

AGRICULTURE CODE

TITLE 2. DEPARTMENT OF AGRICULTURE

For expiration of this chapter, see Section 22.009.

CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION

INCENTIVE PROGRAM

Sec. 22.001. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to reduce air pollution, improve air quality, protect public health, help this state diversify its energy supply, and divert waste from landfills through new price-support incentives to encourage the construction of facilities to generate electric energy with certain types of agricultural residues, forest wood waste, urban wood waste, storm-generated biomass debris, and energy-dedicated crops.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.002. DEFINITIONS. In this chapter:

(1) "Co-firing biomass" means a solid fuel that:

(A) contains qualified agricultural biomass;

(B) is produced by a renewable biomass aggregator and bio-coal fuel producer; and

(C) is used to supplement coal combustion for the generation of electricity.

(1-a) "Diverter":

(A) means:

(i) a person or facility that qualifies for an exemption under Section 361.111 or 363.006, Health and Safety Code;

(ii) a handler of nonhazardous industrial waste that is registered or permitted under Chapter 361, Health and Safety Code;

(iii) a facility that separates recyclable materials from a municipal solid waste stream and that is registered or permitted under Chapter 363, Health and Safety Code, as a municipal solid waste management facility; or

(iv) a renewable biomass aggregator and

bio-coal fuel producer that operates an integrated harvesting, transportation, and solid biofuel conversion facility for qualified agricultural biomass; and

(B) does not include a facility that uses biomass to generate electric energy.

(2) "Farmer" means the owner or operator of an agricultural facility that produces qualified agricultural biomass.

(3) "Forest wood waste" includes residual tops and limbs of trees, unused cull trees, pre-commercial thinnings, and wood or debris from noncommercial tree species, slash, or brush.

(4) "Logger" means a harvester of forest wood waste, regardless of whether the harvesting occurs as a part of the harvesting of merchantable timber.

(5) "Qualified agricultural biomass" means:

(A) agricultural residues that are of a type that historically have been disposed of in a landfill, relocated from their point of origin and stored in a manner not intended to enhance or restore the soil, burned in open fields in the area from which they are derived, or burned in fields and orchards that continue to be used for the production of agricultural goods, and includes:

(i) field or seed crop residues, including straw from rice or wheat, cotton gin trash, corn stover, grain sorghum (milo) harvest residues, sugarcane bagasse, and switchgrass;

(ii) fruit or nut crop residues, including orchard or vineyard prunings and removals;

(iii) forest wood waste or urban wood waste, including state designated forest management cuttings and brush management cuttings from private lands; and

(iv) agricultural livestock waste nutrients; and

(B) a crop grown and used specifically for its energy generation value, including a crop consisting of a fast-growing tree species.

(5-a) "Renewable biomass aggregator and bio-coal fuel producer" means an operator of an integrated harvesting,

transportation, and fuel conversion facility that aggregates qualified agricultural or forest biomass and produces renewable fuel suitable for replacing coal or co-firing with coal.

(6) "Storm-generated biomass debris" means biomass-based residues that result from a natural weather event, including a hurricane, tornado, or flood, that would otherwise be disposed of in a landfill or burned in the open. The term includes:

(A) trees, brush, and other vegetative matter that have been damaged or felled by severe weather but that would not otherwise qualify as forest wood waste; and

(B) clean solid wood waste that has been damaged by severe weather but that would not otherwise qualify as urban wood waste.

(7) "Urban wood waste" means:

(A) solid wood waste material, other than pressure-treated, chemically treated, or painted wood waste, that is free of rubber, plastic, glass, nails, or other inorganic material; and

(B) landscape or right-of-way trimmings.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 1, eff. September 1, 2009.

Sec. 22.003. GRANT PROGRAM. (a) The department shall develop and administer an agricultural biomass and landfill diversion incentive program to make grants to farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers who provide qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to facilities that use biomass to generate electric energy in order to provide an incentive for the construction of facilities for that purpose and to:

(1) promote economic development;

(2) encourage the use of renewable sources in the generation of electric energy;

(3) reduce air pollution caused by burning agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris in open fields; and

(4) divert waste from landfills.

(b) Subject to Section 22.005, a farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer is entitled to receive a grant in the amount of \$20 for each bone-dry ton of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris provided by the farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer in a form suitable for generating electric energy to a facility that:

(1) is located in this state;

(2) was placed in service after August 31, 2009;

(3) generates electric energy sold to a third party by using qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris;

(4) uses the best available emissions control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the air contaminant emissions resulting from the facility;

(5) maintains its emissions control equipment in good working order; and

(6) is in compliance with its operating permit issued by the Texas Commission on Environmental Quality under Chapter 382, Health and Safety Code.

(c) The commissioner by rule may authorize a grant to be made for providing each bone-dry ton of a type or source of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris in an amount that is greater than the amount provided by Subsection (b) if the commissioner determines that a grant in a greater amount is necessary to provide an adequate incentive to use that type or source of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to generate electric energy.

(d) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall assist the department as necessary to enable the department to determine whether a facility meets the requirements of Subsection (b) for purposes of the eligibility of farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers for grants under this chapter.

(e) To receive a grant under this chapter, a farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer must deliver qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to a facility described by Subsection (b). The operator of each facility described by that subsection shall:

(1) verify and document the amount of qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris delivered to the facility for the generation of electric energy; and

(2) make a grant on behalf of the department in the appropriate amount to each farmer, logger, diverter, or renewable biomass aggregator and bio-coal fuel producer who delivers qualified agricultural biomass, forest wood waste, urban wood waste, co-firing biomass, or storm-generated biomass debris to the facility.

(f) The department quarterly shall reimburse each operator of a facility described by Subsection (b) for grants under this chapter made by the operator during the preceding quarter to eligible farmers, loggers, diverters, and renewable biomass aggregators and bio-coal fuel producers. To receive reimbursement for one or more grants, an operator of a facility described by that subsection must file an application with the department that verifies the amount of the grants made by the operator during the preceding quarter for which the operator seeks reimbursement.

(g) The department may contract with and provide for the compensation of private consultants, contractors, and other persons to assist the department in administering the agricultural biomass and landfill diversion incentive program.

(h) Notwithstanding Subsection (b)(2), a facility placed in

service before August 31, 2009, is eligible for reimbursement under this chapter if another facility placed in operation after August 31, 2009, is located 25 miles or less from the existing facility. Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 2, eff. September 1, 2009.

Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and landfill diversion incentive program account is an account in the general revenue fund. The account is composed of:

- (1) legislative appropriations;
- (2) gifts, grants, donations, and matching funds received under Subsection (b); and
- (3) other money required by law to be deposited in the account.

(b) The department may solicit and accept gifts in kind, donations, and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(c) Money in the account may be appropriated only to the department for the purpose of implementing, maintaining, and administering the agricultural biomass and landfill diversion incentive program.

(d) Income from money in the account shall be credited to the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 3, eff. September 1, 2009.

Sec. 22.005. LIMITATION ON GRANT AMOUNT; SCHEDULE OF

PAYMENTS. (a) The total amount of grants awarded by operators of facilities under Section 22.003 and by the department under Section 22.006 during each state fiscal year may not exceed \$30 million.

(b) During each state fiscal year, the department may not pay to an operator of a facility as reimbursements under Section 22.003 or grants under Section 22.006 an amount that exceeds \$6 million.

(c) On a determination that money in the agricultural biomass and landfill diversion incentive account is insufficient to pay reimbursements under Section 22.003 or grants under Section 22.006, the department, in consultation with interested parties, may develop a proportionate and equitable schedule to pay the reimbursements or grants. In developing a schedule to pay reimbursements or grants under this subsection, the department may consider a facility's:

- (1) effect on wages and job creation or job retention;
- (2) level of capital investment; and
- (3) effect on the local economy and the economy of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1196 (H.B. 4031), Sec. 5, eff. September 1, 2009.

Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY GENERATION FACILITIES FOR GRANTS. (a) Except as provided by Subsection (b), an operator of a facility that uses biomass to generate electric energy is not eligible to receive a grant under this chapter or under any other state law for the generation of electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or diverter has received a grant under this chapter.

(b) An operator of a facility that uses biomass to generate

electric energy may receive a grant from the department under this chapter for generating electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that arrives at the facility in a form unsuitable for generating electric energy and that the facility processes into a form suitable for generating electric energy.

(c) To receive a grant from the department under Subsection (b), an operator of a facility must file an application with the department that verifies the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that the facility processed into a form suitable for generating electric energy. The department shall make grants to eligible operators of facilities quarterly, subject to appropriations. The provisions of this chapter governing grants to farmers, loggers, and diverters, including the provisions governing the amount of a grant, apply to a grant from the department under Subsection (b) to the extent they can be made applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.007. RULES. The commissioner, in consultation with the Public Utility Commission of Texas and the Texas Commission on Environmental Quality, shall adopt rules to implement this chapter. Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any other provision of this chapter, the department is not required to administer this chapter or adopt rules under this chapter, and the operator of a facility described by Section 22.003(b) is not required to make a grant on behalf of the department, until funds are appropriated for those purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. 1090), Sec. 1, eff. September 1, 2007.

Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The

agricultural biomass and landfill diversion incentive program terminates on August 31, 2019. On September 1, 2019:

(1) any unobligated funds remaining in the agricultural biomass and landfill diversion incentive program account shall be transferred to the undedicated portion of the general revenue fund; and

(2) this chapter expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1013 (H.B. [1090](#)), Sec. 1, eff. September 1, 2007.