MISSOURI AGRICULTURAL AND SMALL BUSINESS DEVELOPMENT AUTHORITY

NEW GENERATION COOPERATIVE INCENTIVE TAX CREDIT PROGRAM

Guidelines and Procedures
Section 1

Legal Authorization: Chapter 348.432 RSMo (2016).

A. PURPOSE OF THE PROGRAM

1. **Purpose**: To induce producer member investment into new generation processing entities which will result in the processing of Missouri agricultural commodities and agricultural products into value-added goods, provide substantial benefit to Missouri's agricultural producers, and result in the creation of jobs for Missourians.

B. ELIGIBILITY QUALIFICATIONS – NEW GENERATION PROCESSING ENTITY

1. **Eligible New Generation Processing Entity**: is a
   - *partnership,*
   - *corporation,*
   - *Cooperative, or*
   - *limited liability company*

   all of which must be organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

   a. hold a majority of the governance or voting rights of the entity and any governing committee,
   b. control the hiring and firing of management,
   c. deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities,

   A "development facility" is defined as a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product.

   A "renewable fuel production facility" is defined as a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source.

In addition:

a. the development facility or a renewable fuel production facility must be located in Missouri, and
b. the facility must be operational within 24 months of the tax credits being issued.

C. ELIGIBILITY QUALIFICATIONS – PRODUCER MEMBER

1. Eligible Producer Members: A *person, partnership, corporation, trust or limited liability company,* **whose main purpose is agricultural production** that invests cash funds or marketable securities to an eligible new generation cooperative or eligible new generation processing entity, as defined herein, is eligible for a tax credit.

A producer member must:

- **Bear the risk of production for agricultural products,**
- **Bear the risk of price change with respect to production, and**
- **Have a level of involvement in management sufficient to establish material participation.**

Material participation is defined as: A producer member shall be considered to materially participate only if the producer is involved in the agricultural production operation on a basis which is:

- **Regular,**
- **Continuous, and**
- **Substantial**

Generally, a person who receives a fixed rental or other fixed compensation (without reference to production) is ***not*** *a producer.*

Please Note: The Internal Revenue Service also defines a producer as a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation. IRS further distinguishes between active and passive at-risk management. A person not actively engaged in the agricultural production management decision-making process would not be considered a producer.

D. LIMITATIONS ON THE INVESTMENT

1. Time of Investment: The new generation processing entity cannot have received and/or deposited the investment by a producer member to the account of or use by the entity prior to the Authority's approval of the eligible new generation processing entity's application (Form A).

2. Type of investment: A producer member must make an equity investment in the form of cash or marketable securities.

3 Eligible use of funds: Producer members' investments must be used by the eligible new generation processing entity for costs related to facility acquisition or construction, equipment and working capital for the operation of a development facility or renewable fuel production facility.

4. **Securities Registration:** The Secretary of State, Securities Division regulates the offer and sale of securities in the state of Missouri. Shares of stock, membership interests and ownership rights in an agricultural cooperative association are generally considered securities under the Missouri Uniform Securities Act. Under Missouri law, all securities offered or sold in Missouri must be either registered with the Commissioner of Securities, be exempt from registration, or be a federal covered security. Proof of compliance with the Missouri Uniform Securities Act must be provided to the Authority. Questions on securities registration should be directed to:

Missouri Secretary of State, Securities Division
P.O. Box 778, 600 West Main
Jefferson City, MO 65102-0778
Telephone: (573) 751-4136

E. APPLICATION BY NEW GENERATION PROCESSING ENTITY

1. **New Generation Processing Entity Application Submission:** New generation processing entity applicants may submit applications to the Authority on a continuous basis.

2. **Authority's Application:** New generation processing entity must submit the following:
   a. Completed **Form A** (Application for Requesting Certification of New Generation Cooperative Incentive Tax Credits)
   b. $100 Non-refundable processing fee
   c. Feasibility study and business plan showing economic viability, if not included in prospectus,
   d. Certificate of Incorporation issued by the Missouri Secretary of State, or if the certificate is more than 60 days old, a copy of the Certificate of Good Standing
   e. Final Prospectus/Offering Circular showing economic viability, the estimated number of producer members, amount of producer member equity desired, and expected dates of equity contribution,
   f. Proof of compliance with the Missouri Uniform Securities Act,
   g. Organizational bylaws, operating agreement and management agreement (if applicable), if not included in the prospectus/offering circular, verifying the organization as an Eligible New Generation Processing Entity
   h. List of current board of directors or management committee
   i. List of producer-members (both hardcopy and electronic)
   j. Certification of deposit of each producer member's investment to the credit of the new generation processing entity,
   k. Certification of Compliance
   l. Certification of Annual Tax Credit Reporting requirement
   m. Proof of individual members' investments,
   n. Final financing plan, including a letter of loan commitment from the lender (if applicable)
   n. Option or contract for purchase of land (if applicable) or copy of deed for land in Missouri,
   o. Signed copy of construction contracts or purchase contracts verifying cost of project, and
   p. Completed Affidavit of Authorized Workers (included with MO Form A) and evidence of enrollment in E- Verify (www.dhs.gov/e-verify). Acceptable evidence of enrollment

includes the Memorandum of Understanding received upon enrolling.

Submit the above information to:

Missouri Agricultural and Small Business Development Authority
New Generation Tax Credit
P.O. Box 630
Telephone: (573) 751-2129
Jefferson City, MO 65102-0630

F. APPROVAL PROCESS

1. **Application review:** The Authority will only review complete applications (See **Section 2, Form A** of this booklet).

2. **Notification:** The Authority will provide a letter of contingent approval to any eligible new generation processing entity applicant that conforms to the law and guidelines stated herein.

G. APPLICATION BY ELIGIBLE PRODUCER MEMBER

1. **Producer Member Tax Credits:** All producer members of a new generation processing entity wishing to claim a tax credit must:

   a. submit a completed, notarized Member Application for Requesting New Generation Cooperative Incentive Tax Credits (MO Form NG) no later than the deadline established by the Authority. The Authority will mail each eligible producer member the Guidelines and Procedures for the New Generation Cooperative Incentive Tax Credit Program.
   b. a copy of the members valid Missouri drivers license for each person applying and a signed certification of citizenship for each person applying (included with MO Form NG).
   c. $100.00 application processing fee.

NOTE: ***Tax credits will be issued in the name shown on the Missouri Form NG which must match the name shown on the membership list provided by the new generation processing entity. Tax credits will be issued only to memberships with distinct tax identification numbers. Tax credits will not be issued to multiple memberships with the same tax identification number.***

H. ISSUANCE OF THE TAX CREDITS

1. **Proof of Investment:** No later than 45 days after the eligible new generation processing entity's deadline for producer member investment, the new generation processing entity must provide:

   a. Certified listing of all producer members with an ownership interest in the new generation processing entity, Federal ID number/Social Security number, address and the amount and date of each producer member's investment. (Note: The date of

producer members' investment shall be determined as the date on which the eligible new generation processing entity obtains use of the producer members' investment.)

b. Certification of deposit of each producer member's investment to the credit of the new generation processing entity,
c. Audited financial statement that adequately reflects deposits of member's investment, and
d. Monthly bank statements that may be reconciled with the certified membership investment list.

2. Inducement: A producer member, as defined herein, may receive state tax credits equal to:

a. the lesser of 50% of the producer member's cash investment in an eligible new generation processing entity,
b. $15,000, or
c. producer members' pro-ration of the maximum amount of tax credits allocated to the project as described in (I. "Limitations of the Tax Credits") and (K. "Proration of the Tax Credits.")

3. Tax credits: Tax credits will be issued on a first-come, first-serve basis when the required criteria specified herein is met. If the Authority receives more tax credit applications than the amount of available tax credits then those credits which exceed the available amount will be placed on a waiting list to be issued once additional tax credits become available.

I. LIMITATIONS OF THE TAX CREDITS

1. "Large Capital Projects": all eligible producer members related to a "Large Capital Project" may not receive tax credits totaling more than $1,500,000.

2. "Employee Qualified Capital Projects": all eligible producer members related to an "Employee Qualified Capital Project" may not receive tax credits totaling more than $3,000,000.

"Employee qualified" - is defined as sixty full-time employees or equivalent must be employed no later than 24 months from the time the eligible new generation processing entity becomes operational. Sixty full-time employees or equivalent must be maintained for a period of at least five years. A full-time employee is defined as a person working at least 35 hours per week. Equivalent employee includes part-time employees 15 – 25 hours per week as ½ employees and part-time employees working 26 – 34 hours per week as ¾ employees.

3. Allocation of tax credits: $6,000,000 in tax credits are available per fiscal year, subject to budgetary constraints. Each year the Authority will reserve 10% of the credits for "Small Capital Projects". The balance of tax credits will be available to "Large Capital Projects" and "Employee Qualified Capital Projects". After December 31 of each year, the Authority will release any unallocated "Small Capital Project" tax credits for "Large Capital Projects" and "Employee Qualified Capital Projects" or any unallocated "Large Capital Projects" and "Employee Qualified Capital Projects" tax credits to "Small Capital Projects".

4. **Revocation or Repayment of Tax Credits:** The Authority may recapture, in full or part, the value of any credits issued to the new generation processing entity producer members if; (1) any representation made by the new generation processing entity to the Authority in connection with an application from the new generation processing entity proves to have been false when made, (2) the new generation processing entity violates any conditions established by the Authority, or (3) the full time employees or equivalency requirements are not met or maintained.

Liability for repayment or recoupment of tax credits for any misrepresentation remains with the original owner and/or new generation processing entity unless the new generation processing entity signs a tax credit agreement in which case, the new generation processing entity would assume the liability.

In the event tax credits must be recaptured as a result of underemployment for an "Employee Qualified Capital Project", the payback amount will be due and payable on the 15th day of the third month subsequent to the occurrence of a condition of revocation.

The Authority may recapture from the new generation processing entity producer member, in full or part, the value of any credits issued if; any representation made by the new generation processing entity producer member to the Authority in connection with an application from the producer member proves to have been false when made.

J. USAGE OF THE TAX CREDITS

1. **Tax Credits:** Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax for the state tax liability under Chapter 143 (income tax, except for sections 143.91 to 143.265 RSMo); Chapter 147 (corporation franchise tax); and Chapter 148 (financial institution tax).

   If a quarterly tax credit claim contributes to causing an overpayment of taxes for a taxable year, such overpayment shall not be refunded but shall be applied to the next taxable year.

2. **Transferability:** The tax credits may be assigned, transferred, sold, or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the member. To sell, assign, or transfer credits, complete **Form R**, notarize, and submit to the following address, with the $50 transfer fee to:

   Missouri Agricultural and Small Business Development Authority
   New Generation Tax Credit
   P.O. Box 630
   Jefferson City, MO 65102-0630
   Telephone: (573) 751-2129

3. **Carry Forward:** The tax credits may be carried forward to any of the subsequent **<u>four</u>** taxable years after the investment is made, with the exception of corporation franchise tax or tax on financial institutions. Missouri law requires a claim for refund of corporation franchise tax or the tax on financial institutions imposed by chapter 148, RSMo, to be filed within two years from the time the tax was paid.

K. PRORATION OF THE TAX CREDITS

1. **New Generation Processing Entity:** If producer members' investment in a new generation processing entity would be eligible for tax credits in excess of the project's allocation, tax credits will be pro-rated between producer members who apply and calculated as follows:

   a. The amount of each producer member's investment multiplied by 50% will determine the maximum eligible tax credit, not to exceed $15,000,
   b. The sum of producer member's maximum eligible tax credits will be calculated,
   c. The amount of tax credits approved divided by the sum of producer member's maximum eligible tax credits equals the percentage of pro-ration, then
   d. The producer member's maximum eligible tax credit multiplied by the percentage of pro-ration equal the actual amount of tax credit which may be issued to each producer member.

   Any allocation to a new generation processing entity which is not requested by producer member investors by the established deadline date will be available to be redistributed by the Authority.

L. RECORDS, AUDIT, AND ACCOUNTABILITY

1. **The Authority is authorized by Section 348.181 RSMo, to keep the following closed to the public:**

   a. Records and documents submitted which relate to financial investments in a business, or sales projections or processes or other business plan information which may endanger the competitiveness of a business, and

   b. Records and documents submitted related to financial assistance that is awarded by the Authority except for the amount and recipient of any loan or grant from a program administered by the authority**.**

2. **Audit**: The Authority reserves the right to audit approved projects to ensure compliance with program requirements. All projects whose producer members receive tax credits will be audited on no less than an annual basis from the date of issuance through the fifth year after becoming operational. The audit shall include but not be limited to:

   a. construction progress,
   b. updated board member or board of mangers list and CEO,
   c. compliance with reporting requirements as established in the Tax Credit Accountability Act of 2004,
   d. verification of number of employees, and
   e. most recent financial information.

3. **Records maintenance:** The eligible new generation processing entity must retain all documentation related to the New Generation Cooperative Incentive Tax Credit Program for at least seven years from the date of the issuance of the tax credit.

4. **Sale or Other Transfer of Ownership in New Generation Processing Entity:** The Authority must be notified of any transfer of ownership interest in the eligible new generation processing entity which would result in producer members no longer being in operational control. The notice must be within 30 days of the transfer and anytime within five years after becoming operational.

5. **Additional Information:** The Authority reserves the right to request additional information from the new generation processing entity or producer member investors to verify, document, or clarify items submitted in the application.

6. **Tax Credit Accountability Act:** A recipient (eligible producer member) of an agricultural tax credit shall annually, for a period of three years following issuance of tax credits, provide to the Missouri Agricultural and Small Business Development Authority information confirming:
   a. type of agricultural commodity,
   b. amount of investment,
   c. type of equipment purchased, and
   d. name and description of the facility
   e. actual number of permanent full-time, permanent part-time, and seasonal part-time for each month of the preceding twelve (12) month period.

   If the agricultural credit is issued as a result of an eligible producer member investing in a new generation processing entity then the new generation processing entity shall make the annual report.

   The reporting requirements established in this section shall be due annually on June 30th of each year. No person or entity shall be required to make an annual report until at least one year after the credit issuance date.

   After credits have been issued, any failure to meet the annual reporting requirements established in section 135.805 or any determination of fraud in the application process shall result in penalties as follows:

   (1) Failure to report for more than six months but less than one year shall result in a penalty equal to two percent of the value of the credits issued for each month of delinquency during such time period;

   (2) Failure to report for more than one year shall result in a penalty equal to ten percent of the value of the credits issued for each month of delinquency during such time period up to one hundred percent of the value of the credit issued is assessed by way of penalty;

   (3) Fraud in the application process shall result in a penalty equal to one hundred percent of the credits issued. No taxpayer shall be deemed to have committed fraud in the application process for any credit unless such conclusion has been reached by a court of competent jurisdiction or the administrative hearing commission.
   Penalties shall remain the liability of the person or entity obligated to complete the annual reporting, without regard to any transfer of the credits.

F. SUBMISSION OF INFORMATION

For further information regarding this and other financing sources contact:

Missouri Agricultural and Small Business Development Authority
P.O. Box 630
Jefferson City, MO 65102-0630
Telephone: (573) 751-2129
Fax: (573) 522-2416
E-mail: masbda@mda.mo.gov
Web site: agriculture.mo.gov

Missouri Agricultural and Small Business Development Authority

MISSOURI FORM A

Application for Requesting Certification of New Generation Cooperative Incentive Tax Credits

Chapter 348.432 RSMo

Please Type

SECTION 1 **NEW GENERATION PROCESSING ENTITY INFORMATION**

NAME OF NEW GENERATION PROCESSING ENTITY	CONTACT NAME

ADDRESS (STREET/P.O. BOX)	CITY	STATE	ZIP CODE

TELEPHONE NUMBER	FAX NUMBER	SIC CODE or NAICS CODE

BUSINESS FEDERAL IDENTIFICATION NUMBER	COUNTY NEW GENERATION PROCESSING ENTITY LOCATED IN	STATE SENATORIAL DISTRICT	STATE REPRESENTATIVE DISTRICT

NEW GENERATION PROCESSING ENTITY IS ORGANIZED AS: (check one) ☐ PARTNERSHIP ☐ CORPORATION ☐ LIMITED LIABILITY COMPANY ☐ NON-PROFIT COOPERATIVE MARKETING ASSOCIATION (Chapter 274 RSMo) ☐ COOPERATIVE COMPANY (Chapter 357 RSMo)

NEW GENERATION PROCESSING ENTITY IS A (check one)

☐ DEVELOPMENT FACILITY OR

Briefly describe the good produced and the agricultural commodity utilized or the process used to produce a good from an agricultural product. Use additional sheets if necessary.

☐ RENEWABLE FUEL PRODUCTION FACILITY

Briefly describe the energy source and the renewable, domestically grown, organic compound utilized. Use additional sheets if necessary.

SECTION 2 **INVESTMENT INFORMATION**

PROPOSED INVESTMENT: Total amount of project funds required; amount of member equity investment proposed; and amount of tax credits requested. Attach additional sheets if necessary.

USE OF INVESTMENT: Detail listing of the intended uses of all project funds, the proposed sources of such funds, the anticipated construction schedule of the project, and the anticipated financing schedule. (See Program Guidelines for eligible and ineligible uses of funds). Attach additional sheets if necessary.

SECTION 3 **OTHER INFORMATION**:

ECONOMIC IMPACT OF THE PROJECT: Attach a sheet for the number of estimated new full-time permanent, part-time permanent and construction jobs projected to be created due to the project during the next three years, and estimated wage scales of major job classifications.

PRIVATE INVESTMENT: Amount of outside private investment (non-producer member) to be received by the eligible new generation processing entity.
$_____

OTHER STATE AND/OR FEDERAL PROGRAMS: Attach a sheet for any state and federal programs you have applied for and any state or federal programs you've received.

Example: Program Name Program Dollars

SECTION 4	**CERTIFICATION OF THE NEW GENERATION PROCESSING ENTITY**

Pursuant to the "Guidelines and Procedures" document for the "New Generation Cooperative Incentive Tax Credit Program" issued by the Missouri Agricultural and Small Business Development Authority, the Officer (listed below) of the New Generation Processing Entity, as indicated on this Application hereby certify the following:

1. The new generation processing entity is organized as a partnership, corporation, limited liability company, a nonprofit cooperative marketing association pursuant to the laws of this state for the purpose of operating a development facility or a renewable fuel production facility, in which producer members:
   (a) Hold a majority of the governance or voting rights of the entity and any governing committee;
   (b) Control the hiring and firing of management; and
   (c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;
   ("Development facility" and "renewable fuel production facility" are defined in the Program Guidelines and Procedures.)

2. The development facility or renewable fuel production facility must be located in Missouri and must be operational within 24 months of tax credits being issued.

3. The investment proposed herein to receive tax credits has not yet been made, and will not be made prior to the conditional approval of the tax credits by the Authority, as specified in the Program Guidelines and Procedures nor will any investments be made prior to complying with the Missouri Uniform Securities Act.

4. The new generation processing entity will submit a certified listing of all members with an ownership interest in the new generation processing entity, and the amount and date of each member's cash investment <u>after</u> completion of investment. The entity must send an audited financial statement that adequately reflects the investment funds, or monthly bank statements which reflect deposits of members' investment. The bank statements may be reconciled with the certified membership investment list.

5. The new generation processing entity will retain all documentation relating to the program for at least seven years from the date of the grant of tax credits to members, and will allow the Authority to audit such information with that seven year period. The new generation processing entity must inform new members of the provisions and requirements of the program, including the requirement that documentation relating to the program must be retained until the end of the seven year period.

6. In the event any ownership interest in the new generation processing entity or all of the new generation processing entity's assets are sold or otherwise transferred within five years of the date of investment, the new generation processing entity will notify the Authority of such within 30 days of the occurrence.

7. The eligible new generation processing entity agrees that MASBDA staff will be allowed to visit the facility on no less than an annual basis through the fifth year after becoming operational and will provide to MASBDA information relating to: 1) construction progress during the construction phase, 2) current list of board members/board managers with mailing addresses and telephone numbers, 3) most recent financial information, and 4) verify current number of employees.

8. The eligible new generation processing entity agrees to annually, for a period of three years following issuance of tax credits, provide to the Missouri Agricultural and Small Business Development Authority information confirming: (1) type of agricultural commodity; (2) amount of investment; (3) type of equipment purchased; (4) name and description of the facility; (5) actual number of permanent full-time, permanent part-time, and seasonal part-time for each month of the preceding twelve (12) month period.

I, the undersigned, declare that I have examined the application submitted to the Missouri Agricultural and Small Business Development Authority for the New Generation Cooperative Tax Credit Program, including accompanying exhibits, and to the best of my knowledge, information and belief, it is true, correct, and complete, and I hereby agree to comply with the requirements of the program as specified above.

Name of New Generation Processing Entity:_____

Name:_____ Title: _____

Date: _____

Notary

Section 5	**ATTACHMENTS –** Required attachments are detailed in the Program Guidelines and Procedures

SUBMIT TO: **MISSOURI AGRICULTURAL AND SMALL BUSINESS DEVELOPMENT AUTHORITY**
PO BOX 630
JEFFERSON CITY, MO 65102-0630
TELEPHONE: (573) 751-2129