

DEPARTMENT OF AGRICULTURE
Office of the Commissioner
(New Administrative Regulation)

302 KAR 4:010. Renewable Chemical Production Program.

RELATES TO: KRS Chapter 246

STATUTORY AUTHORITY: KRS 246.700(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.700(1)(a) requires the Department of Agriculture to promulgate administrative regulations to create and administer a renewable chemical production program. KRS 246.700 requires the department to cooperate with the Department of Revenue to authorize tax credits for eligible companies producing renewable chemicals. This administrative regulation establishes requirements for renewable chemicals, creation of jobs or investment of new capital related to renewable chemical production, and reporting requirements for eligible companies.

Section 1. Definitions.

(1) "Base employment" means the number of full-time employees employed on the day prior to the work start date of the new employees filling the earliest new jobs identified on the application. For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the department;

(2) "Biobased content percentage" means, with respect to any renewable chemical, the amount, expressed as a percentage, of renewable organic material present as determined by testing representative samples using the American Society for Testing and Materials standard D6866.

(3) "Biomass feedstock" means agricultural crop and process residues, wood and forest residues, energy crops, sugar, polysaccharide, crude glycerin, lignin, fat, grease, or oil derived from a plant or animal, or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process.

(4) "Building block chemical" means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. "Building block chemical" includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, hydroxyalkanoic acids, 1 nonfuel butanol, nonfuel ethanol, biomass derived carbons, bio-oil, or constituent polymer repeating units, or such additional molecules as may be approved by the department after a request and review process;

(5) "Commissioner" means the Commissioner of Agriculture;

(6) "Crude glycerin" means glycerin with a purity level below ninety-five percent;

(7) "Department" means the Kentucky Department of Agriculture;

(8) "Food additive" means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, or nutritional content of food. The Department, in its discretion, shall determine whether or not a building block chemical is primarily consumed as food.

(9) "Full-time employee" means a person employed for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;

(10) "High-purity glycerol" means glycerol with a purity level of ninety-five percent or higher.

(11) "New Jobs" means at least two (2) positions added for the purpose of producing renewable chemicals that are filled by a full-time employee and that increases the total employment of the eligible business above its base employment;

(12) "Renewable Chemical" means a building block chemical with a biobased content percentage of at least 50 percent. "Renewable chemical" does not include a chemical sold or used for the production of food, feed, or fuel. "Renewable chemical" includes cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that such molecules are produced and sold for uses other than food, feed, or fuel. "Renewable chemical" also includes a building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food. "Renewable chemical" also includes supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that such molecules do not provide caloric value so as to be considered sustenance as food or feed;

(13) "Substantial Amount of New Capital" means the investment, after July 1, 2020, by an eligible business of at least five thousand (\$5000) in tangible capital assets used directly in the production of renewable chemicals.

(14) "Sugar" means the organic compounds produced from dedicated crops as well as derived from starches, cellulose, and hemiceluloses, including: glucose, fructose, xylose, arabinose, lactose, and sucrose.

(15) "Date of Eligibility" means the date that a business first qualified as an eligible business by organizing, expanding, or locating in Kentucky on or after July 1, 2020 and:

(a) Filling new jobs; or

(b) Acquiring tangible capital assets as a result of substantial new capital investment.

(16) "Preliminary Tax Credit" means the dollar amount of tax credit certified by the department for an eligible business.

Section 2. Tax Credit Rate Calculation. An eligible business may be approved for a preliminary tax credit calculated in an amount equal to the product of five cents (\$0.05) multiplied by the number of pounds in molecular weight of renewable chemicals produced in this state by the eligible business. This credit may be retroactive to July 1, 2020 with consent of the Kentucky Revenue Cabinet.

Section 3. Full-Time Employee Requirements.

(1) A business shall employ at least two (2) full-time employees over the base employment to meet the eligibility requirement for creating new jobs.

(2) If a full-time employee filling a new job ceases to be employed by the eligible business for any reason, the employee shall be replaced within forty-five (45) days of the employee's termination date in order for the eligible business to maintain the new job for the required period of time. The business shall notify the department within 5 days after the termination date of the need to replace the terminated employee. The business shall notify the department within 5 days after a replacement employee has been hired.

(3) All paid hours (work hours and paid leave hours) should be included when calculating the average hours worked per week to determine if an employee meets the 35-hour minimum requirement to qualify as full-time.

Section 4. Program Applications.

(1) Applications for preliminary tax credits shall be filed with the department by the 15th day of the 1st month following the close of the preceding calendar year.

(2) Upon receipt of an incomplete application or an application without the correct fee, the department shall notify the applicant of the need for additional information or payment. The department shall consider the application abandoned if the department does not receive the required information or payment within thirty (30) days after notification of the deficiency. The thirty (30) day period shall begin on the date the notification is issued by the department.

Section 5. Required Agreement. An eligible businesses shall enter into an agreement with the department to submit all information and reports necessary for the department to determine its date of eligibility, the amount of preliminary tax credit for which the business is eligible, and compliance for each year, including information on required creation or maintenance of new jobs or investment of a substantial amount of new capital.

Section 6. Requests for Eligibility of Additional Molecules and Review.

(1) The department may, after review, add additional eligible molecules to the definition of "building block chemical" upon written request by a producer of a molecule not currently included in the definition of building block chemical.

(2) The department shall accept for review requests for approval of additional molecules on a continuous basis.

(3) The department, before approval of any request for an additional building block molecule, shall convene a committee to review the request and determine whether a requested molecule meets the definition of building block chemical and the criterial for an eligible renewable chemical. The committee shall consist of:

(a) The Director, or their designee, from the University of Kentucky Center for Applied Energy Research;

(b) The Director, or their designee, from the Conn Center for Renewable Energy Research at University of Louisville; and

(c) An employee of the department, appointed by the Commissioner.

(4) Upon approval by the committee, the department shall deem the approved molecule as included in the definition of a building block chemical.

(5) The producer of a disapproved molecule shall be allowed to appeal the decision of the committee.

Section 7. Compliance Cost Fee. A non-refundable compliance cost fee of five hundred dollars (\$500) shall be submitted with all applications for preliminary tax credits for eligible renewable chemical production.

Section 8. Appeal.

(1) Appeals related to the department's decisions on authorizing additional building block chemicals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any eligible business seeking or receiving a tax credit for production of renewable chemicals.

(5) The members of the administrative panel shall determine if the department's action being appealed was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appellant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appellant shall be allowed an opportunity to present arguments for reversing the department's action.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's action.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the action of the department.

(12) Appeals of the panel shall be in accordance with KRS 13B.

Section 9. Material Incorporated by Reference (1) The following material is incorporated by reference:

(1) "Renewable Chemical Production Program Tax Credit Application", (2020)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: December 14, 2020

FILED WITH LRC: December 15, 2020 at 9:17

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2021 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules for application for the tax credit.

(b) The necessity of this administrative regulation: This regulation is necessary to establish application rules for the chemical tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 246.700 tasked the KDA with rule creation and application for the credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for application for the credit.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and perhaps 5 applicants in the near term.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A 500 dollar application fee is required of each applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. The entities will also have a useful tax credit.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(b) On a continuing basis: Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: the KDA general fund, and application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, fees are allowed by statute, and this filing allows for a 500 dollar application fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, fees are allowed by statute, and this filing allows for a 500 dollar application fee.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 246.700

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated, other than the application fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated, other than the application fee.

(c) How much will it cost to administer this program for the first year? Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(d) How much will it cost to administer this program for subsequent years? Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$500 per application.

Expenditures (+/-): Approximately 2 weeks annually for 2 persons would be our maximum guess.

Other Explanation: