

### **302 KAR 4:010. Renewable Chemical Production Program.**

RELATES TO: KRS Chapter 13B, 246.700

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(7) requires the department to cooperate with the Department of Revenue to authorize tax credits for eligible companies producing renewable chemicals. KRS 246.700(4)(a) authorizes the department to impose a nonrefundable compliance cost fee of \$500, collected by the department at the time a business applies for participation in the program. 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, based on data presented.

(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, such as 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 additional molecules as may be approved by the department after a request and review process, in accordance with Section 6 of this administrative regulation.

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

(6) "Crude glycerin" means glycerin with a purity level below ninety-five (95) percent.

(7) "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.

(8) "Department" means the Kentucky Department of Agriculture.

(9) "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 shall determine whether or not a building block chemical is primarily consumed as food, based on data presented.

(10) "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.

(11) "High-purity glycerol" means glycerol with a purity level of ninety-five (95) percent or higher.

(12) "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.

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

(14) "Renewable Chemical" means a building block chemical with a biobased content percentage of at least fifty (50) percent, except for a chemical sold or used for the production of food, feed, or fuel. "Renewable chemical" includes:

(a) Cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that these molecules are produced and sold for uses other than food, feed, or fuel;

(b) 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; and

(c) Supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that these molecules do not provide caloric value so as to be considered sustenance as food or feed.

(15) "Substantial Amount of New Capital" means the investment, after July 1, 2020, by an eligible business of at least \$5,000 in tangible capital assets used directly in the production of renewable chemicals.

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

Section 2. Tax Credit Rate Calculation. An eligible business may be approved for a preliminary tax credit, in accordance with the provisions of KRS 246.700 and this administrative regulation, 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 five (5) days after the termination date of the need to replace the terminated employee. The business shall notify the department within five (5) days after a replacement employee has been hired.

(3) All paid hours (work hours and paid leave hours) shall be included when calculating the average hours worked per week to determine if an employee meets the thirty-five (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 business 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 criteria 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, in accordance with Section 8 of this administrative regulation.

Section 7. Compliance Cost Fee. A non-refundable compliance cost fee of \$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, in accordance with subsection (2) of this section.

(2) The administrative panel shall include at least one (1) person who is:

(a) A department employee; and

(b)

1. Not a department employee; and

2. Not involved or invested in any eligible business seeking or receiving a tax credit for production of renewable chemicals.

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

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

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

- (6) An appellant shall be allowed an opportunity to present arguments for reversing the department's action.
- (7) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's action.
- (8) The three (3) members of the administrative panel shall rule on whether to reverse or affirm the department's action by a majority vote.
- (9) The administrative panel shall conduct the appeal in accordance with KRS Chapter 13B.

Section 9. Material Incorporated by Reference.

- (1) "Renewable Chemical Production Program Tax Credit Application", (2020)", is incorporated by reference.
  - (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.
- (47 Ky.R. 1505, 1938; eff. 7-6-2021.)