

154.27-010 Definitions for subchapter.

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3) (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.

(b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal, thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 or 143A.025, and 154.27-060, that were subject to the tax imposed by KRS 143.020 or 143A.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9) (a) "Capital investment" means:
 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition,

- construction, installation, equipping, upgrading, or retrofitting of an eligible project;
2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;
 - (b) An energy-efficient alternative fuel facility meeting the investment requirements of KRS 154.27-020; or
 - (c) A renewable energy facility meeting the investment requirements of KRS 154.27-020;
- (16) "Energy-efficient alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient

alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;

- (17) "Energy-efficient alternative fuels" means homogeneous fuels that:
- (a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and
 - (b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;
- (18) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (19) (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
- (b) "Facility" shall not include any mining operations, or drilling and production operations for natural gas;
- (20) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (21) (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;
 2. Synthetic natural gas;
 3. Chemicals;
 4. Chemical feedstocks; or
 5. Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- (22) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- (23) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- (24) "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
- (25) "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:
 - (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
 - (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

- (26) "Resident" has the same meaning as in KRS 141.010;
- (27) "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;
- (28) "Synthetic natural gas" has the same meaning as in KRS 152.715;
- (29) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;
- (30) "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and
- (31) "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 199, effective July 15, 2010; ch. 60, sec. 1, effective July 15, 2010; and ch. 139, sec. 2, effective July 15, 2010. -- Created 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 1, effective August 30, 2007.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24, 60, and 139, which do not appear to be in conflict and have been codified together.