

**154.34-070 Application and review process -- Memorandum of agreement -- Standards and criteria for approval -- Preliminary and final approval of company by authority -- Reinvestment agreement -- Notice to department -- Department to monitor use of credits.**

- (1) The application and approval process under this subchapter shall be as follows:
  - (a) An eligible company with a proposed reinvestment project may submit an application to the authority. The application shall include the information required by subsection (4) of this section;
  - (b) Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to a reinvestment project and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish the minimum job retention requirements and maximum total approved cost for the reinvestment project, shall only allow the recovery of costs incurred after preliminary approval, and may include any other terms as agreed to by the parties to the agreement. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement;
  - (c) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;
  - (d) The preliminarily approved company shall have up to three (3) years from the date of preliminary approval to obtain final approval. Upon the earlier of completion of the project or the passage of three (3) years from the date of preliminary approval, the preliminarily approved company shall submit documentation required by the authority, and the authority shall confirm that the minimum investment and job retention requirements established by the memorandum of agreement have been met. Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company and authorize the execution of a reinvestment agreement between the authority and the approved company pursuant to KRS 154.34-080. As part of the reinvestment agreement, the approved costs shall be finally determined, not to exceed the maximum approved costs as determined at preliminary approval, and the approved company shall be eligible to receive incentives in accordance with the provisions of the reinvestment agreement;
  - (e) The authority shall monitor the reinvestment agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the reinvestment agreement and, therefore, eligible for incentives; and
  - (f) Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of credits by the approved company. If, at any time during the term of the reinvestment agreement, an

approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of credits for the approved company.

- (2) The authority may establish standards for preliminary and final approval of eligible companies and their projects through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
- (3) The criteria for preliminary and final approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible equipment and other costs and eligible skills upgrade training costs to be expended by the eligible company, and the number of jobs created or retained as a result of the project.
- (4) The application shall include:
  - (a) A description of the condition of the existing facility, including but not limited to the status of the physical plant, the financial situation of the company, and the efficiency and productivity of the facility;
  - (b) A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary;
  - (c) A timeline for the proposed reinvestment project;
  - (d) A description of the other alternatives that are available to the eligible company, if incentives are not provided;
  - (e) The amount of incentives sought, and an explanation of why the requested incentives are needed;
  - (f) A certification from the company that the reinvestment project would not be economically feasible for the company, but for the incentives available under this subchapter;
  - (g) Payment of any applicable application fees required by the authority; and
  - (h) Any additional information relating to the proposed reinvestment project that the authority may require.
- (5) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.

**Effective:** June 26, 2009

**History:** Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 3, effective June 26, 2009. -- Created 2003 Ky. Acts ch. 148, sec. 7, effective June 24, 2003.

**Legislative Research Commission Note (6/26/2009).** 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 7, provides that, notwithstanding the amendments contained in Sections 1 to 6 of that Act (which includes this statute), "all reinvestment projects preliminarily approved on or after the effective date of this Act shall not be eligible for final approval until July 1, 2010"; and 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 8, provides that, notwithstanding the amendments in Sections 1 to 6 of that Act or the repeals in Section 114 of that Act, "all reinvestment projects preliminarily or finally

approved prior to the effective date of this Act shall be governed by Subchapter 34 of KRS Chapter 154 as it existed prior to the effective date of this Act."