

FILED WITH LRC  
TIME: 10 a.m.  
AUG 15 2018  
Emily B Caudill  
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 15:120. Cellulosic ethanol tax credit.

5 RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4244,  
6 141.4246, 141.4248

7 STATUTORY AUTHORITY: KRS 131.130(1), 141.4246

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4244 provides a nonrefundable  
9 tax credit to producers of cellulosic ethanol. KRS 131.130(1) authorizes the department to  
10 promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.  
11 KRS 141.4246(2) requires the department to promulgate an administrative regulation to establish  
12 the manner in which a pass-through entity shall electronically notify the department of who may  
13 claim the approved tax credit. This administrative regulation establishes guidelines and filing  
14 requirements for a cellulosic ethanol producer filing a tax credit claim for gallons of cellulosic  
15 ethanol produced in this state.

16 Section 1. Definitions. (1) "Applicant" means a cellulosic ethanol producer that files a tax  
17 credit claim as provided by KRS 141.4244.

18 (2) "Application" or "Schedule CELL" means the Schedule CELL, Application, and Credit  
19 Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A7220CELL)[, in-  
20 corporated by reference in 103 KAR 3:040,] that is used to make a cellulosic ethanol tax credit  
21 claim with the department for gallons of cellulosic ethanol produced in this state as provided by

1 KRS 141.4244(3).

2 (3) "ASTM" means the American Society for Testing and Materials.

3 (4) "Cellulosic ethanol" is defined by KRS 141.422(6).

4 (5) "Cellulosic ethanol producer" is defined by KRS 141.422(7).

5 (6) "Corporation" is defined by KRS 141.010(4).~~[141.010(24).]~~

6 (7) "Department" is defined by KRS 141.010(5)~~[141.010(2).]~~

7 (8) "Identification number" [~~the~~] means:

8 (a) Social Security number for individuals;

9 (b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

10 (c) Kentucky corporation income tax and limited liability entity tax account number for  
11 corporations and limited liability pass-through entities.

12 (9) "Individual" is defined by KRS 141.010(13).~~[141.010(7).]~~

13 (10) "Limited liability pass-through entity" is defined by KRS 141.010(15).~~[141.010(28).]~~

14 (11) "Pass-through entity" is defined by KRS 141.010(21).~~[141.010(26).]~~

15 (12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4244.

16 Section 2. Application for Tax Credit. An applicant shall mail to the department a completed  
17 application on or before January 15 for the preceding calendar year.

18 Section 3. Proof of ASTM standard specification. (1) A cellulosic ethanol producer shall pro-  
19 vide proof that the cellulosic ethanol gallons reported on the application meet ASTM standard  
20 specification D4806 for ethanol that is produced from cellulosic biomass materials.

21 (2) Proof submitted by a cellulosic ethanol producer shall be in the form of documentation of  
22 laboratory results that certify that the cellulosic ethanol reported on the Schedule CELL meets the  
23 ASTM standard specification.

1 (3) An independent ASTM certified laboratory shall be used to generate the laboratory results  
2 that are required by this section.

3 (4) Failure to submit documented laboratory results that certify that the cellulosic ethanol meets  
4 the ASTM standard specification with the Schedule CELL shall result in the department  
5 disallowing the credit.

6 (5)(a) A cellulosic ethanol producer shall have the cellulosic ethanol tested as provided by  
7 subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the  
8 cellulosic ethanol meets the ASTM standard specification.

9 (b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be  
10 attached to the application, Schedule CELL, submitted to the department as provided by Section  
11 2 of this administrative regulation.

12 ~~(c) Failure to provide proof of meeting the ASTM standard specification on July 1 and~~  
13 ~~December 31 of each calendar year with the application shall result in the denial of the credit for~~  
14 ~~gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31.~~

15 (d) If proof is timely submitted and the proof certifies that the cellulosic ethanol does not meet  
16 the ASTM standard specification, then all credit claimed for gallons of cellulosic ethanol back to  
17 the previous testing date of July 1 or December 31 shall be disallowed.

18 Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the cred-  
19 it certificate issued by the department to the tax return on which the tax credit is claimed.

20 (2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule  
21 K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1): or Form  
22 765GP, Form number 42A765GP(K-1)[~~, incorporated by reference in 103 KAR 3:040,~~] to the  
23 partner's, member's or shareholder's tax return on which the credit is claimed.

1       Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or  
2 agricultural cooperative association organized under KRS Chapter 272 claiming the cellulosic  
3 ethanol tax credit shall file a report with the department by electronic mail at  
4 KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

5       (2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII  
6 format that includes each partner's, member's, or shareholder's:

- 7       (a) Name;
  - 8       (b) Address;
  - 9       (c) Telephone number;
  - 10      (d) Identification number; and
  - 11      (e) Distributive share of the tax credit.
- 
-

103 KAR 15:120

APPROVED:

*Daniel Bork*  
DANIEL BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

*August 14, 2018*  
DATE APPROVED BY AGENCY

---

---

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 September 30, 2018. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 15:120

Contact Person: Lisa Swiger  
Phone Number: (502)564-9526  
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 15:120 to remove an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was repealed in 2017; and updates statutory references to conform with HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:120 to remove incorrect and/or outdated information which may deem this regulation deficient and cause confusion for taxpayers seeking guidance for this credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.4246 requires the department to promulgate a regulation to establish the manner in which a producer shall notify the department of the credit claimed for gallons of cellulosic ethanol produced in this state. This administrative regulation provides the most recent and up to date information needed to comply with KRS 141.4246.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

(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: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers of cellulosic ethanol in Kentucky will be affected by the information contained in this regulation for reporting.

(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: None. This amendment only removes outdated information and updates statutory references to conform to HB 487.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will not impact the entities identified in question (3).

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

(a) Initially: There are no new costs associated with this regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently budgeted department funding and staff.

(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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers of cellulosic ethanol in Kentucky are required to follow the same process to report gallons produced in the state to the department.



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 15:120

Contact Person: Lisa Swiger  
Phone Number: (502)564-9526  
Email: Lisa.Swiger@ky.gov

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? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 141.4246.

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. There will be no effect on expenditures and revenues for state and local government agencies.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: