



States' Biofuels Statutes

STATE OF MONTANA

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).

Current through the 2013 Legislative Session of the Montana General Assembly.

15-70-501. Short title

This part may be cited as the “Ethanol Tax Incentive and Administration Act of 1983”.

Credits: Enacted by Laws 1983, ch. 649, § 1. Amended by Laws 2007, ch. 100, § 7.

15-70-502. Purpose

The purpose of this part is to establish schedules for the tax incentive for the production of ethanol to be blended for ethanol-blended gasoline and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of ethanol production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

Credits: Enacted by Laws 1983, ch. 649, § 2. Amended by Laws 2007, ch. 100, § 8.

15-70-503. Definitions

As used in this part, the definitions in 15-70-201 and the following definitions apply:

- (1) “Department” means the department of transportation.
- (2) “Ethanol distributor” means any person who, for the purpose of making ethanol-blended gasoline, engages in the business of producing ethanol for sale, use, or distribution.
- (3) “Ethanol-blended gasoline dealer” means any person who blends ethanol with gasoline to produce ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.

(4) “Export” means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

Credits: Enacted by Laws 1983, ch. 649, § 3. Amended by Laws 1985, ch. 697, § 2; amended by Laws 1991, ch. 512, § 8; amended by Laws 1991, ch. 723, § 1; amended by Laws 2005, ch. 452, § 5; amended by Laws 2007, ch. 100, § 9.

15-70-511. Licensing of ethanol distributors

An ethanol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth information that may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

Credits: Enacted by Laws 1983, ch. 649, § 4. Amended by Laws 2007, ch. 100, § 10.

15-70-512. Distributor’s statement

Each ethanol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by the distributor, that includes the following:

- (1) the number of gallons of ethanol manufactured or imported by the distributor during the preceding calendar month;
- (2) the name of each ethanol-blended gasoline dealer to whom the distributor sold ethanol and the number of gallons sold to each dealer; and
- (3) other information that the department may reasonably require to administer the tax laws of this state.

Credits: Enacted by Laws 1983, ch. 649, § 5. Amended by Laws 2007, ch. 100, § 11.

15-70-513. Recordkeeping requirements

The records of each ethanol distributor and ethanol-blended gasoline dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and other information that the department may require.

Credits: Enacted by Laws 1983, ch. 649, § 6. Amended by Laws 2007, ch. 100, § 12.

15-70-514. Examination of records

The department or its authorized representative may examine the books, papers, records, and equipment of any ethanol distributor or ethanol-blended gasoline dealer.

Credits: Enacted by Laws 1983, ch. 649, § 7. Amended by Laws 2007, ch. 100, § 13.

15-70-521. Denaturing ethanol--refund authorized

An ethanol distributor who, for the purpose of denaturing ethanol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

Credits: Enacted by Laws 1983, ch. 649, § 8. Amended by Laws 2007, ch. 100, § 14.

15-70-522. Tax incentive for production of ethanol--rules

(1)(a) If the ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ethanol distributors for distilling ethanol that:

- (i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline;
or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ethanol tax incentive provided in subsection (2):

- (a) the total payments made for the incentive under this part may not exceed \$6 million in any

consecutive 12-month period;

(b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase; and

(c) an ethanol distributor is not eligible to receive the tax incentive unless at least:

- (i) 20% Montana product is used to produce ethanol at the facility in the first year of production;
- (ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;
- (iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;
- (iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;
- (v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and
- (vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.

(4)(a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

- (i) the total number of gallons produced for the month;
- (ii) the total amount of products purchased for the production of ethanol;
- (iii) the percentage of the total amount of products purchased that are Montana products; and
- (iv) other information that the department determines is necessary.

(5)(a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the

application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall adopt rules necessary to carry out the provisions of this section. The department shall coordinate and request information and input from the ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4.

Credits: Enacted by Laws 1983, ch. 649, § 9. Amended by Laws 1985, ch. 697, § 3; amended by Laws 1989, ch. 593, § 1; amended by Laws 1991, ch. 512, § 8; amended by Laws 1991, ch. 723, § 2; amended by Laws 1993, ch. 592, § 1; amended by Laws 1997, ch. 510, § 1; amended by Laws 2001, ch. 532, § 1; amended by Laws 2003, ch. 535, § 1; amended by Laws 2005, ch. 452, § 6; amended by Laws 2007, ch. 100, § 15; amended by Laws 2009, ch. 277, § 10, eff. July 1, 2009.

15-70-523. Application for payment of tax incentive

(1) The claimant shall apply for payment of the tax incentive by signed statement on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the ethanol-blended gasoline dealer at the time of sale and delivery, showing total gallons of ethanol sold; and

(b) a certificate of blending issued by the ethanol purchaser showing the total gallons of ethanol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

Credits: Enacted by Laws 1983, ch. 649, § 10. Amended by Laws 1985, ch. 697, § 4; amended by Laws 2007, ch. 100, § 16.

15-70-527. Penalty for failure to file

An ethanol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both.

Credits: Enacted by Laws 1983, ch. 649, § 11. Amended by Laws 2007, ch. 100, § 17.