



States' Biofuels Statutes

STATE OF NORTH CAROLINA

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Current through the 2013 Legislative Session of the North Carolina General Assembly.

§ 105-449.130. Definitions

The following definitions apply in this Article:

- (1) Alternative fuel.--A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
- (1a) Bulk end-user. -- A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (2) Highway.--Defined in G.S. 105-449.60.
- (3) Highway vehicle.--Defined in G.S. 105-449.60.
- (4) Motor fuel.--Defined in G.S. 105-449.60.
- (5) Motor fuel rate.--Defined in G.S. 105-449.60.
- (6) Provider of alternative fuel.--A person who does one or more of the following:
 - a. Acquires alternative fuel for sale or delivery to a bulk end-user or a retailer.
 - b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a bulk end-user or a retailer to operate a highway vehicle.
 - c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.
 - d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway

vehicle.

(7) Retailer.--A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 44, eff. July 1, 1996; S.L. 2008-134, § 53, eff. Jan. 1, 2009.

§ 105-449.131. List of persons who must have a license

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A provider of alternative fuel.
- (2) A bulk end-user.
- (3) A retailer.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 45, eff. July 1, 1996; S.L. 2008-134, § 54, eff. Jan. 1, 2009.

§ 105-449.132. How to apply for a license

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b).

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by S.L. 1998-146, § 11, eff. Sept. 18, 1998.

§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping certain licenses

(a) Who Must Have Bond.--The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

- (1) An alternative fuel provider.
- (2) A retailer or a bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility.

(b) Amount.--The amount of the bond is the amount that would be required if the fuel the applicant intended to provide or store was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by S.L. 1997-60, § 23, eff. Oct. 1, 1997; S.L. 2008-134, § 55, eff. Jan. 1, 2009.

§ 105-449.134. Denial or cancellation of license

The Secretary may deny an application for a license or cancel a license under this Article for the same reasons that the Secretary may deny an application for a license or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling a license applies to the cancellation of a license under this Article.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 46, eff. July 1, 1996.

§ 105-449.135. Issuance of license; notification of changes

(a) Issuance.--The Secretary must issue a license to each applicant whose application is approved. A license is not transferable and remains in effect until surrendered or cancelled.

(b) Notice.--A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

All taxes for which the license holder is liable under this Article but are not yet due become due on the date of the change. If the license holder transfers the business to another and does not give the notice required by this section, the person to whom the business was transferred is liable for the amount of any tax the license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the license holder.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996.

§ 105-449.136. Tax on alternative fuel

<Text of section eff. until Jan. 1, 2015. See, also, section eff. Jan. 1, 2015.>

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 47, eff. July 1, 1996; S.L. 2009-445, § 38, eff. Aug. 7, 2009.

§ 105-449.137. Liability for and payment of the tax

(a) **Liability.**--A bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel.

(b) **Payment.** -- The tax imposed by this Article is payable when a return is due. A return is due on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by S.L. 1997-60, § 24, eff. Oct. 1, 1997; S.L. 2006-162, § 15(d), eff. Jan. 1, 2007; S.L. 2008-134, § 56, eff. Jan. 1, 2009.

§ 105-449.138. Requirements for bulk end-users and retailers

(a) **Informational Return.**--A bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

- (1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage.--A bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 48, eff. July 1, 1996; S.L. 1997-60, § 25, eff. Oct. 1, 1997; S.L. 2008-134, § 57, eff. Jan. 1, 2009.

§ 105-449.139. Miscellaneous provisions

(a) Records.--A license holder must keep a record of all documents used to determine the information provided in a return filed under this Article. The records must be kept for three years from the due date of the return to which the records apply. The records are open to inspection during business hours by the Secretary or a person designated by the Secretary.

(b) Violations.--The offenses listed in subdivisions (1) through (9) of G.S. 105-449.120 apply to this Article. In applying those offenses to this Article, references to “this Article” are to be construed as references to Article 36D and references to “motor fuel” are to be construed as references to alternative fuel.

(c) Lists.--The Secretary must give a list of licensed alternative fuel providers to each licensed bulk end-user and licensed retailer. The Secretary must also give a list of licensed bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate.

Credits: Added by Laws 1995, c. 390, § 3, eff. Jan. 1, 1996. Amended by Laws 1995 (Reg. Sess., 1996), c. 647, § 49, eff. July 1, 1996; S.L. 2008-134, § 58, eff. Jan. 1, 2009.