CHAPTER 31:02:01

ETHANOL INFRASTRUCTURE INCENTIVE PROGRAM

Section

31:02:01:01. Definitions. Terms used in this chapter mean:

(1) "E15," an ethanol blend containing between ten-and-one-half percent and fifteen percent ethanol;

~~(1)~~(2) "Ethanol," a blended ethyl alcohol produced by fermentation from biological materials such as sugars, starches, and cellulosic feedstocks;

~~(2)~~(3) "Ethanol blend," ~~a blended motor fuel containing ethyl alcohol of at least ninety-nine percent purity, typically derived from agricultural products, and which is blended exclusively with a product commonly or commercially known or sold as gasoline~~ as defined in SDCL § 10-47B-3(10);

~~(3)~~(4) "Ethanol blender pump," a mechanism provided by a motor fuel retail dealer for the dispensing at retail of ethanol blend, as defined in ~~§~~ SDCL 10-47B-3 ~~of ethanol blend~~, so that the end user may choose a particular grade of ethanol to gasoline blend to be dispensed;

(5) "Ethanol infrastructure incentive program," the grant program created by SDCL 10-47B-164.1 and the E15 fuel tax refund program created by SDCL 10-47B-192 and administered under this chapter;

~~(5) "Flex fuel vehicle," a motor vehicle designed to burn either gasoline or a blend of gasoline and up to eighty-five percent ethanol; and~~

(6) "GOED," the Governor's Office of Economic Development; and

(7) "Licensed marketer," a person, licensed by the Department of Revenue pursuant to chapter 10-47B, who qualifies for a fuel tax refund under SDCL 10-47B-192.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:02. Eligible ~~projects~~ activities. The following classes of ~~projects~~ activities ~~are eligible to apply~~ may qualify for ~~grants~~ a grant or payment from the ethanol infrastructure incentive program:

(1) Class 1 -- Motor fuel retail dealer projects for the purchase and installation of ethanol blender pumps installed on or after September 15, 2011, or the modification of existing ethanol blender pumps, to comply with the standards ~~set out~~ in this chapter, and associated piping and storage systems;

(2) Class 2 -- Projects to encourage the purchase of flex fuel vehicles in this state;

(3) Class 3 -- Projects to encourage the increased use of ethanol in this state, including marketing or the dissemination of informational materials in this state; ~~and~~

(4) Class 4 -- Projects to facilitate or encourage the installation of infrastructure for the distribution of ethanol; and

(5) Class 5 -- Motor fuel tax refunds to licensed marketers for calendar years 2025 to 2029, inclusive, calculated from the number of gallons of E15 dispensed through motor fuel pumps located on the marketers' retail premises in this state during the preceding calendar year.

For purposes of this section, "flex fuel vehicle," means a motor vehicle designed to burn either gasoline or a blend of gasoline and up to eighty-five percent ethanol.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:03. Other eligibility criteria. In addition to the criteria ~~set out~~ provided in § 31:02:01:01, ~~a proposed project~~ an applicant seeking a grant from the ethanol infrastructure incentive program for an activity described in subdivisions 31:02:01:02(1) to (4), inclusive, must meet the following criteria:

(1) The project ~~shall~~ must be physically located in this state or directed toward end users in this state;

(2) The project ~~shall~~ must demonstrate a likelihood ~~that it will increase~~ of increasing the use of ethanol in this state or ~~increase~~ increasing consumer knowledge of ethanol;

(3) If applicable, the project ~~shall~~ must utilize existing technologies proven to be reliable;

(4) The project ~~shall~~ must meet state air, water quality, and other environmental protection standards; and

(5) For projects involving the installation of ethanol blender pumps:

(a) The ethanol blender pump ~~shall be of a type that does~~ may not allow ~~for~~ an end user to receive an ethanol blend percentage other than that designated by the end user;

(b) The ethanol blender pump ~~shall~~ must provide ~~all of the following types of ethanol blends for~~ the end user~~:~~

~~(i) A blend of ten percent ethanol;~~

~~(ii) A blend of fifteen percent ethanol or more; and~~

~~(ii) A blend of twenty-five percent or more ethanol~~ with blends of ten percent ethanol, fifteen percent ethanol or more, and twenty-five percent ethanol or more;

(c) The ethanol blender pump ~~shall be of a type~~ must be compatible with related infrastructure, including storage and piping systems; and

(d) The ethanol blender pump ~~shall~~ must comply with all applicable alternative fuel, biofuel, and flexible fuel requirements established by law.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2.

Law Implemented: SDCL 10-47B-164.1.

31:02:01:04. Grant conditions. A grant made for an activity described in subdivisions 31:02:01:02(1) to (4), inclusive, ~~shall~~ must be in an amount determined by GOED and made subject to the following terms:

(1) The amount of the grant may not exceed the actual cost of the project as proposed in the application;

(2) A grant ~~shall~~ must be paid on a reimbursement basis upon satisfactory completion of the project. The grant recipient shall submit a U.S. Internal Revenue Service Form W-9 and as applicable to the project, ethanol blender pump specification, certification that installation meets Department of Agriculture and Natural Resources standards, copies of all invoices for the project, proof of payment of all project costs, lien releases from vendors and installers, and other documentation ~~reasonably~~ required by GOED to establish that the project has been ~~satisfactorily~~ completed in compliance with the provisions of this chapter;

(3) All work paid for with grant proceeds ~~shall~~ must comply with all applicable building and housing codes and standards.

(4) Unless a written extension is granted by GOED, the project ~~shall~~ must be completed within one hundred eighty days of notice of grant approval;

(5) The grant application and application for reimbursement ~~shall~~ must be signed under oath;

(6) Any project that involves the installation of ethanol blender pumps, including successor owners, ~~shall~~ must continue to sell ethanol blends in excess of fifteen percent ethanol for a minimum of twenty-four months after project completion; and

(7) Any existing pump to be replaced ~~shall~~ must be removed and disposed of in compliance with applicable federal and state environmental protection laws.

Source: 38 SDR 115, effective January 9, 2012; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2.

Law Implemented: SDCL 10-47B-164.1.

31:02:01:05. Allocation of grant funds among classes of projects. Moneys deposited in the ethanol infrastructure incentive fund on or after July 1, 2024, may only be used for payment of the motor fuel tax refunds provided in subdivision 31:02:01:02(5). GOED may continue to allocate ~~grant funds~~ moneys deposited in the fund prior to July 1, 2024, among ~~the~~ all classes of projects described in § 31:02:01:02 until the moneys are expended. GOED may designate periods of time during which it accepts applications for grants from one or more ~~class of projects~~ classes of activities described in subdivisions 31:02:01:02(1) to (4), inclusive, but must accept applications for the motor fuel tax refund provided in subdivision 31:02:01:02(5) only as provided in SDCL 10-47B-192. GOED shall ~~publically~~ publicly announce that it is accepting applications for grants or payments and the class or classes of ~~projects which~~ activities that may be eligible for funding. GOED may not accept applications that are ~~not~~ filed ~~within~~ outside the designated application ~~time~~ period or applications that relate to a class of ~~projects~~ activities for which applications are not being accepted.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:06. Application form. ~~A grant~~ An ethanol infrastructure incentive program funding application ~~shall~~ must be submitted on forms provided by GOED and ~~shall include~~ contain the following:

(1) The name, complete mailing address, and county of the applicant;

(2) The name, title, address, telephone number, and email address of a designated contact person for the applicant;

(3) The amount of the grant or motor fuel tax refund requested;

(4) A summary description of the project, including its estimated cost, or, for motor fuel tax refund applications, the total number of gallons of E15 dispensed by the applicant during the preceding calendar year, broken down by retail location if the applicant has multiple locations; ~~and~~

(5) The estimated date of completion of the project, or, in the case of a motor fuel tax refund application, the time period during the previous calendar year in which E15 was available at each location;

(6) For motor fuel tax refund applicants, the actual number of E15 gallons sold and dispensed by motor fuel pumps at each location on the application. The application may not include a number of E15 gallons for a location, or in the aggregate, that is based on percentage calculations applied to an amount of bulk gasoline or ethanol sold or delivered at a location during the preceding calendar year; and

(7) For motor fuel tax refund applicants, evidence the applicant complies with alternative fuel compatibility requirements with the Department of Agriculture and Natural Resources.

~~No~~ GOED may not consider incomplete or inaccurate applications ~~may be considered~~. GOED may request ~~such~~ the additional information as necessary for it to determine eligibility and to make ~~an award~~ a funding decision.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:07. Criteria for grant awards. A portion of the grants to be awarded under this chapter, for activities described in subdivisions 31:02:01:02(1) to (4), inclusive, may be awarded on a first-come basis. Any grant not awarded on a first-come basis ~~shall~~ must be awarded based upon a ~~reasonable~~ projection of additional ethanol blend to be sold as a result of the project and other projected benefits to the ethanol industry in this state. At the time GOED announces that it will entertain grant applications, GOED shall announce the amount of grant ~~funds~~ moneys available and what percentage, if any, ~~will~~ are to be awarded on a first-come basis.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2.

Law Implemented: SDCL 10-47B-164.1.

31:02:01:07.01. Fuel tax refund -- Administration -- Payment. GOED shall pay motor fuel tax refunds described in subdivision 31:02:01:02(5) as follows:

(1) GOED shall make a final determination of refund eligibility and amount within ninety days of receiving the completed application;

(2) Subject to subdivision (3) of this section, the refund amount for an eligible licensed marketer is as provided in SDCL 10-47B-192; and

(3) If moneys allocated from the ethanol infrastructure incentive fund for motor fuel tax refunds are insufficient to pay the full refund amount to all licensed marketers for the preceding calendar year, GOED must prorate each licensed marketer's refund and pay the refund as a percentage of the overall allocation. This percentage is equal to the licensed marketer's number of gallons of E15 sold and dispensed divided by the total number of gallons of E15 sold and dispensed by all licensed marketers eligible for a motor fuel tax refund.

Source:

General Authority: SDCL 10-47B-192.

Law Implemented: SDCL 10-47B-192.

31:02:01:08. Default. Any of the following constitutes a default upon the terms of an ethanol infrastructure incentive program grant or payment:

(1) Any part of ~~a grant~~ an application is shown to be materially false or misleading;

(2) Any part of the grant for an activity described in subdivisions 31:02:01:02(1) through (4), inclusive, is used for any purpose other than reimbursement for eligible project costs;

(3) The grantee for an activity described in subdivisions 31:02:01:02(1) through (4), inclusive, fails to commence or complete the project within the time allowed by this chapter;

(4) For ~~projects~~ an activity involving the installation of ethanol blender pumps, the grantee fails to continue to sell ethanol blends in excess of fifteen percent ethanol for a minimum of twenty-four months after project completion; or

(5) Repeated failure by the grantee to provide access to facilities or documents or to provide the reports and other information required by this chapter.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:09. Remedies. If there is a default pursuant to the provisions of § 31:02:01:08, the grantee or recipient of a fuel tax refund payment shall repay the full amount of the grant or payment to GOED within thirty days of a written demand from GOED. GOED may retain counsel and commence a civil action to recover any ~~grant~~ funds that a grantee or recipient of a fuel tax refund payment is required to repay. GOED may forgive a default under this chapter if any of the following conditions are met:

(1) There are fuel shortages that make compliance impractical;

(2) There are changes in fuel market conditions that make compliance impractical; or

(3) There are changes in state or federal regulations that make compliance impractical.

For any grant involving the installation of ethanol blender pumps and a default pursuant to the provisions of subdivision 31:02:01:08(4), the amount sought ~~to be repaid~~ as repayment may be prorated based upon the number of months less than twenty-four that ethanol blends were sold.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:10. Access and reporting. A grantee or recipient of a fuel tax refund payment shall grant GOED reasonable access to the grantee's or recipient's facilities and records for the purpose of determining compliance with the terms of the grant or payment and of this chapter. A grantee for an activity described in subdivisions 31:02:01:02(1) to (4), inclusive, shall provide a written project report to GOED at least annually on forms provided by GOED. GOED may require more frequent reports in the event of a late or an incomplete report or ~~a~~ GOED having reasonable cause to believe a default has occurred.

Source: 38 SDR 115, effective January 9, 2012.

General Authority: SDCL 10-47B-164.1, 10-47B-164.2, 10-47B-192.

Law Implemented: SDCL 10-47B-164.1, 10-47B-192.

31:02:01:11. Appeal of denied fuel tax refund application. A licensed marketer may appeal a denial of an application for a motor fuel tax refund using the contested case procedures set forth in SDCL chapter 1-26. The appeal commences when the licensed marketer informs the GOED commissioner of the appeal in writing within ten business days of receiving the denial from GOED.

Source:

General Authority: SDCL 10-47B-192.

Law Implemented: SDCL 10-47B-192.