

**CHAPTER 17-02  
ETHANOL PRODUCTION INCENTIVES**

**17-02-01. Ethanol production incentives - Report to budget section.**

1. a. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.
3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative management a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

**17-02-02. Ethanol production incentives - Payments for increased production.**

If an ethanol plant that was in operation in this state before July 1, 1995, increases its production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production capacity during any twelve-month period beginning on or after July 1, 2005, that plant is eligible to receive ethanol production incentive payments under section 17-02-03 on its increased production.

**17-02-03. Ethanol production incentive - Calculation - Payment.**

The office of renewable energy and energy efficiency shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the office of renewable energy and energy efficiency shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the office of renewable energy and energy efficiency shall add zero to any amount payable under this section.
- c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the office of renewable energy and energy efficiency shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the office of renewable energy and energy efficiency shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the office of renewable energy and energy efficiency shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the office of renewable energy and energy efficiency shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

**17-02-04. Subsidy limitations.**

The office of renewable energy and energy efficiency may not distribute more than one million six hundred thousand dollars per eligible facility annually in payments under section 17-02-03 and may not distribute any payment that would create a negative ethanol production incentive fund balance. If the incentive fund balance is insufficient to pay all valid incentive requests received in any quarter, the funds available must be paid out on a pro rata basis and obligations may not be carried forward. No eligible facility may receive state payments that exceed a cumulative total of ten million dollars or for longer than ten years. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section or the ten-year limitation contained in this section.

**17-02-05. Ethanol production incentive fund - Continuing appropriation.**

There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the office of renewable energy and energy efficiency for use in paying ethanol production incentives under this chapter.