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STATE OF SOUTH DAKOTA

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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Sections 31:02:01:01 through  
31:02:01:12, inclusive

ORIGINAL

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RULES HEARING

Transcript of Hearing  
August 13, 2025  
11:00 a.m.

= = = = =

BEFORE THE HONORABLE CATHERINE WILLIAMSON  
ADMINISTRATIVE LAW JUDGE, OFFICE OF HEARING EXAMINERS

A P P E A R A N C E S

AARON SCHEIBE  
MAY, ADAM, GERDES & THOMPSON  
503 South Pierre Street  
Pierre, South Dakota 57501

ALSO PRESENT: Jack Valentine  
Joe Fiala

1           The following Transcript of Hearing was  
2 taken at the Dolly-Reed Plaza, 711 East Wells Avenue,  
3 Pierre, South Dakota, on the 13th day of August, 2025,  
4 commencing at 11:00 a.m.; before Cheri McComsey Wittler,  
5 a Registered Professional Reporter, Certified Realtime  
6 Reporter, and Notary Public within and for the State of  
7 South Dakota.

1 ADMINISTRATIVE LAW JUDGE: We're on the record  
2 then for a public hearing with the Governor's Office of  
3 Economic Development, the Department. The Department  
4 today is represented by Deputy Commissioner Joe Fiala.

5 I'm Catherine Williamson. I'm an Administrative  
6 Law Judge with the Office of Hearing Examiners. I'm here  
7 today and it's August 13. We're present at the  
8 Dolly-Reed Building in Pierre, South Dakota. Mr. Fiala  
9 is present via teleconference.

10 This is in regards to a public hearing on the  
11 GOED ethanol program represented in Chapter 31:02:01 in  
12 the Administrative Rules.

13 And with that, there's a Finance Division staff  
14 present to explain it all.

15 Mr. Valentine, go ahead.

16 MR. VALENTINE: Yes. Thank you. Good morning.

17 Jack Valentine, director of finance for the  
18 Governor's Office of Economic Development. On behalf of  
19 the Governor's Office of Economic Development, I present  
20 to you the changes proposed to Chapter 31:02:01, the  
21 ethanol infrastructure incentive program, to accommodate  
22 legislation to basically appropriate a rebate on the E-15  
23 rebate legislation that was enrolled in the 2024  
24 legislative session.

25 Moving into the chapter, in 31:02:01:01 there

1 are some updates to definitions to define E-15 as well as  
2 to create references to E-15. There are also being some  
3 additional updates to reference the new enrolled  
4 legislation, define a licensed marketer.

5 In 31:02:01:02, eligible activities, mainly  
6 Class 5, the motor fuel tax refunds eligible to licensed  
7 marketers for calendar years 2025 through 2029 as  
8 calculated from the number of gallons of E-15 dispensed  
9 through motor fuel pumps located on their retail premises  
10 in this state during the preceding calendar years is  
11 added.

12 In 31:02:01:03 there are some updates in  
13 references for other eligibility criteria for a project  
14 described in 31:02:01:02, 1 through 4 inclusive, again to  
15 capture that classified activity for the motor fuel tax  
16 refund to a licensed marketer.

17 In 31:02:01:04, under grant conditions,  
18 additional reference was made again back to the  
19 activities for a project described in Subsections  
20 31:02:01:02, Sections 1 through 4 inclusive, again to  
21 capture, again, that Class 5 activity.

22 In 31:02:01:05, allocation of grant funds among  
23 classes of projects, to bring this section into  
24 compliance with the enrolled legislation, beginning as of  
25 July 1, 2024, all funds deposited in the ethanol

1 infrastructure incentive fund shall be allocated solely  
2 for the payment of the motor fuel tax refunds described  
3 in Subsection 31:02:01:02. Subsection 5, while GOED may  
4 continue to allocate any funds deposited in the ethanol  
5 infrastructure incentive fund prior to July 1, 2024,  
6 among all the classes of projects described in Section  
7 31:02:01:02 until such funds are expended.

8 It also creates the designation of an annual  
9 30-day application period for the motor fuel tax refund  
10 which begins on January 1, 2026; that GOED shall publicly  
11 announce that it is accepting applications for grants or  
12 payments and which projects, classes, or activities are  
13 eligible for funding; denotes that GOED may not accept  
14 applications filed outside of the designated application  
15 time period related to those classes of activities for  
16 which applications are not being accepted.

17 Moving into 31:02:01:06, application form, an  
18 ethanol infrastructure incentive program funding  
19 application shall be created and will be the authorized  
20 application form provided by GOED in which applications  
21 for this classified activity should be made upon.  
22 References in Subsection 3 to the amount of grant or  
23 motor fuel tax refund are added. References in  
24 Subsection number 4, addition of the motor fuel tax  
25 refund application, the total number of gallons of E-15

1     dispensed by the applicant during the preceding calendar  
2     year, and then acknowledgment or identification of retail  
3     location if the applicant has multiple locations.

4             In Subsection 5 the addition of "in the case of  
5     a motor fuel tax refund application, the time period  
6     during the previous calendar year in which E-15 was  
7     available at each location" was added. And Subsection 6  
8     added in its entirety, "for motor fuel tax refund  
9     applicants, evidence the applicant complies with  
10    alternative fuel compatibility requirements with the  
11    Department of Agriculture and Natural Resources." Also  
12    an advisement that GOED may not consider incomplete or  
13    inaccurate applications and that GOED may request  
14    additional information as necessary to determine  
15    eligibility and to make a funding and award decision.

16            In Section 31:02:01:07, criteria for grant  
17    awards, again to reference the projects described in  
18    Subsections 31:02:01:02, Section 1 through 4 inclusive.

19            MR. SCHEIBE: And, Ms. Williamson, if I may,  
20    this is Aaron Scheibe. I'm outside legal counsel to GOED  
21    and GOED staff.

22            Just to kind of clarify for the record, a lot of  
23    the changes that Jack is discussing and kind of drawing  
24    attention to with these Subsections 1 through 4 are  
25    really meant to create kind of a two-part way that the

1 programs work, one with the fuel tax refunds, which is  
2 really the object of the rulemaking, which is to get  
3 these fuel tax refunds out and going, but they are  
4 treated differently from the existing program activities.  
5 And so the references that Mr. Valentine is talking about  
6 are really meant to kind of, you know, make it clear that  
7 there's two different tracks within this program for the  
8 way that funds will be used.

9           So I just want to make sure that that's clear.  
10 And that way it maybe saves Jack a little bit of trouble  
11 having to go through and explain all of those references  
12 each time.

13           ADMINISTRATIVE LAW JUDGE: Very good. Thank  
14 you.

15           MR. VALENTINE: Thank you for that.

16           Moving on, Section 31:02:01:08 added in its  
17 entirety criteria for fuel tax refunds. Requirements,  
18 referring again to 31:02:01:02 (5), that classified  
19 activity, GOED will make the final determination of all  
20 refund eligibility and amounts within 90 days of  
21 receiving the first motor fuel tax refund request each  
22 calendar year.

23           Subsection 2, subject to Subsection 31:02:01:08  
24 sub 3, the refund amount for an eligible licensed  
25 marketer is 5 cents multiplied by the total number of

1 gallons of E-15 sold and dispensed by the licensed  
2 marketer during the preceding calendar year.

3 Under Subsection 3, if funding allocated from  
4 the ethanol infrastructure incentive fund for motor fuel  
5 tax refunds is insufficient to pay the full refund amount  
6 to all licensed marketers for the preceding calendar  
7 year, GOED shall prorate each licensed marketer's refund  
8 and pay the refund as a percentage of the overall  
9 allocation. This percentage is to be equal to the  
10 licensed market's number of gallons of E-15 sold and  
11 dispensed divided by the total number of gallons of E-15  
12 sold and dispensed by all licensed marketers eligible for  
13 a motor fuel tax refund.

14 And then under Subsection 4, a licensed marketer  
15 shall report the actual number of E-15 gallons sold and  
16 dispensed by motor fuel pumps at each location on its  
17 application. The application may not report a number of  
18 E-15 gallons for a location or in the aggregate that is  
19 based on the percentage calculation applied to any amount  
20 of bulk gasoline or ethanol sold or delivered at a  
21 location during the preceding calendar year.

22 Section 31:02:01:08 -- or I'm sorry 09, default  
23 references to payment. The application and again to the  
24 projects as described inclusive are made.

25 Section 31:02:01:10 refers to remedies in the

1 recipient of a fuel tax refund and repayment of the full  
2 amount of the grant or payment if found to be in default  
3 and that a grantee or recipient of a fuel tax refund  
4 payment is required to pay.

5 Under Section 31:02:01:11 references again to  
6 the recipient of a fuel tax refund payment with regard to  
7 access and reporting and there are project references to  
8 those eligible projects and activities.

9 31:02:01:12, appeal of denied fuel tax refund,  
10 the application references that a licensed marketer may  
11 appeal GOED's denial of their application for a motor  
12 fuel tax refund using the procedures set forth in  
13 South Dakota Administrative Procedures Act SDCL Chapter  
14 1-26, and that a licensed marketer may commence an appeal  
15 by informing the GOED commissioner in writing within 10  
16 business days of receiving a denial from GOED.

17 I would like to note that these rules as  
18 presented for your consideration are in the format with  
19 which they were presented to Legislative Research Council  
20 code counsel. A number of form and style as well as  
21 potentially substantive changes were returned to GOED  
22 legal counsel and to staff from LRC code counsel. As we  
23 continue to work through those changes and the  
24 developments and the potential changes to the program and  
25 consequences, we ask that you take consideration of these

1 rules as presented to you today into consideration but  
2 you defer accepting these until a later date in September  
3 at which time we will revisit these rules in their  
4 entirety with the changes as noted by Legislative  
5 Research Council code counsel, GOED legal counsel and  
6 staff, and the workout that was made thusly.

7 MR. SCHEIBE: And, again, Ms. Williamson, this  
8 is Aaron Scheibe on behalf of staff.

9 Just for the record, I want to make it clear  
10 that some of the edits that we've seen back from LRC code  
11 counsel concern, you know, definitions and other  
12 provisions that are not necessarily directly related to  
13 this change for the fuel tax refund and that may have  
14 implications for industry. And so part of the request to  
15 defer action or the plan to defer action is to allow  
16 potentially for consultation and, you know, discussion  
17 with industry to ensure that no inadvertent changes are  
18 made that impact, you know, their interests. And  
19 certainly they're not here today to comment, but they  
20 haven't seen what LRC has proposed yet. So as a matter  
21 of fair play and due process, I think it's important for  
22 them to be able to see those things.

23 ADMINISTRATIVE LAW JUDGE: Okay. Thank you.

24 And public commentary for this will be reopened,  
25 correct, prior to the September meeting; correct?

1 MR. SCHEIBE: Correct.

2 ADMINISTRATIVE LAW JUDGE: Okay. And was there  
3 any public comments submitted in regards to this matter  
4 today?

5 MR. VALENTINE: There were no public comments  
6 received or submitted by GOED.

7 ADMINISTRATIVE LAW JUDGE: Okay. And just to  
8 note for the record that no members of the public are  
9 present or no members of the industry are present in the  
10 hearing room today or online.

11 Mr. Fiala, did you have any comments or  
12 questions in regards to this matter?

13 MR. FIALA: No questions at all. And just  
14 concur with Jack's commentary and Aaron Scheibe's  
15 comments as well.

16 Thank you.

17 ADMINISTRATIVE LAW JUDGE: Okay. Very good.

18 And, with that, this matter will be deferred to  
19 September?

20 MR. SCHEIBE: Correct.

21 ADMINISTRATIVE LAW JUDGE: I don't believe any  
22 motion is required because this is not a board. This is  
23 a department hearing.

24 So anything further in regards to this that  
25 needs to go on the record?

1           MR. VALENTINE: Just thank you. I appreciate  
2 the time you took today to oversee these hearings.

3           ADMINISTRATIVE LAW JUDGE: Not a problem. Any  
4 time.

5           MR. FIALA: Yes. Yeah. Thank you.

6           ADMINISTRATIVE LAW JUDGE: Any time. Appreciate  
7 coming down here. So, with that, we'll be off the  
8 record.

9           (The hearing is concluded at 11:15 a.m.)

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF SULLY )

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5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter, and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 stenographic court reporter, I took the proceedings had  
10 in the above-entitled matter on the 13th day of August,  
11 2025, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 27th day of  
14 August, 2025.

15

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17

18 /s/ Cheri McComsey Wittler  
19 Cheri McComsey Wittler  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter  
23  
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