

## 1 STATE OF SOUTH DAKOTA

## 2 GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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5 Sections 31:02:01:01 through  
6 31:02:01:12, inclusive

ORIGINAL

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## 8 RULES HEARING

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10 Transcript of Hearing  
11 September 10, 2025  
12 11:30 a.m.

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

## 16 A P P E A R A N C E S

17 AARON SCHEIBE  
18 MAY, ADAM, GERDES & THOMPSON  
19 503 South Pierre Street  
20 Pierre, South Dakota 5750121 ALSO PRESENT: Jack Valentine  
22 Bill Even (via Zoom)  
23  
24  
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1                   The following Transcript of Hearing was  
2           taken at the Dolly-Reed Plaza, 711 East Wells Avenue,  
3           Pierre, South Dakota, on the 10th day of September, 2025,  
4           commencing at 11:30 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'll go on the  
2 record in the matter of the public hearing of the GOED  
3 and the ethanol meeting. And Chairman Bill Even is here.  
4 And this is in regards to the article -- Administrative  
5 Rules Article 31:02, the Ethanol Infrastructure Incentive  
6 Program. And this is a public hearing about these rules.

7 We are here at the GOED conference room in  
8 Pierre, South Dakota. This is a public hearing. There's  
9 no members of the public present today. They could be  
10 here if they wanted to be to present evidence or present  
11 testimony in regards to these rules.

12 I'm going to ask a member of Governor's Office  
13 of Economic Development to speak about these rules for  
14 Chapter 31:02:01.

15 MR. SCHEIBE: And --

16 ADMINISTRATIVE LAW JUDGE: Go ahead,  
17 Mr. Scheibe.

18 MR. SCHEIBE: Yeah. I'm sorry, Ms. Williamson.  
19 If I could just again jump in and on the record just want  
20 to make sure everybody's clear that this is a continued  
21 hearing that has been continued since August 13 when  
22 these rules were last considered by the agency. And  
23 Mr. Valentine, I think, can speak to anything that's  
24 happened since then.

25 ADMINISTRATIVE LAW JUDGE: Very good.

1           Mr. Valentine.

2           MR. VALENTINE: Yes. Thank you. Jack  
3 Valentine, Director of Finance for the Governor's Office  
4 of Economic Development. Good morning.

5           This is Chapter 31:02:01, the Ethanol  
6 Infrastructure Incentive Program. A number of changes  
7 have been proposed to this chapter due to the E-15 rebate  
8 program that was enacted by the Legislature during the  
9 2024 session. Those changes are substantial in nature.

10          In addition to the substantial changes, there  
11 were some style and form changes that were proposed by  
12 Legislative Research Council code counsel. In working  
13 with GOED's legal counsel and LRC's code counsel, we were  
14 able to come to agreement on those style and form edits.  
15 Those have been adopted in the rules that are presented  
16 before you.

17          Moving into the chapter, in 32:01:01,  
18 Definitions, there's an addition for E-15, an ethanol  
19 blend containing between 10 and one-half percent and  
20 15 percent ethanol. There's some references again to  
21 E-15 and the fuel tax refund that was created by  
22 South Dakota Codified Law 10-47B-192 which is  
23 administered under this chapter, as well as the addition  
24 of the definition for a licensed marketer being a person  
25 licensed by the Department of Revenue pursuant to

1 Chapter 10-47B who qualifies for a fuel tax refund under  
2 South Dakota Codified Law 10-47B-192.

3 Eligible projects and activities are noted in  
4 31:02:01:02, mainly the addition of Class 5, motor fuel  
5 tax refunds to licensed marketers for calendar years 2025  
6 to 2029 inclusive, which is calculated from the number of  
7 gallons of E-15 dispensed through motor fuel pumps  
8 located on the marketers' retail premises in the state  
9 during the preceding calendar year.

10 For the purposes of this section, flex fuel  
11 vehicle means a motor vehicle designed to burn either  
12 gasoline or a blend of gasoline and up to 85 percent  
13 ethanol. That activity and that class of activity is  
14 captured throughout the remainder of the Chapter 31:02;  
15 with regard to other eligibility criteria in Section  
16 01:03; with regard to grant conditions in Section 01:04;  
17 with regard to allocation of grant funds among classes of  
18 projects in Section 01:05; with regard to application  
19 form in Section 01:06; with regard for criteria for grant  
20 awards in Section 01:07. And then the addition of  
21 01:07.01, fuel tax refund administration payment added,  
22 as GOED shall pay motor fuel tax refunds described in  
23 Subdivision 31:02:01:02(5) as follows: (1), GOED shall  
24 make a final determination of refund eligibility and  
25 amount within 90 days of receiving the completed

1 application; (2), subject to Subdivision 3 of this  
2 section, the refund amount for an eligible licensed  
3 marketer is as provided in South Dakota Codified Law  
4 10-47B-192; and, (3), if monies allocated from the  
5 Ethanol Infrastructure Incentive Fund for motor fuel tax  
6 refunds are insufficient to pay the full refund amount to  
7 all licensed marketers for the preceding calendar year,  
8 GOED must prorate each licensed marketer's refund and pay  
9 the refund as a percentage of the overall allocation.  
10 This percentage is equal to the licensed marketer's  
11 number of gallons of E-15 sold and dispensed divided by  
12 the total number of gallons of E-15 sold and dispensed by  
13 all licensed marketers eligible for motor fuel tax  
14 refund.

15           Again, carrying forward the changes to  
16 accommodate the E-15 rebate program in Section 01:08,  
17 default; also in Section 01:09, remedies; also within  
18 Section 01:10, access and reporting. And, finally, in  
19 31:02:01:11, the addition of an -- in an appeal of a  
20 denied fuel tax refund application, a licensed marketer  
21 may appeal a denial of an application for a motor fuel  
22 tax refund using the contested case procedures set forth  
23 in South Dakota Codified Law Chapter 1-26. The appeal  
24 commences when the licensed marketer informs the GOED  
25 commissioner of the appeal in writing within 10 business

1 days of receiving the denial from GOED.

2 That is Chapter 31:02:01, Ethanol Infrastructure  
3 Incentive Program, with the changes presented as staff  
4 recommends Commissioner Even accepts and adopts those  
5 changes.

6 MR. SCHEIBE: And if I may, Ms. Williamson,  
7 because this is an agency rules hearing, there will be --  
8 the public comment period extends for 10 days past  
9 today's hearing date. So there won't be any final agency  
10 action taken until the comment period is closed, and then  
11 the agency will make a determination at that time.

12 ADMINISTRATIVE LAW JUDGE: Very good.

13 And this matter was published pursuant to state  
14 law?

15 MR. VALENTINE: Yes.

16 ADMINISTRATIVE LAW JUDGE: Very good. And I  
17 have in front of me the affidavits of publication. I've  
18 seen those, and they have been published in those papers.

19 With that, is there any comments from the  
20 public? Is there any public online that wish to comment  
21 either for or against these rules?

22 Seeing or hearing none --

23 MR. SCHEIBE: And, Ms. Williamson, again Aaron  
24 Scheibe for staff as counsel.

25 I would just ask Mr. Valentine to confirm that

1       there were no comments received on this to date.

2               MR. VALENTINE:   Correct.   No comments have been  
3       received on the rules.gov website nor through GOED's  
4       inquiry line nor on its phone line regarding these  
5       Ethanol Infrastructure incentive Program rules changes.

6               ADMINISTRATIVE LAW JUDGE:   Very good.

7               Are there any further comments to be made  
8       regarding this matter today?

9               Very good.

10              Thank you, Mr. Even, for allowing me to be here  
11       today.   And, with that, we'll be off the record.   Thank  
12       you very much.

13              (The hearing is concluded at 11:44 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 10th day of  
11 September, 2025, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 15th day of  
14 September, 2025.

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18

/s/ Cheri McComsey Wittler  
Cheri McComsey Wittler  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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<b>/</b>	<b>7</b>	<b>Avenue</b> <sup>[1]</sup> - 2:2 <b>awards</b> <sup>[1]</sup> - 5:20	<b>Council</b> <sup>[1]</sup> - 4:12 <b>COUNTY</b> <sup>[1]</sup> - 9:3 <b>court</b> <sup>[1]</sup> - 9:9 <b>created</b> <sup>[1]</sup> - 4:21 <b>criteria</b> <sup>[2]</sup> - 5:15, 5:19	<b>Ethanol</b> <sup>[4]</sup> - 3:5, 4:5, 6:5, 7:2 <b>evidence</b> <sup>[1]</sup> - 3:10 <b>EXAMINERS</b> <sup>[1]</sup> - 1:13 <b>extends</b> <sup>[1]</sup> - 7:8
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