

# REGISTER



*South Dakota Legislative Research Council*

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A COPY OF EACH REGISTER IS FILED IN THE OFFICE OF THE SECRETARY OF STATE

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**NOTICES OF PROPOSED RULES:** (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

***Department of Revenue and Regulation:***

***Division of Banking:*** (March 29, 2004) has filed rules to adopt an examination fee for trust company examinations and a licensing fee for money order businesses, amend the license fee rates for mortgage brokers, mortgage bankers, and money lending businesses. The general authority for these rules, as cited by the department, is SDCL 51A-2-33, 51A-6A-36, 51A-16-9, 54-4-40, 54-4-45, and 54-14-10.

A public hearing will be held in Room 412 of the Capitol, 500 East Capitol Avenue, Pierre, South Dakota, on April 20, 2004, at 10:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to the Department of Revenue and Regulation, Legal Services, 445 East Capitol Avenue, Pierre, South Dakota 57501-3185, or by emailing [Beth.Christie@state.sd.us](mailto:Beth.Christie@state.sd.us). Copies of the rules are also available at the department's website: [www.state.sd.us/drr](http://www.state.sd.us/drr). Material sent by mail must reach the department by April 19, 2004, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-4701 at least 48 hours before the hearing.

**Department of Social Services: Office of Medical Services:** (March 29, 2004) has filed rules to: incorporate by reference the latest federal poverty levels; remove the requirement that pregnancy be verified by a licensed medical professional before a woman may be eligible for

certain medical programs; provide medical coverage for children under age 21 who were in foster care under the responsibility of the state on their 18<sup>th</sup> birthday; provide medical services for certain women who have been diagnosed with breast or cervical cancer by the Department of Health; specify that individuals applying for or receiving medical assistance must avail themselves of all income and resources to which they are entitled; specify that medical assistance paid in error is subject to recovery by the department; when determining if an individual meets the residency requirements for long-term care assistance, specify that the individual must be in a licensed hospital, nursing facility, intermediate care facility, or assisted living facility that has a Medicaid provider agreement with the department for the level of care and services provided or must reside in an adult foster care facility licensed by the South Dakota Department of Health; consider that the required 30-consecutive-day period of institutionalization has been met if the individual is otherwise qualified but dies before the 30<sup>th</sup> consecutive day; when determining eligibility for long-term care or medical assistance, exempt from consideration as income certain payments made by the Veterans' Administration, payments to volunteers under the National and Community Services Trust Act of 1993, AmeriCorp VISTA, RSVP, senior companion program, Agent Orange product liability settlement, a gift from a tax-exempt organization to a minor child who has a life-threatening condition, a hemophilia settlement fund payment, income of an SSI recipient that is used toward an SSI approved plan for achieving self-support, income provided to victims of a presidentially-declared disaster from federal, state, and local programs and agencies, and income placed into certain

trusts; when determining eligibility for long-term care or medical assistance, consider as income the interest earned on unspent, previously excluded income; establish provisions for the consideration of income and resources for a child born in a hospital and continuously hospitalized for 30 or more consecutive days from the date of birth; establish provisions for the consideration of income and resources for a married couple when only one spouse participates in either HCBS (Home- and Community-Based Services) or HCBWS (Home- and Community-Based Waivered Services); increase the SSI standard benefit amount; repeal a rule pertaining to assets transferred for less than fair market value prior to July 1, 1994; for an applicant or recipient of long-term care, consider the value of real or personal income-producing property; when specifying the requirements that a Medicaid trust must meet, delete the term "long-term care" and use instead "nursing facility, HCBS, or HCBWS"; determine an applicant or recipient to be resource-eligible for an entire month if the applicant's or recipient's resources are within the established limit at some time during the month; clarify that the assessment of a community spouse's share of resources does not apply to individuals entering either an assisted living or an adult foster care facility; when determining initial eligibility for long-term care assistance, clarify that the deduction of the community spouse's share of resources from the couple's total countable resources is allowed only if the institutionalized spouse is receiving HCBS or is in a nursing or intermediate care facility; limit eligibility for the Renal Disease Program to individuals who have been on dialysis for one month or have received a transplant within the last 12 months; require an individual applying for benefits under the Renal Disease Program to be a U.S. citizen or a qualified alien; specify that the department does not consider Indian Health Services or, in certain instances, the department to be a third-party payer for purposes of the Renal Disease Program; delete as a covered benefit under the Renal Disease Program the payment of

Medicare Part B premiums for certain Medicare recipients; increase the rate of payment for travel expenses reimbursable under the Renal Disease Program; and correct an internal reference. The general authority for these rules, as cited by the department, is SDCL 25-4-45.3, 28-1-61, 28-6-1, 28-6-3.1, 28-6-18, 28-6A-12, 28-7A-3, and 28-7A-24.

A public hearing will be held in Conference Room #2, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on Monday, April 19, 2004, at 1:15 p.m. Copies of the proposed rules may be obtained from and written comments sent to Jill Wellhouse, Administrative Rules, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Ms. Wellhouse may be contacted by telephone at (605) 773-3305. Written comments must be received by April 29, 2004, to be considered. Individuals intending to present oral testimony at the hearing must make a written copy of their testimony available to the department at the time of the hearing. The testimony must relate directly to the changes being proposed and must cite the specific rule number to which the comments are being directed. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3305 at least 48 hours before the hearing.

***Department of Agriculture: Division of Agricultural Services:*** (March 30, 2004) has filed rules to adopt the changes to the 2003 Pasteurized Milk Ordinance (PMO) that was passed at the 2003 National Conference of Interstate Milk Shippers. The general authority for these rules, as cited by the department, is SDCL 39-6-9.

A public hearing will be held at the Joe Foss Building, 3<sup>rd</sup> Floor, Training Room, 523 East Capitol Ave., Pierre, South Dakota, on May 11, 2004, at 10:00 a.m. Copies of the proposed rules may be obtained without charge from and

written comments sent to the South Dakota Department of Agriculture, Division of Agricultural Services, 523 E. Capitol Ave., Pierre, South Dakota 57501. Written comments must be received by May 10, 2004. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3796 prior to the hearing.

***Department of Agriculture: Division of Agricultural Services:*** (March 30, 2004) has filed rules to amend the manufacturing grade rules pertaining to the production of milk and milk products. The general authority for these rules, as cited by the department, is SDCL 40-32-18.

A public hearing will be held at the Joe Foss Building, 3<sup>rd</sup> Floor, Training Room, 523 East Capitol Ave., Pierre, South Dakota, on May 11, 2004, at 10:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Agriculture, Division of Agricultural Services, 523 E. Capitol Ave., Pierre, South Dakota 57501. Written comments must be received by May 10, 2004. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3796 prior to the hearing.

***Department of Agriculture: Division of Agricultural Services:*** (March 30, 2004) has filed rules that will adopt the changes to the Codified Federal Regulations pertaining to the quarantine against Karnal bunt, a wheat disease which has world wide export significance. The general authority for these rules, as cited by the department, is SDCL 38-24A-9.

A public hearing will be held at the Joe Foss Building, 3<sup>rd</sup> Floor, Training Room, 523 East Capitol Ave., Pierre, South Dakota, on May 11, 2004, at 11:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota

Department of Agriculture, Division of Agricultural Services, 523 E. Capitol Ave., Pierre, South Dakota 57501. Written comments must be received by May 10, 2004. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3796 prior to the hearing.

***Department of Agriculture: Division of Agricultural Services:*** (March 30, 2004) has filed a rule to amend the locally noxious weed list. The general authority for this rule, as cited by the department, is SDCL 38-22-9 and 38-22-11.1.

A public hearing will be held at the Joe Foss Building, 3<sup>rd</sup> Floor, Training Room, 523 East Capitol Ave., Pierre, South Dakota, on May 11, 2004, at 1:00 p.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Agriculture, Division of Agricultural Services, Weed & Pest Control, 523 E. Capitol Ave., Pierre, South Dakota 57501. Written comments must be received by May 10, 2004. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3796 prior to the hearing.

***Department of Revenue and Regulation:*** (April 2, 2004) intends to amend rules to impose municipal rate changes on sales by catalog companies that publish local rates in their catalogs to the first day of a calendar quarter after 120 days notice has been given to the seller; complete an annual update by changing the year referred to in these rules and an address for filing; change the capitalization factor used to determine the capitalized income value; provide two separate methods for sellers to compute the tax due on a transaction, and to allow for the use of a rounding rule; clarify definitions; explain what portion of the delivery charge is taxable when both taxable and nontaxable products are sold in one transaction;

update rules after the repeal of the tax on transportation; clarify when a manufactured home can be treated as a sectional home for tax purposes; change when the contractors' excise tax applies to manufactured buildings. The general authority for these rules, as cited by the department, is SDCL 10-1-16.1, 10-3-1.2, 10-45-47.1, 10-45-108, 10-46-35.1, and 10-52-4.

A public hearing will be held at 10:00 a.m. on April 23, 2004, in Room 413, 4<sup>th</sup> floor, of the State Capitol located at 500 East Capitol Avenue, Pierre, South Dakota. Copies of the proposed rules may be obtained without charge from the department's website, [www.state.sd.us/drr](http://www.state.sd.us/drr), by emailing [Beth.Christie@state.sd.us](mailto:Beth.Christie@state.sd.us), or by contacting the Department of Revenue & Regulation, Legal Division/Rules, 445 East Capitol Avenue, Pierre, SD 57501-3185. Written comments may be sent to the department at the address listed above and must be received on or before May 3, 2004, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-4701 at least 48 hours before the hearing.

**Department of Corrections: Board of Pardons and Paroles:** (April 2, 2004) intends to amend rules to modernize the Parole Board's, Parole Service's, and the release date calculation operational procedures. The general authority for these rules, as cited by the department, is SDCL 1-15-20, 24-13-7, 24-15-11.3, 24-15A-42.

A public hearing will be held at 1:00 p.m. on May 3, 2004, in the South Dakota State Penitentiary, 3<sup>rd</sup> floor conference room, Sioux Falls, South Dakota. Copies of the proposed rules may be obtained without charge from and written comments sent to the Board of Pardons and Paroles, P.O. Box 5911, Sioux Falls, SD 57117-5911. Written comments must be received by April 30, 2004, to be considered. This hearing is being held in a physically accessible place. Persons who have special

needs for which the board can make arrangements are asked to call (605) 367-5040 at least 48 hours before the hearing.

## **FILINGS IN THE SECRETARY OF STATE'S OFFICE:**

**DEPARTMENT OF EDUCATION: SOUTH DAKOTA BOARD OF EDUCATION:**  
24:03:06:06.05; 24:15:03:06; 24:15:05:01,  
24:15:05:02, 24:15:05:03, 24:15:05:04.

History-Notice: 30 SDR 113, January 12, 2004  
Hearing: January 26, 2004  
Filed: March 29, 2004  
Effective: April 18, 2004

## **Executive Appointments:**

**John E. Peterson**, Aberdeen, was appointed on March 17, 2004, to the **South Dakota Board of Accountancy**, to replace Sharlene Hilderman, effective immediately and shall continue until July 1, 2005.

**Kristi Wagner**, Aberdeen, was appointed on March 18, 2004, to the **South Dakota Commission on Gaming**, to replace John Wiles, effective April 15, 2004, and shall continue until April 14, 2007.

**Kory Menken**, Dakota Dunes, was appointed on March 18, 2004, to the **South Dakota Lottery Commission**, to replace Dennis Wagner, effective March 31, 2004, and shall continue until January 1, 2007.

**Dick Werner**, Huron, was appointed on March 18, 2004, to the **South Dakota Lottery Commission**, to replace Nancy Gunner, effective March 31, 2004, and shall continue until January 1, 2007.

**Eileen Fischer**, Pierre, was appointed on March 18, 2004, to the **South Dakota Real Estate Commission**, to replace James Berven, effective April 12, 2004, and shall continue until April 11, 2008.

Note: A copy of the rules may be obtained directly from the above agencies. Write to the agency at the address given under "Notices of Proposed Rules." There is no charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry,

the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Commerce and Regulation for commercial driver licensing, the Department of Labor for Article 47:03, and the Department of Revenue.

### REMINDER OF HEARINGS SCHEDULED

4-15-2004	Environment and Natural Resources: Board of Minerals and Environment	Adopt rules regarding risk compensation in compulsory pooling and unitization orders; 30 SDR 135.
4-19-2004	Social Services: Medical Services	Amend rules to update and clarify existing rules, adopt form and style changes, correct internal references, expand the categories of individuals eligible for medical services, amend eligibility criteria, specify that an individual's failure to avail himself or herself of all income and resources to which the individual is entitled results in ineligibility, specify that an overpayment constitutes a debt to and is subject to recovery by the department, incorporate the latest federal poverty levels, clarify the long-term care residency requirements, expand the list of income not considered when determining eligibility for long-term care or medical assistance, clarify how the department considers an individual's or couple's income and resources when determining eligibility for long-term care assistance, increase the SSI standard benefit amount, repeal unnecessary rules, and, for the Renal Disease Program, expand the list of entities not considered to be a third-party payer, amend eligibility criteria, and increase the rate of payment for travel expenses; 30 SDR 155.
4-20-2004	Revenue and Regulation: Division of Insurance	Clarify who is entitled to special enrollment provisions under HIPAA and to incorporate the updated mortality tables for ordinary life insurance; 30 SDR 151.
4-20-2004	Secretary of State	Repeal standard form rules regarding the Uniform Commercial Code and the central filing system; outline county requirements for the central recording of real property liens through Dakota Fast File; update the notary public forms; and amend the voter registration system; 30 SDR 151.
4-20-2004	Revenue and Regulation: Division of Banking	Adopt an examination fee for trust company examinations and a licensing fee for money

		order businesses, and amend the license fee rates for mortgage brokers, mortgage bankers, and money lending businesses; 30 SDR 155.
4-21-2004	Health	Amend rules regarding the Children's Special Health Services; 30 SDR 152.
4-23-2004	Revenue and Regulation	Impose municipal rate changes on sales by catalog companies that are preprinted; update reference material in rules; change the capitalization factor used to determine the capitalized income value; provide for two separate methods for sellers to compute tax on gross receipts; clarify definition of receive and receipt; clarify what portion of the delivery charge is taxable; repeal rules on the tax on transportation; clarify definition of permanent foundation for manufactured homes; change when the contractors' excise tax applies to manufactured buildings; 30 SDR 157.
4-26-2004	Agriculture: Division of Ag Development	Amend rules regarding the farm mediation program; 30 SDR 152.
5-3-2004	Corrections: Board of Pardons and Paroles	Amend rules to modernize the Parole Board's, Parole Service's, and the release date calculation operational procedures; 30 SDR 158.
5-11-2004	Labor: Division of Labor and Management	Updated the Workers' Compensation fee schedule; 30 SDR 152.
5-11-2004	Agriculture: Division of Agricultural Services	Update rules to meet the 2003 Pasteurized Milk Ordinance; 30 SDR 156.
5-11-2004	Agriculture: Division of Agricultural Services	Update manufacturing grade rules pertaining to the production of milk and milk products; 30 SDR 157.
5-11-2004	Agriculture: Division of Agricultural Services	Update rules regarding the quarantine against Karnal bunt, a wheat disease; 30 SDR 157.
5-11-2004	Agriculture: Division of Agricultural Services	Update the noxious weed list; 30 SDR 157.

### *Rules Review Committee Meetings*

The next meeting of the Interim Rules Review Committee will be held Tuesday, April 20, 2004, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2004 interim: May 18, June 3, August 3, and October 15.

**Note:** An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the LRC web site.

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