

REGISTER



South Dakota Legislative Research Council

Volume 34

Monday, 8:00 a.m., April 21, 2008

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

Department of Health: Health Systems Development and Regulation: (April 14, 2008) intends to adopt and amend rules to implement health, safety and sanitation requirements for the vacation home lodging category which is currently being licensed as specialty resorts. The general authority for these rules, as cited by the department, is SDCL 34-1-17, 34-18-11, 34-18-22, 34-18-25.1, 34-18-25.2, 34-18-26, .

A public hearing will be held in the Health Lab Building, large conference room, 615 East 4th Street, Pierre, South Dakota, on May 13, 2008, 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 Health, 600 East Capitol Avenue, Pierre, South Dakota 57501. Copies of the proposed rules may also be obtained at the Health Department website: <http://doh.sd.gov/News>. Material sent by mail must reach the department by May 23, 2008, 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) 773-3361 at least 48 hours before the hearing.

Department of Social Services: Economic Assistance: (April 15, 2008) intends to amend rules to increase the Temporary Assistance for Needy Families Program (TANF) payment standard for a child not living with a parent and not placed by a child placement agency and increase the TANF payment standard for an assistance unit that includes a parent. The

general authority for these rules, as cited by the department, is SDCL 28-7A-3.

A public hearing will be held in Conference Room #2, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on May 6, 2008, at 9:30 a.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 May 16, 2008, 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 Environment and Natural Resources: Board of Minerals and Environment: (April 16, 2008) intends to amend a rule to eliminate the minimum 100 feet of surface casing requirement to allow the Secretary of the department to determine how much surface casing is required for all new oil and gas wells on a case by case basis. The general authority for this rule, as cited by the board, is SDCL 45-9-11 and 45-9-13.

A public hearing will be held at the Matthew

Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota, on May 15, 2008, at 11:00 a.m. CDT. Copies of the proposed rule may be obtained without charge from and written comments sent to the Department of Environment and Natural Resources, Oil and Gas Section, 2050 West Main Street, Suite 1, Rapid City, South Dakota 57702. A copy of the rule is also available at the department's website at <http://www.state.sd.us/denr/DES/Mining/Oil&Gas/O&Ghome.htm>. Material sent by mail must reach the department by May 14, 2008, 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) 394-2229 at least 48 hours before the hearing.

Department of Environment and Natural Resources: Board of Minerals and Environment: (April 16, 2008) intends to amend rules in Chapter 74:11:08 to update the requirements for plugging mineral exploration test holes to make the rules consistent with the well construction standards found in Chapter 74:02:04; to allow the use of alternative test hole plugging methods; to allow the commonly used method of plugging test holes with bentonite chips in special circumstances; and amend rules in Chapter 74:29:11 governing in situ leach mining to update an existing rule that lists other permits and approvals an applicant must obtain to operate an in situ leach mine; require an operator applying for an in situ leach mine permit to obtain an Underground Injection Control Class III Well permit under Chapter 74:55:01 before the Board of Minerals and Environment may issue a mine permit; and to make the in situ leach mining rules consistent with recently approved changes to Chapter 74:55:01 Underground Injection Control-Class III Wells. The general authority for these rules, as cited by the board, is SDCL 34-21-12, 34-21-15, 45-6B-81, 45-6C-29, and 45-6D-34.

A public hearing will be held at the Matthew

Environmental Education and Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, on May 15, 2008, at 11:00 a.m. CDT. Copies of the proposed rules may be obtained from and written comments sent to Department of Environment and Natural Resources, Minerals and Mining Program, 523 E. Capitol, Pierre, South Dakota 57501. An electronic version of the rules is also available on the department's web site at <http://www.state.sd.us/denr/DES/Mining/rulerevisions.htm>. Material sent by mail must be received by May 14, 2008, to be considered. This hearing is being held in a physically accessible place and interpreter services will be provided upon request. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-4201 at least 48 hours before the public hearing.

Department of Health: Board of Massage Therapy: (April 17, 2008) intends to amend a rule to license all applicants under the same recognized training requirements. The general authority for this rule, as cited by the board, is SDCL 36-35-12.

A public hearing will be held in Room 423 of the State Capitol, Pierre, South Dakota, on May 5, 2008, at 10:00 a.m. to consider the adoption of the proposed rules. A copy of the proposed rule may be obtained without charge from and written comments sent to the South Dakota Board of Massage Therapy, P.O. Box 1062, Sioux Falls, South Dakota 57101-1062. A copy of the proposed rule may also be obtained at <http://massage.sd.gov>. Material sent by mail must reach the board by April 30, 2008, 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) 271-7103 at least 48 hours before the hearing.

Bureau of Administration: (April 17, 2008) intends to amend rules to implement high efficiency building design regulations to be used on the construction and renovation of state owned buildings meeting certain requirements. The general authority for these rules, as cited by the bureau, is SDCL 5-14-38.

A public hearing will be held in the Mathews Training Center, Foss Building, 523 E. Capitol, Pierre, South Dakota, on May 20, 2008, at 2:00 p.m. Copies of the proposed rules may be obtained from and written comments sent to the Bureau of Administration, State Capitol Building, 500 East Capitol, Pierre, South Dakota 57501-1234. Written comments must be received by May 19, 2008, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the office can make arrangements are asked to call (605) 773-3688 at least 48 hours before the hearing

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

On April 17, 2008, the **DEPARTMENT OF SOCIAL SERVICES** filed an update to the South Dakota Food Stamp Program Certification and Accountability Manual. The update provides for Afghan and Iraqi aliens who have special immigrant status under the Immigration and Nationality Act.

DEPARTMENT OF HEALTH: 44:06:04:01.

History-Notice: 34 SDR 225, March 3, 2008
Hearing: March 26, 2008
Filed: April 15, 2008
Effective: May 5, 2008

DEPARTMENT OF REVENUE AND REGULATIONS: COMMISSION ON GAMING: 20:18:18:02.

History-Notice: 34 SDR 217, Feb. 19, 2008
Hearing: March 11, 2008

Filed: April 15, 2008
Effective: May 5, 2008

DEPARTMENT OF REVENUE AND REGULATION: DIVISION OF

INSURANCE: 20:06:12:07; 20:06:13:17.04; 20:06:19:04; 20:06:25:01, 20:06:25:01.01, 20:06:25:01.02, 20:06:25:02; 20:06:26:01; 20:06:36:01, 20:06:36:04, and 20:06:36:05

History-Notice: 34 SDR 229, March 10, 2008
Hearing: March 27, 2008
Filed: April 16, 2008
Effective: May 6, 2008

DEPARTMENT OF SOCIAL SERVICES: 67:46:04:13.

History-Notice: 34 SDR 263, April 14, 2008
Hearing: N/A
Filed: April 17, 2008
Effective: April 17, 2008

DEPARTMENT OF SOCIAL SERVICES: 67:46:07:03 and 67:46:07:12.

History-Notice: 34 SDR 263, April 14, 2008
Hearing: N/A
Filed: April 17, 2008
Effective: April 17, 2008

DEPARTMENT OF SOCIAL SERVICES: 67:54:09:01 to 67:54:09:23, inclusive.

History-Notice: 34 SDR 229, March 10, 2008
Hearing: March 28, 2008
Filed: April 17, 2008
Effective: May 7, 2008

Executive Appointments:

Mike Ortner, Hot Springs, was reappointed on April 15, 2008, to the **South Dakota Commission on Gaming**, effective immediately and shall continue until April 14, 2011.

Jarrod D. Otta, Sioux Falls, was appointed on April 15, 2008, to the **American Dairy Association of South Dakota**, to replace Mark Pederson, effective April 14, 2008, and shall continue until June 30, 2009.

Scott Rausch, Piedmont, was appointed on April 15, 2008, to the **South Dakota Humanities Council**, to replace Annie Falk, effective April 15, 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 Revenue and Regulation, and the Department of Labor for Article 47:03.

REMINDER OF HEARINGS SCHEDULED

4-24-2008	Transportation	Repeal a speed zone in Minnehaha County on State Trunk Highway 264 because the segment of highway referenced in the current rule has been removed from the state highway system; amend a speed zone in Hughes County on SD Highway 1804 north of the city of Pierre to increase the allowable speed limit to 65 MPH for a portion of this highway north of the Oahe Dam; amend a 45 MPH speed zone along U.S. Highway 18 in Shannon County to reflect the true location of the limits of the reduced speed zone; amend a traffic safety rule in Pennington County to correct the official highway identification which prohibits parking along the south side of State Trunk Highway 44 (remove reference to Sate Trunk Highway 79 which has been relocated); and adopt a new traffic safety rule to prohibit parking along both sides of U.S. Highway 14A in Lawrence County along the shoulder of the road near Chop House south of Spearfish; 34 SDR 257.
4-25-2008	Labor: Electrical Commission	Adopt the 2008 National Electrical Code; 34 SDR 249.
4-25-2008	Revenue and Regulation: Division of Insurance	Amend an Advertisement of Health and Life Insurance rule to remove unnecessary requirements that are inconsistent with codified law and amend Employer Plans rules to prohibit discretionary clauses in health insurance policies; 34 SDR 257.
4-29-2008	Agriculture: Weed and Pest Commission	Amend a rule that will add Phragmites to the local noxious weed list and to add scientific names for all local noxious weeds and declared pests; 34 SDR 249.

5-1-2008	Health: Board of Optometry Examiners	Amend a rule so the fee for licensure by endorsement will be provided by rule instead of by statute; 34 SDR 257.
5-1-2008	Game, Fish and Parks	Amend a Uses of Parks and Public Lands rule to allow deer hunting to take place from October 1 to January 31 in all state parks, recreation areas, and nature areas during established hunting seasons according to provisions and restrictions set forth in ARSD 41:03:01:16, and allow only bow and arrow to be utilized at Clay County Recreation Area; amend Archery Restrictions to restrict persons hunting with bow and arrow from using or possessing lighted sight pins; amend Waterfowl Hunting Seasons rules to establish season dates for Units CGW-11A and NRW-11A (both units located in Bennett County), shooting hours, and daily bag and possession limits; and adjust the season dates to begin on the third Saturday of October for 65 consecutive days (October 18-December 21, 2008); amend an Archery Deer Hunting Season rule to establish season dates, number and types of available licenses, requirements and restrictions, open area, and shooting hours; and repeal the provisions in subsection (5) of ARSD 41:06:22:02 which provides that the archery deer hunting season in state parks, state recreation areas, and state nature areas are open beginning on October 1 and remain open until December 31, inclusive; amend an Archery Antelope Hunting Season rule to establish season dates, number and types of available licenses, requirements and restrictions, open area, and shooting hours; and add Hand County as an area open to archery antelope hunting; amend Youth Deer Hunting Season rules to establish season dates, numbers of available single tag "any antlerless deer" licenses, requirements and restrictions, open areas, and shooting hours; adjust the season length so that it runs continuously from the second Saturday of September through January 31; adjust the age requirement to allow youth who have not turned 18 (currently 16) by June 30 to purchase a license; adjust the application requirement to allow a resident parent or legal guardian to purchase a Youth

		Deer license for a designated mentored youth; allow archery hunters to hunt without wearing fluorescent orange; and require that mentored youth must be at least 10 and younger than 16 years of age; and amend a General Muzzleloading Deer Hunting Season rule to establish season dates, number of available "any deer" and "any antlerless deer" licenses, requirements and restrictions, open area, and shooting hours; adjust the number of "any deer" licenses available only to residents from 400 to 1,000 licenses; 34 SDR 263.
5-5-2008	Health: Board of Massage Therapy	Amend a rule to license all applicants under the same recognized training requirements; 34 SDR 270.
5-6-2008	Social Services: Medical Services	Amend rules to incorporate by reference the latest federal poverty levels established by the United States Department of Health and Human Services; incorporate by reference the latest versions of the <u>Physicians' Current Procedural Terminology (cpt)</u> , the <u>International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CMP)</u> , and the <u>CMS Common Procedure Coding System (HCPCS) manuals</u> ; specify that it is the individual's responsibility to provide the Department with the information necessary to determine initial or continuing eligibility and that failure to do so results in denial of an application or termination of current benefits; and update an internal reference; 34 SDR 263.
5-6-2008	Social Services: Economic Assistance	Amend rules to increase the Temporary Assistance for Needy Families Program (TANF) payment standard for a child not living with a parent and not placed by a child placement agency and increase the TANF payment standard for an assistance unit that includes a parent; 34 SDR 269.
5-8-2008	Revenue and Regulation: Real Estate Commission	Adopt rules to establish fees for a certificate of licensure, additional license, change of business address, change of association, duplicate license, and late renewal fees; 34 SDR 249.
5-13-2008	Health: Health Systems Development and Regulation	Adopt and amend rules to implement health, safety and sanitation requirements for the vacation home lodging category which is currently being licensed as specialty resorts; 34 SDR 269.

5-15-2008	Environment and Natural Resources: Board of Minerals and Environment	Amend a rule to eliminate the minimum 100 feet of surface casing requirement to allow the Secretary of the department to determine how much surface casing is required for all new oil and gas wells on a case by case basis; 34 SDR 269.
5-15-2008	Environment and Natural Resources: Board of Minerals and Environment	Amend rules in Chapter 74:11:08 to update the requirements for plugging mineral exploration test holes to make the rules consistent with the well construction standards found in Chapter 74:02:04; to allow the use of alternative test hole plugging methods; to allow the commonly used method of plugging test holes with bentonite chips in special circumstances; and amend rules in Chapter 74:29:11 governing in situ leach mining to update an existing rule that lists other permits and approvals an applicant must obtain to operate an in situ leach mine; require an operator applying for an in situ leach mine permit to obtain an Underground Injection Control Class III Well permit under Chapter 74:55:01 before the Board of Minerals and Environment may issue a mine permit; and to make the in situ leach mining rules consistent with recently approved changes to Chapter 74:55:01 Underground Injection Control- Class III Wells; 34 SDR 270.
5-20-2008	Bureau of Administration	Amend rules to implement high efficiency building design regulations to be used on the construction and renovation of state owned buildings meeting certain requirements; 34 SDR 270.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, May 13, 2008, in LCR 1 and 2, Third Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2008 interim: June 10, August 19, September 23, December 2, and January 12, 2009.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the Legislative Web site at <http://legis.state.sd.us/rules/index.aspx>.

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