

REGISTER

South Dakota Legislative Research Council



Volume 35

Monday, 8:00 a.m., April 27, 2009

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

Department of Labor: South Dakota Board of Accountancy: (April 21, 2009) intends to amend rules to update references; correct erroneous references; repeal rules for conditional credit and transitional credits for the paper and pencil exam to the computerized exam; update language in rules to allow online renewals submission as signature and verification of information provided and the submitted time as the received date; eliminate pro-rated fees for firms and renewal of certificates; clarification of credit for CPE for instructors or discussion leaders; change definition of lapsed license to expired license; allow the board to be petitioned by an applicant or licensee to show other good cause to waive certain requirements; repeal and amend rules to reflect changes required by the passage of House Bill 1058 in the 2009 legislative session to no longer require notification forms to be filed with the Board, out-of-state firms will need permits only to perform audit work, certificates and firm permits will not be required to be displayed, and disciplinary procedures to include those with practice privileges. The general authority for these rules, as cited by the board, is SDCL 36-20B-12, 36-20B-15, 36-20B-18, 36-20B-19, 36-20B-52, and 36-20B-66.

A public hearing will be held at the Department of Legislative Audit, 427 S. Chapelle, Pierre, South Dakota, on May 12, 2009, at 1:00 p.m. (CDT). Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Board of Accountancy, 301 E. 14th Street, #200, Sioux

Falls, South Dakota 57104 or by calling (605) 367-5770. Material sent by mail must reach the Board of Accountancy office on or before May 1, 2009, 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) 367-5770 at least 48 hours before the hearing.

Department of Health: Health Systems Development and Regulation: (April 21, 2009) intends to amend rules to assure the public health and safety requirements are met in the licensed lodging and campground facilities regulated by the department. The general authority for these rules, as cited by the department, is SDCL 34-1-17, 34-18-11, 34-18-11.1, 34-18-22, 34-18-22.1, 34-18-22.2, and 34-18-22.3.

A public hearing will be held at the Health Building, Room 107, 600 East Capitol Avenue, Pierre, South Dakota, on May 18, 2009, 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 28, 2009, 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 Health: Health Systems Development and Regulation: (April 21, 2009) intends to repeal license fees for certain health care facilities that are now established in statute and to update fees for controlled substance registration and abortion facility licenses. The general authority for these rules, as cited by the department, is SDCL 34-12-6, 34-20B-41, 34-21-18, and 34-23A-48.

A public hearing will be held at the Health Building, Room 107, 600 East Capitol Avenue, Pierre, South Dakota, on May 18, 2009, 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 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 28, 2009, 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 Public Safety: Driver Licensing: (April 23, 2009) intends to amend rules to revise the definitions of terms; clarify documents required for issuance of a first-time driver license or identification card; clarify documents required for issuance to an applicant holding an out-of-state license or identification card; clarify documents required for an applicant holding a South Dakota identification card; clarify a reference to fraudulent documents to reflect changed definition of terms; revise the fee for a prorated driver license for those under twenty-one years of age; revise existing guidelines regarding commercial driver licenses to reflect adoption of current federal regulations; revise certain commercial vehicle criteria to reflect current standards; and revise the seasonal commercial driver license rule to allow for issuance during two ninety day periods within a calendar year. The general authority for these

rules, as cited by the department, is SDCL 32-12-3.2, 32-12-42.1, 32-12-49, 32-12-49.4, 32-12A-48, and 49-28A-2.

A public hearing will be held in the second floor conference room, Public Safety Building, 118 West Capitol, Pierre, South Dakota, on May 19, 2009, at 9:30 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Public Safety, 118 West Capitol, Pierre, South Dakota 57501-2000. Material sent by mail must reach the Department of Public Safety by May 29, 2009, 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) 773-2691 at least 48 hours before the hearing.

Department of Environment and Natural Resources: Board of Minerals and Environment: (April 23, 2009) intends to update the state's existing hazardous waste rules by incorporating updated federal regulations by reference. These updates reflect changes made to the federal hazardous waste rules from July 1, 2007 through June 30, 2008. Changes include amending existing requirements for recycling; clarification of compliance monitoring requirements for hazardous waste combustion operations; and amending requirements for the management of wastewater treatment sludges generated by automobile assembly operations. The general authority for these rules, as cited by the board, is SDCL 34A-11-8 and 34A-11-9.

A public hearing will be held at the Floyd Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota, on July 16, 2009, at 9:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Environment and Natural Resources, Waste Management Program, 523 East Capitol, Pierre, South Dakota 57501-3182. Material sent by mail must be

received by July 16, 2009, 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 Carrie Jacobson at (605) 773-3153 at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF EDUCATION: BOARD OF EDUCATION: 24:15:03:05 and 24:17:03:02.

History-Notice: 35 SDR 203, Feb. 23, 2009
 Hearing: April 7, 2009
 Filed: April 21, 2009
 Effective: May 11, 2009

DEPARTMENT OF HEALTH: HEALTH AND MEDICAL SERVICES: 44:06:04:01.

History-Notice: 35 SDR 204, Feb. 23, 2009
 Hearing: March 30, 2009
 Filed: April 21, 2009
 Effective: May 11, 2009

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES: WATER MANAGEMENT BOARD: 74:51:01:01, 74:51:01:22, 74:51:01:23, 74:51:01:30, 74:51:01:32, 74:51:01:44 to 74:51:01:51, inclusive, 74:51:01:55, 74:51:01:56, 74:51:01:63 to 74:51:01:65, inclusive, Appendix A and B; 74:51:02:08, 74:51:02:11, 74:51:02:21, 74:51:02:25, 74:51:02:26, 74:51:02:35, 74:51:02:40, 74:51:02:41, 74:51:02:43, 74:51:02:45, 74:51:02:48, 74:51:02:52, 74:51:02:54, 74:51:02:55, 74:51:02:58; 74:51:03:04, 74:51:03:06 to 74:51:03:08, inclusive, 74:51:03:10, 74:51:03:20, and 74:51:03:24 to 74:51:03:27, inclusive.

History-Notice: 35 SDR 189, Feb. 2, 2009
 Hearing: March 11, 2009

Filed: April 22, 2009
 Effective: May 12, 2009

DEPARTMENT OF SOCIAL SERVICES: 67:15:04:04; 67:16:25:01 to 67:16:25:03.04, inclusive; 67:16:25:04.01, 67:16:25:05 to 67:16:25:07.04, inclusive, 67:16:25:08.01 to 67:16:25:08.04, inclusive, 67:16:25:10 to 67:16:25:12.05, inclusive, 67:16:25:14; 67:16:39:11; 67:42:05:21; and 67:42:07:11.01.

History-Notice: 35 SDR 203, Feb. 23, 2009
 Hearing: March 17, 2009
 Filed: April 22, 2009
 Effective: May 12, 2009

DEPARTMENT OF GAME, FISH AND PARKS: 41:03:01:05; 41:04:02:26, 41:04:02:32, 41:04:02:39, 41:04:02:42, 41:04:02:51; 41:05:02:12, 41:05:02:68; 41:09:04:02, 41:09:04:02.02, 41:09:04:03, 41:09:04:04, 41:09:04:07, 41:09:04:09 to 41:09:04:17, inclusive.

History-Notice: 35 SDR 197, Feb. 17, 2009
 Hearing: March 5, 2009
 Filed: April 23, 2009
 Effective: May 13, 2009

Executive Appointments:

Russell D. Johnson, Beresford, was appointed on April 9, 2009, to the **South Dakota Snowmobile Advisory Council**, to replace LeRoy C. Anderson, effective April 9, 2009, and shall continue until June 30, 2010.

Dean Krogman, Brookings, was reappointed on April 16, 2009, to the **State Board of Regents**, effective immediately and shall continue until March 31, 2015.

Carole Pagones, Sioux Falls, was reappointed on April 16, 2009, to the **State Board of Regents**, effective immediately and shall continue until March 31, 2015.

Karen Crew, Sioux Falls, was appointed on April 17, 2009, to the **South Dakota Commission on Gaming**, to replace Shawn Lyons, effective April 16, 2009, and shall continue until April 14, 2012.

Karl Fischer, Fort Pierre, was reappointed on April 17, 2009, to the **South Dakota Commission on Gaming**, effective immediately and shall continue until April 14, 2012.

Executive Order:

The Governor has signed **Executive Order 2009-05** dated April 22, 2009. This order permits overwidth commercial fertilizer applicators to move on state highways during nighttime hours. This exception is necessary due

to the wet field conditions creating the need to allow round-the-clock operations. Width restrictions are still in place and warning lights are required. The exception for nighttime travel is not in place for Memorial Day weekend. The executive order expires no later than May 31, 2009.

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

4-30-2009	Revenue and Regulation: Banking Commission	Amend rules to restructure the tiered fee schedule for the semiannual examination fee paid by state chartered banks, to implement additional supervision fees for banks in non-traditional business lines and banks operating under enforcement actions and to amend the additional examination fee provided, and to increase the initial license and renewal fees for entities licensed to lend money in South Dakota pursuant to chapter 54-4; 35 SDR 238.
5-6-2009	Public Utilities Commission	Adopt rules regarding the interconnection of small generator facilities to the electric systems of public utilities; 35 SDR 243.
5-6-2009	Revenue and Regulation: Division of Insurance	Adopt rules to establish a special state continuation election of continuation for individuals that were eligible prior to the enactment of the American Recovery and Reinvestment Act; 35 SDR 237.
5-6-2009	Revenue and Regulation: Real Estate Commission	Amend rules to permit electronic filings of petitions for promulgation of declaratory ruling or rule, include a broker in the registration process for a business corporation or limited liability company, make provisions for commission splits paid out-of-country, prohibit the reproduction of a license, require nonresident licensees to provide certificates of

		<p>licensure at time of application for licensure and when renewing a South Dakota license, require a South Dakota resident licensed as a salesperson by examination in another state to meet certain education and examination requirements, require a nonresident salesperson licensed in South Dakota who establishes residency in this state to meet certain education requirements, correct gender specific language, rename Course I, II and III and revise course content requirements, require an instructor seeking approval to offer prelicensing education to complete certain course work, allow electronic filing of a complaint and response to complaint, distinguish the type of license to be held when appraising real property, define postlicensing education and establish requirements thereof, eliminate fees of certain prelicensing courses, require out-of-state courses to meet certain requirements, repeal the requirement of notice given to students at beginning of continuing education course, and prohibit independent study courses from qualifying for postlicensing education; 35 SDR 237.</p>
<p>5-6-2009</p>	<p>Game, Fish and Parks</p>	<p>Amend a Uses of Parks and Public Lands rule to expand archery hunting opportunities on Farm Island Recreation Area and LaFramboise Island Nature Area; amend a Park Licenses rule to allow a person towing a vehicle to enter a state park without having to purchase a park entrance license (PEL) for the towed vehicle if it will not be operated within the park; amend a Motorboats and Watercraft rule to require any child under seven years of age who is being towed by a watercraft to wear a personal flotation device; amend Archery Deer Hunting Season rules to establish season dates, number and types of available licenses, requirements and restrictions, open area, and shooting hours; remove the restrictions which pertain to archery deer hunting on Farm Island Recreation Area and LaFramboise Island Nature Area; allow purchase of one statewide "any antlerless deer" single-tag and single and double tag "any antlerless deer" licenses for all areas open to archery deer hunting excluding the Black Hills Fire Protection District and</p>

		<p>Codington, Grant, Roberts, Lake, Lincoln, Minnehaha and Moody counties in eastern South Dakota; 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; create an unlimited number of 3-tag licenses valid for one "any antelope" and two "any doe/fawn antelope"; and add Campbell County as an area open to archery antelope hunting; amend a Youth Deer Hunting Season rule to establish season dates, numbers of available single tag "any antlerless deer" licenses, requirements and restrictions, open areas, and shooting hours, and lower the total number of youth deer licenses that can be purchased from five (5) to two (2); 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; allow purchase of one statewide "any antlerless deer" single-tag and single and double tag "any antlerless deer" licenses for all areas open to muzzleloader deer hunting excluding the Black Hills Fire Protection District and Codington, Grant, Roberts, Lake, Lincoln, Minnehaha, and Moody counties in eastern South Dakota; 35 SDR 245.</p>
<p>5-7-2009</p>	<p>Revenue and Regulation: Division of Insurance</p>	<p>Amend a rule to change a reference to reflect the new lifetime benefit maximum amount of two million dollars; 35 SDR 237.</p>
<p>5-7-2009</p>	<p>Secretary of State: Board of Elections</p>	<p>Amend rules to clarify the address which the voter registration address verification notice is mailed to and include information on how to handle the notice if that person is no longer residing at that address; amend language in the notice of election for special district formation to clarify when the trustee election will be held; amend the municipal election ballot to include a list of the types of municipal governing boards; amend the certificate of nomination to fill vacancy form to include the principal residence address of the candidate; amend the approval of automatic tabulating system requirements for certification; amend the instructions to absentee voters to include</p>

		instructions to not return the absentee ballot to the polling place; amend the type of seal used for sealing a ballot box; require the use of paper seals on the ballot box; amend the certification by precinct election board to include certification language for election boards which use electronic pollbooks; remove the date of the election from the official stamp for ballots; modify absentee ballot envelopes; repeal color requirement for special district ballots; add ballot format for special district formation elections; add ballot for school district reorganization elections; add ballot format for sanitary district elections; add petition form for establishing or eliminating school board representation areas; add petition form for referring the discontinuance of an attendance center; and put security measures in place for the use of electronic pollbook; 35 SDR 233.
5-11-2009	Health: Health Systems Development and Regulation	Adopt rules to establish guidelines of the statewide trauma system; 35 SDR 243.
5-12-2009	Education: Board of Education	Amend rules to clarify the addition of state fees being charged students at the state Technical Institutes, establish a higher amount of funding for facilities at the state technical institutes, and clarify the distribution and allocation of funds for each full time equivalent student; 35 SDR 243.
5-12-2009	Social Services	Amend rules to add definitions, remove sales tax on food refund eligibility for food stamp households, delete obsolete provisions relating to automatically eligible households, and amend the time frame to submit a quarterly report; 35 SDR 244.
5-12-2009	Labor: Board of Accountancy	Amend rules to update references; correct erroneous references; repeal rules for conditional credit and transitional credits for the paper and pencil exam to the computerized exam; update language in rules to allow online renewals submission as signature and verification of information provided and the submitted time as the received date; eliminate pro-rated fees for firms and renewal of certificates; clarification of credit for CPE for instructors or discussion leaders; change definition of lapsed license to expired license; allow the board to be petitioned by an

		applicant or licensee to show other good cause to waive certain requirements; repeal and amend rules to reflect changes required by the passage of House Bill 1058 in the 2009 legislative session to no longer require notification forms to be filed with the Board, out-of-state firms will need permits only to perform audit work, certificates and firm permits will not be required to be displayed, and disciplinary procedures to include those with practice privileges; 35 SDR 251.
5-13-2009	Social Services	Amend rules relating to reimbursement for nursing facilities which will amend definitions; update internal references; clarify administrative hearing procedure; delete obsolete provisions; update internal references; repeal rules that are either obsolete or no longer represent the Department's current reimbursement methodology; increase the ceiling for capital costs; establish a new rule that specifies the reimbursement methodology used if an existing facility experiences a change in operational ownership; and specify that the amount of a facility's add-on payment for the use of a specialty bed will be established in the Department's contract with the provider; 35 SDR 244.
5-18-2009	Health: Health Systems Development and Regulations	Amend rules to assure the public health and safety requirements are met in the licensed lodging and campground facilities regulated by the department; 35 SDR 251.
5-18-2009	Health: Health Systems Development and Regulations	Repeal license fees for certain health care facilities that are now established in statute and to update fees for controlled substance registration and abortion facility licenses; 35 SDR 252.
5-19-2009	Public Safety: Driver Licensing	Amend rules to revise the definitions of terms; clarify documents required for issuance of a first-time driver license or identification card; clarify documents required for issuance to an applicant holding an out-of-state license or identification card; clarify documents required for an applicant holding a South Dakota identification card; clarify a reference to fraudulent documents to reflect changed definition of terms; revise the fee for a prorated driver license for those under twenty-one years of age; revise existing guidelines

		regarding commercial driver licenses to reflect adoption of current federal regulations; revise certain commercial vehicle criteria to reflect current standards; and revise the seasonal commercial driver license rule to allow for issuance during two ninety day periods within a calendar year; 35 SDR 252.
7-16-2009	Environment and Natural Resources: Board of Minerals and Environment	Update the state's existing hazardous waste rules by incorporating updated federal regulations by reference. These updates reflect changes made to the federal hazardous waste rules from July 1, 2007 through June 30, 2008. Changes include amending existing requirements for recycling; clarification of compliance monitoring requirements for hazardous waste combustion operations; and amending requirements for the management of wastewater treatment sludges generated by automobile assembly operations; 35 SDR 352.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, June 9, 2009, in Room 413, Fourth Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2009 interim: July 28, September 1, October 6, November 18, and December 15.

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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