

# REGISTER



## South Dakota Legislative Research Council

Volume 34

Monday, 8:00 a.m., April 28, 2008

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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 Education: Board of***

***Education:*** (April 22, 2008) intends to amend rules to change submission dates of scholarship application from May 1 of each year to the third Friday in March to accommodate school events; delete the "or the equivalent on a weighted scale" to eliminate an advantage for some students with access to Advanced Placement courses to obtaining a weighted grade point average of over 4.0; eliminate "High" in Virtual High School; add an electronic delivery necessity unless an exemption is made by the Secretary of Education and to have courses identified as a need by South Dakota Virtual School Advisory Council; add another factor to be considered by the oversight board when reviewing a school district's request for exemption; remove an administrative rule; define terms for appointed board members; better prepare a student for creating a personal learning plan; change the giving of aptitude assessment to a more relevant time; allow individuals with less than a bachelors degree to gain a SD certificate to teach specific career and technical education course; and provide clarity on the Birth to Three Connections program and revise the fee schedule for providers. The general authority for these rules, as cited by the board, is 13-1-12.1, 13-3-47, 13-13-37.4, 13-14-1, 13-33-22, 13-37-1.1, and 13-42-3.

A public hearing will be held in Rooms A & B at the Western Dakota Technical Institute, 800 Mickelson Drive, Rapid City, South Dakota, on May 19-20, 2008, at 8:00 a.m. MST. Copies of the proposed rules may be obtained

without charge from the Department of Education, South Dakota Board of Education, 700 Governors Drive, Pierre, South Dakota 57501-2291 or on the Internet at <http://doe.sd.gov/secretary/board/schedule.asp>. Written comments may be sent to the board at the address above and must be received by May 12, 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) 773-3426 at least 48 hours before the hearing.

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

***Banking Commission:*** (April 23, 2008) has filed rules to repeal and amend the rules to reflect changes required by the passage of Senate Bill 17 in the 2008 Legislative session. The rule changes will no longer require banks to charge off fifty percent of all assets classified as doubtful; update the requirements on banks regarding their allowance for loan and lease losses; allow loan application decisions to be made at a loan production office; make references to responsible parties consistent for mortgage lending entity applicants; provide for an application process to reflect a change in control of a mortgage licensee without requiring an original application; provide for the bonding of mortgage brokerages; include copies of appraisals in the list of required records for each mortgage loan application file; update language regarding approved training courses and require the division to display a list of approved training providers and courses on its website; specify the records that must be maintained by money lenders licensed pursuant to SDCL chapter 54-4; and update the fees authorized for money transmitters. The general authority for these

rules, as cited by the commission, is SDCL 51A-2-13, 51A-2-14, 51A-4-31, 51A-4-32, 51A-4-33, 51A-4-34, 51A-7-3, 51A-7-16, 51A-16-9, 51A-17-19, 54-4-38, 54-14-31, 54-14-14, 54-14-16, 54-14-26, and 54-14-31.

A public hearing will be held in the Student Center, Centennial Rooms, on the campus of Northern State University, Aberdeen, South Dakota, on May 14, 2008, at 8:30 a.m. Copies of the proposed rules may be obtained from and written comments sent to the Division of Banking, 217 ½ West Missouri Avenue, Pierre, South Dakota 57501, or by emailing Lynda.Fratzke@state.sd.us. Copies of the rules are also available at the division's website: [www.state.sd.us/banking](http://www.state.sd.us/banking). 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) 773-3421 at least 48 hours before the hearing.

**Department of Health: Health and Medical Services:** (April 24, 2008) intends to amend Children's Special Health Services rules to increase family income guidelines, remove family cost share requirement, and revise eligibility requirements. The general authority for these rules, as cited by the department, is SDCL 34-1-21.

A public hearing will be held in the Health Lab Building, 615 East 4<sup>th</sup> Street, Pierre, South Dakota, on May 20, 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 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) 773-3361 at least 48 hours before the hearing.

**Department of Environment and Natural Resources: Board of Minerals and Environment:** (April 24, 2008) 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, 2006 through June 30, 2007. Changes include establishing a standardized permit for hazardous waste storage facilities; and a variety of corrections that encompass printing omissions, typographical errors, misspellings and erroneous or missing citations and references throughout the rules. 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 September 18, 2008, at 10:15 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 September 18, 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 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:** 24:10:45:01, 24:10:45:02, 24:10:45:06 to 24:10:45:10, inclusive, 24:10:45:16, and 24:10:45:17.

History-Notice: 34 SDR 221, Feb. 25, 2008  
Hearing: March 17, 2008

Filed: April 18, 2008  
Effective: May 8, 2008

**DEPARTMENT OF TRANSPORTATION:**  
70:01:02:02, 70:01:02:09, 70:01:02:26, and  
70:01:02:59.

History-Notice: 34 SDR 221, Feb. 25, 2008  
Hearing: February 28, 2008  
Filed: April 18, 2008  
Effective: May 8, 2008

**DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES: WATER  
MANAGEMENT BOARD:** 74:55:01:01 to  
74:55:01:61, inclusive.

History-Notice: 34 SDR 199, January 14, 2008  
Hearing: April 3, 2008  
Filed: April 21, 2008  
Effective: May 12, 2008

**DEPARTMENT OF GAME, FISH AND  
PARKS:** 41:03:01:14; 41:04:02:07,  
41:04:02:14, 41:04:02:51, 41:04:02:63.01,  
41:04:02:66; 41:05:02:68; 41:09:12:01; and  
41:10:02:19.

History-Notice: 34 SDR 205, January 28, 2008  
Hearing: March 6, 2008  
Filed: April 24, 2008  
Effective: May 14, 2008

#### **Executive Appointments:**

**Harlan E. Nielsen**, Rapid City, was reappointed on April 15, 2008, to the **State Electrical Commission**, effective immediately and shall continue until April 14, 2011.

**Daniel Hartman**, Spearfish, was reappointed on April 18, 2008, to the **State Plumbing Commission**, effective immediately and shall continue until April 14, 2011.

**Roger L. Simonsen**, Menno, was reappointed on April 18, 2008, to the **State Plumbing Commission**, effective immediately and shall

continue until April 14, 2011.

**Larry A. Simonson**, Rapid City, was reappointed on April 18, 2008, to the **State Electrical Commission**, effective immediately and shall continue until April 14, 2011.

**Daniel Smith**, Pierre, was reappointed on April 18, 2008, to the **State Plumbing Commission**, effective immediately and shall continue until April 14, 2011.

**Thomas Hawley**, Aberdeen, was appointed on April 23, 2008, to the **Education Commission of the States**, effective April 21, 2008.

**Randy Bacon**, Aberdeen, was reappointed on April 24, 2008, to the **Board of Technical Professions**, effective immediately and shall continue until April 14, 2011.

**Dave Bozied**, Sioux Falls, was reappointed on April 24, 2008, to the **Board of Economic Development**, effective immediately and shall continue until April 19, 2012.

**Sharon L. Casey**, Chamberlain, was reappointed on April 24, 2008, to the **Board of Economic Development**, effective immediately and shall continue until April 19, 2012.

**Dale Jans**, Sioux Falls, was reappointed on April 24, 2008, to the **Board of Technical Professions**, effective immediately and shall continue until April 14, 2011.

**Hani Shafai**, Rapid City, was reappointed on April 24, 2008, to the **Board of Technical Professions**, effective immediately and shall continue until April 14, 2011.

**David Stafford**, Rapid City, was reappointed on April 24, 2008, to the **Board of Technical Professions**, effective immediately and shall continue until April 14, 2011.

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**

4-29-2008	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</u> (cpt), the <u>International Classification of Diseases, 9<sup>th</sup> Revision, Clinical Modification</u> (ICD-9-CMP), and the <u>CMS Common Procedure Coding System</u> (HCPCS) manuals; 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.
5-14-2008	Revenue and Regulation: Banking Commission	Repeal and amend the rules to reflect changes required by the passage of Senate Bill 17 in the 2008 Legislative session. The rule changes will no longer require banks to charge off fifty percent of all assets classified as doubtful; update the requirements on banks regarding their allowance for loan and lease losses; allow loan application decisions to be made at a loan production office; make references to responsible parties consistent for mortgage lending entity applicants; provide for an application process to reflect a change in control of a mortgage licensee without requiring an original application; provide for the gongding of mortgage brokerages; include copies of appraisals in the list of required records for each mortgage loan application file; update language regarding approved training courses and to require the division to display a list of approved training providers and courses on its website; specify the records that must be maintained by money lenders licenses pursuant to SDCL chapter 54-4; and update the feew authorized for money transmitters; 34 SDR 277.
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

		<p>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.</p>
<p>5-19&amp;20-2008</p>	<p>Education: Board of Education</p>	<p>Amend rules to change submission dates of scholarship application from May 1 of each year to the third Friday in March to accommodate school events; delete the "or the equivalent on a weighted scale" to eliminate an advantage for some students with access to Advanced Placement courses to obtaining a weighted grade point average of over 4.0; eliminate "High" in Virtual High School; add an electronic delivery necessity unless an exemption is made by the Secretary of Education and to have courses identified as a need by South Dakota Virtual School Advisory Council; add another factor to be considered by the oversight board when reviewing a school district's request for exemption; remove an administrative rule; define terms for appointed board members; better prepare a student for creating a personal learning plan; change the giving of aptitude assessment to a more relevant time; allow individuals with less than a bachelors degree to gain a SD certificate to teach specific career and technical education course; and provide clarity on the Birth to Three Connections program and revise the fee schedule for providers; 34 SDR 277.</p>
<p>5-20-2008</p>	<p>Bureau of Administration</p>	<p>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.</p>

5-20-2008	Health: Health and Medical Services	Amend Children's Special Health Services rules to increase family income guidelines, remove family cost share requirement, and revise eligibility requirements; 34 SDR 278.
9-18-2008	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, 2006 through June 30, 2007. Changes include establishing a standardized permit for hazardous waste storage facilities; and a variety of corrections that encompass printing omissions, typographical errors, misspellings and erroneous or missing citations and references throughout the rules; 34 SDR 278.

### 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>.