

REGISTER



South Dakota Legislative Research Council

Volume 39

Tuesday, 8:00 a.m., May 28, 2013

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

Department of Environment and Natural Resources: Board of Minerals and

Environment: (May 22, 2013) 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, 2010 through June 30, 2012. Changes include establishing procedures for identifying and managing certain hazardous secondary materials destined for recycling, and making technical and typographical corrections to the federal 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 August 15, 2013, at 10:00 a.m. CDT. Copies of the proposed rules may be obtained without charge by calling Carrie Jacobson at (605) 773-3153 or from the following website: <http://denr.sd.gov/des/wm/hw/hwmainpage.aspx>. Access to online commenting is also available at: <http://denr.sd.gov/public/default.aspx>. Written comments may be sent to the Department of Environment and Natural Resources, PMB 2020, Waste Management Program, 523 East Capitol, Pierre, South Dakota 57501-3182. All comments must be received by August 15, 2013, 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.

Department of Environment and Natural Resources: Board of Water and Natural Resources: (May 24, 2013) intends to amend Director Areas in Water Development Districts rules to redraw the director areas in the James River, East Dakota, and West Dakota Water Development District areas; amend Consolidated Water Facilities Construction Program rules to allow applicants to receive funding for project design activities without being placed in the state water facilities plan, remove application restrictions that prohibit a project receiving more than one grant and one loan in a program year, that require applicants that are not funded resubmit an application in order to compete in a subsequent application cycle, and that require a minimum of 40 percent local share of a total project cost unless waived, repeal the section describing the distribution of uncommitted funds, require applicants to submit forms on an application provided by the department, revise the application review process to include eliminating the minimum rate requirement and the related waiver process, include televising and cleaning of sewer lines as an eligible expense, revise the factors for decision making, extend the time allowed to use funds from 3 years to 4 years, revise the provision that the department conduct an overall review of the applicant's financial status, repeal the provision that the board may require an environmental statement, repeal the technical requirements regarding land surveys, plans and specification preparation, and the establishment of monitoring wells, and update or eliminate incorrect statute references and make other minor grammatical changes; amend State Water Pollution Control Revolving Fund Program rules to allow applicants to receive funding for project design activities without being placed in

the state water facilities plan, allow projects that have received funding from the board to remain in the state water facilities plan for the purpose of requesting additional funding, repeal the duplicative requirement for the preparation of plans and specifications, allow applicants to be awarded solid waste management funds in lieu of or in an addition to funds from State Revolving Pollution Control Revolving Fund program, allow all nonpoint source projects to receive principal forgiveness without meeting the minimum established rate, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application review process, and update or correct references to the Clean Water Act authorizing legislation, census data, and state statutes and make other minor grammatical changes; amend Solid Waste Management Program rules to repeal the provision that requires a minimum of 40 percent local share of a total project cost, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application process, discontinue using the price for recyclable materials as a criteria on which to base interest rates and begin using the current rate of alternate federal or state programs as a criteria, repeal the provision that requires the applicant to provide proof of certain permits prior to disbursement of funds, repeal the provision that the board may require an environmental statement, repeal the technical requirements regarding land surveys and plans and specification preparation, revise the period for drawing funds from two years with a one-year extension with board approval to three years, repeal the section describing the distribution of uncommitted funds, eliminate the board's ability to waive the required debt coverage ratio due to financial hardship, require recipients to maintain proper accounting records, and update or correct statute references and make other minor grammatical changes; and amend Drinking Water State Revolving Fund Program rules to

allow applicants to receive funding for project design activities without being placed in the state water facilities plan, allow projects that have received funding from the board to remain in the state water facilities plan for the purpose of requesting additional funding, repeal the duplicative requirement regarding plans and specification preparation, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application review process, make principal forgiveness available to disadvantaged communities, and update or correct references to the Drinking Water Act authorizing legislation, census data, and state statutes and make other minor grammatical changes. The general authority for these rules, as cited by the department, is SDCL §§ 46A-60.1, 46A-1-60.2, 46A-1-60.3, 46A-1-65, 46A-1-67, 46A-1-84, and 46A-3C-6.

A public hearing will be held at the Floyd Matthew Training Center, 523 East Capitol Avenue, Pierre, South Dakota, on June 27, 2013, at 1:00 p.m. CDT. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Environment and Natural Resources, Division of Financial and Technical Assistance, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Copies may also be accessed on the department's web page at <http://denr.sd.gov/public/rules.aspx#comment>. Access to online commenting is also available. Written comments must reach the Board of Water and Natural Resources by close of business on June 26, 2013, 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) 773-4216 at least 48 hours before the hearing.

NOTICES:

The **Department of Social Services** intends to make the following changes to the South Dakota

Medicaid State Plan concerning rates of reimbursement for Swing-Bed Hospitals effective July 1, 2013. This State Plan Amendment removes obsolete language and adds language clarifying that per diem rates will be published on the Department's website. The proposed changes amend Attachment 4.19-D, Page 14 of the State Plan. The Federal fiscal impact associated with this amendment is \$1,590 for Federal Fiscal Year 2013 and \$4,771 for 2014. Written requests for a copy of these changes, and corresponding comments, may be sent to Kirby Stone, State Medicaid Director, Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291.

The **Department of Social Services** intends to make the following changes to the South Dakota Medicaid State Plan concerning reimbursement for inpatient hospital services in State Fiscal Year 2014 effective July 1, 2013. The State Plan Amendment removes obsolete language pertaining to inpatient hospital reimbursement methodology used in State Fiscal Year 2013 and replaces it with language to implement State Fiscal Year 2014 legislative budget appropriations. The proposed changes amend Attachment 4.19-A of the State Plan, pages 1 and 2. The Federal fiscal impact associated with this amendment is \$(227,987) for Federal Fiscal Year 2013 and \$(683,962) for 2014. Written requests for a copy of these changes, and corresponding comments, may be sent to Kirby Stone, State Medicaid Director, Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291.

The **Department of Social Services** intends to make the following changes to the South Dakota Medicaid State Plan concerning outpatient hospital reimbursement methodology effective July 1, 2013. This State Plan Amendment removes obsolete language pertaining to outpatient hospital reimbursement methodology used in State Fiscal Year 2013, replacing it with reimbursement calculations for State Fiscal

Year 2014. This change implements State Fiscal Year 2014 budget appropriations. The proposed changes amend Attachment 4.19-B of the State Plan, page 1b. The Federal fiscal impact associated with this amendment is \$(60,068) for Federal Fiscal Year 2013 and \$(180,204) for 2014. Written requests for a copy of these changes, and corresponding comments, may be sent to Kirby Stone, State Medicaid Director, Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

BUREAU OF ADMINISTRATION:

10:02:01:03; 10:03:01:01, 10:03:01:02, 10:03:02:05; 10:04:01:04, 10:04:02:02, 10:04:02:04 to 10:04:02:09, inclusive, 10:04:02:11 to 10:04:02:14, inclusive, 10:04:02:16, and 10:04:02:17.

History-Notice: 39 SDR 167, April 8, 2013
 Hearing: May 3, 2013
 Filed: May 20, 2013
 Effective: June 10, 2013

DEPARTMENT OF HEALTH: DIVISION OF HEALTH AND MEDICAL SERVICES:

44:20:01:01, 44:20:01:03, 44:20:01:04; and 44:20:03:01.

History-Notice: 39 SDR 167, April 8, 2013
 Hearing: May 2, 2013
 Filed: May 20, 2013
 Effective: June 10, 2013

DEPARTMENT OF LABOR AND REGULATION: DIVISION OF

INSURANCE: 20:06:18:22; 20:06:22:09 to 20:06:22:26, inclusive, Appendices A - C, inclusive, 20:06:22:27 to 20:06:22:35, inclusive; 20:06:33:02, 20:06:33:03; 20:06:39:04, 20:06:39:04.01, 20:06:39:06, 20:06:39:06.01, 20:06:39:08, 20:06:39:08.01, 20:06:39:20.06, 20:06:39:24 to 20:06:39:29, inclusive, 20:06:39:31, 20:06:39:33, 20:06:39:34.01,

20:06:39:34, 20:06:39:37, 20:06:39:42, 20:06:39:57 to 20:06:39:74, inclusive, Appendices A and B; 20:06:40:01 to 20:06:40:03.01, inclusive, 20:06:40:05, 20:06:40:09 to 20:06:40:12, inclusive, 20:06:40:14 to 20:06:40:16, inclusive, 20:06:40:18 to 20:06:40:22, inclusive, 20:06:40:24, 20:06:40:25, 20:06:40:75 to 20:06:40:89, inclusive, Appendices A and B; 20:06:41:11; 20:06:55:16, 20:06:55:22, 20:06:55:25, 20:06:55:25.01, 20:06:55:28 to 20:06:55:53, inclusive, Appendix A; and 20:06:56:01 to 20:06:56:20, inclusive.

History-Notice: 39 SDR 153, March 18, 2013
 Hearing: April 16, 2013
 Filed: May 20, 2013
 Effective: June 10, 2013

DEPARTMENT OF AGRICULTURE:
ANIMAL INDUSTRY BOARD: 12:68:14:01; 12:68:18:04; 12:68:23:01, 12:68:23:02, 12:68:23:04, 12:68:23:10, and 12:68:23:11.

History-Notice: 39 SDR 159, March 25, 2013
 Hearing: April 23, 2013
 Filed: May 21, 2013
 Effective: June 10, 2013

DEPARTMENT OF GAME, FISH AND PARKS: 41:03:04:03; 41:06:02:03; 41:06:07:01; 41:06:26:02; 41:06:42:01 to 41:06:42:05, inclusive; 41:06:43:02; 41:06:59:02; 41:06:60:02 and 41:06:60:05.

History-Notice: 39 SDR 153, March 18, 2013
 Hearing: April 4, 2013
 Filed: May 22, 2013
 Effective: June 11, 2013

DEPARTMENT OF GAME, FISH AND PARKS: 41:03:04:03.

History-Notice: 39 SDR 171, April 15, 2013
 Hearing: May 2, 2013
 Filed: May 22, 2013
 Effective: June 11, 2013

DEPARTMENT OF TRANSPORTATION:
 70:01:03:36 and 70:01:03:37.

History-Notice: 39 SDR 171, April 15, 2013
 Hearing: April 25, 2013
 Filed: May 22, 2013
 Effective: June 11, 2013

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

6-6-2013	Game, Fish and Parks	Amend rules to create a new rule section to establish requirements and restrictions for the operation of motor vehicles, golf carts, mopeds, and scooters on roads or parking areas located within the state park system; limit the scope of the current rule (ARSD 41:06:05:03) which prohibits possession of a firearm while archery hunting and create a new rule to address non-licensee armed accompaniment and place the responsibility for rule adherence upon the unlicensed hunter; establish the
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		<p>number and types of licenses available for the Fall Wild Turkey Hunting Season which include offering fewer one-tag licenses and more two-tag licenses for resident hunters on the East River Prairie Units, offering fewer one-tag licenses for resident hunters and fewer one-tag licenses for nonresident hunters for the Black Hills Unit, and repeal ARSD 41:06:14:04 which provides that in units adjoining the Cheyenne River or White River a license is valid in the adjacent unit within one mile of the common river boundary; modify the season dates for the Waterfowl Hunting Seasons to run from the first Saturday of August to August 31, increase the daily bag limit to 15, add those portions west of the Cheyenne River in Pennington County to the areas open to hunting, allow use of unplugged shotguns, and modify the shooting hours to end one-half hour after sunset; establish the number and types of resident and nonresident licenses available during the Black Hills Deer Hunting Season which will include offering residents and nonresidents fewer "antlerless whitetail deer" licenses than 2012; establish the number and types of resident and nonresident licenses available during the West River Prairie Deer Season; establish the number and types of licenses available for the East River Deer Hunting Season; provide that only unfilled "any antlerless deer" licenses are valid from January 1 to January 15, add Bon Homme, Charles Mix, Clay, Codington, Douglas, Grant, Hutchinson, Lincoln, Turner, Union, and Yankton counties to the area where "any antlerless deer" licenses are not valid, change all references to "Blood Run Nature Area" to "Good Earth State Park", reduce the number of "any antlerless deer" archery access permits for the Adams Homestead and Nature Preserve and Good Earth State Park, and increase the number of "any deer" archery access permits for the Adams Homestead and Nature Preserve; adjust the hunting start date for Unit RFD-SL1 within the National Wildlife Refuge Deer Hunting Season from the Saturday before the East River Deer Hunting Season to the second Saturday of November,</p>
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		<p>adjust the start dates for all other Sand Lake Units accordingly, provide that only unfilled Sand Lake "antlerless deer" licenses are valid during the 9-day hunting season, and make allowance for optics that do not employ magnification during any Refuge Deer Hunting Seasons that are restricted to muzzleloaders; reduce the number of "any deer" licenses and increase the number of "antlerless whitetail deer" muzzleloader licenses in Custer State Park; add Bon Homme, Charles Mix, Clay, Douglas, Hutchinson, and Union counties to where only one Youth Deer hunting license is valid and remove the Youth Deer restriction for Sand Lake National Wildlife Refuge, Lacreek National Wildlife Refuge, Lake Andes National Wildlife Refuge, and Waubay National Wildlife Refuge; provide that during the General Muzzleloading Deer Hunting Season only unfilled "any antlerless deer" licenses are valid from January 1 to January 15; modify the West River Bobcat Trapping and Hunting Season from December 26 thru February 15 and modify the East River season from December 26 through the third Sunday of January; 39 SDR 191.</p>
<p>6-6-2013</p>	<p>Department of Agriculture: Agricultural Services</p>	<p>Adopt rules to require additional labeling and animal health requirements to dairy producers selling bottled raw milk direct to the consumer; 39 SDR 192.</p>
<p>6-27-2013</p>	<p>Environment and Natural Resources: Board of Water and Natural Resources</p>	<p>Amend Director Areas in Water Development Districts rules to redraw the director areas in the James River, East Dakota, and West Dakota Water Development District areas; amend Consolidated Water Facilities Construction Program rules to allow applicants to receive funding for project design activities without being placed in the state water facilities plan, remove application restrictions that prohibit a project receiving more than one grant and one loan in a program year, that require applicants that are not funded resubmit an application in order to compete in a subsequent application cycle, and that require a minimum of 40 percent local share of a total project cost unless waived, repeal the section describing the distribution of uncommitted funds, require applicants to submit forms on an</p>

		<p>application provided by the department, revise the application review process to include eliminating the minimum rate requirement and the related waiver process, include televising and cleaning of sewer lines as an eligible expense, revise the factors for decision making, extend the time allowed to use funds from 3 years to 4 years, revise the provision that the department conduct an overall review of the applicant's financial status, repeal the provision that the board may require an environmental statement, repeal the technical requirements regarding land surveys, plans and specification preparation, and the establishment of monitoring wells, and update or eliminate incorrect statute references and make other minor grammatical changes; amend State Water Pollution Control Revolving Fund Program rules to allow applicants to receive funding for project design activities without being placed in the state water facilities plan, allow projects that have received funding from the board to remain in the state water facilities plan for the purpose of requesting additional funding, repeal the duplicative requirement for the preparation of plans and specifications, allow applicants to be awarded solid waste management funds in lieu of or in an addition to funds from State Revolving Pollution Control Revolving Fund program, allow all nonpoint source projects to receive principal forgiveness without meeting the minimum established rate, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application review process, and update or correct references to the Clean Water Act authorizing legislation, census data, and state statutes and make other minor grammatical changes; amend Solid Waste Management Program rules to repeal the provision that requires a minimum of 40 percent local share of a total project cost, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application</p>
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		<p>process, discontinue using the price for recyclable materials as a criteria on which to base interest rates and begin using the current rate of alternate federal or state programs as a criteria, repeal the provision that requires the applicant to provide proof of certain permits prior to disbursement of funds, repeal the provision that the board may require an environmental statement, repeal the technical requirements regarding land surveys and plans and specification preparation, revise the period for drawing funds from two years with a one-year extension with board approval to three years, repeal the section describing the distribution of uncommitted funds, eliminate the board's ability to waive the required debt coverage ratio due to financial hardship, require recipients to maintain proper accounting records, and update or correct statute references and make other minor grammatical changes; and amend Drinking Water State Revolving Fund Program rules to allow applicants to receive funding for project design activities without being placed in the state water facilities plan, allow projects that have received funding from the board to remain in the state water facilities plan for the purpose of requesting additional funding, repeal the duplicative requirement regarding plans and specification preparation, repeal the requirement that a financial status be prepared and provided to the board before a loan is executed and make the financial status review and preparation part of the application review process, make principal forgiveness available to disadvantaged communities, and update or correct references to the Drinking Water Act authorizing legislation, census data, and state statutes and make other minor grammatical changes; 39 SDR 201.</p>
<p>8-15-2013</p>	<p>Environment and Natural Resources: Board of Minerals and Environment</p>	<p>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, 2010 through June 30, 2012. Changes include establishing procedures for identifying and managing certain hazardous secondary materials destined for recycling, and</p>

		making technical and typographical corrections to the federal rules; 39 SDR 201.
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RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, June 4, 2013, in Room 413, Fourth Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2013 interim: July 9, August 20, September 17, November 12, and December 17.

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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