

REGISTER



South Dakota Legislative Research Council

Volume 34

Monday, 8:00 a.m., June 9, 2008

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

Department of Labor: State Plumbing

Commission: (June 2, 2008) intends to amend plumbing installation practices as they relate to the Uniform Plumbing Code and to adopt rules for continuing educational requirements. The general authority for these rules, as cited by the commission, is SDCL 36-25-14 and 36-25-15.

A public hearing will be held in the Budget Host Inn/State Motel Conference Room, 640 N. Euclid, Pierre, South Dakota, on July 9, 2008, at 1:00 p.m. Copies of the proposed rules may be obtained without charge by writing the State Plumbing Commission, 308 S. Pierre St., Pierre, South Dakota 57501. A copy of the Uniform Plumbing Code may be obtained from the State Plumbing Commission, 308 S. Pierre St., Pierre, South Dakota 57501 at a cost of \$95. Written comments may be sent to the State Plumbing Commission and must be received prior to July 9, 2008. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-3429 prior to the hearing.

Department of Transportation: (June 4, 2008) is proposing to amend a speed zone in Meade County on SD Highway 34 through and to the east of the City of Sturgis to reduce speed limits for traffic along the area of the high school where there are heavy traffic volumes entering and exiting the highway. The general authority for this rule, as cited by the department, is SDCL 32-25-7.

A public hearing will be held in the Commission

Room of the Becker Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota, on June 26, 2008, at 9:05 a.m. CDST. Copies of the proposed rule may be obtained without charge from and written comments sent to the Secretary of Transportation, Becker-Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Material sent by mail must reach the department by June 25, 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) 773-3540 or 1-800-877-1113 (Telecommunication Device for the Deaf).

Department of Social Services: Medical

Services: (June 5, 2008) intends to amend optometric services and supplies rules to define the term "amblyopia"; delete the term "keratoconus"; move the list of covered services, the associated procedure codes, and the rates of reimbursement, to the Department's website; limit the replacement of contact lenses to two lenses a year for standard rigid gas permeable or standard annual replacement daily wear soft contact lenses; specify that patients fitted with planned replacement daily wear soft contact lenses must be provided with a year's supply of lenses at the initial fitting and specify that no other replacement lenses will be covered during that year; specify that covered items and services provided for children under the age of 21 are not subject to established limits providing the items or services are medically necessary; expand the list of non-covered services to include extended wear or daily disposable contact lenses and LASIK surgery; establish a mechanism for providers to request a review of a rate for possible adjustment or to request the

inclusion or exclusion of a particular procedure code from the list; establish a co-pay for exams; allow for the electronic submission of claims; and repeal a rule that is no longer necessary; and amend physician services rules to specify that a procedure code reported with a two-digit modifier of 23 (unusual anesthesia) is reimbursed at 100 percent of the fee established by the Department or 40 percent of the physician's usual and customary charge if the Department has not established a fee; specify that a procedure code reported with a two-digit modifier of 59 (distinct procedure) is reimbursed at 100 percent of the fee established by the Department or 30 percent of the physician's usual and customary charge if the Department has not established a fee; and specify that a procedure code reported with a two-digit modifier of 50 (bilateral procedure) is reimbursed at 40 percent of the physician's usual and customary charge if the Department has not established a fee for service. The general authority for these rules, as cited by the department, is SDCL 28-6-1 and 28-6-1.1.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on June 26, 2008, at 9:00 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 July 7, 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: Water Management Board:

(June 5, 2008) has filed rules to amend Ground Quality rules to require secondary containment and leak monitoring for new and replacement tank systems located within 1,000 feet of an existing community water system or any potable drinking water well, require department approved training for owners and operators of regulated tank systems and make it illegal for non-compliant tank systems to receive delivery of regulated substances. The general authority for these rules, as cited by the department, is SDCL 34A-2-93 and 34A-2-99.

A public hearing will be held at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota, on July 2, 2008, at 8:45 a.m. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Department of Environment and Natural Resources, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501-3181 or by calling 605-773-3296.

Written comments must be received by June 27, 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) 773-3296 at least 48 hours before the public hearing.

Department of Public Safety: Office of Weights and Measures:

(June 6, 2008) intends to amend rules to adopt the 2005 editions of the National Institute of Standards and Technology (NIST) handbooks 44, 133 and 130; to modify the fee structure for conducting heavy scales inspections, retail device inspections, and calibrations in the State metrology laboratory; and to adopt the 2005 Annual Book of the American Society for Testing and Materials Standards for petroleum quality. The general authority for these rules, as cited by the department, is SDCL 34-39-3, 34-39-7, 37-2-6, 37-2-7, 37-20-34, 37-21-5, 37-21-6, 37-21-9.1,

37-21A-11, 37-22-3, 37-22-10, 37-22-12, and 39-1-4.

A public hearing will be held in the second floor conference room, Public Safety Building, 118 West Capitol, Pierre, South Dakota, on July 29, 2008, at 1:00 p.m. Copies of the proposed rules may be obtained without charge from and written comments sent to South Dakota Department of Public Safety, Office of Weights and Measures Program, 118 West Capitol, Pierre, South Dakota 57501-2000. Material sent by mail must reach the Department of Public Safety by July 28, 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) 773-3697 at least 48 hours before the hearing.

South Dakota Board of Regents: (June 6, 2008) intends to amend rules to allow students receiving an associate degree or certificate to continue their enrollment in the South Dakota Opportunity Scholarship program, allow for students to take the ACT exam during the summer before starting their post-secondary education, change the curriculum requirements to reflect the Department of Education's distinguished high school program, and establish dates for student eligibility for funding into administrative rules. The general authority for these rules, as cited by the board, is SDCL 13-55-36.

A public hearing will be held in the Volstroff Ballroom, Union 101a, South Dakota State University, Brookings, South Dakota, on June 27, 2008, at 9:30 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Board of Regents, Office of the Executive Director, 306 East Capitol, Suite 200, Pierre, South Dakota 57501. Written comments must be received by June 26, 2008, 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) 773-3455 at least forty-eight hours before the hearing.

DECLARATORY RULINGS:

The South Dakota Lottery Commission has issued two declaratory rulings relating to video lottery.

In Ruling 08-01, dated April 24, 2008, the Commission revised the incentive commissions that are authorized for on-line retailers who sell certain valid winning tickets for on-line games. The incentives are determined according to a formula included in the ruling and the retailer must meet certain conditions to be eligible.

The other ruling results from the request by IGT, a video lottery machine manufacturer licensed by the South Dakota Lottery. IGT submitted a petition to the Commission to make a determination that the VLC Model 8700 video lottery machine is obsolete because the parts necessary for the manufacture of the machine are no longer available. The hearing regarding this petition was held on October 19, 2007. The Music and Vending Association, the Licensed Beverage Dealers, and the Association of Video Lottery Establishments also participated in the hearing. Based on the evidence and a stipulation between the parties, the Commission declared the VLC 8700 video lottery machine to be obsolete.

Copies of the declaratory rulings may be reviewed or copied at the office of the Legislative Research Council during normal business hours.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Order:

The Governor has signed **Executive Order 2008-06** dated June 3, 2008, which authorizes the South Dakota Division of Wildland Fire

Suppression to augment all of its firefighting response efforts throughout the state with the available assets of the South Dakota National Guard during and following an initial attack on any of the wildfires in which the division responds during the 2008 fire season (April 1 through October 31).

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

6-13-2008	Health: Board of Dentistry	Amend rules to increase the number of hours that a licensed dentist, dental hygienist or advanced dental assistant may take via home study from 10 hours in a licensing cycle to 20 hours; 34 SDR 303.
6-23-2008	Health: Health Systems Development and Regulation	Amend Radiation Control rules to permit hand held intra-oral radiographic imaging devices and a reporting process for lost or damaged equipment; 34 SDR 303.
6-26-2008	Transportation	Amend a speed zone in Meade County on SD Highway 34 through and to the east of the City of Sturgis to reduce speed limits for traffic along the area of the high school where there are heavy traffic volumes entering and exiting the highway; 34 SDR 315.
6-26-2008	Social Services: Medical Services	Amend optometric services and supplies rules to define the term "amblyopia"; delete the term "keratoconus"; move the list of covered services, the associated procedure codes, and the rates of reimbursement, to the Department's website; limit the replacement of contact lenses to two lenses a year for standard rigid gas permeable or standard annual replacement daily wear soft contact lenses; specify that patients fitted with planned replacement daily wear soft contact lenses must be provided with a year's supply of lenses at the initial fitting and specify that no other replacement lenses will be covered during that year; specify that covered items and services provided for children under the age of 21 are not subject to established limits providing the items or services are medically necessary; expand the list of non-covered services to include extended wear or daily disposable

		<p>contact lenses and LASIK surgery; establish a mechanism for providers to request a review of a rate for possible adjustment or to request the inclusion or exclusion of a particular procedure code from the list; establish a co-pay for exams; allow for the electronic submission of claims; and repeal a rule that is no longer necessary; amend physician services rules to specify that a procedure code reported with a two-digit modifier of 23 (unusual anesthesia) is reimbursed at 100 percent of the fee established by the Department or 40 percent of the physician's usual and customary charge if the Department has not established a fee; specify that a procedure code reported with a two-digit modifier of 59 (distinct procedure) is reimbursed at 100 percent of the fee established by the Department or 30 percent of the physician's usual and customary charge if the Department has not established a fee; and specify that a procedure code reported with a two-digit modifier of 50 (bilateral procedure) is reimbursed at 40 percent of the physician's usual and customary charge if the Department has not established a fee for service; 34 SDR 315.</p>
6-27-2008	Board of Regents	<p>Amend rules to allow students receiving an associate degree or certificate to continue their enrollment in the South Dakota Opportunity Scholarship program, allow for students to take the ACT exam during the summer before starting their post-secondary education, change the curriculum requirements to reflect the Department of Education's distinguished high school program, and establish dates for student eligibility for funding into administrative rules; 34 SDR 317.</p>
7-1-2008	Revenue and Regulation: Division of Insurance	<p>Amend a Medicare Supplement Insurance rule to prohibit duplication of coverage when Medicare Advantage coverage is replacing Medicare supplement coverage or when being replaced by Medicare supplement coverage; and adopt Discretionary Clause rules to prohibit discretionary clauses in health insurance policies; 34 SDR 309.</p>
7-2-2008	Corrections: Board of Pardons and Paroles	<p>Amend rules to clarify and modernize operational procedures and reflect current case law; 34 SDR 309.</p>

7-2-2008	Environment and Natural Resources: Water Management Board	Amend Ground Quality rules to require secondary containment and leak monitoring for new and replacement tank systems located within 1,000 feet of an existing community water system or any potable drinking water well, require department approved training for owners and operators of regulated tank systems and make it illegal for non-compliant tank systems to receive delivery of regulated substances; 34 SDR 316.
7-9-2008	Labor: Plumbing Commission	Amend plumbing installation practices as they relate to the Uniform Plumbing Code and to adopt rules for continuing educational requirements; 34 SDR 315.
7-29-2008	Public Safety: Office of Weights and Measures	Amend rules to adopt the 2005 editions of the National Institute of Standards and Technology (NIST) handbooks 44, 133 and 130; to modify the fee structure for conducting heavy scales inspections, retail device inspections, and calibrations in the State metrology laboratory; and to adopt the 2005 Annual Book of the American Society for Testing and Materials Standards for petroleum quality; 34 SDR 316.
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, June 10, 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: 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>.

The **South Dakota Register**, ISSN 0191-1104, is published by the South Dakota Legislative Research Council pursuant to SDCL 1-26A-1. Subscriptions to Volume 34 are \$25. Make checks payable to "State of South Dakota" and mail to the Legislative Research Council, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. Information from the Register is available free of charge on the Internet at <http://legis.state.sd.us>. Subscribe to receive electronic notification of the availability of the **South Dakota Register** at MyLRC (<http://legis.state.sd.us/mylrc/index.aspx>).