

# REGISTER

*South Dakota Legislative Research Council*



*Volume 34*

*Monday, 8:00 a.m., June 30, 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 Social Services: Economic Assistance:*** (June 27, 2008) intends to amend Low Income Energy Assistance Program (LIEAP) rules to reduce the amount payable under LIEAP when a household's rent includes the cost of heat; allow the Department to make adjustments to a household's LIEAP benefit amount until the benefit is paid; and extend the time during which a utility company can use meter readings for energy supplied to households eligible for LIEAP assistance; amend an Emergency Crisis Intervention Program (ECIP) rule to extend the deadline for applying for funds under ECIP. The general authority for these rules, as cited by the department, is SDCL 28-1-50.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on July 30, 2008, at 10:00 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 August 11, 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 Education: Board of Education:*** (June 27, 2008) intends to amend a Career and Technical Education rule to utilize a better and consistent accountability system for the South Dakota Technical Institutes; amend Early Intervention Program rules to provide clarity on the Birth to Three Program, eligibility changes and the posting of rate changes on the South Dakota Department of Education website; and amend Accreditation and School Improvement rules to require that all non-certified administrators will need to have a "plan of intent" on file indicating their intention to become properly certified within three years of their date of hire. The general authority for these rules, as cited by the board, is 1-45-13, 13-1-12.1, 13-3-1.4, 13-3-47, 13-37-1.1, 13-39-37, and 13-42-28.

A public hearing will be held in Conference Room 3, Kneip Building, 700 Governors Drive, Pierre, South Dakota, on July 21-22, 2008, at 1:00 p.m. CST. 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/adminrules/index.asp> Written comments may be sent to the board at the address above and must be received by July 16, 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.

## **FILINGS IN THE SECRETARY OF STATE'S OFFICE:**

### **Executive Appointments:**

**Phyllis Arends**, Canistota, was reappointed on June 23, 2008, to the **Mental Health Planning and Coordination Advisory Council**, effective July 1, 2008, and shall continue until June 30, 2011.

**Jerome Buchkoski**, Sioux Falls, was appointed on June 23, 2008, to the **Board of Examiners of Psychologists**, to replace Dr. Barbara Yutzenka, effective July 1, 2008, and shall continue until June 30, 2011.

**Robert Burns**, Brookings, was appointed on June 23, 2008, to the **Western Interstate Commission for Higher Education**, effective July 1, 2008, and shall continue until June 30, 2011.

**Danny J. Green**, Spearfish, was reappointed on June 23, 2008, to the **Board of Examiners of Psychologists**, effective July 1, 2008, and shall continue until June 30, 2011.

**Arlene Gullikson**, Lake Andes, was appointed on June 23, 2008, to the **Family Support Council**, to replace Larretta Hall, effective June 19, 2008, and shall continue until June 30, 2009.

**James O. Hansen**, Pierre, was appointed on June 23, 2008, to the **Western Interstate Commission for Higher Education**, effective July 1, 2008, and shall continue until June 30, 2012.

**Pam Kettering**, Yankton, was reappointed on June 23, 2008, to the **South Dakota Board of Counselor Examiners**, effective July 1, 2008, and shall continue until June 30, 2011.

**Duane Majeres**, Huron, was reappointed on June 23, 2008, to the **Mental Health Planning and Coordination Advisory Council**, effective July 1, 2008, and shall continue until June 30, 2011.

**Lorin D. Pankratz**, Sioux Falls, was reappointed on June 23, 2008, to the **Board of Examiners of Psychologists**, effective July 1, 2008, and shall continue until June 30, 2011.

**John Pedersen**, Pierre, was appointed on June 23, 2008, to the **Mental Health Planning and Coordination Advisory Council**, to replace Doris Schumacher, effective July 1, 2008, and shall continue until June 20, 2011.

**Tad Perry**, Pierre, was appointed on June 23, 2008, to the **Western Interstate Commission for Higher Education**, effective July 1, 2008, and shall continue until June 30, 2010.

**William Shroll**, Watertown, was reappointed on June 23, 2008, to the **Mental Health Planning and Coordination Advisory Council**, effective July 1, 2008, and shall continue until June 30, 2011.

**Dr. Thomas Stanage**, Yankton, was reappointed on June 23, 2008, to the **Board of Examiners of Psychologists**, effective July 1, 2008, and shall continue until June 30, 2011.

**Tim Bachman**, Sioux Falls, was appointed on June 24, 2008, to the **State Board of Funeral Service**, to replace Robert A. Ellsworth, effective July 1, 2008, and shall continue until June 30, 2011.

**Rebecca Carlson**, Winner, was appointed on June 24, 2008, to the **Planning Council on Developmental Disabilities**, to replace Brooke Lusk, effective July 1, 2008, and shall continue until June 30, 2011.

**Vikki Day**, Highmore, was reappointed on June 24, 2008, to the **Planning Council on Developmental Disabilities**, effective July 1, 2008, and shall continue until June 30, 2011.

**Daniele Dosch**, Rapid City, was appointed on June 24, 2008, to the **Mental Health Planning and Coordination Advisory Council**, to replace Cindy Klein, effective July 1, 2008, and shall continue until June 30, 2011.

**Paul I. Engbrecht**, Marion, was reappointed on June 24, 2008, to the **South Dakota State Board for Nursing Facility Administrators**, effective July 1, 2008, and shall continue until June 30, 2011.

**Jim Goglin**, Tyndall, was appointed on June 24, 2008, to the **State Board of Funeral Service**, to replace Carter O. Wiese, effective July 1, 2008, and shall continue until June 30, 2011.

**Chris Hipple**, Pierre, was reappointed on June 24, 2008, to the **South Dakota State Board for Nursing Facility Administrators**, effective July 1, 2008, and shall continue until June 30, 2011.

**Daryl L. Isburg**, Ft. Pierre, was reappointed on June 24, 2008, to the **State Board of Funeral Service**, effective July 1, 2008, and shall continue until June 30, 2011.

**David R. Johnson**, Sioux Falls, was reappointed on June 24, 2008, to the **South Dakota Board of Counselor Examiners**, effective July 1, 2008, and shall continue until June 30, 2011.

**Darrel Kessler**, Aberdeen, was appointed on June 24, 2008, to the **South Dakota Board of Counselor Examiners**, to replace Terry Dosch, effective July 1, 2008, and shall continue until June 30, 2011.

**David R. Lonbaken**, Pierre, was reappointed on June 24, 2008, to the **State Board of Podiatry Examiners**, effective July 1, 2008,

and shall continue until June 30, 2011.

**Jason Petik**, Custer, was reappointed on June 24, 2008, to the **South Dakota State Board for Nursing Facility Administrators**, effective July 1, 2008, and shall continue until June 30, 2011.

**Terry Rieck**, Glenham, was reappointed on June 24, 2008, to the **South Dakota State Board for Nursing Facility Administrators**, effective July 1, 2008, and shall continue until June 30, 2011.

**Cynthia Roan Eagle**, Rapid City, was appointed on June 24, 2008, to the **Planning Council on Developmental Disabilities**, to replace Katie Seymour, effective July 1, 2008, and shall continue until June 30, 2011.

**Neil Skea**, Rapid City, was reappointed on June 24, 2008, to the **State Board of Podiatry Examiners**, effective July 1, 2008, and shall continue until June 30, 2011.

**Howard Sogn**, Watertown, was appointed on June 24, 2008, to the **State Board of Funeral Service**, to replace Charles E. Johnson, effective July 1, 2008, and shall continue until June 30, 2011.

**Alexia Werdel**, Ree Heights, was reappointed on June 24, 2008, to the **Planning Council on Developmental Disabilities**, effective July 1, 2008, and shall continue until June 30, 2011.

#### **Executive Order:**

The Governor's office has filed a notice stating that **Executive Order 2008-05** was drafted on May 15, 2008. The Governor decided not to sign it thus it was voided.

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

7-1-2008	Revenue and Regulation: Division of Insurance	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.
7-2-2008	Corrections: Board of Pardons and Paroles	Amend rules to clarify and modernize operational procedures and reflect current case law; 34 SDR 309.
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.
7-8-2008	Social Services: Child Support	Repeal obsolete rules and amend rules for a household receiving assistance from the Department, change the assignment of support rights to apply only to those months the recipient actually receives assistance; when distributing amounts of child support collected for a household currently receiving assistance, specify that the Department shall retain the amount of unpaid support obligation accrued under an assignment or the amount necessary to reimburse the Department for the cumulative amount of unreimbursed assistance paid to a family, whichever is less; if the amount collected through an Internal Revenue Services (IRS) tax refund offset is based on a joint return, allow the Department to delay distribution of amounts collected until the Department is notified that the unobligated spouse's share of the refund has been paid or up to six months from the date the offset was paid to the Department, whichever is earlier;

		specify that if the amount collected exceeds the amount of the unpaid support obligation, the Department shall refund the excess to the absent parent or to the parties filing a joint return within 45 days after it is collected; and eliminate the threshold amount for notifying the federal government of delinquent support obligations for purposes of denying, revoking, or limiting passports; 34 SDR 321.
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.
7-10-2008	Game, Fish and Parks	Amend East River Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of licenses/tags available which will include offering 1,855 less one-tag licenses and 65 less two-tag licenses (3% decrease of 1,985 tags) than were authorized in 2007; and remove Brown County from the "super unit" in north-central South Dakota; amend Antelope Hunting Season and License Forms and Fees rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of resident and nonresident licenses/tags available which will include offering residents 485 less one-tag licenses, 6,415 less two-tag licenses, and 9,150 more 3-tag licenses, and nonresidents 41 less one-tag licenses, 508 less two-tag licenses, and 732 more 3-tag licenses, than were authorized in 2007; create a new license that would be valid for "any antelope and two doe/fawn antelope" at a cost of \$40 for residents and \$240 for nonresidents; create a new license that would be valid for "three doe/fawn antelope" at a cost of \$20 for residents and \$75 for nonresidents; provide that unfilled "doe/fawn antelope" tags from Units 15, 35, 49 and 53 can be used anywhere in this 4-unit area during the West River Deer Season; provide that unfilled "any antelope" tags from Units 15, 35, 49 and 53 would convert to "doe/fawn antelope" tags and can be used anywhere in this 4-unit area during the West River Deer Season; combine Bennett and Shannon Counties into one unit; combine Units 27A and 27B (Fall River County) to

	<p>make one Unit 27A but retain the split season; and establish a split season for Units 20A (Corson County) and 24A (Dewey County); amend National Wildlife Refuge Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and establish the number of resident and nonresident licenses/tags available which will include elimination of 275 resident and 25 nonresident "any deer" licenses and instead offer 275 resident and 25 nonresident "any deer plus any antlerless deer" licenses on Sand Lake National Wildlife Refuge; elimination of 20 resident and 2 nonresident 2-tag "any deer plus any antlerless deer" licenses and instead offer 20 resident and 2 nonresident "any deer" licenses on Waubay National Wildlife Refuge; and change the length of the third Waubay National Refuge season from 21 to 14 days; amend Youth Waterfowl Hunting Season rules to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; and adjust the age requirement to allow youth who have not reached the age of 16 by the first day of the season to participate in the youth waterfowl season; amend Early Fall Canada Goose Hunting Season rules to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; modify season dates to begin on the Saturday closest to September 7 (i.e., September 6, 2008) and run until the Friday before the last Saturday of September; and include Perkins County in the area closed for early Canada Goose hunting; adopt Mentored Youth Hunting and amend Application for License and Licensee Forms Fees to establish the framework for mentored youth hunting in South Dakota, including season dates for Youth Deer, Antelope (Rifle and Archery), Fall Turkey, Spring Turkey, Small Game, and Migratory Game Bird Seasons; open areas, required licenses, daily bag and possession limits; and include the following requirements and restrictions: allow a resident parent and/or guardian to purchase no more than one (1) mentor deer license (antlerless), one (1) mentor</p>
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		<p>antelope license (doe/fawn), one (1) mentor fall turkey license "any turkey," and one (1) mentor spring turkey license "one male" for a designated mentored youth at the cost of \$5 per license; mentored youth must be at least 10 and younger than 16 years of age; mentored hunter must be accompanied by an unarmed parent, guardian, or designated mentor (except those persons carrying a pistol and possessing a valid concealed pistol permit as provided in SDCL chapter 23-7) and within immediate physical control and supervision; an adult mentor must have written permission from the parent or guardian to serve as a "mentor;" an adult mentor can not accompany more than one mentored child at any given time; a hunting party which includes a mentored youth can not exceed six (6) total persons; the adult mentor must be a resident, have successfully completed a hunter safety or hunter education course, and be at least 18 years of age; for each season and associated units, all applicable restrictions apply; mentor hunts involving migratory game birds will require the adult mentor to possess all required licenses and certifications for that specific season; for Upland and Migratory hunting, the combined take (daily limit) is not to exceed the limit authorized for the mentor license, as well as the possession limit not to exceed the limit authorized for the adult mentor; youth participating in a "Mentored Hunt" would be ineligible to obtain a regular season license for that specific season (i.e., Youth Deer, Archery and Rifle Antelope, Fall Turkey, Spring Turkey); 34 SDR 331.</p>
<p>7-14-2008</p>	<p>Public Utilities Commission</p>	<p>amend Public Warehouses rules to repeal bond requirements for a public storage warehouse licensee; delete the requirement for a South Dakota resident agent to sign the grain warehouse bond and change the reference from "dealer's" to "buyer's"; delete the requirement for a resident agent signature on a rider or additional bond; delete a reference being repealed; add the word "grain" before "warehouse licensee"; add references to open storage scale ticket holders and grain bank depositors when a license is revoked,</p>

		<p>suspended or ownership is transferred; delete requirements regarding the ordering of additional warehouse receipts; require information on a scale ticket as to the disposition of the grain and remove the requirement that scale tickets be converted to a uniform warehouse receipt, cash, check, or other grain purchase contract within 30 days; allow a temporary public grain storage unit to have a fly ash base, delete the requirement that the base must be at least one foot above the terrain, modify the requirement regarding air flow, add a requirement that an operator must notify the Commission prior to storing grain in a new storage unit, and provide flexibility regarding the inspection of new temporary storage; adopt a new rule that allows a warehouse operator to request a waiver of a rule; amend Grain Dealers rules to change all references to "dealers" to "buyers" and delete the requirement to obtain the signature of a South Dakota resident agent; delete the requirement that the voluntary credit sale contract contain the date of delivery of the grain; change the requirements for class A and class B licenses and the conditions under which the Commission may require a second financial statement; require a grain buyer to post information regarding its license and how to contact the Commission; allow a grain buyer to request a waiver of a rule; amend Assessment of Fees for Intrastate Gas Pipeline Operators rules to change the assessment of charges on pipeline operators from quarterly to annually; 34 SDR 329.</p>
<p>7-17-2008</p>	<p>Secretary of State: Election Board</p>	<p>Amend rules to amend the voter registration form to include the change for the maximum penalty for perjury; amend the address for where the voter registration address verification notice is sent; amend the municipal notice of special election to include wording for a county to use as their notice of special election; amend the personal identification affidavit to include the change for the maximum penalty for perjury; add shaded boxes for the instructions to voters on the general election ballot; add the optical scan ballot format to the primary ballot layout;</p>



		<p>amend the guidelines for acceptance of petitions to remove the date requirement which is clarified in another rule; amend the requirements for counting signatures on petitions to prohibit more than one circulator on a petition sheet; amend the declaration on the partisan nominating petition to include county commissioner under the residency requirement; amend the declaration on the independent nominating petition to include county commissioner under the residency requirement; amend the water development district director nominating petition to include the term length the candidate is running for; amend the nominating petition for road or sanitary district trustee to the nominating petition for special district trustee; amend the requirement of paper seals on the ballot box; repeal the Presidential primary ballot format; add petition format for consumers power district director; and add an oath of recount board; 34 SDR 329.</p>
7-21-2008	Education: Board of Education	<p>Amend a Career and Technical Education rule to utilize a better and consistent accountability system for the South Dakota Technical Institutes; amend Early Intervention Program rules to provide clarity on the Birth to Three Program, eligibility changes and the posting of rate changes on the South Dakota Department of Education website; and amend Accreditation and School Improvement rules to require that all non-certified administrators will need to have a "plan of intent" on file indicating their intention to become properly certified within three years of their date of hire; 34 SDR 343.</p>
7-29-2008	Public Safety: Office of Weights and Measures	<p>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.</p>
7-30-2008	Social Services: Economic Assistance	<p>Amend Low Income Energy Assistance Program (LIEAP) rules to reduce the amount payable under LIEAP when a household's rent</p>

		includes the cost of heat; allow the Department to make adjustments to a household's LIEAP benefit amount until the benefit is paid; and extend the time during which a utility company can use meter readings for energy supplied to households eligible for LIEAP assistance; amend an Emergency Crisis Intervention Program (ECIP) rule to extend the deadline for applying for funds under ECIP; 34 SDR 343.
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, August 19, 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: 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>.