

REGISTER



South Dakota Legislative Research Council

Volume 31

Tuesday, 8:00 a.m., September 7, 2004

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

Department of Revenue and Regulation:

Division of Insurance: (August 30, 2004)

intends to amend rules to update the continuing education requirements; specify when the long-term care suitability report is due; implement privacy guidelines for health information; and define terms and clarify that a report is required. The general authority for these rules, as cited by the department, is SDCL 58-2-40, 58-2-41, 58-4-1, 58-17B-4, 58-17C-19, 58-17C-103, and 58-30-117.

A public hearing will be held in the first floor conference room of the Anderson Building, 445 E. Capitol Avenue, Pierre, South Dakota, on September 24, 2004, at 10:00 a.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Revenue and Regulation, Division of Insurance, 445 E. Capitol Avenue, Pierre, South Dakota 57501-3185. The text of the amended rules will be posted on the department's Web site at www.state.sd.us/drr and the division's Web site at www.state.sd.us/insurance. The rules may also be obtained as a Microsoft Word attachment by emailing Ellen.Blauert@state.sd.us. Written comments must be received by September 23, 2004, 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) 773-3563 at least 48 hours before the hearing.

Department of Labor: Cosmetology

Commission: (August 31, 2004) intends to

amend rules to update requirements for apprentice senior instructor license applications, change the annual renewal dates to birth dates for individuals and to opening dates for salons starting in 2006, change the work credit for reciprocity applicants, update and clarify safety and sanitation procedures, clarify non-invasive chemical use on skin, update prohibited products, update training and curriculum requirements for apprentices, increase the continuing education for instructors from ten annual hours to twelve annual hours, require continuing education for the use of electrical nail files, add that the commission will provide certificates for continuing education, require all foot spas to be disinfected after each use, allow a verification fee and pre-approval for a course provider to teach a course, clarify the type of education required by senior instructor to teach apprentices, and add a newly published textbook to the approved textbooks. The general authority for these rules, as cited by the bureau, is SDCL 36-15-2.4, 36-15-13, 36-15-13.2, 36-15-25, 36-15-25.1, 36-15-25.2, 36-15-26, 36-15-26.1, and 36-15-26.2.

A public hearing will be held at the Cosmetology Commission office, 111 East Capitol, Pierre, South Dakota, on September 27, 2004, at 4:00 p.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Cosmetology Commission, 500 E. Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must be received by September 24, 2004, 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) 773-6193 at least 48 hours before the hearing.

Department of Environment and Natural Resources: Water Management Board:

(September 2, 2004) has filed rules to amend the Groundwater Quality Standards rules to set ground water quality standards to the updated maximum contaminant levels as set by the U.S. Environmental Protection Agency; and amend the Groundwater Discharge Permits rules to define "shallow aquifer," clarify who must apply for a ground water discharge plan, specify the maximum duration for a groundwater discharge facility construction permit, and specify renewal requirements for a groundwater discharge facility construction permit. The general authority for these rules, as cited by the board, is SDCL 34A-2-11, 34A-2-28, 34A-2-30, and 34A-2-93.

A public hearing will be held in the conference room at the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota, on October 6, 2004, at 8:30 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 (DENR), Division of Environmental Services, Ground Water Quality Program, 523 East Capitol, Pierre, South Dakota 57701. Copies of the proposed rules may also be obtained from DENR's Web site at www.state.sd.us/denr/des/ground/groundprg.htm. Material sent by mail must reach the Division of Environmental Services, Ground Water Quality Program by 5:00 p.m., October 4, 2004, in order to be taken into consideration. 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 hearing.

Department of Transportation: (September 2, 2004) has filed rules to add a 30 mph speed zone in Lawrence County along US Highway 14A to lower the speed limit through an area near downtown Deadwood; add a 50 mph speed zone along South Dakota Highway 34 near the junction with South Dakota Highway 47 at Fort

Thompson; and extend 30 mph and 45 mph speed zones in Kingsbury County along US Highway 14 to the east through the City of Lake Preston near the east entrance to the park and swimming pool complex. The general authority for these rules, as cited by the department, is 32-25-7.

A public hearing will be held in the commission room of the Becker-Hansen Building, 700 E. Broadway Avenue in Pierre, South Dakota, on September 23, 2004, 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, Room 202, Becker-Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Material sent by mail must reach the Department by September 22, 2004, 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) 773-3265 at least 48 hours before the hearing.

Department of Labor: South Dakota Board of Accountancy: (September 3, 2004) has filed rules to carry out the functions of the nationally adopted continuing professional education standards, following approval by the Legislature for implementation July 1, 2005. The general authority for these rules, as cited by the department, is SDCL 36-20B-12.

A public hearing will be held in the Conference Room of the Department of Legislative Audit, 427 S. Chapelle Street, Pierre, South Dakota, on October 29, 2004, at 9:00 a.m. 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. Materials sent by mail must reach the Board of Accountancy office on or before October 27, 2004, 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.

20:51:22:05, inclusive; and 20:51:29:00 to 20:51:29:27, inclusive.

DECLARATORY RULING:

The Department of Revenue and Regulation has filed Declaratory Ruling REV 04-01 with the Legislative Research Council. In the ruling, Casey's General Stores, Inc. asked the Department to determine if promotional allowances received from manufacturers, wholesalers, or distributors are exempt from sales and use tax. The Department was asked to interpret SDCL §§ 10-45-1.6 and 10-47-2.7. These statutes provide an exemption from sales and use tax of gross receipts received according to a written contract that requires the retailer to display products or signage in a specified manner. The Department concluded that the promotional allowances received by Casey's after July 1, 2003, met the statutory criteria and is exempt from the sales and use tax.

History-Notice: 30 SDR 215, June 28, 2004
 Hearing: July 23, 2004
 Filed: August 30, 2004
 Effective: September 19, 2004

DEPARTMENT OF LABOR: STATE PLUMBING COMMISSION: 20:53:03:05 and 20:54:02:01.

History-Notice: 30 SDR 203, June 14, 2004
 Hearing: July 28, 2004
 Filed: September 3, 2004
 Effective: September 23, 2004

SECRETARY OF STATE: BOARD OF ELECTIONS: 5:02:04:08; 5:02:05:22, 5:02:05:26; 5:02:06:01.02, 5:02:06:16; 5:02:09:16; 5:02:10:04; 5:02:16:39; 5:02:17:04, and 5:02:17:05.

The Declaratory Ruling is dated July 26, 2004, and may be reviewed or copied at the office of the Legislative Research Council during normal business hours.

History-Notice: 31 SDR 17, August 2, 2004
 Hearing: July 25, 2004
 Filed: September 3, 2004
 Effective: September 23, 2004

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF HEALTH: BOARD OF PHARMACY: 20:51:02:01, 20:51:02:01.01, 20:51:02:04, 20:51:02:04.01, 20:51:02:11.01, 20:51:02:13, 20:51:02:13.01, 20:51:02:16, 20:51:02:17; 20:51:07:04; 20:51:22:00 to

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

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| 9-14-2004 | Environment and Natural Resources: Operator Certification Program | Amend rules to clarify which operators are eligible to become certified as Class III or IV operators; 31 SDR 13. |
| 9-20-2004 | Labor: Public Utilities Commission | Amend rules that would provide a baseline for service requirements while allowing telephony providers to determine which system of electrical backup will keep their customers in communication during a power outage and to require a telephone solicitor who makes |

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| | | unsolicited telephone calls to South Dakota residential telephone subscribers to download updates from the South Dakota do not call register every thirty-one days, instead of every ninety days; 31 SDR 13 and 31 SDR 26. |
| 9-20-04 | Education: Board of Education | Amend rules to clarify appropriate mileage and travel time reimbursement options for early intervention service providers, and to expand endorsement opportunities for principals; 31 SDR 29. |
| 9-20-2004 | Labor: Board of Examiners in Optometry | Amend rules to establish that the date and place for examinations is to be fixed by the National Board of Examiners in Optometry; change the amount of the application fee and fee paid upon issuance of certificate; revise the rules relating to the scope of practice; authorize one annual renewal fee of \$175, instead of the two separate fees, \$150 for renewal for licensed optometrists not certified in the use of pharmaceutical agents, plus an additional \$25 for those licensed optometrists certified in the use of pharmaceutical agents; increase the reinstatement fee after default; and increase the reciprocity fee to be the same as the application fee; 31 SDR 29. |
| 9-23-2004 | Transportation | Add a 30 mph speed zone in Lawrence County along US Highway 14A to lower the speed limit through an area near downtown Deadwood; add a 50 mph speed zone along South Dakota Highway 34 near the junction with South Dakota Highway 47 at Fort Thompson; and extend 30 mph and 45 mph speed zones in Kingsbury County along US Highway 14 to the east through the City of Lake Preston near the east entrance to the park and swimming pool complex; 31 SDR 34. |
| 9-24-2004 | Revenue and Regulation: Division of Insurance | Amend rules to update the continuing education requirements; specify when the long-term care suitability report is due; implement privacy guidelines for health information; and define terms and clarify that a report is required; 31 SDR 33. |
| 9-27-2004 | Labor: Cosmetology Commission | Amend rules to update requirements for apprentice senior instructor license applications, change the annual renewal dates to birth dates for individuals and to opening dates for salons starting in 2006, change the work credit for reciprocity applicants, update |

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| | | and clarify safety and sanitation procedures, clarify non-invasive chemical use on skin, update prohibited products, update training and curriculum requirements for apprentices, increase the continuing education for instructors from ten annual hours to twelve annual hours, require continuing education for the use of electrical nail files, add that the commission will provide certificates for continuing education, require all foot spas to be disinfected after each use, allow a verification fee and pre-approval for a course provider to teach a course, clarify the type of education required by senior instructor to teach apprentices, and add a newly published textbook to the approved textbooks; 31 SDR 33. |
| 9-29-2004 | Health | Adopt and amend rules relating to Radiation Safety, Drug Control, and Medical Facilities; 31 SDR 25. |
| 10-6-2004 | Environment and Natural Resources: Water Management Board | Amend rules to clarify that all waters of the state are subject to public recreation if they can be reached without trespassing on private property; 31 SDR 25. |
| 10-6-2004 | Environment and Natural Resources: Water Management Board | Amend the Groundwater Quality Standards rules to set ground water quality standards to the updated maximum contaminant levels as set by the U.S. Environmental Protection Agency; and amend the Groundwater Discharge Permits rules to define "shallow aquifer," clarify who must apply for a ground water discharge plan, specify the maximum duration for a groundwater discharge facility construction permit, and specify renewal requirements for a groundwater discharge facility construction permit; 31 SDR 34. |
| 10-29-2004 | Labor: Board of Accountancy | Amend rules to carry out the functions of the nationally adopted continuing professional education standards, following approval by the Legislature for implementation July 1, 2005; 31 SDR 34. |

Rules Review Committee Meetings

The next meeting of the Interim Rules Review Committee will be held Friday, October 15, 2004, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2004 interim: December 7.

Note: An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the LRC web site.

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