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South Dakota Legislative Research Council

Volume 35

Monday, 8:00 a.m., October 20, 2008

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: (October 14, 2008) intends to amend rules to update the sources referenced in rule and to add genetic discrimination requirements and new plan standards to the Medicare supplement rules. The general authority for these rules, as cited by the division, is SDCL 58-3-11, 58-3-26, 58-4-1, 58-4-48, 58-6-75, 58-17A-2, 58-17A-5, 58-26-13.1, 58-26-46, 58-27-7, 58-27-108, 58-33A-7, and 58-33A-9.

A public hearing will be held in the Main Floor Conference Room, Anderson Building, Pierre, South Dakota, on November 6, 2008, at 2:00 p.m. Paper 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, Administrative Rules, 445 E. Capitol Avenue, Pierre, South Dakota 57501-3185. Material sent by mail must reach the Division of Insurance by November 5, 2008, to be considered. The text of the proposed rules will be posted on the Department of Revenue and Regulation's website at

<http://www.state.sd.us/drr2/reg/insurance/Legal/hearing.htm>. The rules may also be obtained as a Microsoft Word attachment by emailing Melissa.Klemann@state.sd.us. 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 Game, Fish and Parks:

(October 16, 2008) intends to amend Park License rules to increase the fee for an annual park entrance license (PEL) from \$23 to \$26 for the first vehicle and from \$11.50 to \$13 for each additional vehicle registered to the same owner; increase the fee for a temporary PEL (good for up to seven consecutive days) at Custer State Park from \$5 to \$6 a person or \$12 to \$15 a vehicle; except for Custer State Park, increase the fee for a daily PEL from \$3 to \$4 for each person in the motor vehicle who is 12 years of age or older, or from \$5 to \$6 for each vehicle; and increase the fee from \$2 to \$3 for each person, except the driver and step on guide, occupying a commercial motor coach with a seating capacity of eight or more persons in any state park or recreation area; amend Camping Permits and Rules to increase the fee from \$15 to \$25 to cancel a reservation for a camping cabin or rent-a-camper through the reservation system or after arrival at the park; increase the fee from \$15 to \$25 to cancel or shorten a reservation for a lodge more than 30 days prior to the scheduled arrival date; and increase the fee from \$3 to \$4 to purchase a cubic foot of firewood in a state park, state recreation areas and lakeside use areas where firewood is sold by the department; amend General Provisions (Fishing Seasons and Methods) rules to exempt persons who wish to stock tilapia in indoor aquaculture facilities from having to obtain prior GFP Commission approval; and increase resident and non-resident fees for paddlefish permits from \$5 for residents and \$10 for non-residents, to \$20 for both residents and non-residents, to match fees charged for paddlefish permits in Nebraska; amend Fish Limits rules to repeal the present rule which includes lake herring and lake whitefish with the combined

daily limits for trout and salmon, and instead place lake herring and lake whitefish in the rule which designates species without daily limit; remove the 24-inch minimum size limit and daily limit of one walleye from Diamond and Beaver Lakes in Minnehaha County and manage these waters under the statewide regulations of 4 walleye daily with no more than one fish of 20 inches or greater in length; and adds lift nets and cast nets as legal gear and defines seines, dip nets, lift nets and cast nets legal for taking smelt in the same manner these nets are defined in the bait rules; amend Bait and Biological Specimens rules to replace the word "fishers" with the word "anglers", delete the words "and biological specimens" and add the words "from the waters of the state"; clearly define the species that can be taken and sold as bait by commercial bait dealers and delete biological specimens from the rule; create a new rule which lists species that may be taken as bait for noncommercial use; amend the daily and possession limits for the species which a lawful angler may take and possess for noncommercial use and specify that the limits do not apply to bait purchased from licensed bait dealers; remove the words "and biological specimens," make minor revisions to the text for clarity, add East Krause, Middle Lynn (both in Day County) and Lake Alice (Deuel County) to the list of waters closed to commercial take of bait, and delete that portion of the rule that allows commercial take of mollusks by special permit from the secretary; separate and define the gear allowed for commercial and noncommercial use, allow the department secretary or a designee to approve special equipment requests, add language clarifying that the bait possession limits do not apply to bait purchased from a licensed bait dealer, and make minor revisions to the text of the rule; require that bait traps be lifted and emptied of fish at least once every 48 hours between May 15 and September 14 (presently April 1 and October 31) and every 96 hours between September 15 and May 14 (presently November 1 and March 31); require that bait traps must be marked with the licensee's name and address, delete the text which provides that

trap can be marked anywhere else the owner wishes, require that lost traps be reported in 5 days instead of 10, allow reporting of lost traps to any conservation officer, and delete the requirement that owners are responsible for violations involving lost traps; delete the words "Rough fish to be destroyed" from the title of ARSD 41:09:04:07, make minor revisions to the text of the rule for purposes of clarity, and allow rough fish to be destroyed but not make it mandatory to do so; add the words "and gill-breathing animals" to existing text; add language allowing a bait dealer with a private hatchery license to transport other fish while transporting baitfish under certain conditions; delete the department secretary authority to approve the importation of reptiles, amphibians, crustaceans and mollusks for private introduction, culture or commercial purposes; clarify that a rule applies to "bait dealers" as opposed to simply "dealer"; specify that records required shall be recorded and maintained on forms provided by the department, specify the records required for each type of bait dealer license, require that records be kept current and available for inspection during normal business hours, and require records to be submitted by January 31 before a new license will be issued; and clarify that a conviction for violating the bait dealer rules by a licensee or his agents and employees may be cause for immediate revocation of bait dealer's current license and for the department's refusal to issue a license for the calendar year following the year of conviction; amend Private Fish Hatcheries rules to provide greater detail about the aquaculture license, establish a fee of \$200 for both new licenses and annual license renewals; establish a one-time inspection fee of \$300 for each new facility, man-made water and natural water requiring prior department approval, including those added to an existing license, provide greater detail concerning the fee fishing aquaculture license, establish fees for the fee fishing license (\$100 for both new and renewal licenses and a one-time inspection fee of \$300 for each new facility, man-made water and natural water requiring prior department

approval, including those added to an existing license), and eliminate the pond management hatchery license; establish a deadline of January 1 annually to renew a private fish hatchery license and to request addition of new waters and facilities to an existing license; clarify existing criteria for approval of a private fish hatchery license, delete the criteria requiring that the source of fish be disease free and requiring compliance with importation rules, and adding criteria which specifies that access to the proposed facilities or waters must be entirely controlled by the applicant and the proposed facilities or waters do not contain aquatic nuisance species; require that the private fish hatchery license be available for inspection rather than displayed; require that all facilities and waters covered under a private fish hatchery license are subject to inspection by the department at any reasonable time; require annual health inspections of any licensed aquaculture facility for diseases of regulatory concern and aquatic nuisance species, and establishing specific fish health inspection requirements; clarify that a conviction for violating the private fish hatchery rules by a licensee or his agents and employees may be cause for immediate revocation of the violator's current license and for the department's refusal to issue a license to the violator for the calendar year following the year of conviction; and amend Importation of Fish rules to repeal established fish health inspection and accepted guidelines and importation requirements for fish or fish reproductive products obtained from a non-salmonid facility, and incorporate the requirements set forth in the repealed rules to revised rules that will establish importation requirements for fish or fish reproductive products and eliminate the distinction in the former rules between salmonids and non-salmonids. The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-6-10, 41-6-37.1, 41-6-44, 41-6-44.1, 41-6-45, 41-6-45.1, 41-17-1.1, and 41-17-13.

A public hearing will be held at the Ramkota RiverCentre Convention Center, 902 W. Sioux

Avenue, Pierre, South Dakota, on November 6, 2008, at 2:00 p.m. (CST). Copies of the proposed rules may be obtained from and written comments sent to Jeffrey R. Vonk, Secretary, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Written comments must be received by and in the office of the Secretary of the Department of Game, Fish and Parks on or before 12:00 Noon three (3) days prior to the date of the hearing to be included within the record of the public hearing and to be considered by the Commission. Comments may also be sent by E-mail to chuck.schlueter@state.sd.us. All written and e-mail comments must include the commenter's name and address. 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) 773-3387 before the hearing.

Department of Social Services: Office of the Secretary: (October 17, 2008) intends to amend rules relating to administrative hearings for individuals or entities aggrieved by the Department's action or inaction. The proposed rules will clarify who can request an administrative hearing; repeal rules that duplicate other regulatory or statutory provisions; delete language that relates to the Department's internal procedures; specify the actions that an individual or entity must take to request a hearing; establish the time limit within which a child care provider or a recipient of child care services must request a hearing; allow the hearing examiner to determine if a hearing will be conducted by electronic means and remove the opportunity for a party involved in the action to request that a hearing not be held by electronic means; specify the information that is included in the notice of hearing; except for appeals involving medical assistance, allow an individual to orally withdraw his or her request for a hearing; allow the hearing examiner to dismiss a case if the case is resolved before the hearing examiner enters a final decision; delete the term "abandonment" and replace it with "default"; specify those

circumstances under which a hearing is considered to be in a default situation and subject to dismissal; clarify those procedures used when working to resolve a case before a final decision is entered; specify who may attend a hearing; require a corporation to be represented at the hearing by its attorney; and allow a time extension for mailing the final decision if a continuance of a hearing is requested and the parties to the action stipulate to the continuance. The general authority for these rules, as cited by the department, is SDCL 28-1-24.1 and 28-1-61.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on November 12, 2008, at 8:30 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. Copies of the proposed rules are also available at: <http://dss.sd.gov/news/hearings/index.asp>. Ms. Wellhouse may be contacted by telephone at (605) 773-3305. Written comments must be received by November 24, 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 Social Services: (October 17, 2008) has filed a rule amendment to establish new parameters for the monthly gross and net income eligibility standards for food stamp households and to establish a household's maximum food stamp allotment based on the established thrifty food plan.

This rule is adopted under the procedure provided in SDCL 1-36-20. This procedure permits adoption of a federally mandated rule without following the procedures set forth in SDCL 1-26-4 to 1-26-6, inclusive.

FILINGS IN THE SECRETARY OF STATE'S OFFICE: (None)

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

10-21-2008	Human Services: Division of Rehabilitation Services	Amend Registration of Interpreters rules to add a notification procedure to the division and to the interpreter on any complaints received and an investigation procedure on those complaints; define the certification maintenance program and the certification maintenance cycle; repeal the rule regarding initial registration of South Dakota certified interpreter; add language to the EIPA certified
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		<p>interpreter initial registration regarding the length of time prior to registration that a rating was obtained; add language specifying the requirements that must be met to continue to be certified unless an extension is granted to the South Dakota or EIPA annual registration; add a rule allowing an extension on the certification maintenance cycle under certain circumstances; and increase the time period of when the hearing will be held from date of receipt of the request; 35 SDR 71.</p>
<p>10-24-2008</p>	<p>Revenue and Regulation: Appraiser Certification Program</p>	<p>Amend rules to establish the appraiser classifications that may supervise state-registered appraisers, establish the responsibilities of the state-registered and supervising appraiser, establish the requirements of a supervising appraiser, establish the application for and renewal process for supervisor approval, allow acceptance of case studies or practicum courses approved by state appraiser regulatory agencies, establish the educational requirements for state-registered, state-licensed and state-certified residential appraisers for upgrade to each higher classification, remove the time limit for education credit for state-registered appraisers, set up fees for supervisor approval application and renewal, institute disciplinary action authority for supervising appraisers failing to meet supervisory responsibilities, remove the requirement that a course must be approved in the state it is being offered in to receive acceptance by the secretary, and establish the requirement of a training course for supervisors and state-registered appraisers; 35 SDR 71</p>
<p>10-24-2008</p>	<p>Revenue and Regulation: Lottery Commission</p>	<p>Amend a rule to adopt changes to the Powerball and Power Play games recently approved by the 31 participating lotteries. These changes, to take effect after the drawing on January 3, 2009, include the addition of white ball numbers from 55 to 59 and deletion of red ball numbers from 42 to 39, changes in corresponding prize odds, increase in starting jackpot and making the match 5 prize with Power Play option a guaranteed \$1 million; 35 SDR 77.</p>

11-4-2008	Revenue and Regulation: Business Tax	Amend rules to correct the language of a rule and to comply with the Streamlined Sales Tax Agreement; 35 SDR 81.
11-6-2008	Revenue and Regulation: Division of Insurance	Amend rules to update the sources referenced in rule and add genetic discrimination requirements and new plan standards to the Medicare supplement rules; 35 SDR 93.
11-6-2008	Game, Fish and Parks	Amend Park License rules to increase the fee for an annual park entrance license (PEL) from \$23 to \$26 for the first vehicle and from \$11.50 to \$13 for each additional vehicle registered to the same owner; increase the fee for a temporary PEL (good for up to seven consecutive days) at Custer State Park from \$5 to \$6 a person or \$12 to \$15 a vehicle; except for Custer State Park, increase the fee for a daily PEL from \$3 to \$4 for each person in the motor vehicle who is 12 years of age or older, or from \$5 to \$6 for each vehicle; and increase the fee from \$2 to \$3 for each person, except the driver and step on guide, occupying a commercial motor coach with a seating capacity of eight or more persons in any state park or recreation area; amend Camping Permits and Rules to increase the fee from \$15 to \$25 to cancel a reservation for a camping cabin or rent-a-camper through the reservation system or after arrival at the park; increase the fee from \$15 to \$25 to cancel or shorten a reservation for a lodge more than 30 days prior to the scheduled arrival date; and increase the fee from \$3 to \$4 to purchase a cubic foot of firewood in a state park, state recreation areas and lakeside use areas where firewood is sold by the department; amend General Provisions (Fishing Seasons and Methods) rules to exempt persons who wish to stock tilapia in indoor aquaculture facilities from having to obtain prior GFP Commission approval; and increase resident and non-resident fees for paddlefish permits from \$5 for residents and \$10 for non-residents, to \$20 for both residents and non-residents, to match fees charged for paddlefish permits in Nebraska; amend Fish Limits rules to repeal the present rule which includes lake herring and lake whitefish with the combined daily limits for trout and salmon, and instead place lake herring and lake

		<p>whitefish in the rule which designates species without daily limit; remove the 24-inch minimum size limit and daily limit of one walleye from Diamond and Beaver Lakes in Minnehaha County and manage these waters under the statewide regulations of 4 walleye daily with no more than one fish of 20 inches or greater in length; and adds lift nets and cast nets as legal gear and defines seines, dip nets, lift nets and cast nets legal for taking smelt in the same manner these nets are defined in the bait rules; amend Bait and Biological Specimens rules to replace the word "fishers" with the word "anglers", delete the words "and biological specimens" and add the words "from the waters of the state"; clearly define the species that can be taken and sold as bait by commercial bait dealers and delete biological specimens from the rule; create a new rule which lists species that may be taken as bait for noncommercial use; amend the daily and possession limits for the species which a lawful angler may take and possess for noncommercial use and specify that the limits do not apply to bait purchased from licensed bait dealers; remove the words "and biological specimens," make minor revisions to the text for clarity, add East Krause, Middle Lynn (both in Day County) and Lake Alice (Deuel County) to the list of waters closed to commercial take of bait, and delete that portion of the rule that allows commercial take of mollusks by special permit from the secretary; separate and define the gear allowed for commercial and noncommercial use, allow the department secretary or a designee to approve special equipment requests, add language clarifying that the bait possession limits do not apply to bait purchased from a licensed bait dealer, and make minor revisions to the text of the rule; require that bait traps be lifted and emptied of fish at least once every 48 hours between May 15 and September 14 (presently April 1 and October 31) and every 96 hours between September 15 and May 14 (presently November 1 and March 31); require that bait traps must be marked with the licensee's name and address, delete the text which provides that</p>
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	<p>trap can be marked anywhere else the owner wishes, require that lost traps be reported in 5 days instead of 10, allow reporting of lost traps to any conservation officer, and delete the requirement that owners are responsible for violations involving lost traps; delete the words "Rough fish to be destroyed" from the title of ARSD 41:09:04:07, make minor revisions to the text of the rule for purposes of clarity, and allow rough fish to be destroyed but not make it mandatory to do so; add the words "and gill-breathing animals" to existing text; add language allowing a bait dealer with a private hatchery license to transport other fish while transporting baitfish under certain conditions; delete the department secretary authority to approve the importation of reptiles, amphibians, crustaceans and mollusks for private introduction, culture or commercial purposes; clarify that a rule applies to "bait dealers" as opposed to simply "dealer"; specify that records required shall be recorded and maintained on forms provided by the department, specify the records required for each type of bait dealer license, require that records be kept current and available for inspection during normal business hours, and require records to be submitted by January 31 before a new license will be issued; and clarify that a conviction for violating the bait dealer rules by a licensee or his agents and employees may be cause for immediate revocation of bait dealer's current license and for the department's refusal to issue a license for the calendar year following the year of conviction; amend Private Fish Hatcheries rules to provide greater detail about the aquaculture license, establish a fee of \$200 for both new licenses and annual license renewals; establish a one-time inspection fee of \$300 for each new facility, man-made water and natural water requiring prior department approval, including those added to an existing license, provide greater detail concerning the fee fishing aquaculture license, establish fees for the fee fishing license (\$100 for both new and renewal licenses and a one-time inspection fee of \$300 for each new facility, man-made water and</p>
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		<p>natural water requiring prior department approval, including those added to an existing license), and eliminate the pond management hatchery license; establish a deadline of January 1 annually to renew a private fish hatchery license and to request addition of new waters and facilities to an existing license; clarify existing criteria for approval of a private fish hatchery license, delete the criteria requiring that the source of fish be disease free and requiring compliance with importation rules, and adding criteria which specifies that access to the proposed facilities or waters must be entirely controlled by the applicant and the proposed facilities or waters do not contain aquatic nuisance species; require that the private fish hatchery license be available for inspection rather than displayed; require that all facilities and waters covered under a private fish hatchery license are subject to inspection by the department at any reasonable time; require annual health inspections of any licensed aquaculture facility for diseases of regulatory concern and aquatic nuisance species, and establishing specific fish health inspection requirements; clarify that a conviction for violating the private fish hatchery rules by a licensee or his agents and employees may be cause for immediate revocation of the violator's current license and for the department's refusal to issue a license to the violator for the calendar year following the year of conviction; and amend Importation of Fish rules to repeal established fish health inspection and accepted guidelines and importation requirements for fish or fish reproductive products obtained from a non-salmonid facility, and incorporate the requirements set forth in the repealed rules to revised rules that will establish importation requirements for fish or fish reproductive products and eliminate the distinction in the former rules between salmonids and non-salmonids; 35 SDR 93.</p>
<p>11-12-2008</p>	<p>Social Services: Office of the Secretary</p>	<p>Amend rules relating to administrative hearings for individuals or entities aggrieved by the Department's action or inaction. The proposed rules will clarify who can request an</p>

		<p>administrative hearing; repeal rules that duplicate other regulatory or statutory provisions; delete language that relates to the Department's internal procedures; specify the actions that an individual or entity must take to request a hearing; establish the time limit within which a child care provider or a recipient of child care services must request a hearing; allow the hearing examiner to determine if a hearing will be conducted by electronic means and remove the opportunity for a party involved in the action to request that a hearing not be held by electronic means; specify the information that is included in the notice of hearing; except for appeals involving medical assistance, allow an individual to orally withdraw his or her request for a hearing; allow the hearing examiner to dismiss a case if the case is resolved before the hearing examiner enters a final decision; delete the term "abandonment" and replace it with "default"; specify those circumstances under which a hearing is considered to be in a default situation and subject to dismissal; clarify those procedures used when working to resolve a case before a final decision is entered; specify who may attend a hearing; require a corporation to be represented at the hearing by its attorney; and allow a time extension for mailing the final decision if a continuance of a hearing is requested and the parties to the action stipulate to the continuance; 35 SDR 95.</p>
<p>11-13-2008</p>	<p>Attorney General: Law Enforcement Officers Standards and Training Commission</p>	<p>Amend rules to eliminate the requirement that in order to obtain a waiver of ARSD 2:01:02:01, a law enforcement agency must demonstrate that the agency's jurisdiction includes fewer than five hundred persons and that a waiver is necessary to maintain an adequate law enforcement staff; to provide for the submission of written reports regarding continuing educational hours of officers to the executive secretary of Law Enforcement Training; to specify that officers are to re-qualify every calendar year on a certified shooting course and that firearms instructors must comply with certain requirements pursuant to ARSD 2:01:06:17.05; to set December 31st as the time frame in which a</p>

		certified law enforcement officer is required to meet continuing educational requirements; to update the Certification of Canine Teams Student Handbook; and to establish firearms instructor standards.; 35 SDR 87.
11-13-2008	Agriculture: State Conservation Commission	Adopt rules to define the criteria for the award and selection process for the South Dakota Soil Conservation Award for the Award Winning Soil Conservation Farm; 35 SDR 87.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, December 2, 2008, in LCR 1 & 2, Third Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2008 interim: 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 35 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>).