

REGISTER



South Dakota Legislative Research Council

Volume 38

Monday, 8:00 a.m., October 31, 2011

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

Department of Labor and Regulation:

Appraiser Certification Program: (October 25, 2011) intends to amend rules to change the Department of Revenue and Regulation to Department of Labor and Regulation; change classroom to class; delete the Office of Thrift Supervision; change Examinations Council to Examination Council; revise scope of practice for state-certified residential and state-licensed appraisers; include property characteristics for determining assignment complexity; require a supervising appraiser to be licensed or certified; revise application certification of competency for supervising appraisers; limit the number of attempts a candidate may have to successfully pass the National Uniform Appraiser Examination; raise the hours of experience requirement for application for the state-licensed appraiser classification; include all appraisal practice assignments must comply with the uniform standards; adopt the 2012-2013 Edition of the Uniform Standards of Professional Appraisal Practice; revise examples of those entities establishing assignment conditions; require appraisers to include the Appraisal Management Company registration number in appraisals as applicable; add certain considerations that may be included for selection of appraisers; raise the upgrade fee; provide example of field trips; and specify that an Appraiser Qualifications Board uniform standards instructor must hold a state-certified residential or state-certified general appraiser classification. The general authority for these rules, as cited by the department, is SDCL 36-21B-3 and 36-21B-4.

A public hearing will be held in the Department of Revenue First Floor Conference Room, Anderson Building, Pierre, South Dakota, on November 17, 2011, at 9:00 a.m. A copy of the proposed rules may be obtained from and written comments sent to the Department of Labor and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, South Dakota 57501-3185. Material sent by mail must reach the department by November 16, 2011, to be considered at the public hearing. The department will keep the comment period open until November 28, 2011, for written comments. 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) 773-4608 at least 48 hours before the hearing.

Department of Social Services: Division of Child Support: (October 26, 2011) intends to adopt a rule to add the date of hire to the information that employers within the state must furnish to the state directory of new hires. The general authority for this rule, as cited by the department, is SDCL 28-7A-3.

A public hearing will be held in the DSS Conference Room, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on November 21, 2011, at 9:00 a.m. Copies of the proposed rule may be obtained from and written comments sent to Laura Ringling, Administrative Rules, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Ms. Ringling may be contacted by telephone at (605) 773-3165. Written comments must be received by December 1, 2011, 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. 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) 773-3165 at least 48 hours before the hearing.

Department of Labor and Regulation: Division of Insurance: (October 26, 2011) intends to amend rules to repeal the provision allowing insurers to obtain approval of credit life and health provisions not otherwise permissible under rule; incorporate the provisions of Chapter 20:06:14 into Chapter 20:06:10; define facilitation for purposes of examinations; and repeal Chapter 20:06:14. The general authority for these rules, as cited by the department, is SDCL 58-3-26, 58-17A-2, 58-19-34, 58-33A-7, 58-33A-9, and 58-37-142.

A public hearing will be held in the Main Floor Conference Room, Anderson Building, 445 E. Capitol Ave., Pierre, South Dakota, on November 21, 2011, at 2:00 p.m. Paper copies of the proposed rules may be obtained without charge from and written comments sent to the 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 21, 2011, to be considered. The text of the proposed rules is posted on the department's website: http://dlr.sd.gov/insurance/legal/public_hearings.aspx. 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 Agriculture: Division of Ag Development: (October 27, 2011) intends to amend South Dakota Certified Beef Program rules by changing the definition of verifiable

address, updating beef quality assurance (BQA) references, and changing enrollment criteria. The general authority for these rules, as cited by the department, is SDCL 39-24-6.

A public hearing will be held in the Mathews Training Center, Foss Building, 523 East Capitol, Pierre, South Dakota, on December 1, 2011, at 10:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Department of Agriculture, 523 E. Capitol Avenue, Pierre, South Dakota 57501. Material sent by mail must reach the department by November 28, 2011, 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) 773-5436 at least 48 hours before the hearing.

Department of Revenue: Commission on Gaming: (October 28, 2011) is proposing to amend Gaming rules to define tournament prize pools; clarify which tournaments require prior approval of the executive secretary; allow for the play of a variation of blackjack known as Dealer Bust 21; allow for the play of a variation of poker known as Pai Gow poker; and allow for the configuration of slot machines from a secure server. The general authority for these rules, as cited by the commission, is SDCL 42-7B-4, 42-7B-7, and 42-7B-11.

A public hearing will be held at the City Hall, 102 Sherman Street, Deadwood, South Dakota, on November 30, 2011, at 9:00 a.m. MT. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Commission on Gaming, 221 West Capitol Avenue, Suite 101, c/o 1320 East Sioux Avenue, Pierre, South Dakota 57501-3100. Materials sent by mail must reach the Commission on Gaming by November 30, 2011, to be considered. However, the Commission requests that all written comments be received by November 23, 2011, to allow for adequate consideration prior to the

hearing. This hearing is being held in a physically accessible place. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-6050 or (605) 578-3074 at least 48 hours before the hearing.

Department of Labor and Regulation: Board of Technical Professions: (October 28, 2011) intends to amend rules to clarify definitions; add education requirements for Land Surveyors by removing experience only licensure; correct mistakes; add NCARB's 12 hours of Health Safety and Welfare (HSW) per calendar year as an alternate method for continuing education for architects; increase the fee for retired status; increase the cost of the L.A.R.E. graphics portion of the exam; increase the late renewal penalties for individuals and business entities; create a comity licensure section for licensees seeking licensure through comity; create a Fire Protection Systems section; remove minimum requirements for shop drawings for sprinkler and fire alarm systems; remove informal hearings from the board's options for informal dispositions of complaints; and remove the 60 day maximum limit for a hearing to be had upon request of an aggrieved party. The general authority for these rules, as cited by the board, is SDCL 36-18A-8, 36-18A-22, 36-18A-25 to 36-18A-31, inclusive, 36-18A-34, 36-18A-35, 36-18A-37, 36-18A-39, 36-18A-40, 36-18A-42, 36-18A-43, and 36-18A-50.

A public hearing will be held in Room 304, 3rd floor, 2040 W. Main Street, Rapid City, South Dakota, on November 18, 2011, at 2:00 p.m. MT. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Board of Technical Professions, 2040 W. Main, Suite 304, Rapid City, South Dakota 57702-2447. Written comments must be received by November 17, 2011, 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) 394-2510 at least forty-eight hours before the

hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Appointments:

Robert Clark, Pierre, was reappointed on October 24, 2011, to the **South Dakota Risk Pool Advisory Board**, effective immediately and shall continue until June 30, 2014.

Rick Stracqualursi, Rapid City, was reappointed on October 24, 2011, to the **South Dakota Risk Pool Advisory Board**, effective immediately and shall continue until June 30, 2014.

David M. Christensen, Sioux Falls, was appointed on October 25, 2011, to the **South Dakota Risk Pool Advisory Board**, to replace Jean Reed, effective October 18, 2011, and shall continue until June 30, 2012.

Derek Eisenbeisz, Bowdle, was appointed on October 25, 2011, to the **South Dakota Seed Certification Board**, effective January 1, 2012, and shall continue until January 1, 2017.

Thomas J. Huber, Pierre, was reappointed on October 25, 2011, to the **South Dakota Risk Pool Advisory Board**, effective immediately and shall continue until June 30, 2014.

Shawn R. Lyons, Pierre, was appointed on October 25, 2011, to the **South Dakota Risk Pool Advisory Board**, to replace David Owen, effective October 19, 2011, and shall continue until June 30, 2012.

Cheryl Stone, Pierre, was reappointed on October 25, 2011, to the **South Dakota Risk Pool Advisory Board**, effective immediately and shall continue until June 30, 2014.

Kirk J. Zimmer, Sioux Falls, was appointed on October 25, 2011, to the **South Dakota Risk Pool Advisory Board**, to replace Mike North, effective October 19, 2011, and shall continue

until June 30, 2012.

Jesse J. Smith, Sioux Falls, was appointed on October 26, 2011, to the **South Dakota Risk Pool Advisory Board**, to replace Cindy Morrison, effective October 19, 2011, and shall continue until June 30, 2014.

Executive Orders:

The Governor has signed **Executive Order 2011-21** dated October 21, 2011. This order declares that the offices for state government, within the executive branch, shall be administratively closed on Friday, November 25, 2011.

The Governor has signed **Executive Order 2011-22** dated October 24, 2011. This order provides for the temporary suspension of the requirements for extended period permits for the use of oversized vehicles used to transport round baled feed for livestock. The order will end after sixty days.

The Governor has signed **Executive Order 2011-23** dated October 24, 2011. This order establishes the South Dakota Medicaid Pharmaceutical and Therapeutics Committee. The committee is directed to work with the Department of Social Services to address the

high cost of prescription drugs and the need to find ways to control costs and meet the needs of recipients. The executive order also rescinds Executive Order 2005-09.

The Governor has signed **Executive Order 2011-24** dated October 24, 2011. This order determines that a state of emergency exists due to extremely low inventories and outages of petroleum products. Due to the emergency, the transportation and delivery of diesel, ethanol, gasoline, and propane into and within South Dakota are exempt from 49 CFR Part 395, otherwise known as the federal hours of service regulations. The order will expire no later than midnight, November 30, 2011.

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

11-3-2011	Game, Fish, and Parks	Amend General Provisions rules that would (a) add definitions for "legal spear," "line," and modify the definition of "liberalized fishing" to remove the reference to methods of take; (b) replace all references to "spear" in the rule chapter with the term "legal spear"; (c) add a new rule which creates a permit allowing fish legally possessed by licensed anglers to be gifted to charitable/nonprofit organizations under certain conditions; (d) remove Allen Dam and Little Moreau No. 2 from the prohibition on baitfish use; (e) remove Lake Poinsett Rearing Pond, Platte Creek Rearing Pond, and American Creek Fish Spawning
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		<p>Station from the list of "no fishing zones"; (f) add "hook and line" to the list of authorized methods of take in liberalized fishing waters; (g) modify the rule prohibiting introduction of nonnative fish into state waters and prohibiting possession and transportation of snakehead fish; and (h) modify the rule prohibiting high grading of fish to remove the prohibition of high grading of bluegills on Enemy Swim/Campbell Slough; amend a Fishing Seasons rule pertaining to waters open to the taking of bait that would no longer allow legal anglers to transfer bait collected from that portion of the Missouri River below Gavins Point Dam for use during the same day in the Missouri River below Gavins Point Dam; amend Snagging of Paddlefish rules that would (a) allow applicants for paddlefish snagging permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses and (b) add a limited paddlefish snagging season on Lake Francis Case which would run from May 1 through May 31; amend Fish Limits rules that would (a) remove the current length restrictions placed on black bass (smallmouth and largemouth bass) on Lake Sharpe and (b) change the word "catch" to "harvest" in the rule which establishes daily and possession limits for nonresident family fishing licenses; amend Spearing rules that would (a) replace all references to "spears" with the term "legal spear"; (b) add Mud Lake and Cottonwood Lake in Roberts County to the list of waters where game fish spearing is allowed; and (c) allow applicants for archery paddlefish permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses; amend Bait rules that would (a) raise fees for all bait dealer licenses; (b) change "flathead shiners" to "flathead chub" under species that may be taken as bait for noncommercial use; and (c) close the James, Big Sioux, and Vermillion Rivers as well as the Missouri River below Gavins Point Dam to both the commercial and noncommercial taking of bait year round; amend Private Fish Hatcheries rules that would</p>
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		(a) increase private hatchery license fees and (b) modify the rule pertaining to license approval criteria to allow for bullheads and green sunfish to be present when approving private hatchery ponds; adopt a new chapter to Article 41:10 – Special Management Categories, which deals with regulation of aquatic nuisance species; 38 SDR 65.
11-7-2011	Governor's Office of Economic Development	Adopt rules that will create an Ethanol Infrastructure Incentive Program to provide incentives to retail motor fuel stations and others to increase the amount of ethanol sold in South Dakota; 38 SDR 71.
11-9-2011	Public Utilities Commission	Amend rules to correct statutory citations; revise how refunds and charges are calculated and assessed for gas or electric meters that are running either slow or fast; limit charges for residential customers for meters that do not register properly; revise how refunds and charges are calculated and assessed for other types of electric or gas meter errors; set time frames for overcharge or undercharge payments; allow a utility to create a regulatory asset for amounts not otherwise recovered from a residential customer for meter errors; set forth the definitions for a new chapter of rules regarding renewable energy credits and renewable, recycled, and conserved energy; set forth how a retail provider of electricity shall determine the amount of conserved energy achieved through energy efficiency measures; describe how demand response measures are to be measured and verified; and set forth how a provider of electricity shall report renewable energy credits to the Public Utilities Commission; 38 SDR 65.
11-9-2011	Health: Board of Medical and Osteopathic Examiners	Adopt rules to establish procedures for applicants and licensees and disciplinary proceedings; 38 SDR 71.
11-16-2011	Environment and Natural Resources: Board of Minerals and Environment	Intends to replace the existing oil and gas conservation Article 74:10 with Article 74:12 which will give a clearer, simpler format that includes allowing approval of aquifer exemptions under the notice of recommendation process and allowing administrative approval of commingling oil from separate pools, completing producing wells in multiple zones, dissolving abandoned

		<p>oil and gas fields, and drilling wells without a blowout preventer; expediting regulatory approval under the notice of recommendation process by allowing an operator to set a hearing date for cases that may or may not require a contested case hearing, excluding a duplicative requirement for monthly reporting of water production, an unnecessary requirement for annual submission of pipeline maps, duplicative requirements pertaining to directional wells and pits that are hazardous to birds or other species, an outdated rule pertaining to production of carbon dioxide and steam, and an unnecessary requirement for annual inspections of all oil and gas wells; 38 SDR 71.</p>
<p>11-16-2011</p>	<p>Health: Office of Licensure and Certification</p>	<p>Amend rules to enable birth centers to become licensed as health care facilities and to allow for the provision of an appropriate level of care and services associated with normal, uncomplicated pregnancies; 38 SDR 72.</p>
<p>11-17-2011</p>	<p>Labor and Regulation: Appraiser Certification Program</p>	<p>Amend rules to change the Department of Revenue and Regulation to Department of Labor and Regulation; change classroom to class; delete the Office of Thrift Supervision; change Examinations Council to Examination Council; revise scope of practice for state-certified residential and state-licensed appraisers; include property characteristics for determining assignment complexity; require a supervising appraiser to be licensed or certified; revise application certification of competency for supervising appraisers; limit the number of attempts a candidate may have to successfully pass the National Uniform Appraiser Examination; raise the hours of experience requirement for application for the state-licensed appraiser classification; include all appraisal practice assignments must comply with the uniform standards; adopt the 2012-2013 Edition of the Uniform Standards of Professional Appraisal Practice; revise examples of those entities establishing assignment conditions; require appraisers to include the Appraisal Management Company registration number in appraisals as applicable; add certain considerations that may be included for selection of appraisers; raise the</p>

		upgrade fee; provide example of field trips; and specify that an Appraiser Qualifications Board uniform standards instructor must hold a state-certified residential or state-certified general appraiser classification; 38 SDR 77.
11-18-2011	Revenue: South Dakota Lottery Commission	Amend a rule that would require lottery retailers to collect \$2.00 for the sale of each Powerball play instead of \$1.00; 38 SDR 66.
11-18-2011	Labor & Regulation: Board of Technical Professions	Amend rules to clarify definitions; add education requirements for Land Surveyors by removing experience only licensure; correct mistakes; add NCARB's 12 hours of Health Safety and Welfare (HSW) per calendar year as an alternate method for continuing education for architects; increase the fee for retired status; increase the cost of the L.A.R.E. graphics portion of the exam; increase the late renewal penalties for individuals and business entities; create a comity licensure section for licensees seeking licensure through comity; create a Fire Protection Systems section; remove minimum requirements for shop drawings for sprinkler and fire alarm systems; remove informal hearings from the board's options for informal dispositions of complaints; and remove the 60 day maximum limit for a hearing to be had upon request of an aggrieved party; 38 SDR 79.
11-21-2011	Social Services: Division of Child Support	Adopt a rule to add the date of hire to the information that employers within the state must furnish to the state directory of new hires; 38 SDR 77.
11-21-2011	Labor & Regulation: Division of Insurance	Amend rules to repeal the provision allowing insurers to obtain approval of credit life and health provisions not otherwise permissible under rule; incorporate the provisions of Chapter 20:06:14 into Chapter 20:06:10; define facilitation for purposes of examinations; and repeal Chapter 20:06:14; 38 SDR 78.
11-30-2011	Revenue: Commission on Gaming	Amend Gaming rules to define tournament prize pools; clarify which tournaments require prior approval of the executive secretary; allow for the play of a variation of blackjack known as Dealer Bust 21; allow for the play of a variation of poker known as Pai Gow poker; and allow for the configuration of slot machines from a secure server; 38 SDR 78.

12-1-2011	Agriculture: Division of Ag Development	Amend South Dakota Certified Beef Program rules by changing the definition of verifiable address, updating beef quality assurance (BQA) references, and changing enrollment criteria; 38 SDR 78.
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RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, November 15, 2011. The committee chair has set the following tentative meeting schedule for the 2011 interim: December 20.

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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