

# REGISTER



## South Dakota Legislative Research Council

Volume 35

Monday, 8:00 a.m., November 10, 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:** (November 3, 2008) intends to amend Food Stamp Program rules to increase the standard utility allowance for Food Stamp households responsible for paying heating and cooling expenses; increase the standard telephone allowance for Food Stamp households not eligible for the standard utility allowance but billed for a telephone; increase the limited utility allowance for Food Stamp households not eligible for the standard utility allowance but which incur expenses for at least two separate types of utilities; and increase the one-utility allowance for those Food Stamp households not eligible for either the standard or limited utility allowance but which incur an expense for one type of utility, not including a telephone. The general authority for these rules, as cited by the department, is SDCL 28-12-1.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on November 24, 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 December 4, 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 Health: Board of Pharmacy:** (November 7, 2008) intends to adopt rules to establish criteria to permit use of Board of Pharmacy registered technicians to operate a retail telepharmacy when connected to a licensed South Dakota central pharmacy using advanced technology, automation, and design. The general authority for these rules, as cited by the board is SDCL 36-11-11, 36-11-13, 36-11-19, 36-11-71, and 36-11-72.

A public hearing will be held in Sioux Falls at the Board of Pharmacy office, 4305 South Louise Avenue, Sioux Falls, South Dakota, on December 12, 2008, at 1:00 p.m. CST. Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or sending comments to the South Dakota Board of Pharmacy, 4305 South Louise Ave., Suite 104, Sioux Falls, South Dakota 57106. Copies of the proposed rules may be viewed at the board website [www.pharmacy.sd.gov](http://www.pharmacy.sd.gov) or obtained without charge from the Board's office. Material sent by mail must reach the Board of Pharmacy on or before December 10, 2008, to be considered. Persons who have special needs for which the board can make arrangements are

asked to call (605) 362-2737 before the hearing.

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

**Executive Appointments:**

**Jim Doolittle**, Belle Fourche, was appointed on October 30, 2008, to the **Board of Directors of the Value Added Finance Authority**, to replace David L. Hove, effective October 30, 2008, and shall continue until July 1, 2009.

**Buddy Cronin**, Ft. Pierre, was appointed on October 30, 2008, to the **State Electrical Commission**, to replace Pete Bolzer, effective October 30, 2008, and shall continue until April 14, 2010.

**Paul S. Higbee**, Spearfish, was appointed on October 31, 2008, to the **State Arts Council**, to replace Janet L. Brown, effective October 31, 2008, and shall continue until June 30, 2010.

**Executive Orders:**

The Governor has signed Executive Order 2008-08 dated November 5, 2008. The Governor has declared that the offices of state government shall be administratively closed on Friday, the 28<sup>th</sup> day of November, 2008, and Friday, the

26<sup>th</sup> day of December, 2008. The declaration applies only to state employees within the executive branch of state government under the immediate control of the governor.

The Governor has signed **Executive Order 2008-09** dated October 31, 2008. The Governor has waived the requirements of SDCL 49-28A-3 and 49 CFR Part 395 of the U.S. Department of Transportation Motor Carrier Safety Regulations because an emergency exists due to the extremely low inventories of petroleum products. The transportation and delivery of diesel and propane into or within South Dakota shall be exempt from the federal hours of service regulations. This order will expire upon the conclusion of the emergency or no later than midnight, November 22, 2008.

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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| 11-12-2008 | Social Services: Office of the Secretary | 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 |
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|                   |   | <p>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 31<sup>st</sup> as the time frame in which a 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.</p>  |
| <p>11-13-2008</p> | <p>Agriculture: State Conservation Commission</p>                                   | <p>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.</p>  |

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| 11-13-2008    | Health: Board of Nursing                         | Amend rules to place certain policies adopted by the Nurse Licensure Compact Administrators for implementing the Nurse Licensure Compact into the form of administrative rules, and change the requirement for nurse practitioners and nurse midwives to have direct personal collaboration with a physician for one half day a week or a minimum of one hour per ten hours of practice to twice per month; 35 SDR 105.   |
| 11-13-2008    | Human Services: Board of Examiners of Psychology | Amend rules to provide board jurisdiction over certain supervisors; update the code of conduct; and limit internships to psychology internships; 35 SDR 106.  |
| 11-17&18-2008 | Education: Board of Education                    | Amend rules to permit the state director of special education to appoint additional members to the complaint investigation team; give the Department flexibility in adding endorsements for certified teachers and administrators who were previously restricted due to preparations that did not match the perceived level of initial preparation; grant additional stand-alone certificates previously not issued; give individuals who completed principal programs or endorsements without the required three years of experience to have another option for certification, and to recognize an advanced degree that is over 10 years old as valid; 35 SDR 105.   |
| 11-24-2008    | Revenue and Regulation: Gaming Commission        | Amend Racing rules to prohibit licensees from giving illegal instructions; add safety vests, over-girth and breast collars to the list of items that are not included in a jockey's weight; reduce the maximum weight of a whip from one pound to eight ounces; prohibit horse shoes with toe grabs greater than two millimeters to be worn on front hooves of horses while racing or training; provide guidelines for the humane use of the jockey's whip; create a list of prohibited practices of the jockey's whip in the ordinary course of running a race; require licensees seeking renewal of trainer's licenses or owner-trainer's licenses to complete at least four hours of continuing education each calendar year; amend Deadwood Gambling rules to define a poker podium; replace the requirement of an employee's social security number with the |

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|                   |   | <p>employee's license number and to incorporate portions from mandatory count procedures which are more relevant in the instant rule; remove a July 15 reporting requirement and clarify reporting requirements for changes in count and drop times, as well as to remove provisions of this rule which are more appropriately placed under Job description – List of personnel; clarify when table drop boxes must be removed and provide consistency under count procedures; correct terminology in the existing rule from card room bank to cashier's cage; correct terminology in the existing rule from chip bank cashier to poker podium or cage; create procedures for the use of poker podiums; repeal the requirement that an application for modification of slot machines be made on certain forms; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; create a procedure for the redemption of tickets when an operator goes out of business; eliminate a cross-reference which refers to a rule that no longer exists; correct terminology relating to video imaging reproduction and recording; establish surveillance requirements for poker podiums; reduce the time that written records of surveillance activities must be maintained from five years to two years; eliminate the requirement that licensees maintain copies of reports and a copy of repair invoices on surveillance equipment malfunctions for one year from the date of repair; correct terminology relating to video imaging reproduction and recording; and reduce the time that records of surveillance activities must be maintained from five years to two years; 35 SDR 105.</p> |
| <p>11-24-2008</p> | <p>Social Services: Economic Assistance</p> | <p>Amend Food Stamp Program rules to increase the standard utility allowance for Food Stamp households responsible for paying heating and cooling expenses; increase the standard telephone allowance for Food Stamp households not eligible for the standard utility</p>  |

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|            |  | allowance but billed for a telephone; increase the limited utility allowance for Food Stamp households not eligible for the standard utility allowance but which incur expenses for at least two separate types of utilities; and increase the one-utility allowance for those Food Stamp households not eligible for either the standard or limited utility allowance but which incur an expense for one type of utility, not including a telephone; 35 SDR 127.   |
| 12-3-2008  | Personnel: Career Service Commission                         | Amend a rule to clarify that career service employees who submit classification appeals must appeal to the Commissioner of the Bureau of Personnel prior to an appeal to the Career Service Commission; 35 SDR 117.   |
| 12-5-2008  | Personnel  | Amend a rule to insure that any employee in a direct care position with the Human Services Center and the South Dakota Developmental Center be drug free; 35 SDR 117.   |
| 12-9-2008  | Environment and Natural Resources:<br>Water Management Board | Amend Surface Water Quality rules to update references; correct typographical errors; clarify language; update toxic pollutant criteria; add and modify definitions; modify the dissolved oxygen, water temperature and pH criteria; add E. coli criteria; set site specific criteria for the Little White River and White River; add beneficial uses to low flow rates for low quality fishery waters; review, remove, and reassign designated beneficial uses of certain lakes and streams; 35 SDR 107. |
| 12-10-2008 | Board of Pharmacy  | Adopt rules to establish criteria to permit use of Board of Pharmacy registered technicians to operate a retail telepharmacy when connected to a licensed South Dakota central pharmacy using advanced technology, automation, and design; 35 SDR 127.  |
| 12-18-2008 | Board of Regents   | Amend rules to allow students receiving an associate degree or certificate to continue their enrollment in the South Dakota Opportunity Scholarship program, allow for students to take the ACT exam during the summer before starting their post-secondary education, change the curriculum requirements to reflect the Department of Education's distinguished high school program, and establish dates for student eligibility for funding into administrative rules; 35 SDR 117.                      |

**RULES REVIEW COMMITTEE MEETINGS**

The next meeting of the Interim Rules Review Committee will be held Tuesday, December 2, 2008, in Room 413, Fourth 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>.

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