

# REGISTER

## *South Dakota Legislative Research Council*



*Volume 37*

*Monday, 8:00 a.m., May 16, 2011*

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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 Labor and Regulation:***

(May 10, 2011) is proposing to amend Unemployment Compensation rules to repeal obsolete provisions, clarify when unemployment insurance claims are effective, and modify the requirement to search for new employment when receiving benefits. The general authority for these rules, as cited by the department, is SDCL 61-5-17, 61-6-2, and 61-7-1.

A public hearing will be held in Conference Room 3, Kneip Building, 700 Governors Drive, Pierre, South Dakota, on June 7, 2011, at 1:30 p.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Department of Labor and Regulation, Attention Don Kattke, 811 E. 10<sup>th</sup> Street, Dept. 41, Sioux Falls, South Dakota 57103-1650. Material sent by mail must be received by June 17, 2011, to be considered. Persons who have special needs for which the division can make arrangements are asked to call (605) 367-5345 at least 48 hours before the hearing.

***Department of Game, Fish and Parks:***

(May 13, 2011) intends to adopt an Application for License rule to establish a rule authorizing antlerless deer licenses established by SDCL 41-6-19.8 to be issued to qualifying farmers and ranchers for use in the West River, East River, Youth, Archery, and Muzzleloading deer hunting units where at least one antlerless deer tag is available after the second lottery drawing from the previous year's East River and

West River deer seasons; amend a License Forms and Fees rule to increase by \$90.00 the license fee for all nonresident big game licenses that are valid for the taking of a buck; adopt a Hunting Requirements and Prohibited Methods rule to establish air gun ammunition and performance specifications for hunting cottontail rabbit, squirrel, and species defined as a predator/varmint; amend Fall Wild Turkey Hunting Season rules to establish the number of licenses available; amend Waterfowl Hunting Seasons (Goose Hunting Season – August Management Take) rules to expand the open area to include Hanson, Lincoln, and Union counties, and remove the possession limit of 32 Canada geese; amend Black Hills Deer Hunting Season rules to establish the number of resident and nonresident licenses available; amend West River Prairie Deer Season rules to establish the number and types of resident and nonresident licenses/tags available, and repeal the rule which designates areas where free antlerless deer licenses can be issued to farmers and ranchers for use in West River deer hunting units, add three Limited Access Units to the West River Deer Hunting Season, combining two units and revising three units; amend Archery Deer Hunting Season rules to adjust the start date for Sand Lake NWR from November 1 to the third Saturday in October, adjust the end date for Waubay Lake State Game Refuge and Waubay NWR from January 15 to December 31, add Yankton County to those restricted areas where only one single "any antlerless deer" license is valid, and eliminate antlerless deer licenses in the Black Hills Fire Protection District; amend an Archery Antelope Hunting Season rule to establish the types of resident and nonresident licenses/tags available; amend a Youth Deer Hunting Season

to allow hunters to purchase up to two youth deer licenses, with only one youth deer license valid within the Black Hills Fire Protection District; amend a General Muzzleloading Deer Hunting Season rule to add Yankton County to those restricted areas where only one single "any antlerless deer" license is valid and eliminate antlerless deer licenses in the Black Hills Fire Protection District; amend Furbearer Season rules to shorten the period in which a hunter or trapper harvesting a bobcat after the close of the season must notify a conservation officer or wildlife damage specialist to within 24 hours of harvest, clarify that once a bobcat pelt has been registered and tagged by the department, the tag only pertains to raw pelts (tanned pelts or mounted bobcats will not be required to have a department tag attached); change season dates for mink, weasel, muskrat, beaver, raccoon, and bobcats, and prohibit muskrat trapping on Sand Lake National Wildlife Refuge and Waubay National Wildlife Refuge; amend a Trapping Prohibitions (Water-sets prohibited – exceptions) rule to allow persons West River (excluding the Black Hills Fire Protection District south of Interstate 90 and west of SD Highway 79) to use body grip or killer type traps (as water sets) within 30 feet of water to remove unwanted beavers; and amend Private Shooting Preserves rules to change all references to "operator" to "permittee" and clarify that mandatory attendance at the annual training and information meeting is only required for new preserve permittees. The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-6-10, 41-6-18.4, 41-6-19.6, 41-6-19.8, 41-6-21, 41-8-20, 41-8-31, 41-11-5, and 41-17-1.1

A public hearing will be held at Lewis and Clark Recreation Area, Magilly's Lakeside Eatery, 43497 Shore Drive, Yankton, South Dakota, on June 2, 2011, at 2:00 p.m. (CDT). 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 p.m. 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 email to [chuck.schlueter@state.sd.us](mailto:chuck.schlueter@state.sd.us). All written and email 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.

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

**DEPARTMENT OF HEALTH: BOARD OF PHARMACY:** 20:51:32:01 to 20:51:32:11, inclusive.

History-Notice: 37 SDR 157, Feb. 28, 2011  
Hearing: March 15, 2011  
Filed: May 10, 2011  
Effective: May 30, 2011

**DEPARTMENT OF LABOR AND REGULATION: SOUTH DAKOTA RETIREMENT SYSTEM:** 62:01:02:11; 62:01:03:05; 62:01:07:09.01, 62:01:07:09.02, 62:01:07:13; 62:01:09:08; 62:03:05:08; and 62:04:03:02.

History-Notice: 37 SDR 171, March 21, 2011  
Hearing: April 7, 2011  
Filed: May 10, 2011  
Effective: May 30, 2011

**PUBLIC UTILITIES COMMISSION:** 20:10:27:01, 20:10:27:02, 20:10:27:02.01, 20:10:27:02.02, 20:10:27:04; 20:10:27:07, 20:10:27:11, and 20:10:27:12.

History-Notice: 37 SDR 127, Dec.13, 2010  
Hearing: January 20, 2011  
Filed: May 10, 2011  
Effective: May 30, 2011

**DEPARTMENT OF GAME, FISH AND**

**PARKS:** 41:03:01:16.02; 41:06:02:03;  
41:06:22:01; 41:06:26:02; 41:06:27:02;  
41:06:28:02; 41:06:41:02; 41:06:43:02;  
41:06:44:01; 41:06:45:01; 41:06:47:02;  
41:06:48:02; 41:06:56:03; 41:06:59:02;  
41:09:12:05, and 41:09:12:06.

History-Notice: 37 SDR 175, March 28, 2011  
Hearing: April 7, 2011  
Filed: May 11, 2011  
Effective: May 31, 2011

**DEPARTMENT OF LABOR AND  
REGULATION: DIVISION OF**

**INSURANCE:** 20:06:13:32, 20:06:13:35;  
20:06:18:13; 20:06:21:28.01; 20:06:39:34;  
20:06:40:42 to 20:06:40:74, inclusive;  
20:06:55:25, and 20:06:55:27 to 20:06:55:31,  
inclusive.

History-Notice: 37 SDR 157, Feb. 28, 2011  
Hearing: March 17, 2011  
Filed: May 11, 2011  
Effective: May 31, 2011

**DEPARTMENT OF REVENUE: SOUTH  
DAKOTA LOTTERY COMMISSION:**

48:02:03:11; 48:02:05:04, 48:02:05:05;  
48:02:06:05 to 48:02:06:07, inclusive;  
48:02:07:02; 48:02:08:01, 48:02:08:02,  
48:02:08:05, 48:02:08:09; 48:02:09:03,  
48:02:09:04; 48:02:10:05.01, and 48:02:10:10.

History-Notice: 37 SDR 161, March 7, 2011  
Hearing: March 25, 2011  
Filed: May 11, 2011  
Effective: May 31, 2011

**DEPARTMENT OF TRANSPORTATION:**  
70:01:02:30(4).

History-Notice: 37 SDR 181, April 4, 2011  
Hearing: April 28, 2011  
Filed: May 11, 2011  
Effective: May 31, 2011

**DEPARTMENT OF AGRICULTURE:  
SD WEED AND PEST CONTROL  
COMMISSION:** 12:62:03:01.07.

History-Notice: 37 SDR 165, March 14, 2011  
Hearing: April 21, 2011  
Filed: May 12, 2011  
Effective: June 1, 2011

**Executive Appointments:**

**William A. Aeschlimann**, Hurley, was  
reappointed on May 9, 2011, to the **Animal  
Industry Board**, effective immediately and  
shall continue until June 30, 2015.

**Julie Ranum**, Watertown, was reappointed on  
May 9, 2011, to the **Board of Tourism**,  
effective immediately and shall continue until  
June 30, 2015.

**Judith A. Trzynka**, Watertown, was  
reappointed on May 9, 2011, to the **State  
Library Board**, effective immediately and shall  
continue until June 30, 2015.

**Hannah D. Walters**, Mitchell, was appointed  
on May 9, 2011, to the **Board of Tourism**, to  
replace David Sweet, effective July 1, 2011, and  
shall continue until June 30, 2015.

**Robert V. Burns**, Brookings, was reappointed  
on May 11, 2011, to the **Western Interstate  
Commission for Higher Education**, effective  
July 1, 2011, and shall continue until June 30,  
2015.

**Jeffory A. Erickson**, Sioux Falls, was  
reappointed on May 11, 2011, to the **State  
Banking Commission**, effective immediately  
and shall continue until June 30, 2014.

**Stephen K. Hayes**, Presho, was reappointed on  
May 11, 2011, to the **State Banking  
Commission**, effective immediately and shall  
continue until June 30, 2014.

**John L. Lillibridge**, Burke, was reappointed on May 11, 2011, to the **State Banking Commission**, effective immediately and shall continue until June 30, 2014.

#### **Executive Orders:**

The Governor has signed **Executive Order 2011-09** dated May 10, 2011. The Order declares a disaster to exist due to widespread flooding in the counties of Aurora, Beadle, Brookings, Brown, Buffalo, Clark, Codington, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Jackson, Jerauld, Kingsbury, Lake, Marshall, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Spink, and Sully.

The Governor has signed **Executive Order 2011-10** dated May 10, 2011. The Order permits overwidth fertilizer applicator machinery to operate on the highways during overnight hours if certain safety requirements are followed. This exception to the restriction on nighttime operation is necessary due to the delay in fertilizer application caused by the wet weather and soil conditions.

The Governor has signed **Executive Order 2011-11** dated May 12, 2011. The Order creates the Governor's Task Force on Infant Mortality. The Task Force will be administered by the Department of Health, have up to 30 members who represent the health profession, state agencies, and tribal government. The Task Force will be chaired by First Lady Linda Dugaard and will report to the Governor their recommendations for improving birth outcomes and reducing infant mortality in South Dakota.

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**

5-19-2011	Social Services: Division of Medical Services	Amend rules to update definitions; modify the basis of reimbursement and reimbursement amounts for inpatient services, outpatient services, and physician and other health services; modify dispensing fees for certain items dispensed by a pharmacy or public health service provider; and clarify reimbursement methodologies; 37 SDR 203.
5-19-2011	Social Services: Division of Medical Services	Adopt a rule to outline reimbursement guidelines for certain cost outlier claims submitted by in-state acute care hospitals; 37 SDR 204.
5-20-2011	Attorney General: 24/7 Sobriety Program	Amend rules to establish a definition of ignition interlock device, require the verification of installed ignition interlock devices by participating agencies, require the periodic inspection of those devices, establish standards for ignition interlock devices and permit the Attorney General to approve

		ignition interlock devices, clarify language regarding enrollment and placement of offenders on the 24/7 Sobriety Program, and establish fees within the range as established during the 2011 Legislative Session for twice-a-day PBT testing, urinalysis, drug testing, electronic alcohol monitoring testing, ignition interlock testing and participation fees; 37 SDR 196.
5-20-2011	Revenue: Division of Motor Vehicles	Amend a rule to change the definition of a trailer; 37 SDR 203.
5-24-2011	Agriculture: Division of Resource Conservation and Forestry	Adopt rules to set the procedures for the establishment of forest insect and disease control areas and the control measures needed to address declared forest health problems and to set procedures for establishing control areas for mountain pine beetles in the Black Hills; 37 SDR 203.
5-25-2011	Bureau of Personnel: Career Service Commission	Amend rules to clarify that the definition of "immediate family" includes step-brothers and step-sisters; clarify that a "temporary employee" is not entitled to benefits or other status rights; set time limits on the length of time that an employee is designated as "severely disabled," for purposes of the disability preference used by the Bureau of Personnel when the appointing authority must interview an applicant; revise outdated terminology; clarify that falsifying a time sheet is grounds for disciplinary action even without specific intent; clarify the criteria used in a layoff, the approval process by the Bureau of Personnel, and repeals the rule allowing an appeal of a layoff; update the terminology relative to the accrual, and allowed use of vacation leave, sick leave, and personal leave; and clarify that an appointing authority is not required to give prior notice to an employee of a furlough; 37 SDR 197.
5-26-2011	Bureau of Personnel	Repeal rules governing the Governor's Senior Prescription Drug Program of 2003; 37 SDR 197.
5-26-2011	Transportation	Amend a speed zone in Sioux Falls on Interstate Highway 90 to reduce the speed limit to 65 mile per hour west of the new Marion Road interchange; amend a speed zone in Sioux Falls on Interstate Highway 229 to reduce the speed of vehicles at the approach to

		the Interstate 90 entrance ramps; adopt a new speed zone in Sioux Falls on Interstate Highway 229 to provide a step-down speed approaching the existing Minnehaha County Road 125; amend a speed zone in the town of Lake Norden in Hamlin County on State Highway 28 to reduce speeds adjacent to commercial and residential areas in the city limits and the curves near the lakes; and repeal a speed zone in Minnehaha County on Interstate Highway 229 that is being incorporated into the new 70:01:02:00(5); 37 SDR 209.
6-2-2011	Game, Fish and Parks	Adopt an Application for License rule to establish a rule authorizing antlerless deer licenses established by SDCL 41-6-19.8 to be issued to qualifying farmers and ranchers for use in the West River, East River, Youth, Archery, and Muzzleloading deer hunting units where at least one antlerless deer tag is available after the second lottery drawing from the previous year's East River and West River deer seasons; amend a License Forms and Fees rule to increase by \$90.00 the license fee for all nonresident big game licenses that are valid for the taking of a buck; adopt a Hunting Requirements and Prohibited Methods rule to establish air gun ammunition and performance specifications for hunting cottontail rabbit, squirrel, and species defined as a predator/varmint; amend Fall Wild Turkey Hunting Season rules to establish the number of licenses available; amend Waterfowl Hunting Seasons (Goose Hunting Season – August Management Take) rules to expand the open area to include Hanson, Lincoln, and Union counties, and remove the possession limit of 32 Canada geese; amend Black Hills Deer Hunting Season rules to establish the number of resident and nonresident licenses available; amend West River Prairie Deer Season rules to establish the number and types of resident and nonresident licenses/tags available, and repeal the rule which designates areas where free antlerless deer licenses can be issued to farmers and ranchers for use in West River deer hunting units, add three Limited Access Units to the West River Deer Hunting

		<p>Season, combining two units and revising three units; amend Archery Deer Hunting Season rules to adjust the start date for Sand Lake NWR from November 1 to the third Saturday in October, adjust the end date for Waubay Lake State Game Refuge and Waubay NWR from January 15 to December 31, add Yankton County to those restricted areas where only one single "any antlerless deer" license is valid, and eliminate antlerless deer licenses in the Black Hills Fire Protection District; amend an Archery Antelope Hunting Season rule to establish the types of resident and nonresident licenses/tags available; amend a Youth Deer Hunting Season to allow hunters to purchase up to two youth deer licenses, with only one youth deer license valid within the Black Hills Fire Protection District; amend a General Muzzleloading Deer Hunting Season rule to add Yankton County to those restricted areas where only one single "any antlerless deer" license is valid and eliminate antlerless deer licenses in the Black Hills Fire Protection District; amend Furbearer Season rules to shorten the period in which a hunter or trapper harvesting a bobcat after the close of the season must notify a conservation officer or wildlife damage specialist to within 24 hours of harvest, clarify that once a bobcat pelt has been registered and tagged by the department, the tag only pertains to raw pelts (tanned pelts or mounted bobcats will not be required to have a department tag attached); change season dates for mink, weasel, muskrat, beaver, raccoon, and bobcats, and prohibit muskrat trapping on Sand Lake National Wildlife Refuge and Waubay National Wildlife Refuge; amend a Trapping Prohibitions (Water-sets prohibited – exceptions) rule to allow persons West River (excluding the Black Hills Fire Protection District south of Interstate 90 and west of SD Highway 79) to use body grip or killer type traps (as water sets) within 30 feet of water to remove unwanted beavers; and amend Private Shooting Preserves rules to change all references to "operator" to "permittee" and clarify that mandatory attendance at the annual</p>
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		training and information meeting is only required for new preserve permittees; 37 SDR 213.
6-7-2011	Labor and Regulation	Amend Unemployment Compensation rules to repeal obsolete provisions, clarify when unemployment insurance claims are effective, and modify the requirement to search for new employment when receiving benefits; 37 SDR 213.

### RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, June 7, 2011. The committee chair has set the following tentative meeting schedule for the 2011 interim: July 12, August 30, September 27, November 15, and December 12.

**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>.