REGISTER

South Dakota Legislative Research Council

Volume 34 *Monday, 8:00 a.m., June 16, 2008*

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

Department of Social Services: Child Support: (June 11, 2008) intends to repeal obsolete rules and amend rules for a household receiving assistance from the Department, change the assignment of support rights to apply only to those months the recipient actually receives assistance; when distributing amounts of child support collected for a household currently receiving assistance, specify that the Department shall retain the amount of unpaid support obligation accrued under an assignment or the amount necessary to reimburse the Department for the cumulative amount of unreimbursed assistance paid to a family, whichever is less; if the amount collected through an Internal Revenue Services (IRS) tax refund offset is based on a joint return, allow the Department to delay distribution of amounts collected until the Department is notified that the unobligated spouse's share of the refund has been paid or up to six months from the date the offset was paid to the Department, whichever is earlier; specify that if the amount collected exceeds the amount of the unpaid support obligation, the Department shall refund the excess to the absent parent or to the parties filing a joint return within 45 days after it is collected; and eliminate the threshold amount for notifying the federal government of delinquent support obligations for purposes of denying, revoking, or limiting passports. The general authority for these rules, as cited by the department, is SDCL 25-7A-3.3 and 28-7A-3.

A public hearing will be held in the DSS Conference Room, First Floor, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on July 8, 2008, at 1:30 p.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. Ms. Wellhouse may be contacted by telephone at (605) 773-3305. Written comments must be received by July 18, 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.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF HEALTH: HEALTH SYSTEMS DEVELOPMENT AND REGULATION: 44:02:02:00, 44:02:02:03, 44:02:02:05, 44:02:02:08, 44:02:02:10 to 44:02:02:14, inclusive, 44:02:02:17 to 44:02:02:20, inclusive, 44:02:02:22, 44:02:02:25; 44:02:05:01, 44:02:05:04 to 44:02:05:06, inclusive, 44:02:05:08 to 44:02:05:13, inclusive, 44:02:05:15, 44:02:05:17, 44:02:05:18, 44:02:05:22, 44:02:05:25, 44:02:05:26; 44:02:06:01, 44:02:06:02, 44:02:06:04 to 44:02:06:06, inclusive, 44:02:06:08 to 44:02:06:11, inclusive, 44:02:06:13, 44:02:06:15, 44:02:06:17 to

44:02:06:19, inclusive, 44:02:06:21; and 44:02:08:01 to 44:02:08:14, inclusive.

History-Notice: 34 SDR 269, April 21, 2008
Hearing: May 13, 2008
Filed: June 10, 2008
Effective: June 30, 2008

DEPARTMENT OF HEALTH: HEALTH AND MEDICAL SERVICES: 44:06:01:08, 44:06:01:08.01; 44:06:02:02, 44:06:02:04, 44:06:02:05; 44:06:03:04, 44:06:03:05; 44:06:04:01, and 44:06:04:02.

History-Notice: 34 SDR 278, April 28, 2008
Hearing: May 20, 2008
Filed: June 10, 2008
Effective: June 30, 2008

DEPARTMENT OF LABOR: DIVISION OF LABOR AND MANAGEMENT: 47:03:09:01.

History-Notice: 34 SDR 285, May 5, 2008
Hearing: May 20, 2008
Filed: June 10, 2008
Effective: June 30, 2008

DEPARTMENT OF REVENUE AND REGULATION: BANKING COMMISSION: 20:07:02:05; 20:07:03:11, 20:07:03:16, 20:07:03:17, 20:07:03:19 to 20:07:03:22, inclusive; 20:07:10:03, 20:07:10:05, 20:07:10:07; 20:07:12:03; 20:07:14:01; 20:07:17:01 to 20:07:17:08, inclusive; 20:07:19:04, 20:07:19:04.01, 20:07:19:07, 20:07:19:08, 20:07:19:11; 20:07:20:03; 20:07:21:01, 20:07:21:02; and 20:07:23:01 to 20:07:23:05, inclusive.

History-Notice: 34 SDR 277, April 28, 2008
Hearing: May 14, 2008
Filed: June 10, 2008
Effective: June 30, 2008

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

History-Notice: 34 SDR 249, March 31, 2008
Hearing: April 29, 2008
Filed: June 11, 2008
Effective: July 1, 2008

DEPARTMENT OF EDUCATION: BOARD OF EDUCATION: 24:15:01:01, 24:15:01:02; 24:15:03:03, 24:15:03:06 to 24:15:03:08, inclusive; 24:15:06:10, 24:15:06:42 to 24:15:06:60, inclusive; 24:15:08:01 to 24:15:08:03, inclusive; 24:17:02:03, 24:17:02:04, 24:17:02:07; 24:40:09:03, 24:40:09:04; 24:43:01:09; 24:43:12:09 to 24:43:12:11, inclusive; and 24:43:11:08.

History-Notice: 34 SDR 277, April 28, 2008
Hearing: May 19, 2008
Filed: June 11, 2008
Effective: July 1, 2008

DEPARTMENT OF LABOR: ELECTRICAL COMMISSION: 20:44:14:01.

History-Notice: 34 SDR 249, March 31, 2008
Hearing: April 25, 2008
Filed: June 11, 2008
Effective: July 1, 2008

DEPARTMENT OF SOCIAL SERVICES: MEDICAL SERVICES: 67:11:01:03; 67:16:01:25, 67:16:01:26, 67:16:01:27; 67:46:01:13; and 67:46:06:02.

History-Notice: 34 SDR 263, April 14, 2008
Hearing: May 6, 2008
Filed: June 11, 2008
Effective: July 1, 2008

DEPARTMENT OF SOCIAL SERVICES: ECONOMIC ASSISTANCE: 67:10:05:03 and 67:10:05:05.

History-Notice: 34 SDR 269, April 21, 2008
Hearing: May 6, 2008
Filed: June 11, 2008
Effective: July 1, 2008

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES: BOARD OF MINERALS AND ENVIRONMENT: 74:11:08:03.01 to 74:11:08:08, inclusive; 74:29:11:01, 74:29:11:01.01, 74:29:11:03, 74:29:11:06, 74:29:11:07, 74:29:11:12, 74:29:11:13, 74:29:11:15, 74:29:11:16, 74:29:11:18, 74:29:11:36, 74:29:11:38, 74:29:11:54, and 74:29:11:60.

History-Notice: 34 SDR 270, April 21, 2008
Hearing: May 15, 2008
Filed: June 12, 2008
Effective: July 2, 2008

DEPARTMENT OF HEALTH: BOARD OF EXAMINERS IN OPTOMETRY: 20:50:02:04.03.

History-Notice: 34 SDR 257, April 7, 2008
Hearing: May 1, 2008
Filed: June 12, 2008
Effective: July 2, 2008

BUREAU OF ADMINISTRATION: 10:09:01:01; 10:09:02:01; 10:09:03:01, 10:09:03:02; and 10:09:04:01.

History-Notice: 34 SDR 271, April 21, 2008
Hearing: May 20, 2008
Filed: June 13, 2008
Effective: July 3, 2008

BUREAU OF ADMINISTRATION: 10:10:01:01 to 10:10:01:03, inclusive.

History-Notice: 34 SDR 285, May 5, 2008
Hearing: May 22, 2008
Filed: June 13, 2008
Effective: July 3, 2008

DEPARTMENT OF REVENUE AND REGULATION: REAL ESTATE COMMISSION: 20:69:03:26, 20:69:03:27; and 20:69:13:17.

History-Notice: 34 SDR 249, March 31, 2008
Hearing: May 8, 2008
Filed: June 13, 2008
Effective: July 3, 2008

Executive Appointments:

Robert Bogue, Canton, was reappointed on June 10, 2008, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective July 1, 2008, and shall continue until June 30, 2011.

Mark Bontreger, Watertown, was appointed on June 10, 2008, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, to replace Mark Bratt, effective July 1, 2008, and shall continue until June 30, 2011.

Kelly Johnson, Madison, was reappointed on June 10, 2008, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, effective July 1, 2008, and shall continue until June 30, 2011.

Duane H. Mackey, Vermillion, was appointed on June 10, 2008, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, to replace Dennis Darrington, effective July 1, 2008, and shall continue until June 30, 2011.

Linda Pietz, Yankton, was appointed on June 10, 2008, to the **South Dakota Certification Board for Alcohol and Drug Professionals**, to replace Denise Krueger, effective July 1, 2008, and shall continue until June 30, 2009.

Erin Hayes, Sioux Falls, was appointed on June 11, 2008, to the **Statewide One-Call Notification Center Board**, to replace Rod Cundy, effective June 11, 2008, and shall continue until November 1, 2008.

Wade Pogany, Pierre, was appointed on June 11, 2008, to the **Midwestern Higher Education Commission**, effective July 1, 2008, and will last throughout Governor Rounds' tenure in office.

Executive Order:

The Governor has signed **Executive Order 2008-07** dated June 5, 2008, which declared a state of emergency to exist in South Dakota due to the multiple severe storm outbreaks.

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

6-23-2008	Health: Health Systems Development and Regulation	Amend Radiation Control rules to permit hand held intra-oral radiographic imaging devices and a reporting process for lost or damaged equipment; 34 SDR 303.
6-26-2008	Transportation	Amend a speed zone in Meade County on SD Highway 34 through and to the east of the City of Sturgis to reduce speed limits for traffic along the area of the high school where there are heavy traffic volumes entering and exiting the highway; 34 SDR 315.
6-26-2008	Social Services: Medical Services	Amend optometric services and supplies rules to define the term "amblyopia"; delete the term "keratoconus"; move the list of covered services, the associated procedure codes, and the rates of reimbursement, to the Department's website; limit the replacement of contact lenses to two lenses a year for standard rigid gas permeable or standard annual replacement daily wear soft contact lenses; specify that patients fitted with planned replacement daily wear soft contact lenses must be provided with a year's supply of lenses at the initial fitting and specify that no other replacement lenses will be covered during that year; specify that covered items and services provided for children under the age of 21 are not subject to established limits providing the items or services are medically necessary; expand the list of non-covered services to

		include extended wear or daily disposable contact lenses and LASIK surgery; establish a mechanism for providers to request a review of a rate for possible adjustment or to request the inclusion or exclusion of a particular procedure code from the list; establish a co-pay for exams; allow for the electronic submission of claims; and repeal a rule that is no longer necessary; amend physician services rules to specify that a procedure code reported with a two-digit modifier of 23 (unusual anesthesia) is reimbursed at 100 percent of the fee established by the Department or 40 percent of the physician's usual and customary charge if the Department has not established a fee; specify that a procedure code reported with a two-digit modifier of 59 (distinct procedure) is reimbursed at 100 percent of the fee established by the Department or 30 percent of the physician's usual and customary charge if the Department has not established a fee; and specify that a procedure code reported with a two-digit modifier of 50 (bilateral procedure) is reimbursed at 40 percent of the physician's usual and customary charge if the Department has not established a fee for service; 34 SDR 315.
6-27-2008	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; 34 SDR 317.
7-1-2008	Revenue and Regulation: Division of Insurance	Amend a Medicare Supplement Insurance rule to prohibit duplication of coverage when Medicare Advantage coverage is replacing Medicare supplement coverage or when being replaced by Medicare supplement coverage; and adopt Discretionary Clause rules to prohibit discretionary clauses in health insurance policies; 34 SDR 309.
7-2-2008	Corrections: Board of Pardons and Paroles	Amend rules to clarify and modernize operational procedures and reflect current case

		law; 34 SDR 309.
7-2-2008	Environment and Natural Resources: Water Management Board	Amend Ground Quality rules to require secondary containment and leak monitoring for new and replacement tank systems located within 1,000 feet of an existing community water system or any potable drinking water well, require department approved training for owners and operators of regulated tank systems and make it illegal for non-compliant tank systems to receive delivery of regulated substances; 34 SDR 316.
7-8-2008	Social Services: Child Support	Repeal obsolete rules and amend rules for a household receiving assistance from the Department, change the assignment of support rights to apply only to those months the recipient actually receives assistance; when distributing amounts of child support collected for a household currently receiving assistance, specify that the Department shall retain the amount of unpaid support obligation accrued under an assignment or the amount necessary to reimburse the Department for the cumulative amount of unreimbursed assistance paid to a family, whichever is less; if the amount collected through an Internal Revenue Services (IRS) tax refund offset is based on a joint return, allow the Department to delay distribution of amounts collected until the Department is notified that the unobligated spouse's share of the refund has been paid or up to six months from the date the offset was paid to the Department, whichever is earlier; specify that if the amount collected exceeds the amount of the unpaid support obligation, the Department shall refund the excess to the absent parent or to the parties filing a joint return within 45 days after it is collected; and eliminate the threshold amount for notifying the federal government of delinquent support obligations for purposes of denying, revoking, or limiting passports; 34 SDR 321.
7-9-2008	Labor: Plumbing Commission	Amend plumbing installation practices as they relate to the Uniform Plumbing Code and to adopt rules for continuing educational requirements; 34 SDR 315.
7-29-2008	Public Safety: Office of Weights and Measures	Amend rules to adopt the 2005 editions of the National Institute of Standards and Technology (NIST) handbooks 44, 133 and 130; to modify

		the fee structure for conducting heavy scales inspections, retail device inspections, and calibrations in the State metrology laboratory; and to adopt the 2005 Annual Book of the American Society for Testing and Materials Standards for petroleum quality; 34 SDR 316.
9-18-2008	Environment and Natural Resources: Board of Minerals and Environment	Update the state's existing hazardous waste rules by incorporating updated federal regulations by reference. These updates reflect changes made to the federal hazardous waste rules from July 1, 2006 through June 30, 2007. Changes include establishing a standardized permit for hazardous waste storage facilities; and a variety of corrections that encompass printing omissions, typographical errors, misspellings and erroneous or missing citations and references throughout the rules; 34 SDR 278.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 19, 2008, in LCR 1 and 2, Third Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2008 interim: September 23, December 2, and 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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