

REGISTER

South Dakota Legislative Research Council



Volume 35

Monday, 8:00 a.m., December 1, 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 Protection Services: (December 22, 2008) intends to amend rules to deny an application for adoption services, a family foster home license, or a family day care license if a criminal record check of the applicant or any household member detects a felony conviction within the preceding five years, a crime that would indicate harmful behavior towards children, a crime of violence, or a sex crime; specify that the Department will obtain a criminal records check on an applicant applying through another child placement agency if the child placement agency is unable to obtain the record check on its own; add Haemophilus Influenzae Type b (Hib) and Hepatitis B (Hep B) to the list of immunizations required of an adoption applicant and the applicant's family; no longer require tuberculin skin tests for an adoption applicant, a family foster care applicant, a family day care applicant, or a member of the applicant's household; allow a certified nurse practitioner or physician's assistant to complete the physical exam form on behalf of an adoption applicant; establish a process to be used for removing an individual's name from the state's central registry of abuse and neglect when the screening locates an individual's name on the central registry of another state or when the screening locates a report that was substantiated by a tribal program, specify that hot water in a family foster home must be at least 110 degrees Fahrenheit and may not exceed 130 degrees Fahrenheit; require railings in family foster homes to meet local building codes for height or be at least 34 inches high, whichever is greater,

and have intermediate rails or an ornamental pattern such that a sphere four inches in diameter cannot pass through any opening; establish water safety standards that a family foster home must meet if there is any body of water in the play area and establish additional safety standards that must be met if the body of water is a swimming pool or a hot tub; require an applicant for employment in a group care center to provide three professional references and require the contacts with the references to be documented before the individual is hired; require an employee of a group care center who is under age 21 to be at least three years older than any child the employee supervises and work under the direct supervision of an experienced staff member who is at least 21 years old; require a group care center provider to submit a copy of its building plans for a new facility or the planned renovation or alternation of an existing facility and specify the information that must be included on the plans; require a residential treatment center to include in a child's treatment plan an assessment of the child's needs, strengths, weaknesses, and problems, treatment goals, and timelines for achieving the stated goals; require a foster parent applicant of a child placement agency to obtain at least 30 hours of orientation training in specified areas before receiving an initial license; and specify that a foster home must attempt to preserve a foster child's religious heritage when possible. The general authority for these rules, as cited by the department, is SDCL 26-4-9.1, 26-6-14.3, and 26-6-16.

A public hearing will be held in Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on December 22, 2008, at 9:00 a.m. Copies of the

proposed rules may be obtained from and written comments sent to Virgena Wieseler, Division Director, Division of Child Protection Services, 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. Wieseler may be contacted by telephone at (605) 773-3227. Written comments must be received by January 2, 2009, 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) 773-3227 at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Appointment:

James P. Smith, Pierre, was appointed on November 18, 2008, to the **Board of Pardons and Paroles**, to replace Theodore Pins, effective November 18, 2008, and shall continue until January 16, 2012.

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

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.
11-6-2008 rescheduled to 12-4-2008	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

		<p>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</p>
--	--	---

		<p>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</p>
--	--	---

		<p>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</p>
--	--	---

		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.
12-4-2008	Game, Fish and Parks	Amend Camping Permits and Rules to increase the campsite reservation fee for non-residents from \$5.00 to \$7.70; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; establish the number of licenses/tags available which will include offering residents 970 less one-tag "male turkey" and 1,140 more two-tag "any turkey" licenses for the Prairie Units than 2008 for an overall increase of 1,310 tags (+11%); offer nonresidents 28 less one-tag "male turkey" and 34 more two-tag "any turkey" licenses for the Prairie Units than 2008 for an overall increase of 40 tags (+5%); combine Perkins County units 53A and 53B to make one unit (53A); combine Marshall (48A) and Roberts (55A) Counties into one unit (48A) with one season; eliminate the split season for the Day/Codington County units (22A and 22B) and create one unit (22A) with one season; open Moody and Hand Counties to statewide archery hunting, and close Brookings County to archery hunting west of I-29; strike language in the rule pertaining to sales of leftover licenses as such sales are already addressed in the "Application for License" rules (ARSD 41:06:01); eliminate the use of rifles to hunt turkeys in the Black Hills and restrict to bow and arrow, a shot gun using

		shot shells or a muzzleloading shotgun; add units 07A, 12A, 13A, 17A, 19A, 19B, 36A, 44A, 44B, 62A and 62B to those units restricted to bow and arrow, a shotgun using shot shells or a muzzleloading shotgun, thereby placing all units in eastern South Dakota under this restriction; and add unit PST-ZZ1 to the rule for the purchase of a preference point; amend a Custer State Park Spring Wild Turkey Hunting Season rule to increase the number of resident one-tag "male turkey" licenses available in Unit 1 (CST-CU1-32) from 125 to 135, and would add a Unit 2 (CST-ZZ1-99) in which no turkey license will be issued but an applicant for this unit shall accrue a preference point; amend a Waterfowl Hunting Season rule to retain the light goose Conservation Order and establish requirements and restrictions, season dates, open area, daily bag and possession limits for light geese; and change the dates for the light goose Conservation Order from February 10 through May 8 to February 14 through May 3; and amend a Spearing rule to add legal bow and arrow as a method for taking game fish in the areas listed in the rule as being open to spearing of game fish; 35 SDR 135.
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.
12-6-2008	Agriculture: Agricultural Services	Amend rules to adopt changes to the 2007 Pasteurized Milk Ordinance (PMO) and related documents that were passed at the 2007 National Conference on Interstate Milk Shipments and some other minor changes in definitions, sampling and testing procedures; 35 SDR 136.
12-9-2008	Environment and Natural Resources: 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	Health: 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.
12-15-2008	Health: Health Systems Development and Regulation	Amend J-1 Visa Waiver Program rules to allow up to ten special program waivers to be submitted annually. Urban and non-urban areas will each be allowed to apply for no more than five special program waivers from October 1 through March 31 of each year. Starting April 1 of each year, any remaining special program waiver slots may be filled by urban or non-urban areas; 35 SDR 136.
12-15-2008	Health: Data Statistics	Amend Hospital Charge Reporting rules to allow the hospitals to report charges and standards that provide for the validity and comparability of charge reports; 35 SDR 145.
12-17-2008	Health: Data Statistics and Vital Records	Amend Public Health Statistics rules to increase the fee for search, verification, or certified copy of the following vital events: birth, death, marriage, and divorce; 35 SDR 145.
12-17-2008	Agriculture: Agriculture Development	Amend <i>South Dakota Certified</i> TM beef program rules to alter the entity that issues the BQA/CMP certificate and distributes the manual; allow cattle to be born into the possession of a Beef Quality Assurance trained producer, instead of a BQA licensed producer, so long as they have remained in the possession of the original producer; allow eligible cattle to be enrolled past weaning as long as they have not left the premise of origin or before they are commingled with non-eligible steers or heifers that have originated off the original premise; and allow the feeding of additional feed products to include corn, grain sorghum, oats, wheat barley and distiller products during the final 100 days of the finishing phase of <i>South Dakota Certified Enrolled Cattle</i> TM ; 35 SDR 146.
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.
12-18-2008	Revenue and Regulation: Division of Insurance	Amend a rule to allow for the payment of commissions other than by means of direct deposit and in amounts less than \$25; 35 SDR 145.
12-18-2008	Agriculture: Agricultural Services	Amend a rule to increase the tonnage inspection fee for fertilizer products distributed in South Dakota; 35 SDR 146.
12-22-2008	Social Services: Child Protection Services	Amend rules to deny an application for adoption services, a family foster home license, or a family day care license if a criminal record check of the applicant or any household member detects a felony conviction within the preceding five years, a crime that would indicate harmful behavior towards children, a crime of violence, or a sex crime; specify that the Department will obtain a criminal records check on an applicant applying through another child placement agency if the child placement agency is unable to obtain the record check on its own; add Haemophilus Influenzae Type b (Hib) and Hepatitis B (Hep B) to the list of immunizations required of an adoption applicant and the applicant's family; no longer require tuberculin skin tests for an adoption applicant, a family foster care applicant, a family day care applicant, or a member of the applicant's household; allow a certified nurse practitioner or physician's assistant to complete the physical exam form on behalf of an adoption applicant; establish a process to be used for removing an individual's name from the state's central registry of abuse and neglect when the screening locates an individual's name on the central registry of another state or when the screening locates a report that was substantiated by a tribal program, specify that hot water in a family foster home must be at least 110 degrees Fahrenheit and may not exceed 130 degrees Fahrenheit; require railings in family foster homes to meet local building codes for height or be at least 34 inches high,

		<p>whichever is greater, and have intermediate rails or an ornamental pattern such that a sphere four inches in diameter cannot pass through any opening; establish water safety standards that a family foster home must meet if there is any body of water in the play area and establish additional safety standards that must be met if the body of water is a swimming pool or a hot tub; require an applicant for employment in a group care center to provide three professional references and require the contacts with the references to be documented before the individual is hired; require an employee of a group care center who is under age 21 to be at least three years older than any child the employee supervises and work under the direct supervision of an experienced staff member who is at least 21 years old; require a group care center provider to submit a copy of its building plans for a new facility or the planned renovation or alternation of an existing facility and specify the information that must be included on the plans; require a residential treatment center to include in a child's treatment plan an assessment of the child's needs, strengths, weaknesses, and problems, treatment goals, and timelines for achieving the stated goals; require a foster parent applicant of a child placement agency to obtain at least 30 hours of orientation training in specified areas before receiving an initial license; and specify that a foster home must attempt to preserve a foster child's religious heritage when possible; 35 SDR 155.</p>
--	--	---

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>.

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>).