



SOUTH DAKOTA REGISTER

Published weekly by the Legislative Research Council

Volume 49

Monday, 8:00 a.m., June 12, 2023

FILINGS WITH THE LEGISLATIVE RESEARCH COUNCIL

Notice of Proposed Rules

Date in parentheses indicates when rules were filed with the Legislative Research Council.
Copies of proposed rules may be obtained for no charge at <https://rules.sd.gov> or from the agency directly.

South Dakota Real Estate Commission (Department of Labor and Regulation): (June 6, 2023) intends to amend rules to reestablish qualifications for the reinstated restricted broker's license for auctioneers and reinstate a prohibition against unlicensed callers and bid takers in an auction sale. The general authority for these rules, as cited by the commission, is SDCL 36-21A-89.

A public hearing will be held via [Microsoft Teams](#) and conference call on July 10, 2023, at 10:00 a.m. (CT). Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, the South Dakota Real Estate Commission, 217 West Missouri Avenue, Pierre, South Dakota 57501. Comments may be emailed to dlr.realestate@state.sd.us. Written comments must reach the commission by July 3, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the commission can make arrangements may call (605) 773-3600 at least 48 hours before the public hearing.

Professional Teachers Practices and Standards Commission (Department of Education): (June 6, 2023) intends to amend rules to clarify references to educators and add a requirement to the code of ethics for the reporting of violations of the code. The general authority for these rules, as cited by the commission, is SDCL 13-3-69, 13-42-3, 13-42-33, 13-43-20, and 13-43-25.

A public hearing will be held at the MacKay Building, First Floor, Conference Room 1, 800 Governors Drive, Pierre, South Dakota, on June 27, 2023, at 8:30 a.m. (CT). Copies of the proposed rules may be obtained without charge from South Dakota Department of Education, Attn: Ferne Haddock, 800 Governors Drive, Pierre, South Dakota 57501. Written comments may be sent to South Dakota Department of Education, Attn: Ferne Haddock, 800 Governors Drive, Pierre, South Dakota 57501; emailed to Ferne.Haddock@state.sd.us; or submitted at <https://rules.sd.gov>. Material sent by mail or email must reach the department by June 22, 2023, to be considered. This hearing is being held in a physically accessible location. Persons with special needs for which the commission can make arrangements may call (605) 773-3553 at least 48 hours before the public hearing.

South Dakota Animal Industry Board (Department of Agriculture and Natural Resources): (June 9, 2023) intends to adopt and amend rules to comply with and expand upon statutory authority pertaining to confidential records held by a state agency. The board also intends to adopt a rule to specify that sales of retail meat products only occur when the producing retail store has full control of the sanitation, storage, and transportation of the meat product until purchased by the consumer. Additionally, the board seeks to amend rules regarding meat inspection. The general authority for these rules, as cited by the board, is SDCL 39-5-11.2, 39-5-31, 40-3-14, 40-3-27, and 40-3-29.

A public hearing will be held at the Animal Industry Board Office, 411 South Fort Street, Pierre, South Dakota, on July 11, 2023, at 9:00 a.m. Copies of the proposed rules may be obtained without charge from, and written comments may be sent to, South Dakota Animal Industry Board, 411 South Fort Street, Pierre, South Dakota 57501. Material sent by mail must reach the board by July 10, 2023, to be considered. All written comments must include the name, city, and state of the person submitting the comments. This hearing is being held in a physically accessible location. Persons with special needs for which the commission can make arrangements may call (605) 773-3321 at least 48 hours before the public hearing.

Petition for Rules

The **Department of Game, Fish and Parks** on June 7, 2023, served on the Interim Rules Review Committee and director of the Legislative Research Council petitions received from interested persons, per [SDCL 1-26-13](#), to amend administrative rule to modify the no wake zone at the Cedar Shores marina on Lake Francis Case ([ARSD 41:04:02:42](#)) and to restrict the use of crossbows for the take of paddlefish ([ARSD 41:07:05:02](#)). The [Game, Fish and Parks Commission](#) reviewed the petitions at its June 8-9, 2023, meeting.

Notice

The **Department of Social Services** intends to make changes to the South Dakota Medicaid State Plan to implement the inflationary rate increases appropriated by the South Dakota Legislature during the 2023 legislative session, effective July 1, 2023. The Health Home Quality incentive payment and the Per Member per Month payments will receive a five percent inflationary increase. The updated fee schedule will be posted on the department's website at <http://dss.sd.gov/medicaid/providers/feeschedules/dss/>. The proposed State Plan Amendment (SPA) revises the Health Homes MACPro payment methodology pages.

The department estimates the fiscal impact will be \$21,637 in state funds and \$39,710 in federal funds, totaling \$61,347 in Federal Fiscal Year 2023, and \$97,163 in state funds and \$148,229 in federal funds, totaling \$245,392 in Federal Fiscal Year 2024.

The SPA is available to view on the department's website at <http://dss.sd.gov/medicaid/medicaidstateplan.aspx>. Copies of the proposed SPA pages are also available at the Department of Social Services, Division of Medical Services. Written requests for a copy of these changes, and corresponding comments may be sent to Division of Medical Services, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291. The public comment period will start June 12, 2023, and end July 12, 2023.

FILINGS WITH THE OFFICE OF THE SECRETARY OF STATE

Executive Order

Governor Noem has signed [Executive Order 2023-09](#), dated June 10, 2023, declaring a state of emergency in South Dakota for purposes of exempting deliveries of certain liquid products including gasoline, diesel, jet fuel, propane, ethyl alcohol, and natural gasoline from the United States Department of Transportation's Motor Carrier Safety Regulations (49 C.F.R. Parts 390-399). The purpose of the Order, as described in the document, is to maintain supplies of these products used for transportation and agriculture functions by exempting drivers of vehicles transporting these products from certain federal transportation requirements. It does not require nor allow fatigued drivers to operate transport vehicles and does not exempt drivers from other requirements concerning the use of controlled substances or alcohol, maintaining a commercial driver's license and financial responsibility, and meeting applicable size and weight requirements, among other requirements. The Order will expire upon conclusion of the emergency but not later than midnight on July 9, 2023.

Executive Appointments

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeding</u>	<u>Effective/End Date</u>
Board of Economic Development			
Kevin Tetzlaff Brookings	Governor	Reappointed	6/6/2023 – 4/19/2027
South Dakota Aeronautics Commission			
Kassidy Nelson Aberdeen	Governor	Reappointed	6/1/2023 – 10/30/2025
Gerald Rieber Watertown	Governor	Reappointed	6/6/2023 – 10/30/2025
South Dakota Board of Regents			
Randy Frederick Hayti	Governor	James Thares	6/6/2023 – 3/31/2029
Randall B. Rasmussen Vermillion	Governor	Jon Bastian	6/6/2023 – 3/31/2028
South Dakota State Railroad Board			
Scott N. Lockwood Rapid City	Governor	Gary Doering	6/6/2023 – 10/30/2025
Water Management Board			
Leo Holzbauer Delmont	Governor	Reappointed	6/6/2023 – 6/30/2026

SCHEDULED PUBLIC HEARINGS

6-12-2023	<u>Department of Health:</u> Amend rules to add a newly recognized communicable disease with public health impact to the Category I reportable diseases and condition list; update or delete a communicable disease from the Category II reportable disease and condition list; and clarify the methods of reporting; 49 SDR 99, May 8, 2023.
6-13-2023	<u>South Dakota Commission on Gaming (Department of Revenue):</u> Amend and adopt rules to standardize violations for both illegal substances and violations involving permitted drugs relating to horse racing; increase the fine that may be assessed for such violations; adopt the most recent version of the Association of Racing Commissioners International Uniform Clarification Guidelines for Foreign Substances and Recommended Penalties as applied to authorized drugs, fines, and penalties for violations; increase the permissible bute levels to an amount that is stable, in line with other jurisdictions, and consistent with trainer requests; and rescind a rule relating to the penalty for violation of permitted drug restriction; 49 SDR 109, May 30, 2023.
6-20-2023	<u>South Dakota Investment Council:</u> Adopt rules to clarify the South Dakota Investment Council's declaratory ruling process and repeal unnecessary rules; 49 SDR 107, May 22, 2023.
6-22-2023	<u>Department of Social Services:</u> Amend rules to update the nursing facility rate setting and case mix validation process to use the Patient-Driven Payment Model (PDPM) instead of the M3PI; rebase

	nursing facility rates to use current cost data to match with PDPM case mix data; remove the occupancy rule from direct care; remove the overall rate limit increase; move to inflation calculations based on the nursing facility market basket index; update the depreciation edition referenced in rule; reflect a change in cost ceilings for capital costs; update the case mix validation process; remove the on-site requirement for classification reviews conducted by the department; remove or repeal outdated provisions; and update the Medicaid provider reimbursement manual citation; 49 SDR 113, June 5, 2023.
6-26-2023	<u>South Dakota Division of Insurance (Department of Labor and Regulation)</u> : Amend rules in ARSD article 20:06 to update the sources referenced in rule to the most recent editions, to clean up a broken URL for another rule, and repeal a rule for which the referenced law implemented statute will be repealed effective July 1, 2023.; 49 SDR 113, June 5, 2023.
6-27-2023	<u>Board of Addiction and Prevention Professionals (Department of Social Services)</u> : Amend and adopt rules to change the timeline for renewal of certificates and licenses to a biennial renewal; revise fees consistent with a biennial renewal for certificates and licenses; establish an annual renewal for trainee recognition based on issue date; revise fees consistent with an annual renewal of trainee recognition; adopt a Code of Ethics for trainees and certificate or license holders; eliminate fees for certain services; clarify application information needed for trainees and certificate and license holders to obtain or new; update the continuing education requirements; and update regulations to conform to current standards; 49 SDR 110, May 30, 2023.
6-27-2023	<u>Professional Teachers Practices and Standards Commission (Department of Education)</u> : Amend rules to clarify references to educators and add a requirement to the code of ethics for the reporting of violations of the code; 49 SDR 117, June 12, 2023.
6-28-2023	<u>State Board of Elections (Office of the Secretary of State)</u> : Amend rules to change the date for a statewide runoff; prescribe the oath for a county recount board; prescribe the notice for testing automatic tabulating equipment and prescribe the method for testing such equipment; describe how to seal automatic tabulating machines; prescribe ballot box storage and security; clarify how an auditor is to conduct absentee balloting at nursing facilities, assisted living centers, and hospitals; make changes to the voter registration form; add email address and telephone number to the precinct committeeman or committeewoman statement; change the acknowledgement notice for rejected voter registrations from forwardable to non-forwardable; clarify the procedures for voter registration file security; and prescribe the oath for a post-election audit board; 49 SDR 114, June 5, 2023.
7-7-2023	<u>South Dakota Board of Education Standards (Department of Education)</u> : Adopt a rule to require all school districts to uniformly transcribe postsecondary credits onto a student's high school transcript; 49 SDR 95, May 1, 2023.
7-10-2023	<u>South Dakota Real Estate Commission (Department of Labor and Regulation)</u> : Amend rules to reestablish qualifications for the reinstated restricted broker's license for auctioneers and reinstate a prohibition against unlicensed callers and bid takers in an auction sale; 49 SDR 117, June 12, 2023.
7-11-2023	<u>South Dakota Animal Industry Board (Department of Agriculture and Natural Resources)</u> : Adopt and amend rules to comply with and expand upon statutory authority pertaining to confidential records held by a state agency. The board also intends to adopt a rule to specify that sales of retail meat products only occur when the producing retail store has full control of the sanitation, storage, and transportation of the meat product until purchased by the consumer. Additionally, the board seeks to amend rules regarding meat inspection; 49 SDR 117, June 12, 2023.
7-20-2023	<u>Department of Agriculture</u> : Amend and adopt rules to update the state's existing hazardous waste rules by incorporating updated codified federal regulations adopted from July 1, 2018 through June 30, 2022, by reference; 49 SDR 109, May 30, 2023.
7-21-2023	<u>South Dakota Speech-Language Pathology Board of Examiners (Department of Health)</u> : Amend and adopt rules to remove unnecessary barriers to licensure; update language to reflect current technology and practice; and correct references to authority and legal references; 49 SDR 110, May 30, 2023.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee for the 2023 Interim is Tuesday, June 13, 2023, at 10:00 a.m. (CT) via electronic conference and in Room 414 of the Capitol. Future meetings for the 2023 Interim are scheduled for July 18,

August 8, September 12, and November 7. Find notices of committee meetings in this publication, on the [LRC website](#), and at the Capitol.

The Drafting Manual for Administrative Rules in South Dakota is available on the [Administrative Rules Manual page](#) of the LRC website and is updated regularly to reflect changes in drafting styles and procedures.