

REGISTER

South Dakota Legislative Research Council



Volume 37

Monday, 8:00 a.m., August 23, 2010

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

Department of Revenue and Regulation:

Commission on Gaming: (August 16, 2010) is proposing to amend Racing rules to eliminate the requirement that the paddock judge inspect the horses' shoes and that horses wear head numbers when racing, clarify the procedure used when a race horse owner changes trainers, establish that a jockey fee is earned at the time the jockey enters the paddock for the race, establish that the fee paid to a jockey available to ride the race but who has been removed at the election of the owner or trainer equals the fee paid to the jockey who actually rides the horse, allow acceptance of race entries for races when the original or photocopy of the horse's registration papers are not on file at entry time, clarify that a race track may require identifying tattoos on all horses on the track, allow the use of furosemide (lasix) in race horses when placed on the bleeder list, clarify the requirements and procedures for administering furosemide (lasix) to horses, correct an inconsistency with ARSD 20:04:27:13.09, reflect current wagering equipment capabilities, allow for superfecta wagering at horse races in South Dakota, and correct an inconsistency with ARSD 20:04:33:26(8); and amend Gaming rules to allow for a variation of play for blackjack called Blackjack Switch, allow for a variation of poker known as Ultimate Texas Hold 'em Progressive, allow for a variation of poker known as Caribbean Stud Poker Progressive, allow for variations of poker known as Four-Card Poker Progressive and Crazy 4 Poker Progressive, allow for a variation of poker known as Let It Ride Progressive, allow for a variation of poker

known as Mississippi Stud Progressive, allow for a variation of poker known as Texas Hold 'em Bonus Poker Progressive, clarify procedures used in casino management of progressive slot machine meter sign reconciliation and underpayments to patrons, promulgate application for licensure and reporting requirements for a new category of licenses known as gaming property owners licenses, allow the Commission to require additional persons to be licensed when organizations hold gaming property owners licenses, and clarify that organizations holding gaming property owners licenses be considered persons for purposes of laws that restrict a person from holding more than three retail gaming licenses. The general authority for these rules, as cited by the commission, is SDCL 42-7-56, 42-7B-4, and 42-7B-7.

A public hearing will be held at the City Hall, 102 Sherman Street, Deadwood, South Dakota, on September 15, 2010, at 9:00 a.m. MT. Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Commission on Gaming, 221 West Capitol Avenue, Suite 101, c/o 1320 East Sioux Avenue, Pierre, South Dakota 57501-3100. Materials sent by mail must reach the Commission on Gaming by September 15, 2010, to be considered. However, the Commission requests that all written comments be received by September 10, 2010, to allow for adequate consideration prior to the hearing. This hearing is being held in a physically accessible place. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-6050 or (605) 578-3074 at least 48 hours before the hearing.

Department of Environment & Natural Resources: Environmental Services:

(August 18, 2010) intends to adopt rules to implement South Dakota's Regional Haze Program for the two Class I areas (Badlands and Wind Cave National Parks). The general authority for these rules, as cited by the department, is SDCL34A-1-6.

A public hearing will be held at the Coolidge Meeting Room, Creekside Lodge, 13389 U.S. Highway 16A, Custer, South Dakota, on September 15, 2010, at 9:00 a.m. MDT. Copies of the proposed rules may be obtained from and written comments sent to Rick Boddicker, Environmental Senior Scientist, Department of Environment and Natural Resources, 523 E. Capitol, Joe Foss Building, Pierre, South Dakota 57501 or by calling Lita Magedanz at 605-773-3151. Copies of the proposed rules can also be obtained by visiting the Department's web page at <http://denr.sd.gov/des/aq/airprogr.aspx>.

Written comments must be received by close of business on September 14, 2010, to be considered. 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) 773-3151 at least 48 hours before the public hearing.

Bureau of Personnel: Career Service

Commission (August 18, 2010) intends to amend a rule to add two additional categories of leave related to military leave to the list of reasons for which eligible employees may take family and medical leave. The general authority for this rule, as cited by the bureau, is SDCL 3-6-10.1.

A public hearing will be held in Room 412, Fourth Floor, State Capitol, Pierre South Dakota, on September 15, 2010, at 8:30 a.m. Copies of the proposed rule may be obtained without charge from and written comments sent to the South Dakota Career Service Commission, Room 110, State Capitol, 500 E. Capitol, Pierre, South Dakota 57501-1234.

Written comments must be received by September 15, 2010, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the bureau can make arrangements are asked to call (605) 773-4918 at least 48 hours before the hearing,

Department of Revenue and Regulation:

Property and Special Taxes: (August 19, 2010) intends to amend Property and Special Taxes rules to update manuals to current version, ensure all Certified Appraiser Assessors receive updated training in the ethical requirements for their job, allow companies to compete in providing the cost manuals that are used to assess real property, update real estate abstract classes and remove NA-Z and NA-Z1 classes due to the repeal of NA-Z statutes and change to productivity valuation of agricultural land, change rules due to a change in law relating to the calculation of NA-Z properties and productivity valuation of agricultural land, remove a cross-reference due to a change in the law, allow for the uniform assessment of agricultural land limited in use because of a permanent easement, contract with School and Public Lands, or certain ordinances, allow retailers to sell any size bottle of alcohol, and make certain rules that pertain to malt beverages more consistent with similar rules that affect all other alcoholic beverages. The general authority for these rules, as cited by the department, is SDCL 10-1-15, 10-1-16.1, 10-3-1.2, 10-6-33.13, 10-10-6, and 35-10-1.

A public hearing will be held in the Anderson Building, Room 109, 445 E. Capitol Avenue, Pierre, South Dakota, on September 10, 2010, at 9:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to the Department of Revenue and Regulation, Legal Division, 445 East Capitol Avenue, Pierre, South Dakota 57501-3185, or by emailing John.Richter@state.sd.us. Copies of the rules are also available at the department's website: <http://www.state.sd.us/drr2/prospectax/STRULES10.pdf>. Material sent by mail must reach the

department by September 20, 2010, to be considered. 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) 773-4701 at least 48 hours before the hearing.

Department of Education: Board of Education: (August 20, 2010) intends to amend rules to provide valid and reliable testing procedures for any school district choosing to write their own end-of-course exams. The general authority for these rules, as cited by the board, is SDCL 13-1-12.1 and 13-3-47.

A public hearing will be held at 1000 Sorenson Drive, Chamberlain, South Dakota, on September 28, 2010, at 1:00 p.m. CT. Copies of the proposed rules may be obtained without charge from the Department of Education, South Dakota Board of Education, 800 Governors Drive, Pierre, South Dakota 57501-2291 or from the Internet at <http://doe.sd.gov/secretary/board/schedule.asp>. Written comments may be sent to the board at the address above and must be received by September 21, 2010, to be considered. 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) 773-5669 at least 48 hours before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Appointments:

Patricia LeBrun, Rapid City, was reappointed on August 16, 2010, to the **South Dakota Science and Technology Authority**, effective immediately and shall continue until August 8, 2016.

Scott Pelham, Pierre, was appointed on August 16, 2010, to the **Planning Council on Developmental Disabilities**, to replace Carol

Ruen, effective August 16, 2010.

Carl Anderson, Aberdeen, was reappointed on August 18, 2010, to the **South Dakota State Railroad Board**, effective immediately and shall continue until June 30, 2014.

Dan W. Baker, Rapid City, was reappointed on August 18, 2010, to the **South Dakota State Railroad Board**, effective immediately and shall continue until June 30, 2014.

Todd Yeaton, Highmore, was reappointed on August 18, 2010, to the **South Dakota State Railroad Board**, effective immediately and shall continue until June 30, 2014.

Executive Orders:

The Governor has signed **Executive Order 2010-31** dated August 16, 2010. This order declares a state of emergency to exist in the counties of Aurora, Beadle, Buffalo, Charles Mix, Clay, Codington, Corson, Custer, Day, Deuel, Gregory, Hand, Hutchinson, Jerauld, Kingsburg, Lake, Lyman, McCook, Pennington, Sanborn, Spink, Turner, and Ziebach due to the severe weather with extremely heavy rainfall, ground saturation, and flooding during May and June 2010.

The Governor has signed **Executive Order 2010-32** dated August 18, 2010. This order rescinds Executive Order 2010-25.

The Governor has signed **Executive Order 2010-33** dated August 18, 2010. This order rescinds Executive Order 2010-26.

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

8-25-2010	Military and Veteran Affairs	Amend a rule regarding furloughs for residents of the Michael J. Fitzmaurice South Dakota Veterans Home; 36 SDR 199.
9-2-2010	Human Services: Division of Developmental Disabilities	Amend ICR/MR rules to change individual to person supported or supported person throughout the article, ensure the article is applicable to any facility that qualifies as an intermediate care facility for persons with mental retardation (ICR/MR), clarify what comprehensive functional assessments are needed versus evaluations, clarify when an individual support team must meet, clarify the responsibilities of a qualified mental retardation professional, remove language from the rule on time-out rooms due to their redundancy, clarify who may prescribe psychotropic medication other than a physician, change terminology throughout from strategies to behavior treatment plan, repeal the requirement to notify the parent or legal guardian at least quarterly of the status of the individual support plan, clarify who may discontinue medications other than the physician, add a new chapter that addresses those issues only applicable to a private ICF/MR not otherwise covered in the existing article including: the provision of an on-site review for the completion of an inspection of a minimum of five percent of the persons supported, a requirement to submit a plan to the division for approval of any new construction or remodeling; a requirement that no more than eight people may reside in any home managed by the private ICR/MR after January 1, 2011, a requirement that the division may visit at any time without notice and the requirement that the private ICR/MR must grant access to the division, requirements on completing an inventory for client and agency planning to determine the supported person's functional limitations, an additional listing of rights that should be afforded to the supported person, a requirement that rights be

		<p>limited to protection of the supported person or others, to provide specific services or supports and to promote the least restrictive alternative, and a requirement that the supported person, parent or guardian, be made aware of the appeal process, requirement to develop and implement a restoration plan any time rights are limited; requirement that the facility develop a policy on abuse neglect, exploitation or injury of unknown source and procedures for notifying the appropriate entities, a requirement to ensure that any allegations of abuse, neglect, exploitation or injury of unknown source is investigated by the ICR/MR or other officials pursuant to state law, a requirement to give verbal notice the next working day of any critical incident, what constitutes a critical incident and a requirement to submit a critical incident report using the division's on-line system within seven calendar days, a requirement to demonstrate how the supported person's preferences are identified and prioritized during the individual support plan development, a requirement to develop a transition plan within 180 days from the date of admission, to review that plan annually, and to provide the supported person, parent or guardian, with a list of home and community based services and the community support providers; 37 SDR 17.</p>
9-10-2010	Revenue and Regulation: Property and Special Taxes	<p>Amend Property and Special Taxes rules to update manuals to current version, ensure all Certified Appraiser Assessors receive updated training in the ethical requirements for their job, allow companies to compete in providing the cost manuals that are used to assess real property, update real estate abstract classes and remove NA-Z and NA-Z1 classes due to the repeal of NA-Z statutes and change to productivity valuation of agricultural land, change rules due to a change in law relating to the calculation of NA-Z properties and productivity valuation of agricultural land, remove a cross-reference due to a change in the law, allow for the uniform assessment of agricultural land limited in use because of a permanent easement, contract with School and Public Lands, or certain ordinances, allow</p>

		retailers to sell any size bottle of alcohol, and make certain rules that pertain to malt beverages more consistent with similar rules that affect all other alcoholic beverages; 37 SDR 34.
9-14-2010	Agriculture: Division of Agricultural Services	Amend a rule to decrease the raw milk assessment fee; 37 SDR 29.
9-15-2010	Revenue and Regulation: Commission on Gaming	Amend Racing rules to eliminate the requirement that the paddock judge inspect the horses' shoes and that horses wear head numbers when racing, clarify the procedure used when a race horse owner changes trainers, establish that a jockey fee is earned at the time the jockey enters the paddock for the race, establish that the fee paid to a jockey available to ride the race but who has been removed at the election of the owner or trainer equals the fee paid to the jockey who actually rides the horse, allow acceptance of race entries for races when the original or photocopy of the horse's registration papers are not on file at entry time, clarify that a race track may require identifying tattoos on all horses on the track, allow the use of furosemide (lasix) in race horses when placed on the bleeder list, clarify the requirements and procedures for administering furosemide (lasix) to horses, correct an inconsistency with ARSD 20:04:27:13.09, reflect current wagering equipment capabilities, allow for superfecta wagering at horse races in South Dakota, and correct an inconsistency with ARSD 20:04:33:26(8); and amend Gaming rules to allow for a variation of play for blackjack called Blackjack Switch, allow for a variation of poker known as Ultimate Texas Hold 'em Progressive, allow for a variation of poker known as Caribbean Stud Poker Progressive, allow for variations of poker known as Four-Card Poker Progressive and Crazy 4 Poker Progressive, allow for a variation of poker known as Let It Ride Progressive, allow for a variation of poker known as Mississippi Stud Progressive, allow for a variation of poker known as Texas Hold 'em Bonus Poker Progressive, clarify procedures used in casino management of progressive slot machine meter sign

		reconciliation and underpayments to patrons, promulgate application for licensure and reporting requirements for a new category of licenses known as gaming property owners licenses, allow the Commission to require additional persons to be licensed when organizations hold gaming property owners licenses, and clarify that organizations holding gaming property owners licenses be considered persons for purposes of laws that restrict a person from holding more than three retail gaming licenses; 37 SDR 33.
9-15-2010	Environment and Natural Resources: Environmental Services	Adopt rules to implement South Dakota's Regional Haze Program for the two Class I areas (Badlands and Wind Cave National Parks); 37 SDR 34.
9-15-2010	Bureau of Personnel: Career Service Commission	Amend a rule to add two additional categories of leave related to military leave to the list of reasons for which eligible employees may take family and medical leave; 37 SDR 34.
9-28-2010	Education: Board of Education	Amend rules to provide valid and reliable testing procedures for any school district choosing to write their own end-of-course exams; 37 SDR 35.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 31, 2010, via the Digital Dakota Network (DDN) in Room 414, Fourth Floor, of the State Capitol. Other DDN sites will be: Aberdeen – NSU, 1200 S. Jay Street, Room Lib117; Huron – DOT, 901 Dakota St.; Mitchell – MTI, 1800 E. Spruce, Room TC155; Rapid City – DOT, 2300 Eglin St.; Sioux Falls – University Center, 2205 Career Ave., Room 282 S, and Yankton – DOT 1306 W. 31st St. The committee chair has set the following tentative meeting schedule for the 2010 interim: September 28, November 17, and December 20.

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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