

REGISTER

South Dakota Legislative Research Council



Volume 35

Monday, 8:00 a.m., October 27, 2008

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

Department of Health: Board of Nursing: (October 20, 2008) intends to amend rules to place certain policies adopted by the Nurse Licensure Compact Administrators for implementing the Nurse Licensure Compact into the form of administrative rules, and change the requirement for nurse practitioners and nurse midwives to have direct personal collaboration with a physician for one half day a week or a minimum of one hour per ten hours of practice to twice per month. The general authority for these rules, as cited by the board, is SDCL 36-9-92 and 36-9A-41.

A public hearing will be held in the Fontanelle A Room, Sheraton Hotel, 1211 North West Avenue, Sioux Falls, South Dakota, on November 13, 2008, at 9:00 a.m.. Copies of the proposed rules may be obtained without charge from and written comments sent to the Board of Nursing, 4305 South Louise Avenue, Suite 201, Sioux Falls, South Dakota 57106, or by calling (605) 362-2760. Written comments must be received by November 7, 2008, to be considered. Persons who have special needs for which the board can make arrangements are asked to call (605) 362-2760 before the public hearing.

Department of Education: Board of Education: (October 23, 2008) intends to amend rules to permit the state director of special education to appoint additional members to the complaint investigation team; give the Department flexibility in adding endorsements for certified teachers and administrators who

were previously restricted due to preparations that did not match the perceived level of initial preparation; grant additional stand-alone certificates previously not issued; give individuals who completed principal programs or endorsements without the required three years of experience to have another option for certification, and to recognize an advanced degree that is over 10 years old as valid. The general authority for these rules, as cited by the board, is 13-1-12.1, 13-37-1.1, and 13-42-3.

A public hearing will be held in the AmericInn conference room, 312 Island Drive, Ft. Pierre, South Dakota, on November 17-18, 2008, at 1:00 p.m. CST. Copies of the proposed rules may be obtained without charge from the Department of Education, South Dakota Board of Education, 700 Governors Drive, Pierre, South Dakota 57501-2291 or on 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 November 3, 2008, 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) 773-3426 at least 48 hours before the hearing.

Department of Revenue and Regulation: Commission on Gaming: (October 24, 2008) is proposing to amend Racing rules to prohibit licensees from giving illegal instructions; add safety vests, over-girth and breast collars to the list of items that are not included in a jockey's weight; reduce the maximum weight of a whip from one pound to eight ounces; prohibit horse shoes with toe grabs greater than two millimeters to be worn on front hooves of horses

while racing or training; provide guidelines for the humane use of the jockey's whip; create a list of prohibited practices of the jockey's whip in the ordinary course of running a race; require licensees seeking renewal of trainer's licenses or owner-trainer's licenses to complete at least four hours of continuing education each calendar year; amend Deadwood Gambling rules to define a poker podium; replace the requirement of an employee's social security number with the employee's license number and to incorporate portions from mandatory count procedures which are more relevant in the instant rule; remove a July 15 reporting requirement and clarify reporting requirements for changes in count and drop times, as well as to remove provisions of this rule which are more appropriately placed under Job description – List of personnel; clarify when table drop boxes must be removed and provide consistency under count procedures; correct terminology in the existing rule from card room bank to cashier's cage; correct terminology in the existing rule from chip bank cashier to poker podium or cage; create procedures for the use of poker podiums; repeal the requirement that an application for modification of slot machines be made on certain forms; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; create a procedure for the redemption of tickets when an operator goes out of business; eliminate a cross reference which refers to a rule that no longer exists; correct terminology relating to video imaging reproduction and recording; establish surveillance requirements for poker podiums; reduce the time that written records of surveillance activities must be maintained from five years to two years; eliminate the requirement that licensees maintain copies of reports and a copy of repair invoices on surveillance equipment malfunctions for one year from the date of repair; correct terminology relating to video imaging reproduction and recording; and reduce the time that records of surveillance activities

must be maintained from five years to two years. The general authority for these rules, as cited by the commission, is SDCL 42-7-56, 42-7-67, 42-7B-7, and 42-7B-11.

A public hearing will be held at the City Hall, 102 Sherman Street, Deadwood, South Dakota, on November 24, 2008, 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 November 24, 2008, to be considered. However, the Commission requests that all written comments be received by November 17, 2008, 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 Human Services: Board of Examiners of Psychology: (October 24, 2008) is proposing to amend rules to provide board jurisdiction over certain supervisors; update the code of conduct; and limit internships to psychology internships. The general authority for these rules, as cited by the board, is SDCL 36-27A-2, 36-27A-12, 36-27A-22, and 36-27A-25.

A public hearing will be held via the Digital Dakota Network (DDN) at the following locations: South Dakota State University, SPC 203, Brookings, South Dakota; South Dakota School of Mines and Technology, CB 109, Rapid City, South Dakota; University Center, 282, Sioux Falls, South Dakota; Black Hills State University, LIB 011, Spearfish, South Dakota; and the South Dakota Human Services Center, Staff Development 3B, Yankton, South Dakota, on November 13, 2008, at 8:30 a.m. CST, 9:30 a.m. MST. Copies of the proposed rules may be obtained without charge

from and written comments sent to the South Dakota Board of Examiners of Psychology, 135 East Illinois, Suite 214, Spearfish, South Dakota 57783. Written comments must be received by November 11, 2008, to be considered. Persons who have special needs for which the board can make arrangements may call (605) 642-1600 at least forty-eight hours before the hearing.

Department of Environment and Natural Resources: Water Management Board:

(October 24, 2008) has filed rules to 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. The general authority for these rules, as cited by the department, is SDCL 34A-2-11, 34A-2-33, 34A-2-34, and 34A-2-93.

A public hearing will be held at the Pierre Chamber of Commerce Community Room, 800 West Dakota Avenue, Pierre, South Dakota, on December 9, 2008, at 10:10 a.m. Copies of

the proposed rules may be obtained from and written comments sent to the South Dakota Department of Environment and Natural Resources, Surface Water Quality Program, PMB 2020, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501-3182 or by calling 605-773-3351. Written comments must be received by 5:00 p.m., December 8, 2008, 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) 773-3351 at least 48 hours before the public hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE: (None)

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

11-4-2008	Revenue and Regulation: Business Tax	Amend rules to correct the language of a rule and to comply with the Streamlined Sales Tax Agreement; 35 SDR 81.
11-6-2008	Revenue and Regulation: Division of Insurance	Amend rules to update the sources referenced in rule and add genetic discrimination requirements and new plan standards to the Medicare supplement rules; 35 SDR 93.
11-6-2008	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

		<p>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 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 hearing 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</p>
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		<p>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 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; clarify 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</p>
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		<p>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 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</p>
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		<p>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 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.</p>
11-12-2008	Social Services: Office of the Secretary	<p>Amend rules relating to administrative hearings for individuals or entities aggrieved by the Department's action or inaction. The proposed rules will clarify who can request an administrative hearing; repeal rules that duplicate other regulatory or statutory provisions; delete language that relates to the Department's internal procedures; specify the actions that an individual or entity must take to request a hearing; establish the time limit within which a child care provider or a recipient of child care services must request a hearing; allow the hearing examiner to determine if a hearing will be conducted by electronic means and remove the opportunity for a party involved in the action to request that a hearing not be held by electronic means; specify the information that is included in the</p>

		notice of hearing; except for appeals involving medical assistance, allow an individual to orally withdraw his or her request for a hearing; allow the hearing examiner to dismiss a case if the case is resolved before the hearing examiner enters a final decision; delete the term "abandonment" and replace it with "default"; specify those circumstances under which a hearing is considered to be in a default situation and subject to dismissal; clarify those procedures used when working to resolve a case before a final decision is entered; specify who may attend a hearing; require a corporation to be represented at the hearing by its attorney; and allow a time extension for mailing the final decision if a continuance of a hearing is requested and the parties to the action stipulate to the continuance; 35 SDR 95.
11-13-2008	Attorney General: Law Enforcement Officers Standards and Training Commission	Amend rules to eliminate the requirement that in order to obtain a waiver of ARSD 2:01:02:01, a law enforcement agency must demonstrate that the agency's jurisdiction includes fewer than five hundred persons and that a waiver is necessary to maintain an adequate law enforcement staff; to provide for the submission of written reports regarding continuing educational hours of officers to the executive secretary of Law Enforcement Training; to specify that officers are to re-qualify every calendar year on a certified shooting course and that firearms instructors must comply with certain requirements pursuant to ARSD 2:01:06:17.05; to set December 31 st as the time frame in which a certified law enforcement officer is required to meet continuing educational requirements; to update the Certification of Canine Teams Student Handbook; and to establish firearms instructor standards; 35 SDR 87.
11-13-2008	Agriculture: State Conservation Commission	Adopt rules to define the criteria for the award and selection process for the South Dakota Soil Conservation Award for the Award Winning Soil Conservation Farm; 35 SDR 87.
11-13-2008	Health: Board of Nursing	Amend rules to place certain policies adopted by the Nurse Licensure Compact Administrators for implementing the Nurse Licensure Compact into the form of administrative rules, and change the

		requirement for nurse practitioners and nurse midwives to have direct personal collaboration with a physician for one half day a week or a minimum of one hour per ten hours of practice to twice per month; 35 SDR 105.
11-13-2008	Human Services: Board of Examiners of Psychology	Amend rules to provide board jurisdiction over certain supervisors; update the code of conduct; and limit internships to psychology internships; 35 SDR 106.
11-17&18-2008	Education: Board of Education	Amend rules to permit the state director of special education to appoint additional members to the complaint investigation team; give the Department flexibility in adding endorsements for certified teachers and administrators who were previously restricted due to preparations that did not match the perceived level of initial preparation; grant additional stand-alone certificates previously not issued; give individuals who completed principal programs or endorsements without the required three years of experience to have another option for certification, and to recognize an advanced degree that is over 10 years old as valid; 35 SDR 105.
11-24-2008	Revenue and Regulation: Gaming Commission	Amend Racing rules to prohibit licensees from giving illegal instructions; add safety vests, over-girth and breast collars to the list of items that are not included in a jockey's weight; reduce the maximum weight of a whip from one pound to eight ounces; prohibit horse shoes with toe grabs greater than two millimeters to be worn on front hooves of horses while racing or training; provide guidelines for the humane use of the jockey's whip; create a list of prohibited practices of the jockey's whip in the ordinary course of running a race; require licensees seeking renewal of trainer's licenses or owner-trainer's licenses to complete at least four hours of continuing education each calendar year; amend Deadwood Gambling rules to define a poker podium; replace the requirement of an employee's social security number with the employee's license number and to incorporate portions from mandatory count procedures which are more relevant in the instant rule; remove a July 15 reporting requirement and clarify reporting requirements for changes in

		<p>count and drop times, as well as to remove provisions of this rule which are more appropriately placed under Job description – List of personnel; clarify when table drop boxes must be removed and provide consistency under count procedures; correct terminology in the existing rule from card room bank to cashier's cage; correct terminology in the existing rule from chip bank cashier to poker podium or cage; create procedures for the use of poker podiums; repeal the requirement that an application for modification of slot machines be made on certain forms; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; establish procedures governing the installation and use of on-line monitoring and controls systems in slot machines; create a procedure for the redemption of tickets when an operator goes out of business; eliminate a cross reference which refers to a rule that no longer exists; correct terminology relating to video imaging reproduction and recording; establish surveillance requirements for poker podiums; reduce the time that written records of surveillance activities must be maintained from five years to two years; eliminate the requirement that licensees maintain copies of reports and a copy of repair invoices on surveillance equipment malfunctions for one year from the date of repair; correct terminology relating to video imaging reproduction and recording; and reduce the time that records of surveillance activities must be maintained from five years to two years; 35 SDR 105.</p>
12-9-2008	Environment and Natural Resources: Water Management Board	<p>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.</p>

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, December 2, 2008, in LCR 1 & 2, Third 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>.

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