

REGISTER

South Dakota Legislative Research Council



Volume 34

Monday, 8:00 a.m., July 23, 2007

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

Department of Transportation: (July 19, 2007) is proposing to repeal those provisions of ARSD 70:08:01:03, the enforcement of which was permanently enjoined in *Dakota, Minn. & Eastern R.R. Corp. v. South Dakota*, 236 F. Supp. 2d 989; to specify the information to be included in an application for authority to exercise eminent domain pursuant to SDCL 49-16A-75; and to provide for retroactive effect so as to apply to any administrative proceeding under SDCL 49-16A-75 commenced on or before the effective date of the rule as amended; and repeal those provisions of ARSD 70:08:01:04, the enforcement of which was permanently enjoined in *Dakota, Minn. & Eastern R.R. Corp. v. South Dakota*, 236 F. Supp. 2d 989; to adopt a procedure for administering applications for authority to exercise the right of eminent domain pursuant to SDCL 49-16A-75; and to provide for retroactive effect so as to apply to any administrative proceeding under SDCL 49-16A-75 commenced and pending before the effective date of the rule as amended. The general authority for these rules, as cited by the department, is SDCL 49-16A-75.1.

A public hearing will be held in the commission room of the Becker/Hansen Building, 700 E. Broadway Avenue in Pierre, South Dakota, on August 13, 2007, at 9:05 a.m. CDT. Copies of the proposed rule may be obtained without charge from and written comments sent to the Secretary of Transportation, Becker-Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Material sent by

mail must reach the department prior to the hearing 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) 773-3265.

Department of Health: South Dakota Funeral Services Board: (July 20, 2007) intends to amend rules to accurately reflect the address at which the funeral board may be contacted; to raise the application fee for a funeral establishment license from \$100 to \$200; to raise the renewal fee for a funeral establishment license from \$100 to \$200; to change the application fee for a funeral service license from \$50 to \$100; and to raise the annual renewal fee for a funeral service license from \$50 to \$100. The general authority for these rules, as cited by the board, is SDCL 36-19-9 and 36-19-25.

A public hearing will be held by Digital Dakota Network at the following locations: Arlington High School, Arlington, South Dakota, Armour High School, Armour, South Dakota, SDSU, SPC 203, Brookings, South Dakota, DSU, TCB 103, Madison, South Dakota, CAP A, Pierre, South Dakota, and SDSM&T, CB 109, Rapid City, South Dakota, on August 23, 2007, at 3:00 p.m. MDT (4:00 p.m. CDT). Copies of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Funeral Services Board, 135 East Illinois, Suite 214, Spearfish, SD 57783. Written comments must reach the board by August 23, 2007, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the board can make arrangements are asked to call (605) 642-1600 at least 48 hours before the

hearing.

Department of Game, Fish and Parks:

(July 20, 2007) intends to adopt a definition for “preference point;” amend Duck Hunting Season rules to establish season dates, daily bag and possession limits for duck, coot and merganser; change the opening dates for the Low Plains North and Middle Zones from September 22 (Saturday closest to September 24) to September 29 (last Saturday of September); and change the opening date for the Low Plains South Zone from October 6 (Saturday closest to October 8) to October 13 (second Saturday of October) (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); amend Goose Hunting Season rules to establish season dates, daily bag and possession limits for Canada geese, light geese and white-fronted geese; merge the eight-county Canada goose unit in northeastern South Dakota (formerly Unit 3) with Unit 1; set the Canada goose season in Unit 1 to run for 86 days beginning on September 29 (last Saturday of September); change the light goose and white-fronted goose season opening dates from September 22 (Saturday closest to September 24) to September 29 (last Saturday of September) and change the season length from 85 to 86 days; and remove the Canada goose bag limit reduction (3 to 2) for portions of Grant and Roberts counties that was scheduled to take effect on December 1 (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); amend Furbearer Seasons and License Forms and Fees rules to create a nonresident furbearer license and set the license fee at \$250.00; establish season dates, requirements and restrictions, including prohibiting nonresidents from taking mink, weasel, muskrat, beaver and raccoon until the 1st Saturday of December, prohibiting nonresidents from taking bobcats until the 2nd Saturday of January, and prohibiting nonresidents from using dogs to aid in the taking of raccoons (Note – the proposed season dates are subject to being

modified following receipt of public comment at the hearing.); and amend Falconry Regulations (Nonresident permits) to establish a nonresident raptor collecting permit which allows nonresident falconers to take wild raptors for falconry purposes in South Dakota and set the fee for the permit at \$200.00. Resident and nonresident raptor collecting permittees would be allowed to take passage raptors (immature raptors in their first year plumage), adult American kestrels and adult great horned owls for falconry purposes with trapping of passage raptors permitted only between September 21 and January 31. Only resident general or master falconry permittees would be allowed to take eyas (young, flightless birds) from a nest or aerie but must leave at least one eyas in the nest or aerie. Eyas may be taken only between May 25 and July 10. Nonresidents taking passage gyrfalcons would be required to have the falcon banded in accordance with their home state’s falconry regulations. (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.) The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-6-10, 41-6-18.4, 41-6-19.6, 41-8-20, 41-11-5, and 41-17-1.1.

A public hearing will be held at the Watertown Event Center (Whitewood Room), 1901 9th Avenue SW, Watertown, South Dakota, on August 9, 2007, at 2:00 p.m. CDT. Copies of the proposed rules may be obtained from and written comments sent to Jeffrey R. Vonk, Secretary, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Written comments must be received by and in the office of the Secretary of the Department of Game, Fish and Parks on or before 12:00 Noon three (3) days prior to the date of the hearing, to be included within the record of the public hearing and to be considered by the Commission. Comments may also be sent by e-mail to chuck.schlueter@state.sd.us. E-mail comments must include the commenter’s name and address. 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) 773-3387 before the hearing.

FILINGS IN THE SECRETARY OF STATES OFFICE:

Attorney General Appointment:

Joan Boos Schueller, Pierre, was appointed as a Special Assistant Attorney General, to represent the Department of Health, effective July 16, 2007.

Executive Orders:

The Governor has signed **Executive Order 2007-15** dated July 17, 2007. In order to better coordinate the delivery of services to children, the Governor has created the "Kids Cabinet." The Kids Cabinet consist of the secretaries and appropriate staff from the following departments and staff from the Governor's Office: Department of Education, Department of Health, Department of Social Services, Department of Human Services, Department of Corrections, and in addition, other individuals as the Governor may appoint. The Department of Education shall coordinate the activities of the Kids Cabinet and provide staff assistance to the Kids Cabinet. Other departments shall assist the Department of Education as needed. The Kids Cabinet shall report annually to the Governor on its efforts to coordinate the delivery of services to children.

The Governor has signed **Executive Order 2007-16** dated July 18, 2007, which declares that a state of emergency exists statewide, and that the transportation of diesel, ethanol, gasoline and propane within South Dakota shall be exempt from 49 CFR Part 395, otherwise known as the federal hours of service

regulations. The executive order shall expire upon conclusion of the emergency, but no later than midnight, August 11, 2007.

The Governor has signed **Executive Order 2007-17** dated July 19, 2007, which creates the Advisory Council for Spinal Cord/Traumatic Brain Injury Research (hereafter referred to as "the Council"). The Council will operate through the USD School of Medicine for the purpose of obtaining federal grants, private donations, and other funds for funding research projects and rehabilitation services for persons with spinal cord or traumatic brain injuries, and for promotion of the advancement of knowledge in the area of spinal cord and traumatic brain injury. The research may include such things as cellular studies aimed at developing new therapies to restore neurological functions, as well as clinical research projects that involve human beings. Council members will not receive compensation, but are entitled to per diem and travel expenses while attending meetings of the Council in accordance with established state law. The USD School of Medicine will provide administrative staffing and technical assistance to support the Council and will pay expenditures associated with the Council.

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

7-27-2007	Social Services: Medical Services	<p>Amend rules to incorporate by reference the latest versions of the <u>Physicians' Current Procedural Terminology</u> (cpt) manual, the <u>International Classification of Diseases, 9th Revision, Clinical Modification</u> (ICD-9-CM) manual, and the <u>Common Procedure Coding System</u> (HCPCS) manual; define the term "clinical nurse specialist"; delete the definition of "clozaril therapy"; move the Department's fee schedules for physician services to the Department's website and establish a system under which a provider can request an amendment to the schedules; amend existing rules to relate to the fee schedules being moved to the Department's website; include additional two-letter modifiers to be used by providers when submitting certain claims to the Department; establish the formula for calculating the rate of reimbursement for procedure codes containing modifiers; when applicable, specify those modifier codes that must be reported; delete a reference to a repealed rule; add cross-references; allow hyperbaric oxygen therapy for diabetic wounds of the lower extremities under certain conditions; specify the conditions and supporting evidence that must exist before noninvasive bone-growth stimulation may be a covered service; allow payment for occupational therapy services prescribed by a physician and provided by a licensed therapist; establish the rate of reimbursement for services provided by a clinical nurse specialist; clarify that an employee under the direct supervision of a participating physician must use his or her own provider identification number and may not bill under the supervising physician's number; specify that an employee working under the direct supervision of a participating provider and providing mental health or counseling services must meet the requirements of chapter 67:16:41 (Mental Health Services by Independent Practitioners); when submitting a claim for immunizations, require that the claim contain the applicable procedure code for the administration of the</p>
-----------	-----------------------------------	--

		<p>vaccine and an additional procedure code for the vaccine itself and, if the vaccine is supplied by the state, require that the claim include a specified two-letter modifier that must be attached to the procedure code being billed; expand those medical services that are subject to the requirements contained in Chapter 67:16:39 (Case Management – Primary Care Provider); repeal Appendix A (List of Physician Nonlaboratory Procedures), Appendix B (List of Physician Laboratory Procedures), and Appendix C (Physician Medical Procedures – Medicare Maximum Allowances); transfer the list of modifier codes for physician services from Appendix D to a new rule; increase the amount of the cost outlier for hospital claims paid under the DRG system; no longer require that an x-ray be taken to substantiate the existence of a subluxation of the spine for purposes of chiropractic treatment; clarify that payments made for certain services are subject to and must be billed under existing rules governing hospital services, clinic services, ambulatory surgical services, federally qualified health centers (FQHCs), and rural health clinics (RHCs); specify that the estimated acquisition cost for Schedule II controlled substances is the average wholesale cost of the drug less 10.5 percent; update the definition of “pharmaceutical and therapeutics committee”; and allow medical claims to be submitted in an electronic format; 34 SDR 1.</p>
8-2-2007	Public Utilities Commission	<p>Amend telecommunications rules to add some requirements for applicants requesting a certificate of authority to provide interexchange services in South Dakota, including providing information to customers and the prevention of slamming and to delete some requirements, including the filing of tariffs, cost support for certain rates, and organizational information; clarify that any security filed by an interexchange company is only for the benefit of South Dakota customers; add requirements for alternative operator services regarding notification to customers prior to the customer incurring charges for a call and to delete the requirement</p>

		to file tariffs; regarding applications for certificates of authority to provide local exchange services in South Dakota: add some additional requirements, including providing information to customers and delete some requirements, including the filing of tariffs, cost support for certain rates, and organizational information; require some form of security as a condition to receiving a certificate of authority; waive the provisioning of a requirement for local exchange service if it is not necessary based on the type of service being provided; require a petition for arbitration of an interconnection agreement to be accompanied by written testimony, exhibits, cost support, request for protective order, and proposed procedural schedule; require that responses to arbitrations must contain the information that is required for petitions for arbitration; require a petition for suspension or modification of an interconnection requirement to include written testimony and exhibits; add a rule which sets forth how a person who is not a party to an arbitration may participate; clarify that an eligible telecommunications carrier must continue to file improvement plans after the filing of the initial plan; require the annual life line report to be filed with the annual certification; require local exchange companies to notify customers in advance of all interruptions due to maintenance, if possible, instead of just for "extended" interruptions; set forth the requirements for notifying customers when a new telephone company acquires the subscriber base of another carrier and to require the acquiring carrier must provide to the subscriber the rates, terms and conditions of service as well as other information and give notice 30 days before the transfer which would allow the subscriber sufficient time to choose a new carrier; and change how customers are notified of changes in rates, terms and conditions of service; 34 SDR 11.
8-2-2007	Revenue and Regulation: Division of Insurance	Amend rules to revise the standards for long term care and long term care partnership coverage; 34 SDR 23.
8-2-2007	Attorney General: Law Enforcement Officers Standards and Training	Amend rules to change the required license fee to \$75 for polygraph examiner applicants

	Commission	currently licensed in another state; add a statutory citation to the general authority section of ARSD 2:01:11:01; and update the Certification of Canine Teams Student Handbook; 34 SDR 23.
8-3-2007	Labor: Board of Counselor Examiners	Amend rules to offer unlicensed practitioners an opportunity for licensure, offer a wider selection of qualified supervisors, and make updates and clarifications to assist the licensee; 34 SDR 23.
8-6-2007	Labor: Board of Examiners in Optometry	Amend rules to allow discretion where appropriate in the minimum office equipment requirements of an optometrist; to make uniform references to licensure by endorsement; to clarify and eliminate apparent conflict in time frames for meeting requirements of licensing; to repeal ambiguous and inconsistent requirements for continuing education and licensure of optometrists; and add codes to the Procedural Code List as approved by the Board of Optometry; 34 SDR 24.
8-9-2007	Game, Fish and Parks	Adopt a definition for “preference point;” amend Duck Hunting Season rules to establish season dates, daily bag and possession limits for duck, coot and merganser; change the opening dates for the Low Plains North and Middle Zones from September 22 (Saturday closest to September 24) to September 29 (last Saturday of September); and change the opening date for the Low Plains South Zone from October 6 (Saturday closest to October 8) to October 13 (second Saturday of October) (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); amend Goose Hunting Season rules to establish season dates, daily bag and possession limits for Canada geese, light geese and white-fronted geese; merge the eight-county Canada goose unit in northeastern South Dakota (formerly Unit 3) with Unit 1; set the Canada goose season in Unit 1 to run for 86 days beginning on September 29 (last Saturday of September); change the light goose and white-fronted goose season opening dates from September 22 (Saturday closest to September 24) to September 29 (last Saturday of September) and

		<p>change the season length from 85 to 86 days; and remove the Canada goose bag limit reduction (3 to 2) for portions of Grant and Roberts counties that was scheduled to take effect on December 1 (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); amend Furbearer Seasons and License Forms and Fees rules to create a nonresident furbearer license and set the license fee at \$250.00; establish season dates, requirements and restrictions, including prohibiting nonresidents from taking mink, weasel, muskrat, beaver and raccoon until the 1st Saturday of December, prohibiting nonresidents from taking bobcats until the 2nd Saturday of January, and prohibiting nonresidents from using dogs to aid in the taking of raccoons (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); and amend Falconry Regulations (Nonresident permits) to establish a nonresident raptor collecting permit which allows nonresident falconers to take wild raptors for falconry purposes in South Dakota and set the fee for the permit at \$200.00. Resident and nonresident raptor collecting permittees would be allowed to take passage raptors (immature raptors in their first year plumage), adult American kestrels and adult great horned owls for falconry purposes with trapping of passage raptors permitted only between September 21 and January 31. Only resident general or master falconry permittees would be allowed to take eyas (young, flightless birds) from a nest or aerie but must leave at least one eyas in the nest or aerie. Eyas may be taken only between May 25 and July 10. Nonresidents taking passage gyrfalcons would be required to have the falcon banded in accordance with their home state's falconry regulations. (Note – the proposed season dates are subject to being modified following receipt of public comment at the hearing.); 34 SDR 32.</p>
8-13-2007	Transportation	<p>Repeal those provisions of ARSD 70:08:01:03, the enforcement of which was permanently enjoined in Dakota, Minn. & Eastern R.R.</p>

		Corp. v. South Dakota, 236 F. Supp. 2d 989; to specify the information to be included in an application for authority to exercise eminent domain pursuant to SDCL 49-16A-75; and to provide for retroactive effect so as to apply to any administrative proceeding under SDCL 49-16A-75 commenced on or before the effective date of the rule as amended; and repeal those provisions of the ARSD 70:08:01:04, the enforcement of which was permanently enjoined in Dakota, Minn. & Eastern R.R. Corp. v. South Dakota, 236 F. Supp. 2d 989; to adopt a procedure for administering applications for authority to exercise the right of eminent domain pursuant to SDCL 49-16A-75; and to provide for retroactive effect so as to apply to any administrative proceeding under SDCL 49-16A-75 commenced and pending before the effective date of the rule as amended; 34 SDR 31.
8-23-2007	Health: Funeral Services Board	Amend rules to accurately reflect the address at which the funeral board may be contacted; to raise the application fee for a funeral establishment license from \$100 to \$200; to raise the renewal fee for a funeral establishment license from \$100 to \$200; to change the application fee for a funeral service license from \$50 to \$100; and to raise the annual renewal fee for a funeral service license from \$50 to \$100; 34 SDR 31.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 21, 2007, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2007 interim: September 27, December 4, and January 7, 2008.

Note: An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the Legislative Web site.

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 34 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>).