



Legislative Research Council

RECEIVED

AUG 08 2007

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

MEMORANDUM

Rep. Larry J. Tidemann, Chair
Sen. Jean M. Hunhoff, Vice Chair

James Fry, Director
Doug Decker, Code Counsel

August 7, 2007

TO: Rules Contacts

FROM: Doug Decker, Code Counsel 

RE: Interim Rules Review Committee Meeting – August 21, 2007

Your agency has been scheduled to present rules at the next Interim Rules Review Committee meeting (see the enclosed agenda). The agency must have a representative present at this meeting to explain the rules, give background information, or answer any questions from the committee.

Each agency must serve a copy of the rules and other information on the committee members *at least five days before the meeting*. Please review the "Directions for Submitting the Final Draft". The five-day requirement should be considered the minimum time allowed for service of the rules before the meeting. The committee members will use the copy of the rules that is served on the committee as part of the rule adoption process according to SDCL 1-26-4(9) to prepare for the meeting. The service of the rules must be done with enough time between the service of the rules and the meeting to allow the committee members time to review the rules prior to the meeting. A committee member who has not received the rules in time to review the rules before the meeting may vote to reject the agency's rules.

Thank you for your cooperation in this matter. This procedure will expedite the presentation of your rules before the committee and give the committee members access to the most recent version of your rules.

DD:ks

Enclosure: Agenda



Legislative
Research
Council

RULES REVIEW COMMITTEE
AGENDA

Senator Orville B. Smidt, Chair
Representative Roger W. Hunt, Vice Chair

Two hundred eightieth meeting
Tuesday
August 21, 2007

Room 413
State Capitol
Pierre, South Dakota

Agencies are asked to have a representative present at the meeting
to give background information on their rules.

9:00 a.m. Call to order, roll call, approval of minutes, staff report

9:05 a.m. Review of proposed rules

Senator Smidt

Department of Game, Fish and Parks - Amend Fall Wild Turkey Hunting Season rules to offer residents 500 and nonresidents 40 more one-tag "any turkey" licenses (17% increase of 540 tags) in the Black Hills than 2006; offer residents 340 less one-tag and 995 more two-tag "any turkey licenses (15% increase of 1,650 tags) in Prairie units than 2006; offer nonresidents 4 more one-tag and the same number of two-tag "any turkey" licenses (1% increase) in Prairie units than 2006; change the season dates from October 1 – December 31 to October 1 – January 31; add new units in Brookings County east of Interstate 29 and Brule County (rifles would not be permitted for turkey hunting in the Brookings County unit); and expand the 5-county unit in northeastern South Dakota to include all of Grant County; amend Black Hills Deer Hunting Season rules to eliminate the 5,500 resident and 440 nonresident "any buck with two points or more or any antlerless deer" and offer 500 resident and 40 nonresident "any deer" licenses and 5,000 resident and 400 nonresident "any whitetail deer" licenses in 2007; and offer the same number of resident and nonresident "antlerless" licenses as 2006; amend West River Deer Hunting Season rules to adjust license numbers in six units for a no net change in resident one-tag and 30 less two-tag licenses (60 tags) than 2006; and adjust license numbers in six units for a no net change in resident one-tag licenses and 2 less two-tag licenses (4 tags) than 2006; amend Mountain Lion Hunting Season rules to dissolve the separate Black Hills and Prairie units and establish one statewide unit; dissolve separate Black Hills and Prairie licenses and establish one resident license that is valid statewide and set the fee for this license at \$15.00 (\$10.00 plus \$5.00 surcharge); increase the harvest limit to 35 (25 in 2006) mountain lions or 15 (8 in 2006) female mountain lions; and require that all harvested mountain lions be presented to a GFP representative for inspection within 24 hours of harvest; and amend Public Water Zoning rules to establish a new water safety zone; i.e., a "No Wake Zone" in the area on Lake Madison (Lake County) commonly

known as Sunset Harbor, including the entrance canal, and would change the water safety zone on the waters of Lehrman GPA (McCook County) from no boating “from October 20 to December 31, inclusive” to no boating “during a Conservation Order as well as during any open season for migratory waterfowl.”

Department of 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 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.)

10:00 a.m. Break

Senator Hundstad

Department of Revenue and Regulation: Lottery Commission - Amend rules to authorize the Lottery to conduct an online raffle game and establish parameters for the game.

Department of Revenue and Regulation: Abstractors' Board of Examiners - Amend rules to update the various fee schedules and manner for their determination as well as the procedures of the South Dakota Abstractors' Board of Examiners.

Department of Agriculture: Animal Industry Board - Amend rules to add a definition for biological products; specifically state that biologicals must be approved for sale in South Dakota; to limit risk materials being brought into the state by hunters and taxidermists and assure proper disposal; to include federal regulations as a reference for tuberculosis control; to require identification on roping and dogging cattle; to require testing each year for tuberculosis on cattle used for rodeo/roping purposes; repeal the TB blood test as it has been invalidated as an official test for tuberculosis in cervidae; change and update current dates of reference material; change the accepted date for a valid tuberculosis test from 30 to 60 days; include semen and embryos in health certificate requirements for import; require specific identification on semen and embryo imports; state the time frame for keeping records available; specify reporting requirements for shipping certain poultry and hatching eggs; require the lot number and expiration date of testing material be included on the report; to use the correct term "certificate of veterinary inspection" rather than "health certificate;" specify information to be included on reporting forms; use correct terminology for certificate of veterinary inspection and require proper terminology on certificates; specify that certain forms are kept as records by hatchery operators and dealers; ensure proper terminology is used throughout the rules consistent with the definition section; specify issuance of permits and expiration periods for pullorum testers; include primates in animals regulated by the board; specify time frame for required testing for two diseases; specify further information required to be reported by permittees; extend the valid testing period for 60-90 days for ram epidymitis within the state; to decrease the number of herd tests for accredited status from three to two and include NVSL contract labs as approved; eliminate use of the BTB test; to change the time frames for establishing and renewing accredited law status; to allow lab as approved by the board for state lab approval and clarify definition of official identification; to allow two additional tests to be approved for brucellosis testing; to extend the period for certified free status; to allow the re-test of additions to a certified herd to be tested along with the next herd test; to provide for tissue in addition to the brain to be tested for CWD; to decrease the eligible age for CWD testing from 16 to 12 months; to extend the closed herd status on imported cervidae from three to five years; to eliminate restrictions on funding assistance for Johne's control efforts; to provide for the approval of newer testing methods; and to allow waiver of requirements for nonvirgin nonpregnant females.

Department of Revenue and Regulation: Appraiser Certification Program - Amend rules to clarify that continuing education is not required during inactive status; to return to active status from inactive status an appraiser must complete all continuing education that would have been required if the appraiser was on an active status; establish requirements for registering supervisors for appraisal experience credit and removal of a supervisor; require a supervisor to be in good standing; allow applicants that have moved to the state of South Dakota that are licensed or certified by another state to be deemed to have met the Appraiser Qualifications Board criteria and be issued an equivalent appraiser classification; a candidate that does not complete the examination within the specified time limit would have to submit another application and the fee before being approved to sit for the examination again; delete language regarding complete appraisal; replace introduction to computers, word processing/spreadsheets with computer science required for general education for certified appraisers; remove the word "deferred" and replace with "not

required” for continuing education requirements; establish when continuing education is not required by first time applicants; delete unnecessary word; delete mandatory fee requirement for acceptable courses without state review; clarify requirements for acceptable distance continuing education; and require written examination for distance qualifying education.

11:10 a.m. Break

Department of Revenue and Regulation: Division of Insurance - Amend rules to revise the standards for long term care and long term care partnership coverage.

Department of Transportation – 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 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

Senator Hunhoff

Department of Health - Amend rules to change the form used to gather hospital charge data from the Health Care Financing Administration Uniform Bill-92 Form to the new standard of Centers for Medicare and Medicaid Services Uniform Bill-04.

Department of Tourism and State Development: Board of Economic Development - Amend rules to implement House Bill 1176, as passed by the 2007 South Dakota Legislature, to revise certain provisions concerning the making of grants and loans from the Revolving Economic Development and Initiative Fund and the Value-Added Agriculture Subfund and to repeal the Venture Capital Investment Fund program, the Capital Investment Entity Program, the Value-Added Tourism Subfund program and the Entrepreneur Support Program.

Department of 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.

12:00 p.m. Lunch

1:10 p.m. **Representative Lust**

Attorney General: Law Enforcement Officers Standards and Training Commission - Amend rules to change the required license fee to \$75 for polygraph examiner applicants 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.

Public Utilities Commission - 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 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.

Representative Thompson

Department of Environment and Natural Resources: Board of Minerals and Environment - Amend rules to update existing hazardous waste rules by incorporating the federal regulations by reference. Changes to the rules include clarifications to the used oil management standards; special provision for National Environmental Performance Track Program companies; amends existing national emission standards for permitted hazardous waste treatment, storage and disposal facilities; includes certain wastes generated by the dye, pigment, food, drug and cosmetic colorant manufacturing industries as hazardous wastes; clarifies requirements for the management of mercury-containing equipment; modifies requirements for the hazardous waste manifest system; and establishes requirements for the safe management of used electronic devices that contain cathode ray tubes.

Department of Social Services: Medical Services - Amend rules to incorporate by reference the latest versions of the Physicians' Current Procedural Terminology (cpt) manual, the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) manual, and the Common Procedure Coding System (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 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.

2:15 p.m. Adjourn

Members: Senators Jean M. Hunhoff, Jim Hundstad, and Orville B. Smidt; and Representatives Roger W. Hunt, David Lust, and Bill Thompson.

NOTE: *Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605/773-3251) in advance of the meeting to make any necessary arrangements.*



All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage (<http://legis.state.sd.us>). Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at MyLRC (<http://legis.state.sd.us/mylrc/index.aspx>).