

Guide to Drafting

Administrative Rules of South Dakota



Revised August 2018

TABLE OF CONTENTS

	Page
INTRODUCTION	1
OVERVIEW OF THE DRAFTING PROCESS	1
PREPARING TO DRAFT RULES.....	4
ESSENTIAL COMPONENTS OF A COMPLETE RULE	5
NUMBERING AND CATCHLINE	5
TEXT OF A RULE.....	6
SOURCE NOTES.....	6
GENERAL AUTHORITY AND LAW IMPLEMENTED	6
COMMON COMPONENTS OF AN ADMINISTRATIVE RULE	7
DEFINITIONS.....	7
INCORPORATION BY REFERENCE	7
COMPONENTS TO AVOID IN DRAFTING RULES.....	8
FORM AND STYLE COMPONENTS OF AN ADMINISTRATIVE RULE.....	9
GENDER.....	9
PUNCTUATION	9
SUBDIVISIONS	10
VERBS.....	10
PREPARING THE DRAFT OF THE PROPOSED RULES.....	11
RULE ADOPTION OUTLINE, REFERRING TO STATUTES AND FORMS	13
SERVICE - NOTICE - PUBLICATION	13
COMMENT PERIOD.....	14
PUBLIC HEARING - COMMENT - CONTINUATION - MAJORITY PRESENT.....	15
RULES ADOPTED BY AGENCY - INTERIM RULES REVIEW COMMITTEE	15
FILING WITH SECRETARY OF STATE.....	16
EFFECTIVE DATE	17
FORMS.....	18 - 35
RULE FORMAT EXAMPLES	36 - 56
EMERGENCY RULES.....	57
FORMS FOR EMERGENCY RULES.....	59 - 68
STYLE AND FORM EDITING GUIDELINES	69
ABBREVIATIONS - CAPITALIZATION	69
CITATIONS TO AUTHORITY - FEDERAL REGULATIONS.....	70
HEADINGS - HYPHENATION	70
INTERNAL REFERENCES	71
LAW IMPLEMENTED - NOTES	72
NUMBERS, DATES, AND TIME - STATUTES.....	73
WORDS AND PHRASES	73 - 76

INTRODUCTION

Rule-making is law-making by an executive branch agency. As such it can only be done after the Legislature has delegated rule-making authority to the agency and has provided understandable standards to guide the agency in the exercise of this legislative authority. This manual will help each agency exercise its rule-making authority.

The intent of this manual is to guide the drafting of administrative rules in a style and form that gives uniformity to the Administrative Rules of South Dakota. This manual refers to the statutes to be followed, and provides an outline of the rules promulgation process, and samples of forms for navigating the process required by the Administrative Procedures Act (APA), SDCL chapter 1-26. It is this process that gives an agency's rules the force and effect of law.

The APA provides for legislative oversight of the rule promulgation process by the Interim Rules Review Committee (Committee). The Committee reviews each proposed administrative rule, makes recommendations regarding the rules, occasionally reverts rules back to earlier steps in the rule promulgation process, or may suspend a rule from going into effect. The Committee meeting dates are set by the Committee at the end of each legislative session and are open to the public. The Committee's meeting dates are provided in the [South Dakota Register](#).

OVERVIEW OF THE DRAFTING PROCESS

A rules drafter needs to be familiar with three areas of the law: the rule promulgation process required by the statutes in the APA; the statutes granting rule-making authority to the agency; and the agency's statutes to be implemented by the rules.

The rule promulgation process is governed by SDCL §§ 1-26-1 to 1-26-13.1, inclusive, and 1-26-38.

The assignment to draft administrative rules for an agency may appear to be difficult because the statutes are sometimes dense legislative prose. However, if a drafter understands SDCL §§ 1-26-4, 1-26-4.1, and 1-26-6, the rule promulgation process will not be difficult. The other statutes in SDCL chapter 1-26 fill in important details required by the process; the drafter will need to know these requirements as well. The outline on pages 13 to 17, inclusive, provides all the details and statutory references for the entire rule promulgation process.

These are the three statutes, stripped of their legislative prose, and paraphrased to give you an overview of this process:

1-26-4. Notice, service, and hearing required for adoption of rules--Service on interim committee--Waiver of service.

The following procedure is used to adopt, amend, or repeal a rule.

An agency **serves** a copy of a proposed rule upon the department secretary or the state entity to which it is attached for written approval to proceed.

At least **twenty days** before the public hearing to adopt the proposed rules, the following three actions must occur.

The agency **serves**:

- 1) The director of the Legislative Research Council (LRC) with a copy of:
 - a. the proposed rules (**two copies are needed for editing purposes**);
 - b. any publication incorporated by reference;
 - c. the fiscal note;
 - d. the impact statement on small business; and
 - e. the notice of hearing.

- 2) The commissioner of the Bureau of Finance and Management (BFM) with a copy of:
 - a. the proposed rules;
 - b. the fiscal note;
 - c. the impact statement on small business; and
 - d. the notice of hearing.

- 3) The agency **publishes** the notice of hearing in three newspapers of general circulation so that anyone likely to be affected by the rule has notice.

The LRC **reviews** the rule for style and form, clarity, and legality. The LRC then sends a letter to the agency recommending corrections to the proposed rule.

All interested persons have a **reasonable opportunity** to submit amendments, data, opinions, or arguments at a public hearing for the rule. The hearing may be continued from time to time. The agency keeps **minutes** of the hearing. A majority of the members of any board or commission authorized to pass rules must be present at the public hearing.

An agency headed by a full-time public officer or entity accepts written comments regarding the proposed rule for a period of **ten days** after the public hearing. A part-time citizen board, commission, committee, or task force, may close the comment period at the end of the public hearing. Any hearing may be specifically continued for taking additional comments.

The agency considers all amendments, data, opinions, or arguments regarding the proposed rule. A proposed rule may be modified or amended now to include or exclude matters which were described in the notice of hearing.

At least **five days before** the Interim Rules Review Committee hearing to review the rules, the agency serves on the Committee:

- a. the minutes of the hearing;

- b. a complete record of written comments;
- c. the impact statement on small business;
- d. the fiscal note;
- e. the information required to increase a fee; and
- f. a corrected copy of the rules.

Note: The Committee has created the "Rules Presentation Format"; it is a process requirement of the Committee and not a requirement of this statute. It is served on the Committee at this time.

The time periods specified in this section may be extended by the agency. The requirement to serve the Committee may be waived by the Committee chair if the agency presents sufficient reasons to the Committee chair that the agency is unable to comply with the time limit. The waiver may not be granted solely for the convenience of the agency.

1-26-4.1. Notice of hearing on proposed rule--Contents--Publication--Mailing.

The **notice of a public hearing** to adopt a rule must notify persons likely to be affected by the proposed rule.

The notice of the public hearing is **published in at least three newspapers** of general circulation in different parts of the state. This must be done at least **twenty days** before the agency's public hearing for the rules.

The notice of a public hearing is mailed to each person who has asked for notice of the rule-making proceedings.

A **notice of a public hearing** contains a narrative **description** of:

- 1) The **effect** of the proposed rule; and
- 2) The **reasons** for adopting the proposed rule.

Think of "effect" as what you are doing and "reason" as why you are doing it. A simple declarative sentence telling the public what the proposed rules will do and why you are proposing to amend the rule is all that is needed. The notice does not need to be an index.

A **notice of hearing** states:

- 1) Where and when the hearing will be held;
- 2) How amendments, data, opinions, and arguments may be presented; and
- 3) How the public may obtain copies of the proposed rule:
 - a. The agency's website, if a copy is available there; or
 - b. The reference to: rules.sd.gov.

1-26-6. Completion of adoption of rule or change in rules.

A rule is **adopted** after these **six actions** are complete:

- 1) The **requirements** of § 1-26-4 are complete;
- 2) The rule approval form is **signed** by a majority of the members of the multi-member body or by the officer having the authority to adopt the rules;
- 3) The rule approval form is **signed** by the director of the LRC;
- 4) A copy of the rule is **filed** with the director to use to prepare the "Administrative Rules of South Dakota";
- 5) The rule and a certificate is **filed with the secretary of state**. The certificate affirms that the rule is a true and correct copy and that the agency has complied with chapter 1-26; and
- 6) The agency **appeared and presented** the proposed rule to the Interim Rules Review Committee.

The certificate in subdivision 5) is an affidavit signed, under oath, by the officer authorized by law to promulgate the rule. For a multi-member body, the certificate is signed by its presiding officer.

A rule is provisionally effective on the twentieth day after it is filed with the Secretary of State, not counting the day of filing. A delayed effective date may be specified.

A rule which is not yet effective or a provisionally effective rule may be suspended before the first day of July of the following year. The rule's provisional status ends then and the rule may not be suspended by the Committee.

A provisional rule is enforced by the agency and the courts like a permanent rule.

PREPARING TO DRAFT RULES

With this insight into the overall process, begin drafting the rules. Start by reading the statutes for the agency that grant rule-making authority and the statutes to be implemented by the rules. A rule may not exceed or extend the authority given to an agency in statute or correct mistakes in statute. Each rule may only carry out the functions delegated by the Legislature, S.D. Const. Art. III, § 26.

Except for definitions, a statute cannot be repeated in the rules. See [SDCL § 1-26-6.1](#).

Organize requirements in a logical narrative and divide the requirements into sections with one major requirement to a section. Group the sections into chapters and the chapters into articles. Using the guidelines in this manual, put the rules into South Dakota's form and style for administrative rules.

ESSENTIAL COMPONENTS OF A COMPLETE RULE

A properly prepared administrative rule consists of:

1. Numbering and Catchline;
2. The Text of the rule;
3. Source Notes; and
4. General Authority and Law Implemented.

Numbering and Catchline

The LRC will provide title, article, and chapter numbers to agencies writing new rules. Agencies then number the sections according to the organization of the rules.

To number a new section inserted between two existing sections of rules, use the number of the section immediately preceding the section to be added and place a two-digit decimal number after it. For example, the new section between sections 99:99:99:01 and 99:99:99:02 is numbered 99:99:99:01.01.

Rules are organized by: Title; Article; Chapter; and Section. For example: Title 99; Article 99:99; Chapter 99:99:99; and Section 99:99:99:01.

If a section is repealed, the number is not used over again unless the proposed section covers the same topic. Numbers and catchlines of repealed sections are retained, and sections following repealed sections are not renumbered. Repealed sections may be dropped if the rules are adopted under other numbers. In unusual cases, repealing rules and reenacting the rules with new numbers may be permitted after checking with LRC.

The title or heading given to each rule is called a **catchline**. The catchline given to a rule grabs the reader's attention. A catchline helps the reader find topics more quickly and provides an index to the rules when listed in the contents of the chapter. It is not part of the rule. Everything in the catchline that is essential to the rule must be repeated in the body of the rule. The catchline should indicate to the reader the subjects covered by the rule. If not, the catchline should be expanded or the rule should be broken into several parts. An emergency rule includes the words "EMERGENCY RULE" in the catchline.

Refer to the catchlines in the [South Dakota Codified Laws](#) for examples.

Capitalize only the first letter, proper names, and the first letter following a dash in the catchline. Use a bold font for the section number and all words in the catchline.

Use a space both before and after a dash in the catchline:

41:08:01:08.01. Bobcat trapping and hunting season established -- Hunting restrictions -- Tagging requirements. The bobcat trapping and hunting season is open from sunrise on the second Saturday of December to sunset on January 31 in all counties west of the Missouri River....

Text of A Rule

It is not legalese that makes a rule legal but the procedure set out in the APA that is followed to adopt the rules. A rule should clearly state who is responsible for taking an action. Use simple words and short sentences.

Even technical requirements benefit from a simple presentation.

Use the same words to express the same ideas but don't give different meanings to one word. Be clear, concise, and consistent.

Source Notes

The **source note** is always provided by the LRC. The source note is placed below the text of the rule and above the citations to general authority. It gives the history of the rule, citing the volume and page number of the South Dakota Register on which the date of filing with the Secretary of State and the effective date are recorded. The source note is retained even when a rule is repealed.

If transferring a section, the agency should add "transferred from 99:99:99:01" to the source note. See the example on pages 46 and 47 in this manual.

General Authority and Law Implemented

Following its text each rule must contain a citation to the statutory authority granting the agency the power to adopt this rule and a citation to the specific law that is implemented by the rule. The **general authority** is the statute authorizing the agency to adopt this rule. The **law implemented** is the statute that the rule administers. In many instances, the general authority and the law implemented are the same. Rules are not accepted or effective without these citations.

See [SDCL § 1-26-6.2](#).

The citations to general authority and law implemented must be to specific sections, including subdivisions of the statute, and not to chapters. If there is more than one statute that grants authority for the rules or that is implemented, cite all the statutes. In some instances, citations may be to an executive order, federal law or regulations, or court cases in addition to South Dakota statutory law.

In citing South Dakota Codified Laws, use the form shown in **CITATIONS TO AUTHORITY**.

If there is more than one code section to be cited, do not use the word "and" to separate them. Place commas between the code section numbers: SDCL §§ 3-3-2, 3-4-2, 3-12-47(19), 3-12-52 to 3-12-55, inclusive.

When citing federal statutes, reference to the United States Code is preferred over reference to the Statutes at Large, and reference to Statutes at Large is preferred over reference to Public Laws. The form is shown in **CITATIONS TO AUTHORITY**.

Use a semicolon to separate references from two or more different sources. For example: SDCL § 45-8-17; 9 C.F.R. § 75.1 (January 1, 1998). Double-space all legal citations and reference notes, and place a period at the end.

COMMON COMPONENTS OF AN ADMINISTRATIVE RULE

The common components provided in an administrative rule include:

1. Definitions; and
2. Incorporation by Reference.

Definitions

Definitions are shortcuts to save space in the body of rules.

Like a dictionary, definitions simply give the meaning of the terms used in the rules. For example, "board" can be defined to mean "the Board of Medical and Osteopathic Examiners" and "TANF" to be the acronym for "temporary assistance to needy families."

If needed, definitions of terms that are defined in statute may be repeated in the rules. See [SDCL § 1-26-6.1](#).

Terms defined in statute may also be incorporated by reference into the definitions section of rules.

The definitions section uses the form of subdivisions.

Substantive provisions are not included with the meanings of the terms defined in the definitions section. For example, "executive secretary" may be defined in the definitions section, but the duties may not be included as part of the definition. The executive secretary's duties must be the subject of a separate rule. If it is impossible or not advisable to separate substantive provisions from a definition, define the term in a substantive rule of its own.

Incorporation by Reference

The preferred method for imposing federal regulations or other published standards is to rewrite them as rules. However, if the material is lengthy and is generally available it may be incorporated by reference. Material published by a South Dakota state agency may not be incorporated by reference. See [SDCL § 1-26-6.6](#).

If outside materials are incorporated, the rule must describe the portions being adopted which may be one section or a whole book. If the outside material is updated or amended, an agency continues to be bound by the portions originally adopted until the agency's rules are amended.

The attempt to adopt a future rule or regulation of another state or the federal government has been held to be an unconstitutional delegation of legislative authority. For this reason, a date

certain is required for the incorporation by reference. See *State v. Johnson*, 84 S.D. 556, 173 N.W.2d 894 (1970).

Under SDCL § 1-26-6.6, any publication incorporated by reference must be generally available to the public. A copy of the incorporated material must be supplied to the LRC for review. The LRC will return the copy upon completion of its review and the agency must retain a copy of the incorporated material. See SDCL §§ [1-26-4](#) and [1-26-6](#). If an agency cannot afford to buy a copy, the material is not available "at a reasonable cost" as required by SDCL § 1-26-6.6. An agency incorporating outside material is required to have on the cover of the incorporated material a label containing the name of the agency, the filing date of the rule, and reference to the specific rule adopting the outside material. Use of gummed address labels makes it easy to place this information on the incorporated material.

The following is an example of the information needed on the label that is placed on the face of the material incorporated by reference:

Reference to: § 20:54:02:01
Filed by: State Plumbing Commission
Date filed: 11-28-96

(Note: Use the date the rules are filed with the Secretary of State)

If the material incorporated by reference is from the Code of Federal Regulations, the Federal Register, the United States Code, or the Statutes at Large and is cited to the specific provisions incorporated, no reference note is needed below the rule.

See **CITATIONS TO AUTHORITY** for the form of material incorporated by reference.

If the material incorporated is not from one of these publications, place a reference note beneath the citations to general authority and law implemented. The reference note must contain the title of the publication, the date of publication, and the author. The note must also contain information about where and at what cost the publication may be obtained.

See **NOTES** for an example.

COMPONENTS TO AVOID IN DRAFTING RULES

Components that are provided in an administrative rule but should be avoided:

1. Examples; and
2. Forms.

Examples

Avoid the use of examples in the text of a rule. However, examples may be placed after the citations for law implemented.

Forms

Specific forms are not usually adopted as rules. To prescribe a form, give a narrative description of its essential contents in a rule. This allows an agency to change the style of the form without going through the rule-making procedure each time the form is updated.

FORM AND STYLE COMPONENTS OF AN ADMINISTRATIVE RULE

Eliminate jargon. The meaning of professional language used among colleagues may be lost on the readers of rules. Use active verbs. Passive verbs bury the identity of the subject of the sentence and create doubt as to who is required to take an action. Punctuate precisely. The meaning of a rule may hang on the location of a comma. Use no more words than needed. Avoid the repetitive legalistic style such as: "any and all" or "each and every." State a requirement only once.

Remember the rules of grammar. Keep number in mind when matching subjects and verbs. Watch the antecedents of pronouns. A "board" may mean a group of persons, but the word is singular.

Be concerned about how the rules will look when published. Keep paragraphs and rules short.

Gender. Gender-neutral terms, such as "applicant," "individual," or "person" should be used as much as possible. "He," "she," "his," "him," or "her" may be used if there is no alternative. Pronouns may sometimes be omitted altogether without losing meaning, or nouns may be repeated. Complete rewriting of a sentence is another method to avoid the issue of gender. The combinations "he or she" and "his/her" may not be used. "Their" with a singular subject should be avoided. [SDCL § 2-14-5](#) addresses the legal effect of words expressing gender.

Punctuation. Punctuation used in rules follows accepted punctuation in English. Extensive punctuation indicates faulty arrangement and ambiguous construction. Short, simple sentences prevent possible misinterpretation.

Colons should be used to introduce a series and after "Source," "General Authority," "Law Implemented," and other note headings.

Quotation marks should be used around a word being defined but otherwise should be avoided. Commas and periods are ordinarily placed inside quotation marks but other punctuation marks are placed outside unless they are part of the quotation.

Semicolons should be used preceding clauses beginning with conjunctions like "however" and after each subdivision of a section except the last.

Periods should be used at the end of the citations and the notes below each section.

Commas should be used instead of **parentheses** to set apart phrases, clauses, or other expressions. A comma should be used before the conjunction in a series.

Subdivisions. A list of requirements, standards, or definitions is clearer and more readable if it is published in the form of numbered subdivisions. The form is usually used when there are three or more requirements in the list. The form is not usually used when there are two requirements unless there is a specific reason for doing so. The form is never used for one requirement except in a definitions section.

The use of subdivisions allows the reader to easily identify the requirements. If subdivisions need to be broken into more subdivisions and then more subdivisions, consider breaking off and starting a new section.

Before subdividing, introduce the list with a complete thought followed by a colon. A rule never starts with a numbered subdivision. The first break into subdivisions is indented and numbered (1), (2), (3), etc. Subdivisions may be broken into further subdivisions. The second break is indented again and indicated by (a), (b), (c), etc. The third break is indented further and indicated by (i), (ii), (iii), etc. Use no more than three levels of subdivisions. The reader may find it difficult to follow a requirement buried deep in subdivision (1)(a)(i). All line carryovers are brought back to the left margin.

Some kinds of requirements are more effectively published as tables instead of subdivisions. A table adds to the readability of rules.

Verbs. The verb used in a rule should be active and in the present tense. A verb is generally imperative, permissive, or prohibitive. This is a guide to usage:

- shall = required action
- may = permitted action
- may only = restricted action
- may not = prohibited action
- must = action required as a condition of something; used with inanimate subjects
- must be = required condition
- is = statement of condition

A rule giving discretion to an officer or board using "may" must also establish guidelines to be followed in exercising that discretion. A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation but not the permission to act and therefore should be avoided.

Do not use made-up words ending in "-ize" or "-zation." Avoid legalisms, jargon, and redundancies. Use shorter, simpler words when you have a choice.

Avoid adjectives such as "real," "true," and "actual" and adverbs such as "duly" and "properly." Since these ideas are normally implied, expressing them creates doubt that they are implied elsewhere. Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless you specify what these words mean or refer to the standards that must be met.

If "such" is used, it requires the addition of "a" before a singular noun, as in "such a person."

PREPARING THE DRAFT OF THE PROPOSED RULES

All rules promulgated, whether new, amended, transferred, or repealed, are subject to legal review and to editing for form, style, and clarity by the Legislative Research Council. See [SDCL § 1-26-6.5](#).

Each rule in a set of proposed rules must be complete. A complete rule includes the number, the catchline, the text, the source note, the general authority, and the law implemented.

Agencies can find copies of their rules online on the Legislative Research Council website at <http://www.sdlegislature.gov/Rules/RulesList.aspx>. Copies of proposed rules are available at <https://rules.sd.gov/default.aspx>.

Rules may be downloaded from the LRC website in Microsoft Word format. Click on "Download file in Microsoft Word format" on the upper left of the screen. The downloaded files contain an entire article. Delete the sections or chapters not affected by the proposed rule in your draft.

Proposed rules should be presented:

1. In numerical order;
2. Double-spaced and printed on one side of the paper only; and
3. With each page numbered.

Amendments, transfers, and repeals of existing rules are shown in the form used for legislative bills: deletions overstricken followed by insertions underscored.

New material always follows the stricken material for which it is being substituted. Do not reverse the order.

If the material to be stricken consists of more than one sentence, the new or underscored material replacing the old or stricken material should be inserted at the end of the sequence of stricken material. Periods should logically be carried to the end of the sentence where new material is being inserted and treatment should be the same as in simple amendments where new material is inserted after a specified word and before the period.

Never overstrike or underscore part of a word, number, or citation:

- not ~~animals~~, but ~~animal~~ animals
- not § ~~32-14-79~~ 87, but § ~~32-14-79~~ 32-14-87
- not ~~forty-five~~, but ~~forty~~ five forty

Do not underscore a set of proposed rules comprised only of new rules.

If new rules are being added to existing rules that are part of the set of proposed rules, the new material must be underscored.

Any change in the title of the article or chapter, change in the catchline of a section in the table of contents, or addition to the table of contents must also be included in the set.

If the final draft is prepared in Microsoft Word, the agency must e-mail an electronic copy to the LRC. A printed copy of the same final draft, showing changes, is the form in which the rules must be filed with the Secretary of State.

RULE ADOPTION OUTLINE, REFERRING TO STATUTES AND FORMS

The following rule adoption outline provides the steps an agency must follow to adopt a rule. It includes references to the statutes in the APA and the forms to be used. Use it as a checklist to help you document the completion of each step in the process.

The form numbers in the outline correspond to the forms on pages 17 to 34, inclusive. Each agency must create all the forms except Form 5 and Form 8.

Form 5 is BFM Form 50.10, the fiscal note, obtained from BFM.

Form 8 is the “Affidavit of Publication”, which is provided by the newspapers publishing your notice.

I. Service – Notice - Publication

A. Serve the rule maker, a department secretary, or other state entity with one copy of these documents:

1. Admission of service, Form 1;
2. Authorization to proceed, Form 2;
3. The proposed rules; and
4. Materials incorporated by reference.

SDCL § 1-26-4(1)

B. Get signed, written approval to proceed, Form 2.

SDCL § 1-26-4(2)

C. Publish notice of the public hearing, Form 6, at least **twenty days** before the public hearing, in a manner selected to notify persons likely to be affected by the rule in at least three newspapers of general circulation in different parts of the state.

SDCL §§ 1-26-4(3) and 1-26-4.1.

D. Serve on the Legislative Research Council (LRC) at least **twenty days** before the public hearing, one copy of these documents:

1. Admission of Service, Form 3;
2. The proposed rules – double spaced (**two copies of the rules are needed for review and style and form editing**);
3. The notice of hearing, Form 6;
4. The fiscal note, Form 5;

5. The small business impact statement, Form 14; and
6. Any materials incorporated by reference.

SDCL §§ 1-26-4(2), 1-26-4.1, 1-26-2.1, and 1-26-6.6.

E. Serve on the Bureau of Finance and Management (BFM) at least **twenty days** before the public hearing one copy of these documents:

1. Admission of service, Form 4;
2. Notice of hearing, Form 6;
3. The fiscal note, Form 5;
4. The proposed rules, double spaced; and
5. The small business impact statement, Form 14.

SDCL §§ 1-26-4(2), 1-26-4.2, and 1-26-2.1.

F. If rules have a negative fiscal impact on local political subdivisions, ask BFM to send a copy of its fiscal note to these entities:

1. South Dakota Municipal League;
2. Associated School Boards of South Dakota; and
3. South Dakota County Commissioners Association.

SDCL § 1-26-4.2.

G. Send the notice to interested persons.

SDCL § 1-26-4.1.

II. Comment Period

A. Accept comments from the public and from the LRC.

SDCL §§ 1-26-4(5), (6), 1-26-6.3, and 1-26-6.5.

III. Public Hearing – Comment – Continuation - Majority Present

- A. The public hearing includes these requirements:
 - 1. All interested persons can submit amendments, data, opinions, or arguments. SDCL § 1-26-4(5);
 - 2. The hearing may be continued. SDCL § 1-26-4(5); and
 - 3. The agency shall keep minutes of the hearing, Form 10. SDCL § 1-26-4(5).
- B. If a board or commission has rule-making authority, a majority of the board or commission must be present. SDCL § 1-26-4(5).
- C. The comment period is open for **ten days** following the hearing if the rule-maker is a secretary, commissioner, officer, or other full-time officer of the state. SDCL § 1-26-4(6).
- D. However, the comment period may be closed at the end of the hearing if the rule-maker is a part-time citizen board or part-time commission. The hearing may be specifically continued to take additional comments. SDCL § 1-26-4(6).

IV. Rules Adopted by the Agency – Approval - Changes

- A. Make changes in rules after consideration of comments. SDCL § 1-26-4(7).
- B. Make LRC's recommended changes. SDCL §§ 1-26-4(4), 1-26-6.5.
- C. Any changes must be within the scope of the notice. SDCL § 1-26-4(7).
- D. The rules are approved and the approval is signed by the person or a majority of the body with the authority to adopt them, Form 11. SDCL § 1-26-6(2).

V. Interim Rules Review Committee – Service – Hearing – Action

- A. Serve on the Rules Review Committee, at least **five days** before the meeting, copies of these documents:
 - 1. Affidavit, Form 12. SDCL § 1-26-4(8);
 - 2. Minutes of public hearing, Form 10. SDCL § 1-26-4(8);
 - 3. Complete record of written comments. SDCL § 1-26-4(8);
 - 4. The impact statement on small business, Form 14;
 - 5. The fiscal note, Form 5;
 - 6. The fund balance condition statement for a fee increase, if applicable. SDCL § 1-26-4.8;

7. The final draft of the rules. SDCL §§ 1-26-4(8), 1-26-4.3, 1-26-6(1); and
8. The rules presentation format, Form 15.

B. Serve on the LRC at least **five** days before the meeting copies of these documents:

1. The “Approval of Rules”, Form 11;
2. Minutes of public hearing, Form 10. SDCL § 1-26-4(8);
3. Complete record of written comments. SDCL § 1-26-4(8);
4. The impact statement on small business, Form 14;
5. The fiscal note, Form 5;
6. The fund balance condition statement for a fee increase, if applicable. SDCL § 1-26-4.8;
7. The final draft of the rules. SDCL §§ 1-26-4.3, 1-26-4.8, 1-26-6(1); and
8. The rules presentation format, Form 15.

C. Interim Rules Review Committee hearing:

1. Form 11, signed by the LRC, is returned to the agency.

SDCL §§ 1-26-1.2, 1-26-1.3, 1-26-4.3, 1-26-6(3), and 1-26-6.5;

2. Committee Action. The Committee may move:

- a. That the rule-making process is complete to the satisfaction of the Committee and the rules may be filed with the Secretary of State. SDCL § 1-26-4.9(1);
- b. To revert the rules to an earlier step in the adoption process. SDCL §§ 1-26-4.9(2), 1-26-4.7; or
- c. To suspend the rules pursuant to SDCL §§ 1-26-38, 1-26-4.9(3).

VI. Filing with Secretary of State

- A. File a copy of Form 11 and the original certificate Form 13 with the Secretary of State after the agency has appeared before the Interim Rules Review Committee. No more than **60 days** may elapse between the agency's hearing before the Interim Rules Review Committee and the date that the rules are filed with the Secretary of State.

SDCL §§ 1-26-6(1), 1-26-6(5), 1-26-4.3, 1-26-7.

Note: The process is best served by filing the rules with the Secretary of State as soon as possible.

VII. Effective Date

- A. Rules are provisionally effective on the **20th day** after filing with the Secretary of State. SDCL § 1-26-6.
- B. Rules are finally effective on July 1 after the next Legislative Session. SDCL § 1-26-6.

Note: Keep the originals of all documents in the agency files, SDCL § 1-26-7. However, the original of Form 13, the “Certificate,” must be filed with the Secretary of State.

FORM 1

See SDCL subdivision 1-26-4(1)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive, and
- (2) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Secretary
Department of Standards

FORM 2

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AUTHORIZATION TO PROCEED

Pursuant to SDCL subdivision 1-26-4(2), I, _____, Secretary of the Department of Standards, authorize the Board of Metric Conversion to proceed with the promulgation of the proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive.

Dated this ____ day of _____, 20____.

Secretary of Department of Standards

FORM 3

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note,
- (4) the Small Business Impact Statement, and
- (5) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20____.

Legislative Research Council

For these rules, the Agency contact person is: _____

Phone Number: _____

FORM 4

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed rules §§ 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note, and
- (4) the Small Business Impact Statement Form

is hereby admitted at Pierre, South Dakota, this ____ day of _____, 20__.

Bureau of Finance and Management

FORM 5, BFM 50.10

(NOTE: A copy of this form may be obtained from the Bureau of Finance and Management. If your rules have a negative fiscal impact on a local government, such as a county or a school district, you must direct the Bureau of Finance and Management to send a copy of its fiscal note to the organizations listed in SDCL 1-26-4.2.)

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency**

	CODE	NAME
DEPARTMENT		
DIVISION		
PROGRAM		

PROPOSED RULE:
Hearing Date:

FISCAL IMPACT STATEMENT:

Brief description of fiscal impact; (Example: Pursuant to 1-26-402, these rules have minimal impact to all entities. No additional staffing or resources are needed.)

FISCAL NOTE SUMMARY:

List state agencies of local governmental subdivisions affected.

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL		
Local Subdivisions:		
TOTAL		
Small Business Increases (Decreases)		
TOTAL		

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business :		
TOTAL		

APPROVED _____ DATE _____
Signature Department Secretary or Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, and 5) small business impact statement

Revised June 2004

FORM 6
See SDCL 1-26-4.1

Board of Metric Conversion
Notice of Public Hearing to Adopt Rules

A public hearing will be held in Room 412, 4th floor, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota, on May 27, 20__, at 10:00 a.m. CT, to consider the adoption and amendment of proposed rules numbered

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive

The effect of the rules will be to require that milk and butter cartons carry their volume and weight, respectively, in liters and kilograms.

The reason for adopting the proposed rules is to ease the conversion to the metric system by making the public aware of metric measurements.

(Note: The notice must contain a narrative description of the effect of the proposed rule and the reason for adopting the proposed rule.)

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Standards, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-1234. Material sent by mail must reach the Department of Standards at least 72 hours before the public hearing, to be considered.

(Note: If the entity promulgating the rules is not a multi-person decision-maker, the agency shall accept written comments for a period of ten days after the hearing.)

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Standards at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-5555.

Copies of the proposed rules may be obtained without charge from the
South Dakota Department of Standards
Room A-418
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

Published at the approximate cost of \$_____.

FORM 7

See SDCL subdivision 1-26-4(3)

Board of Metric Conversions
Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

May 2, 20__

Capital Journal
333 West Dakota Avenue
Pierre, South Dakota 57501

To whom it may concern:

Please publish the enclosed notice in your paper for one issue by May 5, 20__.

Please include your Affidavit of Publication with your invoice.

Sincerely yours,

John Doe
Supervisor

Enclosure

FORM 8

See SDCL 1-26-4.1



Capital Journal

AFFIDAVIT OF PUBLICATION

State of South Dakota, County of Hughes

_____ of said county, being, first duly sworn, on oath, says: That he/she is the publisher or an employee of the publisher of the **Capital Journal**, a daily newspaper published in the City of Pierre in said County of Hughes and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated, that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, that said newspaper has been published within the said County of Hughes and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the legal/display advertisement headed _____

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for _____ successive week(s) to wit:

_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$_____.

Signed: _____

subscribed and sworn to before me this _____ day of _____ 19__

Notary Public in and for the County of Hughes, South Dakota.
My Commission expires _____, 20__.

FORM 9

See SDCL 1-26-4.1

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AFFIDAVIT OF MAILING NOTICE
TO INTERESTED PARTIES

I, John Doe, under oath, do swear, that on May 1, 20___, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of rule-making proceedings by the Department of Standards.

John Doe

Subscribed and sworn to
before me this ___ day
of _____, 20___.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20___.

FORM 10

See SDCL subdivisions 1-26-4(5) and (8)

BOARD OF METRIC CONVERSION MINUTES OF PUBLIC HEARING

The Board of Metric Conversion convened at 10:00 a.m. on Thursday, May 27, 20__, in Room 412, Fourth Floor, State Capitol, Pierre, South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the board numbered 99:01:03:05 and 99:01:03:11 to 99:01:03:14, inclusive, adopted under the authority of SDCL §§ 83-17-22 and 83-17-23.

Hearing Officer: John Smith, Esq., Pierre, South Dakota.

Members of the Board in Attendance: Richard Roe, June Doe, and Charles Coe.

Others in Attendance: James Jones, Pierre; Harold Hanson, Pierre; Mary Smith, Pierre; Dr. O. J. Johnson, Vermillion; Professor Michael Mooney, Brookings; Angela Akins, Sioux Falls; Dr. Cecelia Singer, Rapid City; and Thomas Moore, Aberdeen.

Written Testimony

The hearing officer marked and entered into the record four letters which had been received by the secretary of the board before the hearing. These letters were received from Adam Atkinson, Sioux Falls; Dr. William Webster, Vermillion; Helen Harris, Huron; and Joseph Morgan, Watertown.

Dr. O. J. Johnson, Vermillion, requested that a letter and report from a group of professors from the Mathematics Department, University of South Dakota, be entered into the minutes as an exhibit. The letter was signed by Jane Wells, Ph.D.; Harley Harris, Ph.D.; Oscar Jefferson, M.S.; Laura Linley, Ph.D.; and O. J. Johnson, Ph.D. The letter and report were marked for exhibit and entered in the record of the proceedings.

Oral Testimony

Oral testimony in favor of the proposed rules was presented by James Jones, Mary Smith, Dr. O. J. Johnson, Harold Hanson, Professor Michael Mooney, and Dr. Cecelia Singer.

Angela Akins questioned the advisability of passing the rules at this time. She felt that public acceptance would be poor and that the board should first enter upon a campaign to educate the public before it adopted the rules.

Richard Roe pointed out that the requirement to carry the volume and weight in liters and kilograms was in addition to the usual measurements of quarts and pounds. The board felt that the effect of the new requirement would be one of education of the public.

Thomas Moore said he was in favor of the rules in principle, but he objected to the additional cost to the dairies. The dairies would have to order the printing of new cartons for their milk and butter and he felt that it was unfair to have the dairy industry bear the cost.

Mr. Roe stated that anyone wishing copies of the minutes of board meetings, copies of the letters entered as exhibits, or notices of board meetings could call or write the Office of Metric Conversions.

Respectfully submitted,

Charles Coe
Secretary
Board of Metric Conversions

Adjournment: 11:05 a.m.

FORM 11

See SDCL subdivisions 1-26-6(2) and (3)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

APPROVAL OF RULES

Following public hearing held on May 27, 20__, the following rules, attached, are approved and will become effective twenty days after filing with the Secretary of State:

99:01:03:05
99:01:03:11 to 99:01:03:14, inclusive

Date _____

Date _____

BOARD OF METRIC CONVERSIONS

LEGISLATIVE RESEARCH COUNCIL
(for legality and for form and style)

Richard Roe

June Doe

Charles Coe

Mary Boe

Fred Moe

(NOTE: This form must be signed by a majority of the members of the board or commission. Make only one original copy of this form. If you need extra signed copies, make photocopies after the original has been signed. Have as many signature lines as there are board members. On Form 11 for signature by a department secretary, the name of the department and a signature line for the department secretary are substituted for those of the board in this example.)

FORM 12

See SDCL subdivision 1-26-4(8)

(NOTE: A current list of the members of the Interim Rules Review Committee may be obtained from the Legislative Research Council.)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

AFFIDAVIT

I, June Roe, certify that on June 1, 20__, I sent by U.S. mail and electronic mail a correct copy of the following documents adopted by the Board of Metric Conversions on May 27, 20__:

- 1) The minutes of the public hearing (*Form 10*);
- 2) A record of the written comments;
- 3) The small business impact statement (*Form 14*);
- 4) The fiscal note (*Form 5*);
- 5) The financial resource information, if the rules increase a fee; and
- 6) The rules adopted:

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive.

These documents were sent to the Interim Rules Review Committee members at their respective electronic mail addresses listed below:

Representative Julie Bartling
bjbart@gwtc.net

Senator Craig Kennedy
Craig.Kennedy@sdlegislature.gov

Representative Steven Haugaard
Steve@haugaardlaw.com

Senator Lance Russell
Lance.Russell@sdlegislature.gov

Representative Jean Hunhoff
DJHunhoff@iw.net

Senator Alan Solano
Alan.Solano@sdlegislature.gov

and to the following members at their respective U.S. mail addresses listed below:

Representative Julie Bartling
28921 US Hwy. 18
Gregory, SD 57533

Senator Craig Kennedy
101 W. 31st St.
Yankton, SD 57078

Representative Steven Haugaard
47629 258th St.
Sioux Falls, SD 57104

Senator Lance Russell
1938 Lincoln Ave.
Hot Springs, SD 57747

Representative Jean Hunhoff
2511 Mulligan Dr.
Yankton, SD 57078

Senator Alan Solano
3410 Wisconsin Ave.
Rapid City, SD 57701

Subscribed and sworn to before me this 1st day of June, 20__.

Notary Public - South Dakota

June Roe

(Seal)

My Commission expires: _____.

FORM 13

See SDCL subdivision 1-26-6(5)

(NOTE: This certificate must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules.)

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

CERTIFICATE

I, Richard Roe, hereby certify that I am a duly appointed member and the duly elected chair of the Board of Metric Conversions and that the attached instruments are full, true, and correct copies of the following rules adopted by the Board of Metric Conversions on May 27, 20__:

99:01:03:05

99:01:03:11 to 99:01:03:14, inclusive

I further certify that SDCL 1-26-4 and 1-26-6 were complied with in the adoption of these rules. These rules will become effective twenty days after filing with the Secretary of State.

Richard Roe, President
Board of Metric Conversions

Subscribed and sworn to
before me this ____ day
of June, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

FORM 14

SMALL BUSINESS IMPACT STATEMENT FORM

See SDCL 1-26-2.1

(NOTE: This form must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules. A small business is defined as any business with 25 or fewer full-time employees. When a set of rules is proposed, a general summary shall be provided; each proposed rule amendment shall also be explained thoroughly. In the case of a large set of proposed rules which all have a single purpose and impact, one explanation is sufficient. The law makes it clear that agencies or commissions shall use readily available information and existing resources to prepare the impact statement.)

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
 - Direct impact *(please complete remainder of form)*
 - Indirect impact *(please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered)*
 - No impact *(please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered)*

2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:

3. What is the basis for the enactment of the rules(s)?
 - Required to meet changes in federal law
 - Required to meet changes in state law
 - Required solely due to changes in date (i.e. must be changed annually)Other: _____

4. Why is the rule(s) needed?

5. What small businesses or types of small businesses would be subject to the rule?

6. Estimate the number of small businesses that would be subject to the rule.
 1-99 100-499 500-999 1,000-4,999 More than 5,000
 Unknown - please explain _____
7. Are small businesses required to file or maintain any reports or records under this rule?
 Yes No
- a. If "yes," how many reports must a small business submit to the state on an annual basis?
- b. If "yes," how much ongoing recordkeeping within the business is necessary?
- c. If "yes," what type of professional skills would be necessary to prepare the reports or records?
- The average owner of a small business should be able to complete the reports and/or records with no assistance
 - It is likely that a bookkeeper for a small business should be able to complete the reports and/or records
 - It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records
 - It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records
 - Other _____
 - Unknown - please explain _____
8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?
 No - please explain _____
 Yes - please explain _____

Dated

Authorized Signature

Name of Agency

FORM 15

Department/Board/Commission Name _____

Interim Rules Review Committee Rules Presentation Format

When you submit the final draft to the Legislative Research Council (LRC) and the Rules Review Committee, please answer these questions to show that the SDCL § 1-26 rule-making process is complete. Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes _____ No _____ Date _____
- The date of your public hearing. Date _____
- The date you submitted the proposed rules and the supporting documents to LRC and the Bureau of Finance and Management: Date _____ (*Note - This must be completed at least 20 days before your public hearing.*)
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.
- The date and the name of the newspapers where you published the notice of the public hearing.
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
- Summarize how and when interested persons, if any, were contacted and how many were contacted.

- Provide the page numbers in the minutes where it mentions how the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action. _____
- If the rules are implementing a bill from last session, identify the bill number. _____
- The date you submitted the final rules and supporting documents to the LRC and the Rules Review Committee: Date _____ (*Note - This must be received no later than 5 days before the Rules Review Committee meeting.*)
 - the "Approval of Rules" - Form 11 (LRC only);
 - the style and form copy (LRC only);
 - the "Affidavit" of mailing - Form 12 (LRC only);
 - the final copy of the rules (Both);
 - the minutes of the hearing (Both);
 - the record of written comments (Both);
 - the impact statement on small business – Form 14 (Committee only);
 - the fiscal note – Form 5 (Committee only);
 - the budgetary information required to increase a fee (Committee only); and
 - the Rules Presentation Format (Both).

RULE FORMAT EXAMPLES

EXAMPLE: Format for new rules: title heading and analysis showing new material added, article heading and analysis, chapter heading and analysis, section defining terms for the article, source note, and citations. The section illustrates the form of subdivisions.

TITLE 74

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Article

- 74:01 General administration, Transferred to Article 74:25.
- 74:02 Water rights.
- 74:03 Water pollution control program, Transferred to Articles 74:50 to 74:56,
inclusive.
- 74:04 Water hygiene.
- 74:05 Water development.
- 74:06 Reserved.
- 74:07 Environmental financial assurance.
- 74:08 Administrative fees.
-
- 74:56 Storage facilities -- Remediation.
- 74:57 Concentrated animal feeding operations.

ARTICLE 74:57

CONCENTRATED ANIMAL FEEDING OPERATIONS

Chapter

- 74:57:01 Inspections of concentrated animal feeding operations.

CHAPTER 74:57:01

INSPECTIONS OF CONCENTRATED ANIMAL FEEDING OPERATIONS

Section

- 74:57:01:01 Definitions.
- 74:57:01:02 Scope.
- 74:57:01:03 Construction inspections.
- 74:57:01:04 Annual inspections.
- 74:57:01:05 Triennial inspections.
- 74:57:01:06 Closure inspections.
- 74:57:01:07 Permission.
- 74:57:01:08 Search warrants.
- 74:57:01:09 Enforcement.
- 74:57:01:10 Appeals process.

74:57:01:01. Definitions. Words and phrases defined in SDCL chapter 34A-2 have the same meaning when used in this chapter. Terms used in this chapter mean:

(1) "Manure management system," any piping, containment structures, or disposal appurtenances associated with the collection, storage, treatment, and disposal of manure or wastewater at a concentrated animal feeding operation; and

(2) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources or an authorized representative.

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46.

74:57:01:02. Scope. The secretary may inspect all concentrated animal feeding operations, records, and reports necessary under SDCL chapter 34A-2 or this article. The scope of an inspection is limited to that reasonably necessary to ensure that pollution of waters of the state and other natural resources is not occurring, that reports filed with the secretary are accurate, and that the operation is being conducted pursuant to the permits, approvals, or orders required by SDCL chapter 34A-2 or this article.

The secretary only has access to the inside of an animal confinement building if access is necessary in order to determine compliance with a water pollution control permit under SDCL chapter 34A-2. If access is necessary, the secretary shall abide by all security measures implemented by the producer to ensure protection of the health of the animals at the animal feeding operation.

Source: 24 SDR 99, effective February 1, 1998.

General Authority: SDCL 1-40-38.

Law Implemented: SDCL 1-40-38, 34A-2-45, 34A-2-46.

EXAMPLE: Amendment of the chapter analysis (table of contents), showing amendments, repeals, and additions.

CHAPTER 67:16:05

HOME HEALTH SERVICES

Section

- 67:16:05:01 Definition of a ~~home health agency~~ terms.
- 67:16:05:02 Repealed.
- 67:16:05:03 ~~Home health services for individuals not eligible for medicare~~ Individuals eligible for home health services.
- 67:16:05:04 ~~Payments for home health services for individuals eligible for medicare and medicaid~~ Repealed.
- 67:16:05:05 ~~Home health services payable~~ Covered services.
- 67:16:05:05.01 Service restrictions.
- 67:16:05:05.02 Physician's orders required before services begin -- Plan of care -- Certification and recertification.
- 67:16:05:05.03 Supervisory visit required when home health aide services provided.
- 67:16:05:05.04 Extended services -- Prior authorization required.
- 67:16:05:05.05 Respiratory therapy -- Limitations.
- 67:16:05:05.06 Postpartum services -- Limitations.
- 67:16:05:06 ~~Home health services~~ Services not covered.
- 67:16:05:06.01 Medical records.
- 67:16:05:07 Basis of payment.
- 67:16:05:07.01 Submission of claims.
- 67:16:05:07.02 Cost not to exceed institutional care.
- 67:16:05:07.03 Services provided outside South Dakota.

EXAMPLE: Amended catchline and text and addition of a cross-reference. See the corresponding change in the example of the chapter analysis.

~~67:16:05:03. Home health services for individuals not eligible for medicare~~
Individuals eligible for home health services. ~~The following home health services are available to individuals not eligible for medicare.~~

~~—— (1) Post hospital services of up to one hundred home visits within one year after the individual's most recent discharge from a hospital in which he was an in-patient for not less than three days. The physician shall arrange for these services within fourteen days after the patient's discharge from the hospital and periodically review the necessity for continued visits by the home health agency; and~~

~~—— (2) Payment for one hundred home health agency visits to patients per calendar year for covered home health services without prior hospitalization. The attending physician shall determine the necessity for these services and periodically review the plan for home health services. Home health services are available to an individual in the individual's place of residence. The individual must be eligible for medicaid and the required services must meet the conditions of this chapter.~~

Source: 1 SDR 30, effective October 13, 1974; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

Cross-Reference: Service restrictions, § 67:16:05:05.01.

EXAMPLE: Repeal of a section. See the corresponding change in the example of the chapter analysis.

67:16:05:04. Payments for home health services for individuals eligible for medicare and medicaid. ~~Payments to participating providers for home health services provided to individuals eligible for medicare and medicaid shall be limited to the coinsurance and deductible insurance charges relating to such services~~ Repealed.

Source: 1 SDR 30, effective October 13, 1974; 4 SDR 35, effective December 22, 1977; 5 SDR 109, effective July 1, 1979; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

~~**General Authority:** SDCL 28-6-1.~~

~~**Law Implemented:** SDCL 28-6-1.~~

EXAMPLE: Addition of new section between existing sections. See the corresponding change in the example of the chapter analysis.

67:16:05:05.05. Respiratory therapy -- Limitations. An individual receiving home respiratory therapy must meet the following requirements:

(1) Be medically dependent on a ventilator for life support at least six hours a day and must have been dependent for at least 30 consecutive days;

(2) Except for the availability of these respiratory care services at home, would require respiratory care as an inpatient in a hospital, a skilled nursing facility, or an intermediate care facility and would be eligible for long-term nursing care under this article;

(3) Have adequate support services to be cared for at home; and

(4) Wishes to be cared for at home.

Source:

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

EXAMPLE: Amended section with subdivisions. See example of chapter analysis for corresponding change to catchline.

67:16:05:06. ~~Home health services~~ Services not covered. The following ~~home health services are not covered under the medical assistance program~~ this chapter:

- (1) Physician's medical or surgical services;
- (2) ~~Full time nursing care;~~
- (~~3~~) Drugs and biologicals;
- (~~4~~) (3) Personal comfort items;
- (~~5~~) (4) General housekeeping services;
- (~~6~~) (5) Meals or other nutritional items delivered to the ~~patient's~~ individual's home;
- (~~7~~) (6) ~~Posthospital~~ Posthospital benefits which include services by a home health agency operating primarily for the treatment of mental illness;
- (~~8~~) ~~Transportation involved in furnishing home health services on an out patient basis;~~
and
- (~~9~~) ~~Physical, occupational, or speech therapy provided for residents in nursing homes.~~
- (7) Mileage or travel time incurred by the home health agency; and
- (8) Visits by a dietitian.

Source: SL 1975, ch 16, § 1; 1 SDR 30, effective October 13, 1974.

General Authority: SDCL 28-6-1.

Law Implemented: SDCL 28-6-1.

EXAMPLE: Repeal of an entire chapter.

ARTICLE 20:09

HOUSING DEVELOPMENT AUTHORITY

Chapter

- 20:09:01 Definitions.
- 20:09:02 Initiated procedures.
- 20:09:04 General provisions.
- 20:09:05 Single-family mortgages.
- 20:09:06 Multifamily rental housing.
- 20:09:07 Subdivision development mortgages.
- 20:09:08 Interim construction loans, Repealed.
- 20:09:09 Single-family portfolio purchases.

CHAPTER 20:09:08

INTERIM CONSTRUCTION LOANS

(Repealed)

Section

- ~~20:09:08:01 — Methods of financing.~~
- ~~20:09:08:02 — Mortgage limits.~~
- ~~20:09:08:03 — Loan inclusions.~~
- ~~20:09:08:04 — Mortgage terms.~~
- ~~20:09:08:05 — Applications and processing.~~
- ~~20:09:08:06 — Bonds and completion assurances.~~

~~20:09:08:07~~ — ~~Terms and conditions governing the authority's participation with administrative agents in making interim construction financing loans.~~

~~20:09:08:08~~ — ~~Fees and charges.~~

~~20:09:08:09~~ — ~~Interest rates.~~

NOTE: Print out the entire chapter with overstrikes.

EXAMPLE: Transfer of a section.

CHAPTER 24:03:08

SPECIAL SERVICES

Section

24:03:08:01 Health services.

24:03:08:02 ~~Supportive personnel~~ Transferred.

24:03:08:03 Disaster plan and drills.

24:03:08:02. Supportive personnel. ~~All supportive personnel shall be licensed or trained to perform the specific responsibility assigned.~~ Transferred to § 24:03:05:11.

~~**Source:** SL 1975, ch 16, § 1; 3 SDR 23, effective September 29, 1976; 5 SDR 110, effective July 5, 1979; 11 SDR 96, 11 SDR 112, effective July 1, 1985.~~

~~**General Authority:** SDCL 13-1-12, 13-3-47.~~

~~**Law Implemented:** SDCL 13-1-12, 13-3-47.~~

CHAPTER 24:03:05

INSTRUCTIONAL STAFF

Section

24:03:05:01 Instructional staff.

24:03:05:01.01 In-service education and staff development plan required.

24:03:05:02 Transferred.

24:03:05:03 Guidance counselor.

24:03:05:04 Librarian.

- 24:03:05:05 Repealed.
- 24:03:05:06 Teacher aide.
- 24:03:05:07 Noncertified teacher substitute defined -- Minimum qualifications -- Time limit and procedure for extension -- In-service training required.
- 24:03:05:08 Certified teacher substitute and temporary administrator defined -- Minimum qualifications -- Time limit and procedure for extension -- In-service training required.
- 24:03:05:09 Minimum secondary staff requirements.
- 24:03:05:10 School nurse -- Health services.
- 24:03:05:11 Support personnel.

~~24:03:08:02~~ 24:03:05:11. Supportive Support personnel. All ~~supportive~~ support personnel shall be licensed or trained to perform the specific responsibility assigned.

Source: SL 1975, ch 16, § 1; 3 SDR 23, effective September 29, 1976; 5 SDR 110, effective July 5, 1979; 11 SDR 96, 11 SDR 112, effective July 1, 1985; transferred from § 24:03:08:02.

General Authority: SDCL 13-1-12, 13-3-47.

Law Implemented: SDCL 13-1-12, 13-3-47.

NOTE: Changes in the database required to accomplish the transfer must be shown at both the old and new locations of the rule. The changes should be placed in their number order in the set of proposed rules.

EXAMPLE of the transfer of a chapter.

ARTICLE 41:07

FISHING SEASONS AND METHODS

Chapter

- 41:07:01 General provisions.
- 41:07:02 Fishing seasons.
- 41:07:03 Fish limits.
- 41:07:04 Snagging of salmon, Repealed.
- 41:07:05 Snagging of paddlefish.
- 41:07:06 Spearing.
- 41:07:07 Underwater spearing, Transferred.
- 41:07:08 Hoop nets and setlines.
- 41:07:09 Bullfrogs.
- 41:07:10 Turtles.

CHAPTER 41:07:07

UNDERWATER SPEARING

(Transferred to Chapter 41:07:06)

Section

- ~~41:07:07:01 — Repealed.~~
- ~~41:07:07:02 — Season and area open to taking of largemouth bass.~~
- ~~41:07:07:03 — Limits.~~
- ~~41:07:07:04 — Season and areas open to taking of catfish without limit.~~

~~41:07:07:05 — Restricted areas.~~

~~41:07:07:06 — Use of divers down flag.~~

~~**41:07:07:01. Season and areas open to taking of all game fish species. Repealed.**~~

~~**41:07:07:02. Season and area open to taking of largemouth bass.** Legal spearguns may be used in the underwater spearing of largemouth bass during the hours between sunrise and sunset from July 1, 1974, to December 31, 1974, both dates inclusive, in the Pactola reservoir.~~

~~**Source:** SL 1975, ch 16, § 1.~~

~~**General Authority:** SDCL 41-2-32, 41-12-1, 41-12-4, 41-12-12.~~

~~**Law Implemented:** SDCL 41-12-1, 41-12-4, 41-12-12, 41-3-10, 41-12-5.~~

NOTE: Print out the entire chapter with overstrikes.

CHAPTER 41:07:06

SPEARING

Section

41:07:06:01 Spearing of rough fish in inland waters.

41:07:06:02 Spearing of rough fish in South Dakota-Minnesota boundary waters.

41:07:06:03 Areas open to spearing of all species of fish.

41:07:06:04 Season and area open to taking of largemouth bass.

41:07:06:05 Season and areas open to taking of catfish without limit -- Exception.

41:07:06:06 Limits.

41:07:06:07 Restricted areas.

41:07:06:08 Use of diver-down flag.

~~41:07:07:02~~ 41:07:06:04. Season and area open to taking of largemouth bass. Legal spearguns, spears, and bows and arrows may be used in the underwater spearing of largemouth bass during the hours between sunrise and sunset from July 1, ~~1974~~, to December 31, ~~1974~~, inclusive, in the Pactola ~~reservoir~~ Reservoir.

Source: SL 1975, ch 16, § 1; transferred from § 41:07:07:02.

General Authority: SDCL ~~41-2-32~~, 41-2-18, 41-12-1, ~~41-12-4~~, 41-12-12.

Law Implemented: SDCL 41-2-18, 41-12-1, 41-12-5, 41-12-12.

NOTE: Continue by showing the rest of the transfers. Changes in the database required to accomplish the transfer of the chapter must be shown at both the old and new locations. The changes should be placed in their number order in the set of proposed rules.

Example: Amended section with a delayed effective date.

CHAPTER 12:02:16

CONCESSIONS AND COMMERCIAL EXHIBITS

Section

- 12:02:16:01 License required.
- 12:02:16:02 Contracts for commercial exhibits and concessions.
- 12:02:16:03 Substitute locations.
- 12:02:16:04 Application for space.
- 12:02:16:05 Maps.
- 12:02:16:06 (Effective through September 3, 1995) Reservations. (Effective September 4, 1995) Renewal of space contracts.
- 12:02:16:07 Contracts.
- 12:02:16:08 Payment.
- 12:02:16:09 Expiration of contracts.
- 12:02:16:10 Cancellations by lessee.
- 12:02:16:11 Electrical service.
- 12:02:16:12 Business operations.
- 12:02:16:13 Repealed.
- 12:02:16:14 Advertising.
- 12:02:16:15 Sanitation and appearance.
- 12:02:16:16 Supply trailers.
- 12:02:16:17 Construction of buildings.
- 12:02:16:18 Maintenance of permanent buildings.
- 12:02:16:19 Privately owned buildings.

- 12:02:16:20 Taxes.
- 12:02:16:21 Buildings subject to inspection.
- 12:02:16:22 Prices.
- 12:02:16:23 Access of officials.
- 12:02:16:24 Noncompliance with health or electrical regulations cause for cancellation of contract.
- 12:02:16:25 Temporary wiring for carnivals and shows.

12:02:16:06. (Effective through September 3, 1995) Reservations. The manager shall mail reservations for space requests to previous year's exhibitors and concessionaires by February 1. The forms must be completed and returned to the state fair office by March 1.

(Effective September 4, 1995) Reservations Renewal of space contracts. The manager shall mail ~~reservations~~ applications to renew contracts for space ~~requests~~ to the previous year's exhibitors and concessionaires by ~~February~~ January 1. The forms must be completed and returned to the state fair office by ~~March 1~~ February 1 and must include payment of the first half of space rent.

Source: 2 SDR 74, effective May 18, 1976; 12 SDR 128, 12 SDR 154, effective July 1, 1986; 18 SDR 14, effective July 30, 1991; 21 SDR 213, effective September 4, 1995.

General Authority: SDCL 1-21-10.

Law Implemented: SDCL 1-21-10.

Example: Addition of a new appendix by amending chapter analysis and a section. Format for a cover page for the appendix.

CHAPTER 20:06:13

MEDICARE SUPPLEMENT INSURANCE

Section

20:06:13:01	Repealed.
20:06:13:02	Definitions.
20:06:13:02.01	Requirements for definition of "accident" and similar words in policies.
20:06:13:02.02	Requirements for definitions in policies.
20:06:13:03	Applicability.
20:06:13:04 to 20:06:13:12	Repealed.
20:06:13:13	Coverage of sickness -- Other insurance.
20:06:13:14	Eligible expenses under Medicare.
20:06:13:14.01	Health care expenses defined -- Exclusions.
....	

20:06:13:76 Compliance with data requests.

Appendix A Medicare Supplement Refund Calculation Forms.

Appendix B Form for Reporting Medicare Supplement Policies.

Appendix C Notice to Applicant Regarding Replacement of Medicare Supplement Insurance.

Appendix D Outline of Medicare Supplement Coverage Policies Plans A through J.

Appendix E Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare.

20:06:13:31. Notice requirements for policies or certificates that are not Medicare supplement policies. The disclosure notice required by § 20:06:13:30 must be in at least twelve-point type. The notice must be printed on or attached to the first page of the policy, subscriber contract, or certificate or the first page of an outline of coverage under a policy, subscriber contract, or certificate if an outline is provided at the time of application. The notice must contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the 1997 Guide to Health Insurance for People with Medicare available from the company."

Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in § 20:06:13:30 must disclose, using the applicable statement in Appendix E at the end of this chapter, the extent to which the policy duplicates Medicare. Disclosure used by an issuer must be in substantially the same form and in no less than twelve-point type. For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, line spacing, and usage of boxes around text. The issuer shall provide the disclosure statement as a part of, or together with, the application for the policy or certificate.

Source: 8 SDR 174, effective July 1, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 143, effective March 29, 1989; 17 SDR 58, effective October 29, 1990; 18 SDR 225, effective July 17, 1992; 22 SDR 107, effective February 18, 1996; 23 SDR 236, effective July 13, 1997.

General Authority: SDCL 58-17A-7.

Law Implemented: SDCL 58-17A-7.

Reference: **1997 Guide to Health Insurance for People With Medicare**, National Association of Insurance Commissioners and Health Care Financing Administration, U.S. Department of Health and Human Services. Free copies may be obtained from the local Social Security or Health Care Financing Administration Office or the Health Care Financing Administration, 6325 Security Boulevard, Baltimore, MD 21207.

DEPARTMENT OF COMMERCE AND REGULATION

DIVISION OF INSURANCE

INSTRUCTIONS FOR USE OF THE DISCLOSURE STATEMENTS
FOR HEALTH INSURANCE POLICIES SOLD TO
MEDICARE BENEFICIARIES THAT DUPLICATE MEDICARE

Chapter 20:06:13

APPENDIX E

SEE: § 20:06:13:31

Source: 22 SDR 107, effective February 18, 1996; 23 SDR 236, effective July 13, 1997.

APPENDIX E

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Federal law, P.L. 103-432, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement must be in substantially the same form and in no less than twelve-point type. For purposes of this section, form means the language, format, type size, type proportional spacing, bold character, line spacing, and usage of boxes around text.
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. The federal law does not preempt state laws that are more stringent than the federal requirements.
7. The federal law does not preempt existing state form filing requirements.

EMERGENCY RULES

Emergency rules are promulgated using an abbreviated procedure. This procedure does not include the usual waiting periods and review by the Interim Rules Review Committee. An emergency rule can become effective in as few as 3 days whereas a permanent rule usually requires 2 to 4 months to become effective due to waiting periods and hearing requirements.

An agency may not use the emergency rule procedure for the convenience of the agency merely to avoid the requirements of timely promulgating a rule. See [SDCL § 1-26-5](#).

To adopt an emergency rule, the agency must:

1. **Serve** the head of the department, LRC, and the Interim Rules Review Committee with the proposed rule, any materials incorporated by reference, a statement of necessity for the emergency procedure, and notice of intent to adopt emergency rules;
2. **Make** any changes required by the LRC. SDCL § 1-26-6.5;
3. Have the rules **signed** by the person or a majority of the body with authority to adopt them, Form E-9. SDCL § 1-26-6(2) and (3);
4. **File** the rule with the LRC, obtain signatures for form and style and legality. SDCL § 1-26-6(3); and
5. **File** any material concerning incorporations by reference.

The agency must **publish** the notice of intent to adopt emergency rules as it would publish a notice for permanent rules. And the agency must send the notice to interested parties. Forms E-1 to E-8 and [SDCL § 1-26-4.1](#), and [1-26-5](#).

The LRC will **review** the emergency rule for style, form and legality, and the statement of necessity for the emergency for sufficiency.

SDCL subdivision 1-26-5(3) requires that the agency provide a **statement** explaining that the emergency procedure is necessary:

1. Because of imminent peril to the public health, safety, or welfare;
2. To prevent substantial unforeseen financial loss to state government; or
3. Because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such an event by the emergency procedure is required to secure or protect the best interests of the state or its residents. Form E-5.

If the **statement of necessity** does not meet one of the standards outlined in the statute the emergency will not be approved. See [SDCL § 1-26-6.5](#).

An emergency rule includes the words "EMERGENCY RULE" in the catchline.

Three days after the publication of notice and if the agency and LRC signatures have been obtained, the agency may file the rules and Forms E-9 and E-10 with the Secretary of State. See [SDCL § 1-26-6\(1\) and \(5\)](#).

No more than thirty days may elapse between the first service on LRC and filing with the Secretary of State. See [SDCL § 1-26-4.3](#).

The rules are provisionally effective when filed with the Secretary of State but are void ninety days later. See [SDCL § 1-26-5.1](#).

The form numbers correspond to the forms on the following pages. Each agency must create the forms, except Form E-7, the affidavit of publication. This form is provided by the newspaper publishing the agency's notice.

Keep originals of all of these documents in the agency files except the “Certificate,” Form E-10. The original of this form must be filed with the Secretary of State. While it is not required by statute, the Secretary of State requests that a copy of Form E-9, the “Approval of Rules,” be filed with the rules and the certificate.

A fiscal note and the small business impact statement are not required with emergency rules.

FORM E-1

See SDCL 1-26-5

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed emergency rules §§ 99:02:01:01-ER to 99:02:01:10-ER, inclusive,
- (2) the notice of intent to adopt the rules,
- (3) the statement of necessity, and
- (4) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20__.

Secretary
Department of Commerce and Consumer Affairs

FORM E-2

See SDCL 1-26-5

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

ADMISSION OF SERVICE

Personal service of

- (1) the Board of Metric Conversion's proposed emergency rules §§ 99:02:01:01-ER to 99:02:01:10-ER, inclusive,
- (2) the notice of intent to adopt the rules,
- (3) the statement of necessity, and
- (4) all materials incorporated by reference

is admitted at Pierre, South Dakota, this ____ day of _____, 20__.

Legislative Research Council

For these rules, the Agency contact person is: _____

Phone Number: _____

FORM E-3
See SDCL 1-26-5

(NOTE: A current list of the members of the Interim Rules Review Committee may be obtained from the Legislative Research Council.)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

AFFIDAVIT

I, Richard Roe, certify that on June 1, 20__, I sent by U.S. mail and electronic mail a correct copy of the following documents:

- (1) a full, true, and correct copy of emergency rules §§ 99:02:01:02-ER to 99:02:01:10-ER, inclusive, proposed for adoption by the Board of Metric Conversion,
- (2) a copy of the notice of intent to adopt the rules (*Form E-4*), and
- (3) a statement of necessity (*Form E-5*).

These documents were sent to the Interim Rules Review Committee members at their respective electronic mail addresses listed below:

Representative Julie Bartling
bjbart@gwtc.net

Senator Craig Kennedy
Craig.Kennedy@sdlegislature.gov

Representative Steven Haugaard
Steve@haugaardlaw.com

Senator Lance Russell
Lance.Russell@sdlegislature.gov

Representative Jean Hunhoff
DJHunhoff@iw.net

Senator Alan Solano
Alan.Solano@sdlegislature.gov

and to the following members at their respective U.S. mail addresses listed below:

Representative Julie Bartling
28921 US Hwy. 18
Gregory, SD 57533

Senator Craig Kennedy
101 W. 31st St.
Yankton, SD 57078

Representative Steven Haugaard
47629 258th St.
Sioux Falls, SD 57104

Senator Lance Russell
1938 Lincoln Ave.
Hot Springs, SD 57747

Representative Jean Hunhoff
2511 Mulligan Dr.
Yankton, SD 57078

Senator Alan Solano
3410 Wisconsin Ave.
Rapid City, SD 57701

Subscribed and sworn to before me this 1st day of June, 20__.

Notary Public - South Dakota (Seal)
My Commission expires: _____, 20__.

Richard Doe

FORM E-4

See SDCL 1-26-5, 1-26-4.1

BOARD OF METRIC CONVERSION

NOTICE OF INTENT TO ADOPT EMERGENCY RULES

Notice is hereby given that the South Dakota Board of Metric Conversion, pursuant to the authority vested by SDCL chapters 1-26 and 36-72, intends to adopt emergency rules to implement statewide conversion to the metric system.

The effect of the rules is to establish the metric system to be used by businesses and schools throughout the state and to set the deadline for conversion.

The reason for adopting the rules is to comply with federal mandates for rapid conversion.

A copy of the proposed rules may be obtained from the

South Dakota Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

Published at an approximate cost of \$_____.

FORM E-5

See SDCL subdivision 1-26-5(3)

BOARD OF METRIC CONVERSION

STATEMENT OF NECESSITY FOR EMERGENCY RULE

By enactment of Public Law Number 110-4, the 110th Congress mandated conversion by all states to the metric system by July 1, 2001, and established sanctions for not doing so. The federal rules governing the program were not published until April 15, 20___. The federal deadline for implementation of the law and the sanctions for failing to meet the deadline were not changed.

The time required for promulgation of permanent rules will not allow the state to meet the required deadline; therefore, emergency rules are necessary to meet the federally imposed deadline and to protect the state from federal sanctions.

FORM E-6

See SDCL 1-26-4.1

Board of Metric Conversions
Department of Standards
State Capitol
500 East Capitol
Pierre, South Dakota 57501-1234

May 1, 20__

Capital Journal
333 West Dakota Avenue
Pierre, South Dakota 57501

To whom it may concern:

Please publish the enclosed Notice of Intent to Adopt Emergency Rules in your paper for one issue by May 4, 20__.

Please include your Affidavit of Publication with your invoice.

Sincerely,

John Doe
Supervisor

Enclosure

FORM E-7

See SDCL 1-26-4.1



Capital Journal

AFFIDAVIT OF PUBLICATION

State of South Dakota, County of Hughes

_____ of said county, being, first duly sworn, on oath, says: That he/she is the publisher or an employee of the publisher of the **Capital Journal**, a daily newspaper published in the City of Pierre in said County of Hughes and State of South Dakota; that he/she has full and personal knowledge of the facts herein stated, that said newspaper is a legal newspaper as defined in SDCL 17-2-2.1 through 17-2-2.4 inclusive, that said newspaper has been published within the said County of Hughes and State of South Dakota, for at least one year next prior to the first publication of the attached public notice, and that the legal/display advertisement headed _____

a printed copy of which, taken from the paper in which the same was published, and which is hereto attached and made a part of this affidavit, was published in said newspaper for _____ successive week(s) to wit:

_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__
_____ 19__	_____ 19__

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$_____.

Signed: _____

subscribed and sworn to before me this _____ day of _____ 19__

Notary Public in and for the County of Hughes, South Dakota.
My Commission expires _____, 20__.

FORM E-8

See SDCL 1-26-4.1

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

AFFIDAVIT OF MAILING NOTICE
TO INTERESTED PARTIES

I, John Doe, under oath, do swear, that on May 4, 20__, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of the rule-making proceedings of the Department of Standards.

John Doe

Subscribed and sworn to
before me this 4th day
of May, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

FORM E-9

See SDCL subdivisions 1-26-6(2) and (3)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

APPROVAL OF RULES

Pursuant to notice published as provided by SDCL 1-26-5, the following rules, attached, are approved and will become effective immediately after filing with the Secretary of State:

199:02:01:01 to 199:02:01:10, inclusive

Date _____

Date _____

BOARD OF METRIC CONVERSIONS

LEGISLATIVE RESEARCH COUNCIL
(for legality and for form and style)

Richard Roe

June Doe

Charles Coe

Mary Boe

Fred Moe

(NOTE: This form must be signed by a majority of the members of the board or commission. Make only one original copy of this form. If you need extra signed copies, make photocopies after the original has been signed. Have as many signature lines as there are board members. On Form E-8 for signature by a department secretary, the name of the department and a signature line for the department secretary are substituted for those of the board in this example.)

FORM E-10

See SDCL subdivision 1-26-6(6)

(NOTE: This certificate must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules.)

IN THE MATTER OF THE
PROMULGATION OF
EMERGENCY RULES

CERTIFICATE

I, Richard Roe, hereby certify that I am a duly appointed member and the duly elected chair of the Board of Metric Conversion and that the attached instruments are full, true, and correct copies of the following emergency rules adopted by the Board of Metric Conversions on May 7, 20__:

199:02:01:01 to 199:02:01:10, inclusive

I further certify that SDCL 1-26-5 and 1-26-6 were complied with in the adoption of these rules. These rules are effective immediately upon filing with the Secretary of State.

Richard Roe, President
Board of Metric Conversions

Subscribed and sworn to
before me this 7th day
of May, 20__.

Notary Public - South Dakota

(Seal)

My Commission expires
_____, 20__.

STYLE AND FORM EDITING GUIDELINES

Rules are edited according to the following guidelines:

1. ABBREVIATIONS. Abbreviations may be used if they serve a specific purpose and are defined in the definitions section.

2. CAPITALIZATION. Some specific examples commonly found in the text of rules are the following:

Governmental Offices and Institutions. The full proper name of a department or a governmental agency or institution is capitalized: "Department of Labor," "University of South Dakota," "Hughes County Commission," "Environmental Protection Agency," "Board of Pharmacy," "Human Services Center," and "Division of Insurance," but not "department," "university," "county commission," "agency," "board," or "division." The titles of smaller offices or programs within departments are not capitalized. "Supreme Court" and "Legislature" are traditionally capitalized.

Governmental Officials. The titles of state, county, municipal, or district officials are not capitalized: "secretary of agriculture," "county commissioner," "mayor," and "supervisor." Substitutions for official titles, such as "secretary" or "director," are not capitalized. "Governor" is traditionally capitalized.

Acts. The official titles of state or federal acts are capitalized: "Securities and Exchange Act of 1934" and "South Dakota Human Relations Act of 1972." Before capitalizing the name of a particular state act, check the South Dakota Codified Laws to be sure it has a specific name. For an example, see [SDCL § 20-13-56](#). A reference to laws on a particular subject, such as "insurance statutes," is not capitalized. The words "Session Laws" are capitalized.

Geographic Names. "Federal," "state," "city," and "county," if not part of a proper name, are not capitalized. Examples include: "federal area," "State of South Dakota," "county of Hughes," and "city of Mitchell," in contrast to "Hughes County" and "Rapid City." Other examples are: "rivers," "state parks," and "state game refuges," in contrast to "White River," "Custer State Park," and "Wall Lake State Game Refuge."

Words Used with Numbers or Letters. Words denoting unit and class are capitalized if followed by specific Arabic numbers or specific letters: "Class 3," "Interstate 29," "State Highway 13," "Class 2 misdemeanor," "Class A," "Unit 400A," "several classes," and "third class." The words Fahrenheit and Celsius are capitalized.

Private Associations. The names of professional and private associations, corporations, and businesses are capitalized.

References to SDCL and ARSD. The words "title," "article," "chapter," "section," and "rule" are not capitalized.

Notes Following Rules. All of the words introducing notes after the text of rules are capitalized: "Source," "General Authority," "Cross-Reference," and "Note."

3. CITATIONS TO AUTHORITY. Citations to South Dakota documents take the following form:

South Dakota Codified Laws	SDCL chapter 2-14 SDCL 2-14-2 SDCL subdivision 2-14-2(18)
Laws of South Dakota (Session Laws)	SL 1982, ch 316, §6
South Dakota Register	10 SDR 76

Other authorities in the text of a rule or in the notes following the text should be cited as follows:

United States Code	42 U.S.C. § 1983
United States Statutes at Large	85 Stat. 1043
Public Laws	Pub. L. No. 94-45 (July 3, 1975)
Code of Federal Regulations	45 C.F.R. § 1060.2 (March 5, 1981)
Federal Register	45 Fed. Reg. 45, 259 (July 31, 1980) (to be codified at 14 C.F.R. § 39.13)

See **GENERAL AUTHORITY AND LAW IMPLEMENTED** and **INCORPORATION BY REFERENCE**.

4. COLLATERAL REFERENCES. See **NOTES**.

5. CROSS-REFERENCES. See **NOTES**.

6. FEDERAL REGULATIONS. If the task is to adopt the federal regulations as an agency's own rather than incorporating federal regulations by reference, translate the federal language into plain English as much as possible and break the lengthy federal rules into smaller rules. The added catchlines will make the requirements easier to grasp. Federal rules are often incorporated by reference. See **INCORPORATION BY REFERENCE**.

7. HEADINGS. Titles, articles, and chapters have headings; sections have catchlines. Catchlines may be any length. See **CATCHLINES**. Headings are limited only by the space available for the "headers" at the top of each page of the printed rules.

Each title heading is followed by an index or table of contents, which is a list of the articles in the title. Similarly, each article has an index or table of contents, which is a list of the chapters in the article, and each chapter has an index or table of contents, which is a list of sections in the chapter.

8. HYPHENATION. Hyphens are used in written numbers and fractions and in some adjective forms. Do not hyphenate words beginning with "semi" or "non." Hyphenation of words beginning with "self-" and of the word "secretary-treasurer" is permissible. Check with the dictionary for the hyphenation of particular words. Long-term and short-term should be hyphenated.

Frequently used words that should not be hyphenated include the following: prima facie, percent, prorata, pro rata, ex parte, nonresident, interstate, intrastate, and statewide.

9. INTERNAL REFERENCES. Internal references are references in the text of rules to other sections of the Administrative Rules of South Dakota or to sections of the South Dakota Codified Laws.

Administrative rules may be referred to in the following manner:

- one section: § 55:10:12:04
- two sections: §§ 55:10:12:04 and 55:10:12:05
- three or more sections: §§ 55:10:12:01 to 55:10:12:10, inclusive
- a subdivision: subdivision 55:10:12:01(3)
- sections connected by "or": § 55:10:12:04 or 55:10:12:05

Codified laws may be referred to in the following manner:

- one section: SDCL 3-12-71
- two sections: SDCL 3-12-71 and 3-12-72
- three or more sections: SDCL 3-12-71 to 3-12-75, inclusive
- a subdivision: SDCL subdivision 2-14-2(18)
- two subdivisions: SDCL 2-14-2(18) and (19)
- three or more subdivisions: SDCL 2-14-2(18), (19), and (23)
- sections connected by "or": SDCL 3-12-71 or 3-12-75

(Note: The way to cite to the codified laws within a section differs from the way to cite to them in the General Authority and Law Implemented portions of the rules.)

References to chapters, articles, and titles are spelled out in the text, followed by the number. Examples are:

- chapter 55:10:12
- article 55:10
- ARSD title 55
- SDCL chapter 1-26
- SDCL title 32

"Chapter" and "article" are abbreviated in cross-references. See **NOTES**.

The word "section" is not spelled out unless it is used at the beginning of a sentence. In all other cases, use the section symbol. The section symbol in WORD 2016 is found at Insert, Symbol.

10. LAW IMPLEMENTED. See **GENERAL AUTHORITY AND LAW IMPLEMENTED.**

11. NOTES. Informational notes are not considered part of the rules. They follow law implemented citations and are placed in the order in which they are listed below:

References provide publishing information for material incorporated by reference. See **INCORPORATION BY REFERENCE.**

The following is an example of a reference note:

Reference: **National Standard Plumbing Code**, 1996 edition, pages numbered by chapter, National Association of Plumbing-Heating-Cooling Contractors. Copies may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, Box 6808, Falls Church, Virginia 22046. Cost: \$45.

Collateral References cite to other material such as cases, texts, and other departmental publications which may add to an understanding of the rule. For an example, see [§ 67:12:05:51](#).

Collateral Reference: Definition, *King v Smith*, 392 U.S. 309 (1968).

Cross-References direct the reader to the South Dakota Codified Laws or to other rules which may be similar or which may provide further information about the main point of the section. The form for cross-references includes the catchline. For an example, see [§ 41:06:01:02](#).

Cross-References:
Combination licenses, SDCL 41-6-10.1, § 41:06:02:01.01.
Basic or general hunting license required, SDCL 41-6-11.
Safety instruction required for licensing of child under sixteen - - Fee waived, SDCL 41-6-16.

Examples illustrate the way the rule is to operate. For an example, see [§ 64:06:02:80](#).

Example: A tourist drives a car into a city from Interstate 90 to be repaired and then drives back to the highway to continue the trip. The receipts from the repair are subject to the city's sales tax.

Notes explain the rule or provide additional information. For an example, see [§ 70:03:01:61.02](#). Notes may be added by the agency writing the rules or by LRC.

Note: It is recommended that the draw bar length not exceed eight feet.

12. NUMBERS, DATES, AND TIME. Generally, spell out numbers ten and under. Use Arabic numerals for numbers over ten. Spell out dollar amounts under \$11 unless they include cents. If a sentence contains several numbers, some of which should be in Arabic numerals, use Arabic numerals for all. Numbers following words such as "unit" and "class" should be Arabic numerals.

Do not spell out decimals. Drop zeros from the right side of decimals. Fractions may be spelled out or written in numerals, depending upon readability. Spell out times of the day or use numerals with a colon. The designations "a.m.," "p.m.," "noon," and "midnight" are always lower case. Technical rules and tables may require specific individual styles. Understanding and readability are primary goals. Examples of the style for numbers are as follows:

25	225
52,925	four
ten dollars	25 cents
\$4.30	\$403
\$4,081	\$4,081.34
8:00 a.m.	Class 2
one-half, 1/2, .5	12:00 midnight
90 degrees Fahrenheit	45 degrees
October 31	1.3

13. REFERENCES. See **NOTES**.

14. STATUTES. With the exception of definitions, it is illegal to copy material from the statutes in the rules without permission from the Code Counsel. See [SDCL §§ 1-26-6.1](#) and [2-16-8.1](#). You may refer to a statute in an internal reference but avoid copying statutory material.

15. WORDS AND PHRASES. The following words and phrases are often incorrectly used:

AVOID	USE
aforesaid, aforementioned, before-mentioned	"the," "that," or "those"
afforded or accorded	given
and/or	"either A or B, or both"
any and all	(either word)
as provided in this chapter	(delete)
at such time as	when
at the time of	when
authorized and empowered to	may
be and the same is hereby	is
carry out	"execute" or "complete"
commence	begin
constitute and appoint	appoint
deal with	"address" or "conduct"
deem	consider

deemed to be	is
during such time as	while
during the course of	during
each and all	(either word)
either directly or indirectly	(delete)
employ (meaning to use)	use
every person, all persons	a person
except when otherwise provided	(delete)
expend	spend
fail, refuse, or neglect	fail
feasible	"practicable" or "workable"
following section	§ (fill in number)
formulate	make
for the duration of	during
for the reason that	because
forthwith	immediately
from and after	after
full and complete	full
give consideration to	consider
greater than	more than
have need of	need
hereby	(delete)
hereinafter, hereinbefore, hereinabove, above, below, following, preceding	(these are objectionable when referring to the position of a section or other provision; if reference is necessary, specify the article, chapter, section, or subdivision by number)
in case	if
in order to	to
in the event that	if
in the interests of	for
inquire	ask
institute	"begin" or "start"
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is required to	shall
is unable to	cannot
it is a person's duty to	shall
it is lawful to	may

make application	apply
make a determination	"determine" or "decide"
make payment	pay
make provision for	provide for
maximum	most
means and includes	"means" or "includes"
minimum	least
modify	change
necessitate	require
no later than June 30	before July 1
none whatever	"none" or "no"
not later than	before
null and void	void
occasion (verb)	cause
of a technical nature	technical
on or after July 1	after June 30
on or before July 1	by July 1
on a person's own application	upon request
or, in the alternative	or
per (person, year, day)	"a" or "for each"
per annum	a year
per centum	percent
period of time	"period" or "time"
prior to	before
provided (conjunction)	"if" or "but"
provided, however, that	"except," "but," or "however" or start a new sentence
provision of law	law
purchase	buy
render (meaning "to make")	make
retain	keep
said	"the," "that," or "those"
same	(the appropriate pronoun)
shall be	is
shall be construed to mean	means
shall be deemed to be	is
shall have the power to	may
shall not	may not
sole and exclusive	exclusive
subsequent to	after
such	"the," "that," or another pronoun
suffer	allow
terminate	end
timeframe	"schedule" or "period"
to wit	(delete or use "namely")
under the provisions of	under
unless and until	"unless" or "until"
until such time as	until

utilize (meaning "to use")	use
when, where (as a condition)	if
whatsoever	whatever
whenever	"when" or "if"
wheresoever	where
whosoever	whoever
whomsoever	(archaic; improper)