

PROCEDURE AND FORMS FOR ADOPTING PERMANENT RULES

1. Consult the Drafting Manual: Administrative Rules of South Dakota for use in drafting the rules.
2. Review SDCL 1-26-4.²⁰
3. Serve person who will authorize the agency to proceed with rulemaking with a copy of:
 - a) Form 1 (Personal Service on Person Authorizing Rule Promulgation);
 - b) Form 2 (Authorization to Proceed);
 - c) Proposed rules; and
 - d) Materials incorporated by reference in the proposed rules.
4. Schedule public hearing following authorization to proceed.
5. At least 20 days before public hearing:
 - a) Mail Notice of Public Hearing to Adopt Rules [Form 6] to all persons who have requested advanced notice of rulemaking proceedings.
 - b) Complete Affidavit of Mailing Notice [Form 9];
 - c) Publish Notice of Public Hearing [Form 7 (Letter to newspaper) and Form 8 (Affidavit of Publication)] in accordance with SDCL 1-26-4.1;
 - d) Serve Legislative Research Council (LRC) [Form 3] and Bureau of Finance and Management [Form 4] with one copy of:
 - i) Proposed rules (Double-spaced);
 - ii) Form 5 (Fiscal Note);
 - iii) Form 6 (Notice of Public Hearing to Adopt Rules);
 - iv) Form 14 (Small Business Impact Statement);
 - v) Form 16, where applicable (Housing Cost Impact Statement)
 - vi) To the LRC only:
 - (1) Completed Forms 1 and 2 (per the LRC's request);
 - (2) Any material incorporated by reference, to be returned after the LRC's review; and
 - (3) (Via e-mail to adminrules@sdlegislature.gov) A Word .doc file of the proposed rules.
6. Accept public comments in accordance with SDCL 1-26-4(6).
7. LRC will return proposed rules with recommendations for form, style, clarity, and legality.
8. Incorporate LRC recommendations, subject to appeal to Interim Rules Review Committee.
9. Consider public comments.
10. Complete Form 11 (Approval of Rules).
11. At least five days before the Interim Rules Review Committee meeting, serve each Committee member with:

²⁰ Review all time requirements under SDCL 1-26-4, 1-26-4.3, 1-26-6, and 1-26-8.

- a) Form 12 (Affidavit of Service) and all its referenced documents (for final rules, please three-hole punch and number by page the final rules);
 - b) Form 15 (Rules Presentation Format);
 - c) First draft of proposed rules showing LRC recommendations; and
 - d) LRC letter to the agency.
12. At least five days before the Interim Rules Review Committee meeting, serve LRC with:
- a) Original Form 11 (Approval of Rules);²¹
 - b) Final rules (showing understrikes and overscores); and
 - c) Copies of:
 - i) Form 10 (Minutes of Public Hearing);
 - ii) A record of written comments;
 - iii) Form 15 (Rules Presentation Format); and
 - iv) Form 12 (Affidavit of Service).
13. Appear and present final rules to the Interim Rules Review Committee.
14. No more than 60 days following the completion of the Interim Rules Review Committee's review of the rules, file with the Office of the Secretary of State:
- a) Final rules;
 - b) Form 11 (per the Secretary's request); and
 - c) Form 13 (Certificate).²²
15. Rules are provisionally effective on the 20th day after filing with the Office of the Secretary of State.
16. Rules are effective on July 1 following the next legislative session.

²¹ Form 11 will be returned at the Committee hearing after the Committee completes its review of the rules.

²² All originals of Forms and documents, other than Form 13, must be maintained by the agency (SDCL 1-26-7). The original signed copy of Form 13 must be filed with the Office of the Secretary of State.

FORM 1

Personal service on [Name of Person Authorizing Rule-Making] of:

1. [Agency]'s proposed rules §§ [Proposed Rule Citations]; and
2. All materials incorporated by reference

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

Received by: _____
[Title of Person Authorizing Rule-Making]

FORM 2

AUTHORIZATION TO PROCEED

In accordance with SDCL 1-26-4(2), I, _____, [Title of Person Authorizing Rule-Making], authorize [Agency] to proceed with the promulgation of proposed rules §§ [Proposed Rule Citations].

Dated this ____ day of _____, 20__.

[Title of Person Authorizing Rule-Making]

FORM 3

Personal service on the Legislative Research Council of:

1. [Agency]'s proposed rules §§ [Proposed Rule Citations];
2. Admission of personal service by the officer authorizing the rulemaking;
3. Authorization to Proceed;
4. Notice of Public Hearing;
5. Fiscal note;
6. Small Business Impact Statement;
7. All materials incorporated by reference; and
8. Where applicable, the housing cost impact statement

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

Received by: _____
Legislative Research Council

Agency contact person:

Name

Phone Number

E-Mail Address

FORM 4

Personal service on the Bureau of Finance and Management of:

1. [Agency]'s proposed rules §§ [Proposed Rule Citations];
2. Notice of Public Hearing;
3. Fiscal note;
4. Small Business Impact Statement; and
5. Where applicable, the housing cost impact statement

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

Received by: _____
Bureau of Finance and Management

FORM 5, BFM 50.10

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

	CODE	NAME	PROPOSED RULES (by §, unless entire ch., art.)
DEPT.			
DIVISION			
PROGRAM			

IMPACT ON GOVERNMENT SUMMARY: (Changes to any existing process, schedule, or activity of any state or local gov't entity resulting from the proposed rule change.)

FISCAL IMPACT STATEMENT: (Estimate the overall fiscal impact--in terms of increases or decreases--because of, or to carry out, the proposed changes. Take into consideration staffing and resource changes (i.e. dollars, employees, equipment, supplies). Include a brief explanation if there is a minimal, incalculable, or no fiscal impact.)

FISCAL IMPACT BASIS: (Provide the assumptions, any computations, and any statistics that went into this Fiscal Note; and describe the accuracy of the estimated impacts on this form.)

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL		
Local Gov't Agencies:		
TOTAL		

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State & Local Gov't Agencies:		
TOTAL		

APPROVED _____ DATE _____
*Signature of Constitutional Officer, Commissioner, Department Secretary,
or Board or Commission Chairman of Agency Administering the Rules*

ADD ADDITIONAL PAGES IF NEEDED. A copy of this form may be obtained from the Bureau of Finance and Management. If proposed rules have a negative fiscal impact on a local government, the Bureau of Finance and Management must send a copy of its fiscal note to the organizations listed in SDCL 1-26-4.2.

FORM 6

[Agency Name] Notice of Public Hearing to Adopt Rules

A public hearing will be held in [Building Name and Room Number, if any; Address of Hearing Location], on [Date], at [Time] [(Central) / (Mountain)], to consider the [adoption / amendment / adoption and amendment] of proposed Administrative Rules of South Dakota numbered

§§ [Proposed Rule Citations].

The effect of the rules will be [Narrative Description of Effect].

The reason for adopting the proposed rules is [Narrative Description of Reason].

Persons interested in presenting amendments, data, opinions, and arguments for or against the proposed rules may appear in-person at the hearing, or mail or e-mail them to [Agency Name, Agency Mailing Address and E-mail Address (or in lieu of e-mail, URL to Other Online Commenting Method)]. The deadline to submit any such written comments for consideration by this [part-time board is seventy-two hours before the date of the public hearing / agency is ten days after the date of the public hearing].

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

For Persons with Disabilities: This hearing will be located at a physically accessible place. Please contact [Agency Name] at least 48 hours before the public hearing if you have special needs for which special arrangements can be made by calling [Phone Number].

Copies of the proposed rules may be obtained without charge from:

[Agency Name] and/or [rules.sd.gov] and/or [other agency URL]
[Agency Address]
[Agency Contact E-mail Address]
[Agency Contact Phone Number]

Published at the approximate cost of \$_____.

FORM 7

[Agency Name]
[Department Name]
[Agency Address]

[Date]

[Publication Name]
[Publication Mailing Address]

To whom it may concern:

Please publish the enclosed Notice of Public Hearing in your newspaper for one issue by [Date].

Please include the enclosed Affidavit of Publication (Form 8) with your invoice.

Sincerely yours,

[Agency Contact Name]
[Agency Contact Title]

Enclosure

FORM 8

AFFIDAVIT OF PUBLICATION

I, _____, under oath, do swear, that I am the publisher, or an employee of the publisher, of the _____, a newspaper of general circulation in _____.

I further swear that the Notice of Public Hearing to Adopt Rules by _____ at a public hearing on _____ was published on _____.

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20__.

FORM 9

AFFIDAVIT OF MAILING NOTICE

I, [Agency Contact Name], under oath, do swear, that on [Date of Mailing], 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 rulemaking proceedings by the [Department Name].

[Agency Contact Name]

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20__.

FORM 10

MINUTES OF PUBLIC HEARING
[Agency Name]

The [Agency Name] convened at [Time] on [Date], in [Location Address].

The purpose of the meeting was to conduct a public hearing on the proposed rules of [Agency Name] numbered §§ [Proposed Rules Citations], adopted under the authority of SDCL [Citation of General Authority for Proposed Rules].

Hearing Officer:

Members of the Board in Attendance:

Others in Attendance:

Written Testimony

- [Name of Testifier]
 - [Affiliation, Association, or Representation – If Any]
 - Proponent or Opponent
 - [Residence of the Person Submitting the Testimony]
 - [Date Written Testimony Received by Agency]
 - [Rules Testified To]
 - [Summary of Testimony]
 - [Agency Discussion in Response]
 - [Agency Action Taken in Response]

Oral Testimony

- [Name of Testifier]
 - [Affiliation, Association, or Representation – If Any]
 - Proponent or Opponent
 - [Residence of the Person Submitting the Testimony]
 - [Rules Testified To]
 - [Summary of Testimony]
 - [Agency Discussion in Response]
 - [Agency Action Taken in Response]

Summary of Changes to Proposed Rules Because of the Public Hearing or Comment

- [ARSD Section Number of Rule Modified After the Public Hearing]
 - [Description of Changes]
 - [Reason for Changes]

Adjournment: [Time of Adjournment]

Respectfully submitted,

[Agency Contact Name]
[Contact Title]
[Agency Name]

FORM 12

AFFIDAVIT

I, [Agency Contact Name], certify that on [Date of Mailing], I sent by U.S. mail and electronic mail a correct copy of the following documents adopted by the [Agency Name] on [Date of Public Hearing]:

- 1) Form 10 – Minutes of the Public Hearing;
- 2) A record of written comments;
- 3) Form 14 – Small Business Impact Statement;
- 4) Form 5 - Fiscal note;
- 5) For any rules that increase a fee, the financial resource information;
- 6) For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the housing cost impact statement; and
- 7) The final rules as adopted:

§§ [Citations to Rules]

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

Representative Roger DeGroot
Roger.DeGroot@sdlegislature.gov

Senator Red Dawn Foster
[reddawn@return2heart.org](mailto:red dawn@return2heart.org)

Representative Erin Healy
Erin.Healy@sdlegislature.gov

Senator Jean Hunhoff
DJHunhoff@iw.net

Representative Jon Hansen
Jon.Hansen@sdlegislature.gov

Senator Jim Mehlhaff
Jim.Mehlhaff@sdlegislature.gov

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

Representative Roger DeGroot
1925 Oriole Trail
Brookings, SD 57006-6614

Senator Jean Hunhoff
2511 Mulligan Dr.
Yankton, SD 57078

Representative Erin Healy
911 S. 2nd Avenue
Sioux Falls, SD 57104-5005

Senator Jim Mehlhaff
1014 W. Capitol Ave.
Pierre, SD 57501

Representative Jon Hansen
47484 Dells Dr.
Dell Rapids, SD 57022

[Agency Contact Name]

[Agency Name]

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20____.

FORM 13

CERTIFICATE

I, [Name of Agency Contact], hereby certify that I am a duly appointed member and the duly elected chair of the [Agency Name], and that the attached instruments are full, true, and correct copies of the following rules adopted by the [Agency Name] on [Date of Public Hearing]:

§§ [Citations to Adopted Rules]

I further certify that [Agency Name] complied with SDCL 1-26-4 and 1-26-6 in the adoption of the attached rules. The rules will become effective twenty days after filing with the Office of the Secretary of State.

[Agency Contact]
[Agency Name]

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20____.

FORM 14

SMALL BUSINESS IMPACT STATEMENT

1. Our agency has determined that the rule(s) we are proposing have the following impact on small businesses (i.e., a business with 25 or fewer full-time employees):
 - Direct impact (Complete remainder of form, starting on question 2.)
 - Indirect impact (Explain impact specific to small businesses and how impact is indirect in the space below, then skip to the date and signature at the end of the form.)
 - No impact (Explain how there is no impact specific to small businesses in the space below, then skip to the date and signature at the end of the form.)

Explain:

2. A general narrative and overview of the effect of the rule(s) on small business written in plain, easy to read language (do not repeat the general effect of the proposed rule(s), instead specify the proposal's effects on small business in particular):
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. Provide a brief discussion of the necessity of the rule(s):
5. Describe the small businesses or types of small businesses that would be subject to the rule(s)?
6. Estimate of the number of small businesses that would be subject to the rule(s):

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 the rule(s)?

Yes No

a. If "yes," how many annual reports must a small business submit to the state?

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 or records with no assistance.

It is likely that a bookkeeper for a small business should be able to complete the reports or records.

It is likely that a small business person would need the assistance of a CPA to complete the reports or records.

It is likely that a small business person would need the assistance of an attorney to complete the reports or records.

Other

Unknown - please explain:

8. Are there any less intrusive or less costly methods to achieve the purpose of the rule(s) (i.e., fewer reports, less recordkeeping, lower penalties)?

No - please explain:

Yes - please explain:

[Date]

[Authorized Signatory]

[Agency Name]

This Small Business Impact Statement must be signed by the head of the agency or the presiding officer of the board or commission empowered to adopt rules.

A general explanation must be provided for each proposed rule or rule amendment. For multiple proposed rules with a single purpose and impact, only one explanation is required.

Agencies must use readily available information and existing resources to prepare this Small Business Impact Statement.

FORM 15

Rules Presentation Format

Department/Board/Commission Name _____

Please complete 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 _____

- Date of public hearing _____

- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management _____
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.

- Date and name of newspapers in which the notice of public hearing was published:
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____

- Summary of how, when, and number of interested persons, if any, were contacted.

- Page numbers in the minutes where the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- For any rule implementing a bill from a preceding session, the number of the bill:

- Date final rules and supporting documents submitted to the LRC and the Committee

FORM 16

HOUSING COST IMPACT STATEMENT

This Statement shall be completed only if the agency marks a box(es) in #1 based on a model code developed by a national or international organization of trade professionals.

1. Our agency has determined that the proposed rule(s) prescribe new standard(s) or requirement(s) for building or remodeling a residential structure with regard to (*check all that apply*):

Electrical systems
Plumbing systems
Mechanical systems
Energy conservation
Fire prevention
Other

2. Briefly describe the standard(s) and requirement(s):
3. Provide a brief discussion of the necessity of each standard or requirement:
4. Provide the average estimated cost (i.e., total cost to the consumer of all materials, labor, and taxes) of compliance, per dwelling unit, with each standard or requirement:
5. Provide the name, city of residence, and licensed trade of three licensed contractors or other applicable building trades professionals operating in the state consulted on the estimate, and their estimates:

i. Name: _____ City: _____ Licensed Trade: _____

- Cost estimate of compliance:
- Explanation of estimate:

Signature: _____ Date: _____

ii. Name: _____ City: _____ Licensed Trade: _____

- Cost estimate of compliance:
- Explanation of estimate:

Signature: _____ Date: _____

iii. Name: _____ City: _____ Licensed Trade: _____

- Cost estimate of compliance:
- Explanation of estimate:

Signature: _____ Date: _____

6. This statement was published on the agency's website starting on the following date:
_____ at the following url: _____.

[Date]

[Authorized Signatory]

[Agency Name]

This Housing Cost Impact Statement must be signed by the head of the agency or the presiding officer of the board or commission empowered to adopt rules.

A general explanation must be provided for each proposed rule or rule amendment. For multiple proposed rules with a single purpose and impact, only one explanation is required.

"Residential structure" means any one-family dwelling, two-family dwelling, or townhouse not more than three stories above grade.