

Interim Rules Review Committee 2024 Final Report



Study Assignment

Created by SDCL [1-26-1.1](#), the Interim Rules Review Committee, on behalf of the Legislature, oversees executive branch agencies in the exercise of the quasi-legislative authority delegated to the agencies to promulgate rules. The Committee is empowered to require agencies to go back to an earlier part of the rulemaking process (i.e., revert) if the Committee finds concerns listed in SDCL [1-26-4.7](#), including concerns that the rule does not follow legislative intent or the Legislature's delegated authority.

Summary of Interim

Trends regarding this interim compared to prior interims for the Committee are showcased below in chart form.

Table 1. Number of Rule Packets by Interim – Reason for Rules

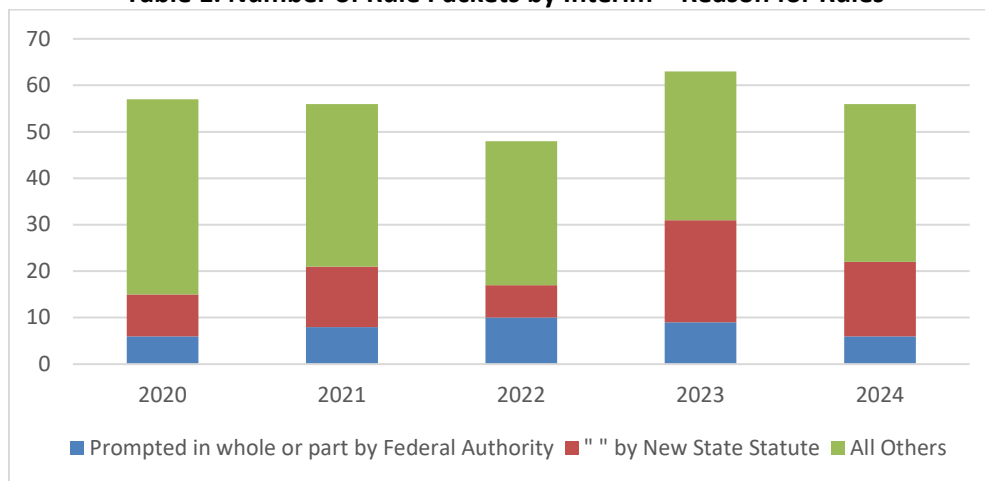


Table 2. Average Number of Rule Packets by Month (2020-24 Interims)

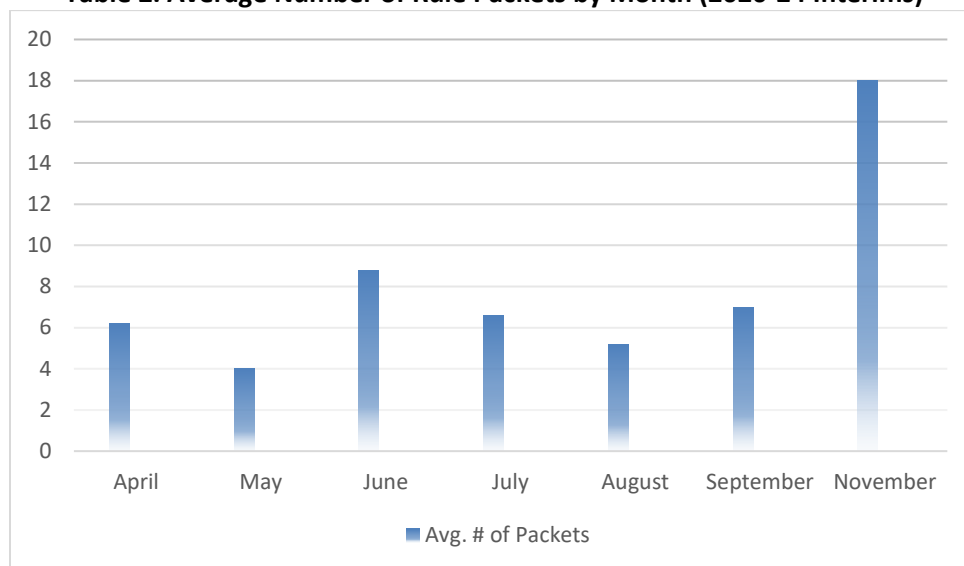
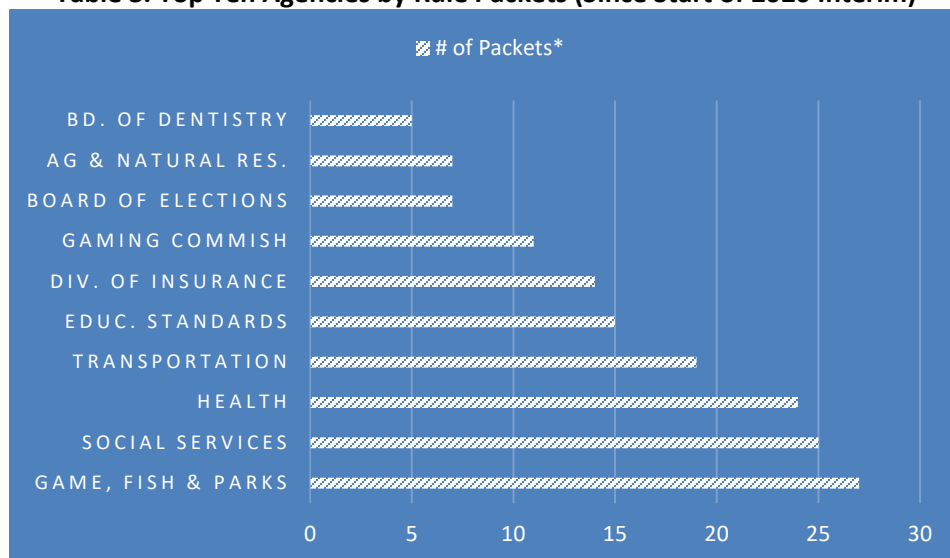
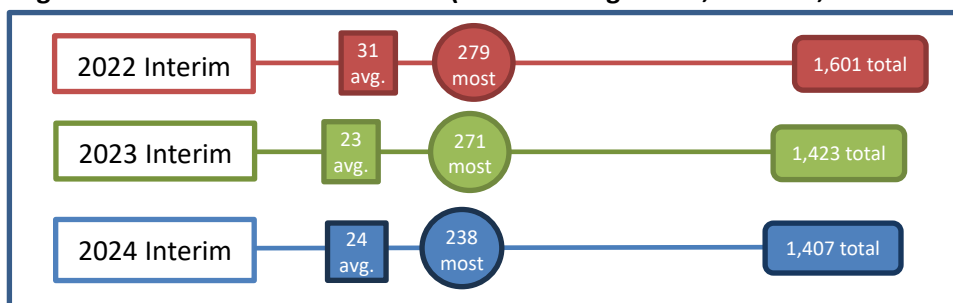


Table 3. Top Ten Agencies by Rule Packets (Since Start of 2020 Interim)



* 69 boards, commissions, agencies, and offices have presented a rules packet in the last five years.

Table 4. Pages of Rules Reviewed Per Packet (Not Counting Forms, Minutes, Written Comments)



The Committee met on the dates listed below. The Committee's actions at a given meeting are summarized below the corresponding date, with agency rules reviewed listed by agency name:

February 28, 2024:

- The Committee met to organize itself, selecting its chair and vice chair and setting the meeting schedule for the entire interim.
- Assignments as lead members on particular agencies' proposed rules were discussed.
- Members were briefed by staff on updates made to the [Drafting Manual – Administrative Rules of South Dakota](#) for the 2024 interim.
- Staff updated the Committee on legislation proposed by the Committee in 2023, and enacted at the 2024 session: [HB 1005](#) and [HB 1006](#).

April 15, 2024:

- Department of Health – Add newborn hearing screening to the South Dakota newborn screening panel.
- Department of Health – Add X-linked adrenoleukodystrophy (X-ALD) to the South Dakota newborn screening panel.
- State Board of Dentistry (Department of Health) – Amend and adopt rules on the maintenance and destruction of patient and advertising records.
- Department of Agriculture and Natural Resources – Revise the start date of the State Fair to add one more day and increase admission, parking, and camping fees to reflect the additional day.

- South Dakota Animal Industry Board (DANR) – Clarify the sale of retail meat products requires that the producing retail store has full control of the sanitation, storage, and transportation of the product until purchased.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Clarify rules on hunting private land leased by the state; modify regulations on tree stands, bait stations, and trail cameras; revise elk and bighorn sheep hunting regulations; and increase the number of available nonresident waterfowl licenses.
- South Dakota Board of Education Standards (Department of Education) – Make student learning objectives optional for assessing teacher performance, revise outdated timelines for adopting the state's teacher evaluation model, and update and clarify language.
- South Dakota Public Utilities Commission – Repeal a rule lacking statutory authority, update cross-references, change requirements for grain buyer licensees, annual telecommunications filings, master meter notice and filing, and pipeline safety.
 - The proposal regarding pipeline safety was the result of federal regulation.
- South Dakota Commission on Gaming (Department of Revenue) brought two packets. One revised rules that lack statutory authority, and to clarify that individuals are entitled to notice by the Commission when the Commission takes administrative action. The other created an additional pay level to the TriLux Bonus Blackjack with Super 3 table game.
- Staff notified the Committee about potential cleanup legislation for rules provisions in [SDCL chapter 1-26](#) that staff had been working on, and would be reaching out to the executive branch to review.
- Staff sought and obtained from the Committee its approval to have the Administrative Law Committee of the State Bar review, at its leisure, the contested case provisions in chapter 1-26 to see if any revisions are necessary, under the Committee's authority to review administrative law per [SDCL 1-26-1.2](#).

[May 7, 2024:](#)

- South Dakota Board of Pharmacy (Department of Health) – Update language, references, and compounding standards; revise intern and technician vaccine administration standards; and provide a fee increase for pharmacist licensure. Many of the rules had been proposed, and reverted, [back at the Committee's September 2020 meeting](#) (pgs. 4-5).
- Department of Health – Amend a rule to correct an error by clarifying that home health agency personnel and hospice providers are required to be Medicare-certified, not Medicaid-certified.
- Division of Insurance (Department of Labor and Regulation) – Revise plan standards to incorporate the 2024 Medicare Supplement coverage amounts set by the federal government.
 - The proposal was the result of federal regulation.
- The Chair tasked LRC staff with reviewing the Form 5 – Fiscal Note (required by [SDCL 1-26-4.2](#)) to see if updates were necessary.

[June 10, 2024:](#)

- Department of Human Services – Allow CHOICES waiver service providers to cease providing services to participants appealing a termination notice, and clarify who may appeal a termination and on what grounds.
- South Dakota Board of Funeral Service (Department of Health) – Update rules to align with statutory changes in the 2023 and 2024 legislative sessions, remove unnecessary barriers to licensure, revise language to current terminology and practice, and correct cross-references.
 - The proposal, in part, was the result of the enactment of [HB 1015](#) and [SB 141](#) in 2023.
- South Dakota Board of Dentistry (Department of Health) – Revise the collaborative supervision requirements and remove a clinical practice requirement to align with new law.
 - The proposal was the result of the enactment of [HB 1074](#) in 2024.
- Department of Social Services – Permit an individual to end TANF benefits by a verbal statement, update federal medical services eligibility standards, and update the personal needs allowance for individuals in

nursing or intermediate care facilities (per the recommendation of the [2023 Study Committee on Sustainable Models for Long Term Care](#)).

- A portion of the proposal is the result of federal regulation.
- South Dakota Board of Education Standards (Department of Education) – Remove youth suicide awareness training from the certification process based on statute revision, repeal certain teacher permits, and create a one-year CTE instructor permit.
 - The change in suicide awareness and the one-year CTE instructor permit were the result of the 2024 enactment of [HB 1020](#) and [HB 1187](#), respectively.
- Department of Revenue – Repeal obsolete rules, eliminate the dealer technology exemption, and adopt rules on the motor vehicle excise tax exemption for rental companies.
- Division of Insurance (Department of Labor and Regulation) – Update statutory references and sources referenced in rule, and implement the group capital calculation filing for insurance holding companies.
 - The calculation rule was the result of the 2024 enactment of [HB 1059](#).
- The Chair requested staff create a uniform form for the presentation of agency financial resource information, which must be provided to the Committee whenever the agency increases a fee, per [SDCL 1-26-4.8](#).

July 23, 2024:

- South Dakota Board of Nursing (Department of Health) – Revise the approval process for clinical enrichment programs and use of nurse preceptors, and require nurses and registrants to report to the Board within 60 days a new address, name, or reportable event.
- Department of Human Services – Clarify and update regulations pertaining to HOPE waiver services, specify the contents of an individual support plan and require the participant's signature, and clarify the services, cost share, and reasons for discontinuing or denying HOPE waiver services.
 - Some of these revisions were the result of federal regulation.
- South Dakota Housing Development Authority – Add a recognized Indian tribe to those government entities eligible for housing infrastructure grants and loans.
 - This revision was the result of the 2024 enactment of [HB 1041](#).
- Department of Social Services – Repeal the Medicaid recipient cost-share requirement, update nursing facility level of care classifications, and detail what settings or services apply to each level of classification.
 - The repeal was prompted, in part, by federal regulation.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Brought three packets. One updated bison hunting provisions, cleaned up and modified elk hunting provisions, and modified the dates for various hunting seasons. A second involved revisions to elk hunting licenses and a modification of restrictions on nonresidents taking raccoons. The final packet pertained to second annual park entrance licenses, revisions to antelope licenses and seasons, removed the availability of access permits within the Black Hills Fire Protection District, and decreased the minimum factory rated muzzle velocity for pellet air guns when hunting certain animals.
 - The park entrance license revisions were prompted by [SB 55](#) enacted in 2024.
- Transportation Commission (Department of Transportation) – Revise speed limits in Pennington, Brookings, Butte, Custer, Meade, and Perkins Counties.
- Secretary of State – Revise notary application and renewal forms to add e-notary provisions required by statute and to modify the oath to better align with statute.
 - The e-notary provisions were the result of [SB 211](#) enacted in 2024.
- Commission on Gaming (Department of Revenue) – Incorporate the most recent version of the Association of Racing Commissioners International guidelines for authorized drugs in horse racing.
- Staff presented a proposed form for agencies providing financial resource information per SDCL 1-26-4.8.

August 20, 2024:

- Department of Health – Repeal rules associated with emergency medical services as they have been transferred by statute to the Board of Medical and Osteopathic Examiners, update ambulance service requirements and establish quality assurance standards, and set the process for requesting a hardship exemption for a medical/program director.
 - The revisions are prompted by [SB 63](#) and [SB 64](#), enacted in the 2024 session.
- Department of Health – Increase the fee for medical cannabis establishments as directed by the Legislature.
 - This revision was directed by [SB 43](#) enacted in 2024.
- South Dakota Board of Education Standards (Department of Education) – Change the timeframe for appeal of due process (IEPs in schools) complaints to align with statute.
 - The revisions are the result of [HB 1220](#) enacted in 2024.
- Division of Insurance (Department of Labor and Regulation) – Implement an examination validity program and maintaining qualifications program for broker-dealer agents, investment advisers, and investment adviser representatives; and update the examination requirement for investment advisers/representatives.
- The form for agencies to submit financial resource information when increasing a fee, per [SDCL 1-26-4.8](#), was adopted by the Committee and became [Form 17](#).

September 10, 2024:

- South Dakota Board of Physical Therapy (Department of Health) – Update the activities that meet continuing education requirements and the Board's waiver of education requirements.
 - The waiver revision was motivated, in part by [SB 78](#) enacted in 2023, and its two-year licensure scheme.

October 22, 2024:

- South Dakota Board of Podiatry Examiners (Department of Health) – Increase a license renewal fee to ensure the Board's financial viability.
- Department of Human Services – Permit developmental disability support providers who do not provide services in the state to satisfy requirements to be a South Dakota provider for purposes of providing services when South Dakota recipients are located out of state.
- Department of Health – Update and clarify minimum regulations for nursing homes, assisted living centers, and hospitals.
- South Dakota Board of Medical and Osteopathic Examiners (Department of Health) – Amend, repeal, and adopt rules regulating and overseeing emergency medical service personnel after the transfer of oversight to the Board.
 - This was the result of [SB 63](#) and [SB 64](#), enacted in the 2024 session.
- South Dakota Conservation Commission (Department of Agriculture and Natural Resources) – Repeal an outdated rule defining "urban area" and update rules associated with the soil conservation award program.
 - The soil conservation award updates were the result of [HB 1033](#), enacted in the 2024 session.
- Board of Water and Natural Resources (Department of Agriculture and Natural Resources) – Update the boundaries of director areas and the director numbers for the East Dakota and Vermillion Basin Water Development Districts.
 - The revisions were the result of the 2023 enactment of [SB 83](#) and the 2024 enactment of [HB 1130](#).
- Department of Social Services – Remove the three-month waiting period for non-Medicaid children's health insurance program (CHIP) eligibility for individuals who were disenrolled from other coverage.
 - This revision was the result of federal regulation.
- South Dakota Board of Social Work Examiners (Department of Social Services) – Clean up outdated or obsolete content in the social worker article, add a multistate licensing category and fee on account of the

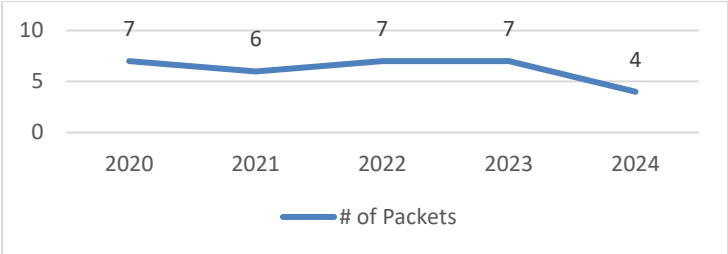
compact, update supervision and continuing education requirements, and adopt the most recent national code of ethics.

- The multistate license was the result of [HB 1015](#) enacted in the 2024 session.
- Department of Social Services – Revise and update language throughout the TANF, Medicaid, and low-income energy assistance articles for style and form.
- State Brand Board (Department of Agriculture and Natural Resources) – Increase the fee for lifetime travel permit fees on horses and update rules on out-of-state brand recognition and use.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Cap nonresident licenses for and modify unit for the spring turkey hunting season, modify fishing regulations on Belle Fourche Reservoir and Lake Oahe, modify the reporting requirements for fish hatcheries, and revise bobcat hunting and trapping rules.
- Game, Fish and Parks Commission (Department of Game, Fish and Parks) – Establish fees for the habitat conservation emblem and increase fees for park entrance, camping permits, lodges/cabins, trail use passes, use of park facilities, campsite reservations, licensing boats, hunting licenses, fishing licenses, and firewood.
 - The habitat conservation emblem rules are the result of [HB 1119](#), enacted in the 2024 session.
- Transportation Commission (Department of Transportation) – Change speed limits in Douglas, Hamlin, and Walworth Counties and update reference manuals and other publications used for signing, utility installation, traffic control, and access management standards.
- State One-Call Board (Department of Public Safety) – Require operator participation in a positive response program and limit excavators to a certain number of updates to current tickets for excavation.
- Department of Public Safety – Revise the T50 minimum distillation temperature for certain volatility classes of fuels and adopt the 2024 Commercial Vehicle Safety Alliance handbook.
- Division of Labor and Management (Department of Labor and Regulation) – Update the source of reference used to calculate reimbursement for workers' compensation dental procedures and increase the conversion factor for dental fees.
- Board of Technical Professions (Department of Labor and Regulation) – Update board processes, modernize language, eliminate the use of professional titles by retirees, repeal redundant disciplinary proceedings, and update test scoring experience, and education requirements.
- State Electrical Commission (Department of Labor and Regulation) – Adopt the 2023 National Electric Code and implement standards for third-party inspection.
- South Dakota Lottery Commission (Department of Revenue) – Permit mobile claims for lottery prizes between \$100 and \$5,001, and update the Mega Millions game rules effective April 2025 when the game is updated nationally.
- Division of Insurance (Department of Labor and Regulation) – Update a reference guide, modernize continuing education requirementscourse attendance roster, and clarify long-term care continuing education.

Rules Reverted to Prior Step

The following table provides a trend in the number of rules packets in which the Committee has reverted one or more rules:

Table 4. Rule Packets Containing Rule(s) Reverted by the Committee



In accordance with § [1-26-4.7](#), the Committee reverted to a prior step in the rule promulgation process certain rules proposed by the:

- *Game, Fish and Parks Commission (Department of Game, Fish and Parks)*: At its [April meeting](#) (pgs. 3-4), the Committee reverted an amendment to [ARSD 41:06:16:11](#) that would increase the number of nonresident waterfowl licenses by 210 (to 4,410) and increase the number of temporary (three-day) nonresident waterfowl licenses by 105 (to 2,205). Citing a concern about the underlying basis for the amendment and the large number of opponents, the Committee reverted the amendment. Brought for reconsideration under [SDCL 1-26-4.10](#) at the Committee's [May meeting](#) (pgs. 4-7), the Committee again reverted the proposal, despite the Department providing more information on the basis for the amendment, per SDCL 1-26-4.7(8) ("not a reasonable implementation of the law as it affects the convenience of . . . persons most likely affected by the proposed rule").
- *Board of Education Standards (Department of Education)*: At its [April meeting](#) (pgs. 5-6), the Committee reverted the entire packet presented, as all changes were rooted in a proposal to eliminate the use of a "student growth rating based on . . . student learning objectives" in teacher assessments, by amending ARSD [24:57:01:01](#) and [24:57:02:03](#). The Committee expressed concern about making student learning objectives an optional consideration in assessing teacher performance, and the impact of this change on school accountability and goal setting.
- *South Dakota Board of Pharmacy (Department of Health)*: At its [May meeting](#) (pgs. 2-3), the Committee reverted two rule amendments:
 - An amendment to [ARSD 20:51:14:01](#)'s annual certificate renewal fee, increasing the fee by \$25 (to \$150), was reverted by the Committee after it was discovered that the fee increase would not substantially impact the Board's deficit and that other funding would need to be secured to pay for the prescription drug monitoring program driving the deficit, which was not associated with licensing renewal. The Committee reverted pursuant to SDCL 1-26-4.7(8).
 - An amendment to [ARSD 20:51:28:02.01](#)'s authorization of pharmacy interns to administer immunizations was reverted at the recommendation of Code Counsel, after the Board refused to repeal the rule for lack of statutory authority. The Committee reverted pursuant to [SDCL 1-26-4.7](#)(4) ("not a valid exercise of delegated legislative authority").
- *Department of Health*: At its [August meeting](#) (pgs. 2-3), the Committee reverted one section of new rule (per [SDCL 1-26-4.7](#)(3) (to "address the recommendations or objections" of the Committee) that would have set the qualifications of a program director. The Committee expressed concern that the program director, serving in lieu of a medical director physician, did not have sufficient qualifications to oversee an ambulance service without sufficient experience and training. Based on the minimum experience and training suggested by the Committee, the Department brought a revised rule back for reconsideration under [SDCL 1-26-4.10](#) at the Committee's [September meeting](#) (pgs. 1-4), at which the Committee declared the rulemaking process complete.

Listing of Legislation Adopted by the Committee

- [Draft #37](#) would update, clarify, and technically correct aspects of SDCL chapter 1-26 pertaining to rulemaking, and revert the responsibility for staffing the Rules Committee back to Code Counsel. This revision was proposed and the reasons for it were stated on the record at the end of the [Committee's October meeting](#).

Summary of Meeting Dates and Places

The Committee met at the State Capitol in Pierre on February 28, April 15, May 7, June 10, July 23, August 20, September 10, and October 22.

Listing of Committee Members

Members of the committee are Senator Jean Hunhoff, Chair; Representative Jon Hansen, Vice-Chair; Senators Red Dawn Foster and Jim Mehlhaff; and Representatives Roger DeGroot and Erin Healy.

Listing of Staff Members

Staff members for the committee meetings were Justin Goetz, Code Counsel; Kelly Thompson, Legislative Editor; Hilary Carruthers, Legislative Systems Analyst; and Dilyn Tramp, IT Support Specialist.

Members of the Research Division who performed the initial rule review for style, form, clarity, and legality were Anita Thomas, Chief Research and Legal Analyst; Melanie Dumdei, Assistant Chief for Legal; Anna Madsen, Assistant Chief for Research; Legislative Attorney Hillary Larsen; Research Analysts Jacob Carlson, Lance Nixon, and Will Steward; and LRC Legal Extern Mary Merxbauer.

Members of the fiscal staff who reviewed rule fiscal documents were Senior Fiscal Analysts Joey Knofczynski and Joslyn Jessop, and Fiscal Analysts Bill Douglas and Mitch Honan.

