

Drafting Manual

Administrative Rules of South Dakota



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1. INTRODUCTION

Rule promulgation is a quasi-legislative function of a constitutional officer, executive branch agency, board, or commission. An agency may promulgate rules only after the Legislature delegates express authority to the agency to promulgate a rule in a particular subject matter ("General Authority") and provides "intelligible standards" to guide the administrative action so that the agency is not able to exercise unlimited or absolute discretion in promulgating the rule ("Law Implemented").

The Administrative Procedures Act (APA), codified in South Dakota Codified Law (SDCL) [chapter 1-26](#), provides the process for rule promulgation. Under the APA, a six-member Interim Rules Review Committee (Committee) provides legislative oversight of rule promulgation. In addition, the Committee is authorized to advise agencies regarding rule-making legislation, and to advise the Legislature on administrative law in general, including proposing legislation impacting administrative law.

The Committee must review each proposed addition to, amendment of, or repeal of, permanent rule before it goes into effect.

The Committee sets its meeting dates for the year at the end of that year's legislative session. The dates are published in the [South Dakota Register](#) and on the Legislative Research Council's (LRC) [website](#). Each meeting is open to the public. Meetings may also be convened at the call of the chair or a majority of the Committee.

In addition to the procedural requirements of the APA, an agency must follow the LRC guidelines for style, form, and clarity in rule drafting, in accordance with [SDCL 1-26-6.2](#). This manual contains those style and form guidelines, in addition to general recommendations regarding the rulemaking process.

2. OVERVIEW OF THE DRAFTING PROCESS

2.1. Beginning the Rulemaking Process ([SDCL 1-26-4](#))

To adopt, amend, or repeal a permanent rule, an agency must follow the process provided in SDCL 1-26-4.

Before rule promulgation may begin, an agency must receive written approval to proceed from the department secretary or the state entity to which the agency is attached.

At least 20 days before the public hearing to adopt a proposed rule, the agency must:

- 1) Serve the director of the Legislative Research Council (LRC) with a copy of:
 - a. The proposed rule;
 - b. Any publication incorporated by reference;
 - c. A fiscal note;
 - d. An impact statement on small business;
 - e. A housing cost impact statement, if applicable; and
 - f. The notice of public hearing; and
- 2) Serve the commissioner of the Bureau of Finance and Management (BFM) with a copy of:
 - a. The proposed rule;

- b. A fiscal note;
- c. An impact statement on small business;
- d. A housing cost impact statement, if applicable; and
- e. The notice of public hearing; and

3) Publish the notice of public hearing in three newspapers of general circulation.

After the LRC reviews the proposed rule for form, style, clarity, and legality, the LRC sends a letter to the agency recommending corrections. The agency must incorporate all LRC recommendations, subject to the agency's appeal to the Committee.

All interested persons must have a reasonable opportunity to submit amendments, data, opinions, or arguments at a public hearing for the proposed rule, by mail or e-mail. While a public hearing may be held by teleconference, the meeting must comply with SDCL chapter 1-25. The hearing may be continued from time-to-time. The agency must keep minutes of the hearing. A majority of the members of any board or commission authorized to adopt rules must be present at the public hearing.

The time required for public comment is different depending on the nature of the entity with rulemaking authority. An agency headed by a full-time public officer or entity must accept written comments regarding the proposed rule for ten days following 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, but all written comments must be submitted to the agency at least 72 hours before the day of the public hearing. Any hearing may be specifically continued for taking additional comments.

The agency must consider all amendments, data, opinions, or arguments regarding a proposed rule. A proposed rule may be modified or amended to include or exclude matters described in the notice of public hearing.

At least seven days before the Committee hearing to review the rule, the agency must serve the Committee with:

- a. Minutes of the public 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, if applicable;
- f. A housing cost impact statement, if applicable; and
- g. The rule in final form.¹

The agency may extend any period under this section; for instance, more time from publishing notice to the hearing. The Committee chair may waive the service requirement on the Committee if the agency presents sufficient reasons that the agency is unable to comply with the time limit. The waiver may not be granted solely for the convenience of the agency.

2.2. Notice of Hearing ([SDCL 1-26-4.1](#))

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

¹ Although not required by statute, the Committee requires each agency to provide a completed Rules Presentation Format, the initial draft of the proposed rule showing LRC recommended edits, and the LRC letter to the agency.

At a minimum, at least 20 days before a public hearing, a notice of public hearing must be published in at least three newspapers of general circulation in different parts of the state.

The notice of public hearing must be mailed to each person who has requested notice.

The notice of public hearing must contain a narrative description of:

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

The effect and the reasons for adopting the proposed rule must be different. A notice of public hearing must also provide:

- 1) The date, time (Central or Mountain), and location of the hearing;
- 2) How amendments, data, opinions, and arguments may be presented and how they may be submitted electronically; and
- 3) How the public may obtain copies of the proposed rule:
 - a. The agency's website;
 - b. An agency contact; or
 - c. <https://rules.sd.gov>.

For any public meetings held entirely by teleconference, the notice should contain call-in or log-in information to permit the public to access the teleconference remotely.

For the notice of public hearing template, please review Form 6 in the Administrative Rules Manual - Permanent Rules packet on the LRC website. An agency must file a notice of public hearing with every proposed permanent rule package.

2.3. Fiscal Note ([SDCL 1-26-4.2](#))

The fiscal note contains the rulemaking agency's best estimate of what the proposed rule's impacts on state revenue will be. In other words, the agency must estimate revenues and expenses that will result from any proposed new, amended, or repealed rule.

Besides the estimates, the agency must provide the assumptions, statistics, and computations that resulted in the estimates. This requires the agency to provide an explanation of the changes that the proposed rule will make on agency activities that, when coupled with the assumptions, statistics, and computations, provide a complete explanation of the estimate.

For the fiscal note template, please review Form 5 in the Administrative Rules Manual - Permanent Rules packet on the LRC website. An agency must file a fiscal note with every proposed permanent rule package, even if the agency has no reasonable basis to believe the proposed rule will have any fiscal impact, whether positive or negative. The agency must briefly describe its basis for finding of no fiscal impact.

2.4. Small Business Impact Statement ([SDCL 1-26-2.1](#))

The small business impact statement requires the rulemaking agency to specify the effect of its proposed rules on businesses that employ 25 or fewer full-time employees. The agency must:

² The "effect" is what the agency is doing (the result); the "reason" is why the agency is doing it (the basis or justification). A simple declarative sentence stating the effect and the reason is enough. The notice does not need to be an index that outlines the entire contents of the rule.

- 1) Provide a plain language narrative on the rule's impact on small businesses;
- 2) Estimate the number of small businesses subject to the rule;
- 3) Estimate the reporting and recordkeeping requirements, and professional skills needed, for small businesses to comply with the rule; and
- 4) Give a description of any less intrusive or less costly alternatives to achieving the purpose of the proposed rule.

An agency must file a small business impact statement with every proposed permanent rule package, even if the agency has no reasonable basis to believe the proposed rule will directly impact small businesses. The agency must briefly explain why the proposal has an indirect impact, or no impact, on small businesses.

2.5. Housing Cost Impact Statement ([SDCL 1-26-2.3](#))

An agency shall file a housing cost impact statement only when the proposed permanent rule:

- 1) Prescribes new standards or requirements for building or remodeling a residential structure; and
- 2) The standard or requirement comes from a model code developed by trade professionals.

If none of the proposed rule sections contain material meeting both of the above criteria, SDCL 1-26-2.3 does not appear to require the filing of this form with the Committee or LRC.

The housing cost impact statement gathers information on the cost of compliance to the consumer for the new building standard or requirement. This information must be obtained from the estimates of three building trades professionals operating in South Dakota. The agency must average the three estimates in preparing the impact statement.

2.6. Adoption of Rule ([SDCL 1-26-6](#))

A rule is adopted when:

- 1) The agency meets all the requirements of [SDCL 1-26-4](#);
- 2) A majority of the members of a multi-member body or the officer having the authority to adopt the rule signs the rule approval form (see Form 11 in the Administrative Rules Manual - Permanent Rules packet);
- 3) The director of the LRC or the director's designee signs the rule approval form;
- 4) An agency files an electronic (.docx) copy of the rule, containing all engrossments, with the director, or the director's designee, for use in the Administrative Rules of South Dakota;
- 5) The agency appears and presents the proposed rule to the Committee; and

- 6) The agency files with the Office of the Secretary of State the rule and a certificate³ affirming that the rule is a true and correct copy, and that the agency has complied with chapter 1-26 (see Form 13 in the Administrative Rules Manual - Permanent Rules packet).

A rule is provisionally effective on the twentieth day after the agency files it with the Office of the Secretary of State, not counting the day of filing. The agency may specify a delayed effective date.

The Committee may suspend a rule that is not yet effective or that is provisionally effective before the first day of July of the following year.⁴ A rule's provisional status ends on the first day of July, and the Committee may not suspend the rule following that date.

A provisional rule may be enforced in the same manner as a permanent rule.

3. PREPARING TO DRAFT RULES

3.1. Drafting Rules Generally

Before drafting a rule, locate and review the statutes that grant rule promulgation authority to the agency and the statutes containing the policy to be implemented by the rule. A rule may not exceed or extend the authority granted to the agency in statute or correct mistakes in statute. Each rule may only carry out the functions delegated to an agency by law.

Except for definitions, the text of a rule may not repeat the text of any statute.⁵ Repeating statutory content is redundant and may lead to confusion or a void rule if statute is revised.

3.2. Starting a Rule Draft

All rules promulgated, whether new, amended, transferred, or repealed, are subject to review and editing for form, style, clarity, and legality by the Legislative Research Council.⁶

Each rule in a set of proposed rules must be complete. A complete rule includes the number, catchline, text, source note, General Authority, and Law Implemented.

Agencies can find copies of current administrative rules on the Legislative Research Council website at <https://www.sdlegislature.gov/Rules/Administrative>.

Copies of proposed rules are available at <https://rules.sd.gov/>.

Rules may be downloaded from the LRC website in Microsoft Word format. Click on "DOWNLOAD XXXX IN MICROSOFT WORD FORMAT" on the upper left of the screen. Delete any sections or chapters not affected by the proposed rule in your draft.

Proposed rules should be presented:

- 1) In numerical order;
- 2) Double-spaced;
- 3) On single-sided pages with page numbers in the footer;
- 4) With each rule section appearing on a separate page; and
- 5) In Times New Roman, 12-point font.

³ The certificate is an affidavit that is signed by the officer authorized by law to promulgate the rule. For a multi-member body, the certificate is signed by its presiding officer.

⁴ See [S.D. Const., Art. III, § 30](#) and [SDCL 1-26-38](#).

⁵ See [SDCL 1-26-6.1](#).

⁶ See [SDCL 1-26-6.5](#).

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 stricken material. If stricken material consists of more than one sentence, the underscored material replacing stricken material should be inserted at the end of the sequence of all stricken material. Unless the entire sentence is being struck, retain the period. 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

If the text is to be deleted, overstrike the single space before the deleted text. If text is to be added, underscore the single space immediately before the new text. If text that begins a section is to be deleted and new text added immediately thereafter, overstrike the space that follows the deleted text and add an underscored space at the end of the added text:

- ~~If~~ When a person is successful in being drawn for more than one bighorn sheep....

The same content may not be both overstricken and underscored.

A change to the index (included before sections in a chapter and before chapters in an article) is necessary when

- (1) A change is made to the heading of an article or chapter;
- (2) A chapter or article is added or repealed;
- (3) A change is made to the catchline of a section; and
- (4) A section is repealed.

A change to the index must also be underscored or overstricken.

3.3. Preparing Amendments to Existing Rules

Agency personnel amending existing permanent rule should:

- ☐ Verify the rule language is the current language, taken from the LRC website;
- ☐ Review this *Manual* for style and form revisions before beginning any edits, particularly if this is the first rule revised by the agency in a year or more or if the *Manual* was recently updated;
- ☐ Locate and confirm the content of statutes that grant rulemaking authority to the agency and the statutes containing the policy to be implemented by the rule;
- ☐ Assess whether all aspects of the current rule that will not change remain sound, including its General Authority and Law Implemented notes; and
- ☐ Obtain a copy of any material incorporated by reference ([SDCL 1-26-6.6](#)) that is being updated in the amended rule.

Rule language that was not updated recently may not be as clear or stylistically proper as it should be. It deserves additional scrutiny. **An agency is also responsible for making style, form, and clarity edits to its rules.**

3.4. Preparing New Rule Sections

An agency may need to draft new rule sections to account for new rulemaking authority delegated by law. Agency personnel should:

- ☐ Review this *Manual* for style and form revisions before drafting new language;
- ☐ Locate and confirm the content of statutes that grant rulemaking authority to the agency and the statutes containing the policy to be implemented by the rule;
- ☐ Obtain a copy of any material incorporated by reference ([SDCL 1-26-6.6](#));
- ☐ Ensure that the proposed section is indeed a rule⁷--that it is not just "internal management of an agency"; and
- ☐ Assess whether the new sections conflict with or unintentionally impact existing administrative rules by:
 - Verifying that all currently defined terms are properly used in the new content;
 - Updating or adding cross-references to existing rules to account for any interrelationship with the new content, if any; and
 - Ensuring that new sections do not duplicate substance in other rule sections.

When required by statute to propound rule, the agency should ensure the permanent rule is effective as close to the effective date of the underlying law as possible. That often means starting on rule drafting immediately after the law is enacted. In addition to reviewing the *Manual* and relevant statutes on rulemaking procedure, scrutinize [SDCL 1-26-4.4](#).

3.5. Preparing Repealed Rule Sections

Repeal on loss of statutory authority. An agency should have a list of all the SDCL sections on which its rules rely. Once legislative session ends, the agency should consult the "[SDCL Index](#)" under the session laws on the LRC website to determine if any of these authorities have been repealed.

Wherever the statute or statutes that provide either General Authority or Law Implemented for a rule section have been repealed, the rule section should also be repealed.

For more information on the impact of statutory repeals, consult [SDCL 1-26-8.1](#).

Repeal for programmatic reasons. Where an agency seeks to repeal a rule section for programmatic reasons, the agency should verify whether the statute providing General Authority for the rule requires the agency to promulgate such a rule. The statute indicates this requirement with the verb "shall." If the rule is required, the agency should provide, or be able to point to, another rule section that meets the requirement.

All repeals. Additionally, the agency should:

- ☐ Review this *Manual* for examples of the style and form for repealed sections;
- ☐ Verify the rule language to be repealed is the current language, taken from the LRC website;
- ☐ Search for and eliminate cross-references to the repealed rule in any rules that will not also be repealed; and

⁷ For purposes of SDCL chapter 1-26, "rule" means each agency statement of general applicability that implements, interprets, or prescribes law, policy, procedure, or practice requirements of any agency. See [SDCL 1-26-1\(8\)](#).

- ☐ Verify that there are no unintended consequences elsewhere in the rules, resulting from a repeal.

3.6. Essential Components of a 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.

3.6.1. Numbering and Heading, and Catchline

Rules are organized by title, article, chapter, and section, with each receiving a number. For example: title 99; article 99:99; chapter 99:99:99; and section 99:99:99:01. The specific number assigned to a rule allows for the rule to be located more easily. For section numbers in ARSD titles 1 through 9, use a double digit for the title number (e.g., § 01:02:04:01).

Titles, articles, and chapters have titles called headings; sections have titles called catchlines.

The LRC is authorized to set the title, article, chapter, and section headings, catchlines, and numbers for new rules.⁸

Headings should capture the entire substance of a title, article, or chapter in only a few words. Each title heading is followed by an index or table of contents that is a list of the articles in the title. Similarly, each article has an index or table of contents that is a list of the chapters in the article, and each chapter has an index or table of contents that is a list of sections in the chapter.

Catchlines should also be concise, as a catchline provides a summary of the section's subject. The catchline serves to help index the rules but is not part of the rule itself or its substance. Everything in the catchline must be contained in the body of the rule. An emergency rule must include the words "EMERGENCY RULE" in the catchline.

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

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

Use a space before and after a dash in the catchline. For example:

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....

For any new section inserted between two existing sections, the number of the existing section immediately preceding the new section must be used with a two-digit decimal number added 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.

For any repealed section, the number is not reused unless the proposed section covers the same subject. Numbers and catchlines of repealed sections are retained, and sections following a repealed section are not renumbered.

⁸ [SDCL 1-26A-1](#).

3.6.2. Source Notes

The LRC provides the source note. 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 Office of the Secretary of State and the effective date are recorded. The source note is retained even when a rule is repealed.

For any section that is transferred, the notation "transferred from 99:99:99:01" must be added to the source note.

Citations in the source note to the State Register appear similar to this example: 10 SDR 76. The first number denotes the volume of the Register. The second number is the page number in that volume.

3.6.3. General Authority and Law Implemented

Each rule must contain a citation to the statutory authority granting the agency the power to adopt the rule and a citation to the Law Implemented by the rule. The general authority is the statute authorizing the agency to adopt a rule (i.e., "... shall promulgate rules in accordance with chapter 1-26 to ..."). It is the "clearly expressed legislative will to delegate the power to adopt the particular rule."⁹ The Law Implemented is the statute containing the policy that the rule administers. The law being implemented provides "a policy, standard, or rule" that limits the agency from exercising "unlimited or absolute discretion" in its power to adopt a particular rule.¹⁰ Rules are not accepted or effective without these citations.¹¹

The citations to law implemented must be to specific sections of statute, and where applicable, subdivisions and subsections of the statute, and not to chapters or titles, per SDCL 1-26-6.2. The citations to general authority need only be to a specific section of statute, and not to chapters or titles. If there is more than one statute that grants authority for the rules or that is implemented, cite all the statutes.

In some cases, **Law Implemented** and **General Authority** exist in the same statutory provision, as shown in these two statute excerpts:

36-9A-26. Fees. The board, in rules promulgated pursuant to chapter 1-26, shall establish the following nonrefundable fees within the prescribed limits as follows:

(1) For initial licensure or endorsement from another state, not more than two hundred dollars;

34A-6-1.6. Promulgation of rules--Factors for consideration--Scope--Open burning.

The board shall promulgate rules pursuant to chapter 1-26 setting forth the requirements for the issuance, renewal, reissuance, revocation, or suspension of solid waste management system, solid waste facility, and resource recovery permits. In promulgating these rules the board shall consider and may establish requirements based on the protection of the public health, the quantity of solid waste to be handled, the environmental effects of solid waste facilities, the nature, origin, or characteristics of the solid waste, the potential for contamination of groundwater and surface water, requirements and standards for corrective actions, requirements for public roadway standards, and design for access to the facilities with approval by the secretary of the Department of Transportation, public sentiment, the financial capability of the applicant,

⁹ S.D. Migratory Bird Ass'n v. SD Game, Fish & Parks, 312 N.W.2d 374, 375 (S.D. 1981).

¹⁰ State v. Moschell, 2004 S.D. 35, ¶ 17, 677 N.W.2d 551, 559; see also S.D. Migratory Bird Ass'n, *supra*.

¹¹ See [SDCL 1-26-6.2](#).

the effects of a facility on vicinity property values, population density, climate, soils, geology, wetlands, and other health, environmental, economic, or aesthetic considerations.

Statutory language providing that an agency adopt "reasonable regulations" or promulgate rules the agency "shall deem appropriate," and similar language, may not be sufficient as Law Implemented. This type of statutory language does not provide a fixed rule or standard guiding the agency's rulemaking and potentially leaves the agency with an unconstitutional unlimited or absolute discretion to adopt rules.¹²

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(1)(2)(5), 3-12C-101(19), 3-12C-1115(1)(2)(a), 3-12C-1201 to 3-12C-1216, inclusive. Citations must be in ascending numerical order, starting with title, then chapter, and finally section (e.g., SDCL 1-12-3, 2-1-1, 2-1-3, 2-1-3.1). Multiple subdivisions and subsections cited in a single section must also be in ascending order.

Other examples for citing to the statutory authority granting General Authority to adopt a rule or the Law Implemented by the rule are as follows:

South Dakota Codified Laws	SDCL 2-14-2
	SDCL 2-14-2(18)
	SDCL 3-12C-1115(2)(a)
	SDCL 34-20G-1(10), 34-20G-2(2).

Double-space all legal citations and reference notes and place a period at the end.

Infrequently, the Legislature may enact an uncodified statute that directs an agency to create, amend, or repeal a particular administrative rule. Only in that case should a session law be cited, and only in the Law Implemented note, as follows:

Session Laws of South Dakota	SL 2024, ch 138, § 2
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3.7. Common Components of an Administrative Rule

3.7.1. Definitions

Definitions are shortcuts to save space in the body of a rule. They provide the meaning of terms as used in the rule. Definitions of terms that are defined in statute may be repeated in the rule,¹³ or may be incorporated by reference into the definitions section of rules. When incorporating by reference, cite only the SDCL section number, not the subdivision.

Common terms should not be defined when they are used in rule for their commonly understood meaning. Do not use the term being defined in its own definition. Do not define a word or phrase that is not used in the applicable article, chapter, or section.

The definitions section uses a subdivision for each defined term. Defined terms are placed in alphabetical order. The section begins with the phrase, "Terms used in [this chapter / chapters XX:XX:XX to XX:XX:XX, inclusive, / this title] mean:". Each subdivision should be led by the term to be defined capitalized, with a comma immediately following, and the term and comma bracketed by quotation marks. For an example, review page 28.

¹² See Hogen v. S.D. Bd. of Transp., 245 N.W.2d 493, 497 (S.D. 1976); Affiliated Distillers Brands Corp. v. Gillis, 81 S.D. 44, 49, 130 N.W.2d 597, 599 (1964).

¹³ See [SDCL 1-26-6.1](#).

Definitions in a definition section do not include substantive provisions. For example, "executive secretary" may be defined in the definitions section, but the executive secretary's duties may not be included. The duties must be the subject of a separate rule.

3.7.2. Incorporation by Reference

A rule may enforce federal regulations or other published standards. A rule may incorporate by reference lengthy or generally available regulations or standards.¹⁴ Material published by a South Dakota state agency may not be incorporated by reference.¹⁵

For material that is incorporated by reference, the rule must cite the specific portion being incorporated, which may be one section or a whole volume. If material incorporated by reference is amended or updated, the portion incorporated by reference continues to apply in the rule until the agency amends the rule with an updated reference to the material.

Incorporating a future rule or regulation of another state or the federal government is an unconstitutional delegation of legislative authority.¹⁶ A date certain is therefore required for the incorporation by reference. For more information on this convention, review **§ 3.7.2 – Citations to Federal Authority**, on page 18.

Alternatively, the agency may adopt the text of the federal regulation as the agency's own rather than incorporating federal regulations by reference. To do this, the agency must translate the federal language into plain English as much as possible and break the lengthy federal rules into smaller rules.

Under [SDCL 1-26-6.6](#), any publication incorporated by reference must be generally available to the public. 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 must provide a copy of the incorporated material to the LRC for review. The material will be returned to the agency upon completion of the review. An agency must retain a copy of any incorporated material.¹⁷

The cover of incorporated material must have a label that lists the name of the agency, the filing date of the rule, and citation to the specific rule adopting the outside material.

For example:

Reference to: § 20:54:02:01

Filed by: State Plumbing Commission

Date filed: 11-28-96¹⁸

For material that is only available electronically, the equivalent "label" convention is to download the PDF of the material, use a PDF editor to add a cover page to the PDF file, and place the above information on that cover page.

A reference note located beneath the citations to General Authority and Law Implemented must contain the title of the publication, the date of publication, and the author of the material incorporated by reference. The note must also contain information about where and at what cost the publication may be obtained.

In both the text of the rule and the reference note, the material incorporated by reference must be referenced by its exact title. Only the material's title in the note should be bolded.

¹⁴ See **CITATIONS TO AUTHORITY** for the form of material incorporated by reference.

¹⁵ See [SDCL 1-26-6.6](#).

¹⁶ See *State v. Johnson*, 84 S.D. 556, 173 N.W.2d 894 (1970).

¹⁷ See SDCL [1-26-4](#) and [1-26-6](#).

¹⁸ Use the date the rules are filed with the Office of the Secretary of State.

A reference note is unnecessary if a rule incorporates material from the Code of Federal Regulations, Federal Register, United States Code, or Statutes at Large, so long as the rule cites to the specific provision incorporated.

3.8. Components to Avoid in Rules

3.8.1. Examples

Do not use examples in the text of a rule. If there is a general statement in the rule describing a term or concept, there should not be examples in the text of the rule. If there is a list of specific items in the text of the rule, there should not be a general statement, and the list should be exhaustive, not examples.

When a general statement is used in a rule section, examples of the general statement should only be provided below the Law Implemented note, in an Example note as described in **Section 4.18. Notes – Other References and Examples**, on page 22.

Accordingly, rules should not use the phrase "including, but not limited to." The portion of the phrase "but not limited to" is redundant, as the plain definition of the term, including, is not exhaustive.

The use of "including" is problematic if it is used to introduce examples in rule text.

3.8.2. Forms

To prescribe a form, a rule should provide a narrative description of the form's essential contents. This allows an agency to change the style of the form without going through the rule promulgation process each time the form is updated.

3.9. Finalizing the Draft

After the Interim Rules Review Committee has completed its review of an agency's rule-making, the agency must e-mail an electronic copy of the final rules, showing overscores and understrikes, in Microsoft Word format, to the LRC. This draft should further set out any overscores and understrikes by depicting the impacted words in red font. A printed copy of the same final draft, showing overscores and understrikes, must be filed with the Office of the Secretary of State.

4. STYLE AND FORM EDITING GUIDELINES

4.1. Eliminate Jargon and Complex Language

The language of a rule should be directed to the rule's most appropriate audience. The meaning of professional or technical language may be lost on the reader of a rule. If a rule is being addressed to the public generally, the rule should be written in plain language, to the extent possible. For more industry specific rules, technical vocabulary specific to that industry may be appropriate.

Do not use repetitive legalese such as: "any and all" or "each and every."

Be mindful about how the rules will look when published. Keep rule sections and paragraphs within rules sections short. Use no more words than necessary. Using complex sentences often requires excessive punctuation, which can be confusing and lead to possible misinterpretation.

Avoid adjectives such as "real," "true," and "actual," and adverbs such as "duly" and "properly." Do not use "total" before "amount." These ideas are normally implied. Expressing them creates doubt whether they are implied elsewhere. Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless one specifies what these words mean or refers to the standards that must be met.

4.2. Abbreviation - Acronyms and Initialisms

One type of jargon common to rule writing is the abbreviation. Acronyms and initialisms are the two abbreviations. An acronym shortens a phrase by combining the first letter or letters of each word in a phrase to form a pronounceable word (i.e. NASA, AIDS, etc.). An initialism consists of the initial letters of a phrase but are not pronounced as a word (MLB, FBI, HIV, etc.).

Acronyms and initialisms are not encouraged in the drafting of rules. If an acronym or an initialism is necessary, the drafter should ensure that the abbreviation is more likely to be recognized than the full term. This may be done by verifying inclusion of the acronym or initialism in a standard dictionary. In addition, the drafter should define the acronym or initialism. If placed in a section with multiple definitions, the acronym or initialism must appear in alphabetical order.

Certain abbreviations, which began as acronyms or initialisms, have, through the use of trademarks, become proper nouns, e.g., ACT, CLEP, SAT, and may be used freely.

In lieu of acronyms and initialisms, short form references should be used, as described in 4.3 - Key Words, Consistent Terms, and Short Form References.

4.3. Key Words, Consistent Terms, and Short Form References

Use the same words to express the same ideas and refer to the same object. Do not give different meanings to one word. Be clear, concise, and uniform. Adjectives are appropriate if modification of the noun is contextually necessary, and the adjective is not emphatic (e.g., "actual amount"). Subjective adjectives ("adequate," "reasonable," "sufficient") should be used sparingly and only if some parameters or measurements apply. The use of short form references (e.g., "board" for "school board") is permissible in rules, so long as there can be no reasonable ambiguity attributed to the short form use (e.g., "board of trustees" and "school board" in the same section means not using the short form "board").

4.4. Rule Organization

The basic working unit of a rule is the section. A group of related sections form a chapter; a group of related chapters form an article; and a group of related articles form a title. For greater clarity, it may be necessary to break a section down into smaller units.

A section may not begin with a numbered subdivision. A subdivision may not begin with a numbered subsection. Each requires lead-in language. Capitalize the first word in any subdivision or subsection. A colon must be at the end of the lead-in language, while semicolons should be used to separate subdivisions and subsections, with a period at the end of the sentence. Graphically, this arrangement is represented as follows:

10:10:10:10. Catchline. Introductory material and lead-in clause:

- (1) Subdivision;
- (2) Subdivision with lead-in clause:
 - (a) Subsection;
 - (b) Subsection; and
 - (c) Subsection; and
- (3) Subdivision.

Unless subdivisions contribute to the clarity of the rule section, avoid their use. Do not create multiple subdivision lists within a section. Do not create multiple subsection lists within a subdivision.

4.5. Active Voice

Use the active voice whenever possible. The use of active voice expressly identifies the principal actor—the person or entity who has a power, privilege, or duty—as the subject of a sentence, logically followed by the mandate (i.e., verb and object) imposed. Passive voice generally employs the opposite order—object, verb, then subject—and is often indicated by the phrase "shall be" or "must be." Passive verbs bury the identity of the subject of the sentence and create doubt as to who is required to take an action.

Active voice	The board shall appoint a director. (subject) (verb) (object)
Passive Voice	A director shall be appointed by the board. (object) (verb) (subject)

4.6. Imperative, Permissive, and Prohibitive Construction

A verb used in a rule generally should be imperative, permissive, or prohibitive. This is a guide to usage:

- shall = required action ("has the duty to")
- may = permitted action ("has the discretion to")
- may only = restricted permitted action
- may not = prohibited action
- must = action required as a precursor to or condition of an occurrence; requirement imposed upon an inanimate subject
- 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.

"Must" should only be used rather than "shall" when the subject of the sentence is a necessary condition, or the actor with the duty cannot be specified in the sentence. Because the nature of rule is to largely set directives or impose obligations on specific actors, and the active voice is the clearest way to do so, "shall" should generally be used over "must."

Use "is" rather than "shall be" when making a statement that is true by operation of law.

Correct	The secretary's annual salary <u>is</u> one hundred thousand dollars.
Incorrect	The secretary's annual salary <u>shall be</u> one hundred thousand dollars.

4.7. Singular Subject, Present Tense Verb

A verb used in a rule should be in the present tense. Doing so eliminates the use of improper phrasing, such as "shall be." Use the singular instead of the plural. Keep the number in mind when matching subjects and verbs. A board may mean a group of persons, but the word is singular.

4.8. Time and Date

Use the present tense. Doing so eliminates the use of improper phrasing, such as "shall be."

Correct	A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether guilt is satisfactorily shown, the defendant is entitled to an acquittal.
Incorrect	A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether guilt shall be satisfactorily shown, the defendant shall be entitled to an acquittal.

Specific times must be depicted as "a.m." or "p.m." Do not use "o'clock" and "a.m." or "p.m." together.

Dates should be depicted as numbers, both for the day and year, whenever specifying a date. The number should be used without the ordinal indicator. All other depictions of days, such as a day of the month, should be written out.

Correct	"as of December 31, 2003"
Incorrect	"on December 31 of the application year"
Correct	"on December thirty-first of the application year"

4.9. Capitalization

The Legislative Research Council encourages normal capitalization usage and the capitalization of proper nouns. The guidelines of the *Chicago Manual of Style* serve as a general model. 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: "medicaid," "social security," "medical assistance program," "24/7 sobriety program". Fund names are not capitalized. "Supreme Court" and "Legislature" are capitalized.

Governmental Officials. The titles of state or local officials are not capitalized: "secretary of agriculture," "county commissioner," and "mayor." Substitutions for official titles, such as "secretary" or "director," are not capitalized. "Governor" is 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 ensure 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. Capitalize "Session Laws."

Geographic Names. if not part of a proper name, "federal," "state," "city," and "county" 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. Rules should not contain references to trade, nongovernment organization, or brand names. It should be possible to describe the item or service with sufficient detail to not resort to these names.

SDCL and ARSD. Do not capitalize "title," "article," "chapter," "section," or "rule."

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

4.10. Gender

Use gender-neutral terms, such as "applicant," "individual," or "person." The terms "he," "she," "his," "him," or "her" may be used if there is no alternative. Do not use "he or she" or "his/her." Do not use "their" with a singular subject. Pronouns may sometimes be omitted without losing meaning, or nouns may be repeated. In the process of amending a rule, amend the language to reflect gender neutrality.

4.11. Individual–First Language

When referring to persons with disabilities or disorders, it is generally best to put the reference to the individual first and the disability or disorder last.

Correct	person with a developmental disability
Incorrect	the developmentally disabled
Correct	person with a visual impairment
Incorrect	the visually impaired

Additionally, do not make the person synonymous with the disability or disorder (e.g., autistic, epileptic, quadriplegic).

4.12. Punctuation

Punctuation used in rules follows accepted punctuation in English. Punctuate precisely. The meaning of a rule may hang on the location of a comma. 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, whether in a definitions section or in a section containing substantive provisions, 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. Smart quotes are not to be used, only straight quotes.

Apostrophes should be straight. Smart apostrophes are not to be used.

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.

Parentheses should only be used for acronyms and initialisms, in the outline formatting for subdivision numbers and subsection letters, or in cross-referencing the subdivision number and subsection letter.

4.13. Hyphenation

When adding hyphens to two or more words that should be one hyphenated word, be sure to strike both words and replace with the hyphenated word.

It is generally acceptable to add a hyphen in the following circumstances:

When to hyphenate	Examples
When joining two or more words that serve as a single adjective before a noun	a two-way street, an over-the-counter drug
When writing compound numbers	forty-seven percent
When writing fractions	one-half
When necessary to avoid confusion	re-sign an application
When necessary to avoid an awkward combo of letters	semi-independent, shell-like
When using the prefix "all"	all-inclusive
When using the prefix "ex" if the prefix means "former"	ex-member
When using the prefix "self"	self-inflicted
When a prefix is followed by a capitalized word	anti-American, pre-Civil War
When a prefix is followed by numbers or letters	mid-1980's, anti-HIV
When a noun is followed by the suffix "elect"	senator-elect

Compound modifiers that contain -ly adverbs are generally not hyphenated.

4.14. Numbers

Most numbers used in the body of rule text, including references to money, should be written out rather than indicated by numerals. Common exceptions to this rule are dates, penalties, formulas, proper nouns containing numerals, and numerals used in tables. Numbers following words such as "unit" and "class" should be Arabic numerals (For examples, see 4.8. "Words Used with Numbers or Letters").

Do not spell out decimals. Drop zeros from the right side of decimals. Technical rules, formulas, and tables may be exempt from the spelling out requirement. Understanding and readability are primary goals. Examples of the style for numbers are as follows:

five thousand one hundred thirty-two	Class 2
ten dollars	1.3
ten dollars and forty cents	.5
one-half	thirty-five degrees Fahrenheit

4.15. Citations to Session Laws

Citations to the Session Laws of the State of South Dakota are as follows:

In rule text	1982 Session Laws, chapter 316, § 6
In note text	SL 1982, ch 316, § 6

Citations to session laws should be rare, as permanent statutes are codified per SDCL 2-16-13, and permanent rules should only be authorized by permanent statutes. If a session law directs an agency to revise a rule, citing the session law as law implemented is proper.

4.16. Citations to Federal Authority

Federal authorities in the text of a rule should be cited as follows:

United States Code	42 U.S.C. § 1983
United States Statutes at Large	85 Stat. 1043
Public Laws	Emergency Compensation and Special Unemployment Assistance Extension Act of 1975, Pub. L. No. 94-45, § 104(1), 89 Stat. 236 (1975)
Code of Federal Regulations	45 C.F.R. § 1060.2 45 C.F.R. Part 160
Federal Register	Participation by Minority Business Enterprise in DOT Programs, 45 Fed. Reg. 20,771, 21,173-174 (Mar. 31, 1980) (to be codified at 14 C.F.R. § 39.13)

Citations to federal codified statute and regulation in the rule text should have a parenthetical date. Because subsequent amendments of federal statute and regulation are not constitutionally permitted to be automatically incorporated into administrative rule, a date certain may be necessary to provide a snapshot in time for referencing the statute or regulation:

4.17. 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 referenced in the following manner:

- one section: § 55:10:12:04
- two sections: §§ 55:10:12:04 and 55:10:12:05
- three or more consecutive sections: §§ 55:10:12:01 to 55:10:12:10, inclusive
- three or more non-consecutive sections: §§ 55:10:12:01, 55:10:12:03 to 55:10:12:05, inclusive, and 55:10:14:01
- a subdivision: subdivision 55:10:12:01(3)
- two subdivisions: subdivisions 44:90:02:04(1) and (2)
- three-or-more subdivisions: subdivisions 44:90:02:04(1) to (3), inclusive, and (5)
- a subsection: subsection 44:90:02:04(3)(b)
- multiple subsections: subsections 44:90:02:04(3)(a), (b), and (4)(a)
- sections connected by "or": § 55:10:12:04 or 55:10:12:05
- a chapter: chapter 55:10:12
- an article: article 55:10
- a title: title 55

Codified laws may be referenced in the following manner:

- one section: SDCL 3-12-71
- two sections: SDCL 3-12-71 and 3-12-72
- three or more consecutive sections: SDCL 3-12-71 to 3-12-75, inclusive
- there or more non-consecutive sections: SDCL 2-13-2, 2-16-13, and 3-12-71 to 3-12-75, inclusive
- a subdivision: SDCL subdivision 2-14-2(18)
- two subdivisions: SDCL subdivisions 2-14-2(18) and (19)
- three or more subdivisions: SDCL subdivisions 2-14-2(18), (19), and (23)
- a subsection: SDCL subsection 2-16-6(2)(c)
- multiple subsections: SDCL subsections 34-20G-72(2)(a) to (c), inclusive, (4)(a), (b), and (i)-(k), inclusive, and (6)(a)
- sections connected by "or": SDCL 3-12-71 or 3-12-75
- a chapter: SDCL chapter 1-26
- a title: SDCL title 32

Note: Citation to codified laws within the text of a rule differs from the citation in the General Authority and Law Implemented, with the latter not using the words "subdivision" or "subsection."

Use the word "section" instead of the section symbol (§), in the manner depicted above, only when the section symbol would otherwise begin a sentence.

4.18. Notes – Other References and Examples

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**.

For example:

Reference: National Standard Plumbing Code, 1996 edition, 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.

References:

NFPA 101 Life Safety Code, 2012 edition, National Fire Protection Association. Copies may be obtained at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards>. Cost: \$150.50.

Dietary Guidelines for Americans, 2020-2025, United States Department of Agriculture. Copies may be viewed and printed free of charge at https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.

Note that the title of the incorporated material, as depicted in the Reference note, should be bolded. The title when used in the text of the rule above this note should not be bolded.

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 [section 67:12:05:51](#).

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

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

Cross-References:

Combination licenses, SDCL 41-6-10.1, § 41:06:02:01.01.

Safety instruction required for licensing of child under sixteen--Fee waived, SDCL 41-6-14.

Firearms safety instruction, SDCL chapter 41-7.

Special permits and licenses, article 41:09.

For multiple rules or statutes that may be cross-referenced and that have the same catchline, the chapter heading should be added ahead of the catchline, with two dashes separating, to distinguish the two.

Cross-References:

Group care centers for minors -- Treatment plan, § 67:42:07:05.

Residential treatment centers -- Treatment plan, § 67:42:08:05.

Other authorities (*i.e.*, statutes and rules) should be cited within rule text, and not listed in a Cross-Reference note for the rule, when the authority is directly relied upon in the rule text to describe a standard, process, or term that is necessary for the enforcement or understanding of the rule. These authorities, if cited in the rule text, should not be restated in a Cross-Reference note.

Examples illustrate the way the rule is to operate or provide specific instances of a key term or concept generally defined in the rule.

For an example showing how a rule is to operate, see [section 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.

For an example showing specific instances of a key term or concept generally defined in the rule, see [section 20:18:35:01](#).

Example: (2) "Event category": Professional hockey governed by the National Hockey League.

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

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

4.19. Use of Codified Law

An agency may not copy material from statute, other than definitions, in the agency's rules without permission from the Code Counsel.¹⁹ Rules may refer to a statute in an internal reference but may not copy statutory material.

4.20. Age

If age is used to describe a noun, and if the age comes *before* the noun, hyphenate the age-related words as if they were a single word:

Example: If the twenty-one-year-old student . . .

If age is used to describe a noun, and if the age comes *after* the noun, use a hyphen only between the numbers.

Example: If the student is twenty-one years old . . .

When referencing age, avoid the use of phrases "up to" or "over the age of."

¹⁹ See [§§ 1-26-6.1](#) and [2-16-8.1](#).

4.21. Words and Phrases

The following words and phrases are often used incorrectly:

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	(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 thirtieth	before July first
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 first	after June thirtieth
on or before July first	by July first
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"
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
State of South Dakota	this state
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)

4.22. Using "Person" or "Individual"

"Person" may be used to apply a provision to human beings and nonhuman entities like corporations and governmental bodies.

If "person" is used to apply a provision to a human being, the context must clearly indicate that the application may only apply to a human being.

When it is not clear from the context that the application of a provision only applies to a human being, "individual" should be used.

4.23. Using "That" or "Which"

The choice of using "that" or "which" is dependent on the intent of the sentence.

If a phrase is intended to provide information integral to the sentence, such as a restriction or description, use "that." A phrase using "that" is not set off by commas.

If a phrase is intended to provide additional but not essential information, use "which." Since a rule is enforceable as law, it rarely includes nonessential information. Therefore, "which" should not be used often in rule. A phrase using "which" is set off by commas.

4.24. Using "Less" or "Fewer," "Greater" or "More"

Whether to use "less" or "fewer" depends on the noun that is being modified. If the noun is countable or plural, use "fewer." Use "more" rather than "greater than." "Greater than" may be used in limited circumstances when comparing the degree, level, or number of the items referenced.

Correct	less land
Correct	fewer acres
Correct	more bandwidth

4.25. Using "Whether" or "Whether or Not"

When to use only the word "whether," as opposed to the phrase "whether or not," depends on that which is being modified.

If the "whether" clause is the object of a verb, then "or not" is unnecessary.

Correct	The <u>applicant</u> shall <u>indicate</u> whether the <u>license</u> was revoked.
	(subject) (verb) (object)

If the "whether" clause is the object of a preposition, "or not" is unnecessary.

Correct	The board shall base its <u>decision on whether</u> the <u>error</u> was remedied.
	(preposition) (object)

"Whether or not" is necessary when the "whether" clause modifies a verb or when the phrase "regardless of whether" could logically be used in the sentence.

Correct	The board shall <u>vote</u> , <u>whether or not</u> all members are present.
	(verb) (clause)

4.26. Using "Damage" or "Injury"

Damage is harm done to personal property or real property. Injury is harm suffered by an individual due to an act or omission of another.

Example	The driver must call 911 if an accident results in <i>damage to property</i> or <i>injury to an individual</i> .
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4.27. Using "Ensure" or "Insure"

"Ensure" means to make certain that something will or will not occur. "Insure" means to protect against damage, injury, or loss, or to obtain insurance.

Example	The owner shall insure the property to ensure solvency following a fire.
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4.28. Using "When" or "If"

Use "when" to reference future events that are certain to occur. Use "if" to reference future events that may or may not occur.

Examples	When the report is compiled, the secretary must notify the unit. If the secretary determines a report is necessary, the secretary must notify the unit.
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4.29. Using "Who" or "Whom"

"Who" and "whom" are relative pronouns. A trick for choosing whether to use *who* or *whom* is to turn the sentence around and substitute a personal pronoun. If the personal pronoun is in the nominative case, *i.e.*, I, he, she, we, or they, use "who." In the following example, because "she" signed the contract, "who" is correct.

Example	The physician <u>who</u> signed the contract shall notify the secretary.
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If the personal pronoun is in the objective case, *i.e.*, me, him, us, or them, use "whom." In the following example, because the contract was delivered to "him," "whom" is correct.

Example	The individual to <u>whom</u> the contract was delivered shall notify the secretary.
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4.30. Using "Duty" or "Power"

"Duty" is the obligation to act. "Power" is the authority to act. It is important to distinguish between what *must* be done and what *may* be done. Use a sentence or section to *require* the performance of certain acts. Use a separate sentence or section to *authorize* the performance of certain acts. Utilize "shall" and "may," respectively. If a constitutional officer has the duty or power, expressly assign the duty or power to the officer, not the office of the constitutional officer.

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 through 74:56.
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.
<u>74:57</u>	<u>Concentrated animal feeding operations.</u>

ARTICLE 74:57

CONCENTRATED ANIMAL FEEDING OPERATIONS

Chapter

<u>74:57:01</u>	<u>Inspections of concentrated animal feeding operations.</u>
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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:

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:

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)~~ (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) ~~Post hospital~~ 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, <u>Repealed</u> .
20:09:09	Single-family portfolio purchases.

CHAPTER 20:09:08

INTERIM CONSTRUCTION LOANS

(Repealed)

Section

20:09:08:01	Methods of financing, <u>Repealed</u> .
20:09:08:02	Mortgage limits, <u>Repealed</u> .
20:09:08:03	Loan inclusions, <u>Repealed</u> .
20:09:08:04	Mortgage terms, <u>Repealed</u> .
20:09:08:05	Applications and processing, <u>Repealed</u> .
20:09:08:06	Bonds and completion assurances, <u>Repealed</u> .
20:09:08:07	Terms and conditions governing the authority's participation with administrative agents in making interim construction financing loans, <u>Repealed</u> .
20:09:08:08	Fees and charges, <u>Repealed</u> .
20:09:08:09	Interest rates, <u>Repealed</u> .

NOTE: Print the entire chapter with section numbers, catchlines, source notes, and the last period of the body of rule text retained, and adding Repealed before the retained period.

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~~ must 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, <u>Transferred</u> .
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, <u>Transferred</u> .
41:07:07:03	Limits, <u>Transferred</u> .
41:07:07:04	Season and areas open to taking of catfish without limit, <u>Transferred</u> .
41:07:07:05	Restricted areas, <u>Transferred</u> .
41:07:07:06	Use of divers-down flag, <u>Transferred</u> .

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

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.

41:07:07:02. Season and area open to taking of largemouth bass. ~~Legal spear-guns 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~~ Transferred to § 41:07:06:04.

~~**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.~~

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.

41:07:06:04. Season and area open to taking of largemouth bass. Legal spear-guns, 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 through December 31 in the Pactola 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.

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	<u>(Effective through September 3, 1995) Reservations. (Effective September 4, 1995) Renewal of space contracts.</u>
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.

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. If there are many edits recommended, verify that all edits were made with LRC prior to submitting the final packet to LRC and the Interim Rules Review Committee.
9. Consider public comments.
10. Complete Form 11 (Approval of Rules).

²⁰ Review all time requirements under [SDCL 1-26-4](#), [1-26-4.3](#), [1-26-6](#), and [1-26-8](#).

11. At least seven calendar days before the Interim Rules Review Committee meeting, serve each Committee member with:
 - 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 seven calendar 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 12 (Affidavit of Service);
 - iv) Form 15 (Rules Presentation Format); and
 - v) Form 17 (Agency Financial Resources), if applicable.
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:
 - a) The Office of the Secretary of State:
 - i) Final rules;
 - ii) Form 11 (per the Secretary's request); and
 - iii) Form 13 (Certificate);²² and
 - b) LRC:
 - i) Word version of the final rules showing understrikes and overscores in red font.²³
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 first 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.

²³ SDCL subdivision 1-26-6(4) requires that "a copy has been filed [with LRC] in a form prescribed by [LRC] to show amendments, deletions, and other changes to existing rules, for use in preparation of copy for the Administrative Rules of South Dakota."

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

DATE _____

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 11

APPROVAL OF RULES

Following public hearing held on [Date of Public Hearing], the following rules, attached, are approved and will become effective twenty days after filing with the Office of the Secretary of State:

§§ [Citations to Rules]

[Date]

[Date]

[Agency Name]

LEGISLATIVE RESEARCH COUNCIL

A majority of the members of the board or commission must sign this form, either by ink signature or attributable electronic signature with two-factor authentication or biometric identification to a single signor. Original copies of this form must be maintained by the Agency. Extra signed copies may be photocopied after the original has been signed. Include as many signature lines as there are board members. For any 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.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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, Form 17 - Agency Financial Resources;
- 6) For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, Form 16 - 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 Taffy Howard
Taffy.Howard@sdlegislature.gov

Representative Jon Hansen
Jon.Hansen@sdlegislature.gov

Senator Liz Larson
Liz.Larson@sdlegislature.gov

Representative Erik Muckey
Erik.Muckey@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 Taffy Howard
530 Westberry Dr.
Rapid City, SD 57702

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

Senator Liz Larson
2013 S. Main Avenue
Sioux Falls, SD 57105

Representative Erik Muckey
196 E. 6th Street 308
Sioux Falls, SD 57104

[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.

FORM 17
AGENCY FINANCIAL RESOURCES

Complete this form if the rulemaking involves a new fee or increases a fee, pursuant to SDCL 1-26-4.8.

Project as if
the fee was
implemented.

List the fee proposed for increase first in bold, then any other revenue sources. Provide amounts for each. Add more rows if needed.

Fund Name: _____		Revenue of the Fund			
Name of Fund Revenue (Tax, Fee, Interest, Sales) Source & SDCL cite:	FY_____ (2 years prior)	FY_____ (1 year prior)	FY_____ (current year)	FY_____ (next year)	
	\$	\$	\$	\$	
	\$	\$	\$	\$	
	\$	\$	\$	\$	
Total Revenue	\$	\$	\$	\$	

List program(s) that need the fee increase first, in bold font, then any other programs using fund moneys. Add more rows if needed.

Expenses of Programs/Transfers Paid from the Fund				
Program Name or Transfer Description. ("Transfer to ____"):	FY_____ (2 years prior)	FY_____ (1 year prior)	FY_____ (current year)	FY_____ (next year)
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Total Expenses	\$	\$	\$	\$
Net Change in Fund	\$	\$	\$	\$
End of FY Fund Balance	\$	\$	\$	\$

Insert the name of the program for which the fee increase is necessary. Add program expense and revenue tables for each program receiving money from the increased fee.

Program: _____	Expenses of the Program			
Expense Objects	FY_____ (2 years prior)	FY_____ (1 year prior)	FY_____ (current year)	FY_____ (next year)
Personal Services	\$	\$	\$	\$
Travel	\$	\$	\$	\$
Contractual Services	\$	\$	\$	\$
Supplies & Materials	\$	\$	\$	\$
Grants & Subsidies	\$	\$	\$	\$
Capital Outlay	\$	\$	\$	\$
Total Expenses	\$	\$	\$	\$

List all program revenue sources (with proposed fee increase bolded, listed first). Includes taxes, other fees, interest, and sales.

Revenues of the Program				
Revenue Name	FY_____ (2 years prior)	FY_____ (1 year prior)	FY_____ (current year)	FY_____ (next year)
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Total Revenue	\$	\$	\$	\$
Net Revenue/(Expense) of the Program	\$	\$	\$	\$

APPROVED: _____ **DATE:** _____

Signature of Constitutional Officer, Commissioner, or Secretary of Agency
Promulgating Rules or Board/Commission Chair of Rulemaking Body

PROCEDURE AND FORMS FOR ADOPTING EMERGENCY RULES

1. Consult the Drafting Manual: Administrative Rules of South Dakota for use in drafting the rules.
2. Review [SDCL 1-26-5](#).²⁴
3. Serve the Department Secretary/Commissioner/Officer [Form E-1], the Legislative Research Council (LRC) [Form E-2], and each member of the Interim Rules Review Committee [Form E-3] with a copy of:
 - a) Form E-4 (Notice of Intent to Adopt Emergency Rules);
 - b) Form E-5 (Statement of Necessity for Emergency Rules);
 - c) Proposed emergency rules; and
 - d) To the Secretary/Commissioner/Officer and LRC only:
 - i) Any material incorporated by reference.
4. Incorporate LRC recommendations for form, style, clarity, and legality, subject to appeal to the Interim Rules Review Committee.
5. Publish Notice of Intent to Adopt Emergency Rules [Forms E-4 (Notice of Intent to Adopt Emergency Rules), E-6 (Letter to newspaper), and E-7 (Affidavit of Publication)].
6. Mail notice to all persons who have requested advanced notice of rulemaking proceedings [Form E-8 (Affidavit of Mailing Notice)].
7. Following publication of Notice of Intent to Adopt an Emergency Rule, complete Form E-9 (Approval of Rules).
8. File with the Office of the Secretary of State:
 - a) Form E-10 (Certificate); and
 - b) Final rules.
9. Serve LRC with copy of:
 - a) Final rules;
 - b) Form E-7 (Affidavit of Publication);
 - c) Form E-8 (Affidavit of Mailing Notice);
 - d) Form E-9 (Approval of Rules); and
 - e) Form E-10 (Certificate).
10. Rules are provisionally effective immediately after filing with the Office of the Secretary of State.

²⁴ Review all time requirements under [SDCL 1-26-4.3](#), [1-26-6](#), and [1-26-8](#).

FORM E-1

Personal service on [Name and Title of Department Secretary, Commissioner, or Constitutional Officer] of

1. [Agency]'s proposed emergency rules §§ [Citations of Proposed Emergency Rules];
2. Notice of Intent to Adopt Emergency Rules;
3. Statement of Necessity; and
4. Material incorporated by reference

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

[Name and Title of Secretary, Commissioner, or Officer]

FORM E-2

Personal service on the Legislative Research Council of

1. [Agency]'s proposed emergency rules §§ [Citations to Proposed Emergency Rules];
2. Notice of Intent to Adopt Emergency Rules;
3. Statement of Necessity; and
4. Material incorporated by reference

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

Legislative Research Council

Agency contact person:

Name

Phone Number

E-Mail Address

FORM E-3

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:

- 1) Emergency rules §§ [Citations to Emergency Rules], proposed for adoption by [Agency Name];
- 2) Form E-4 – Notice of Intent to Adopt Emergency Rules; and
- 3) Form E-5 – Statement of Necessity for Emergency 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 Taffy Howard
Taffy.Howard@sdlegislature.gov

Representative Jon Hansen
Jon.Hansen@sdlegislature.gov

Senator Liz Larson
Liz.Larson@sdlegislature.gov

Representative Erik Muckey
Erik.Muckey@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 Taffy Howard
530 Westberry Dr.
Rapid City, SD 57702

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

Senator Liz Larson
2013 S. Main Avenue
Sioux Falls, SD 57105

Representative Erik Muckey
196 E. 6th Street 308
Sioux Falls, SD 57104

[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 E-4

[AGENCY NAME]
NOTICE OF INTENT TO ADOPT EMERGENCY RULES

[Agency Name], in accordance with SDCL 1-26, intends to adopt emergency rules to [Description of Purpose for Emergency Rules].

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

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

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

[Agency Name]
[Agency Address]

Published at the approximate cost of \$_____.

FORM E-5

[AGENCY NAME]
STATEMENT OF NECESSITY FOR EMERGENCY RULES

[Enter Description of Necessity for Emergency Rules in accordance with [SDCL 1-26-5\(3\)](#)]

FORM E-6

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

[Date]

[Publication Name]
[Publication Mailing Address]

To whom it may concern:

Please publish the enclosed Notice of Intent to Adopt Emergency Rules (Form E-4) in your newspaper for one issue by [Date].

Please include the enclosed Affidavit of Publication (Form E-7) with your invoice.

Sincerely yours,

[Agency Contact Name]
[Agency Contact Title]

Enclosure

FORM E-7

AFFIDAVIT OF PUBLICATION

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

I further swear that the Notice to Adopt Emergency Rules by _____ was published on _____.

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20____.

FORM E-8

AFFIDAVIT OF MAILING NOTICE

I, [Agency Contact Name], under oath, do swear, that on [Date of Mailing], I mailed a copy of the Notice of Intent to Adopt Emergency Rules 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 E-9

APPROVAL OF RULES

The following emergency rules, attached, are approved and will become provisionally effective immediately after filing with the Office of the Secretary of State:

§§ [Citations to Rules]

[Date]

[Date]

[Agency Name]

LEGISLATIVE RESEARCH COUNCIL

A majority of the members of the board or commission must sign this form. Original copies of this form must be maintained by the Agency. Extra signed copies may be photocopied after the original has been signed. Include as many signature lines as there are board members. For any 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.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FORM E-10

CERTIFICATE

I, [Agency Contact Name], 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 emergency rules adopted by the [Agency Name] on [Date of Adoption]:

§§ [Citations to Adopted Rules]

I further certify that [Agency Name] complied with SDCL 1-26-5 and 1-26-6 in the adoption of the attached rules. The rules will become effective immediately upon 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____.

DEPARTMENT OF SOCIAL SERVICES
PROCEDURE FOR ADOPTING FEDERALLY-MANDATED RULES

This process may be used only for federally-mandated rule promulgation

1. Consult this Drafting Manual for use in drafting the rules.
2. Review [SDCL 1-36-20](#).
3. Serve the Legislative Research Council (LRC) [Form DSS-1] with a copy of:
 - a) Proposed rules;
 - b) The federal statute or regulation mandating rule promulgation; and
 - c) Form DSS-2.
4. Incorporate LRC recommendations for form, style, clarity, and legality, subject to appeal to the Interim Rules Review Committee.
5. File with the Office of the Secretary of State:
 - a) Form DSS-2
 - b) Form DSS-3; and
 - c) Final rules.
6. Serve LRC with copy of the final rules.
7. Rules are provisionally effective immediately after filing with the Office of the Secretary of State.

FORM DSS-1

Personal service on the Legislative Research Council of

1. Department of Social Services proposed rules §§ [Citations to Proposed Rules];
2. Federal law mandating rule promulgation; and
3. Affidavit stating that the proposed rules are mandated by federal law.

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

Legislative Research Council

Agency contact person:

Name

Phone Number

E-Mail Address

FORM DSS-2

AFFIDAVIT

I, [Name of Secretary of Department of Social Services], certify that the Department of Social Services is required under [Citation to Federal Statute or Regulation] to promulgate the proposed rules §§ [Citations to Proposed Rules].

Secretary of the Department of Social Services

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20____.

FORM DSS-3

CERTIFICATE

I, [Name of Secretary of Department of Social Services], hereby certify that I am the Secretary of the Department of Social Services, and that the attached instruments are full, true, and correct copies of the following proposed rules adopted by the Department of Social Services on [Date of Adoption]:

§§ [Citations to Adopted Rules]

I further certify that the Department of Social Services complied with SDCL 1-36-20 in the adoption of the attached rules. The rules will become provisionally effective immediately upon filing with the Office of the Secretary of State.

Secretary of the Department of Social Services

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

Notary Public - South Dakota

[Seal]

My Commission expires _____, 20__.