

## PART V - PROCEDURE FOR ADOPTING PERMANENT RULES

### Notice:

Serve head of department with a copy of (1) admission of service (Form 1); (2) authorization to proceed (Form 2); (3) proposed rules; and (4) materials incorporated by reference.	SDCL 1-26-4(1)
Get written approval to proceed.	SDCL 1-26-4(2)
Service on Legislative Research Council (LRC) and Bureau of Finance and Management (BFM), publication of notice, and notice to interested persons must be done <u>at least 20 days before the hearing</u> .	SDCL 1-26-4(2) 1-26-4(3)
Service on LRC (two copies) and BFM (one copy) includes: (1) admission of service (Form 3 or 4 as applicable); (2) notice of hearing; (3) fiscal note; (4) proposed rules - double spaced; (5) (LRC only) copies of admission of service on department secretary and authorization to proceed (Forms 1 and 2); (6) (LRC only) one copy of any materials incorporated by reference. The materials will be returned after the review is complete; and (7) Small Business Impact Statement (Form 14)	SDCL 1-26-4(2)
If rules have a negative fiscal impact on local political subdivisions, ask BFM to send a copy of its fiscal note to South Dakota Municipal League, Associated School Boards of South Dakota, and South Dakota County Commissioners Association.	SDCL 1-26-4.2
Publish notice of hearing in a manner selected to notify persons likely to be affected; minimum legal test is publication of notice in at least three newspapers of general circulation in different parts of the state.	SDCL 1-26-4.1 1-26-4(3)
Send notice to interested persons.	SDCL 1-26-4.1

### Comment period:

Accept comments from public and from LRC.	SDCL 1-26-4(6) 1-26-6.5
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Hold public hearing. If a board or commission has rule-making authority, a majority of the board or commission must be present at the hearing. SDCL 1-26-4(4)

Keep comment period open for ten days following hearing; however, if agency is part-time citizen board or part-time commission, close comment period at end of hearing unless hearing is specifically continued to take additional comments. SDCL 1-26-4(6)

### **Adoption process:**

Make changes in rules after consideration of comments by public; make LRC's recommended changes; changes must be within the scope of the notice. SDCL 1-26-4(4)  
1-26-4(7)  
1-26-6.5

Have rules signed by the person or a majority of the body with the authority to adopt them (Form 11). SDCL 1-26-6(2)

Serve Rules Committee with minutes of public hearing, complete record of written comments, and final draft of rules after hearing. SDCL 1-26-4(8)  
1-26-4.3  
1-26-6(1)

Serve final draft of rules with Legislative Research Council and obtain signature of LRC approving the rules for legality and for form and style (Form 11). SDCL 1-26-6(4)  
1-26-6.5  
1-26-6.6

Appear and present rules to the Interim Rules Review Committee. SDCL 1-26-1.2  
1-26-4(8)

### **Filing with Secretary of State:**

File a copy of Form 11 and original certificate Form 13, with the Secretary of State if the agency has appeared before the Rules Committee and minutes and final rules were served on the Rules Committee and if all signatures have been obtained. No more than 75 days may elapse between when the agency's public hearing commences and the rules are filed with the Secretary of State. SDCL 1-26-4.3  
1-26-6(1)  
1-26-6(5)

### **Effective date:**

Rules are provisionally effective on the 20th day after filing with the Secretary of State. SDCL 1-26-6

Rules are finally effective on July 1 after the next legislative session. SDCL 1-26-6

## PROCEDURE FOR ADOPTING PERMANENT RULES

### Step 1

Forms 1, 2

Serve proposed rules on department secretary

### Step 2

Forms 3, 4, 5, 6, 14

Serve rules, notice, fiscal notes, and impact statement on LRC and BFM

No waiting period

### Step 3

Forms 6, 7, 8, 9

Publish notice of hearing and send notice to interested persons

Wait 20 days

### Step 4

Form 10

Hold public hearing

Wait 10 days unless the entity promulgating the rules is a board or a multiperson decision maker

### Step 5

Form 11

Adopt rules

No waiting period

### Step 6

Forms 11, 12

Submit final, adopted rules to LRC for approval signature. Send final rules and minutes of hearing to Rules Committee.

Appear and present rules to the Committee

### Step 7

Form 13

File rules and certificate of compliance with Secretary of State

Wait 20 days

Rules are effective

**All original documents should be kept in your office except as noted below.**

The times shown in the flow chart are the minimums established by SDCL 1-26-4 and 1-26-6. Steps 4 through 7 must be accomplished in 75 days (SDCL 1-26-4.3).

The form numbers in the chart correspond to forms on the following pages. Your agency must create all of these forms, with the exception of Form 5 (BFM 50.10), the fiscal note, which is obtained from the Bureau of Finance and Management, and Form 8, affidavit of publication, which is provided by the newspapers publishing your notice.

Keep the **originals** of all of the documents in your agency files, SDCL 1-26-7. However, the original of Form 13, the certificate, must be filed with the Secretary of State. While it is not required by statute, the Secretary of State has requested that a copy of Form 11 be filed with the rules and the certificate (Step 7).

A more detailed explanation of this entire process is contained in the Administrative Procedures Act, SDCL chapter 1-26.



**FORM 1**

See SDCL subdivision 1-26-4(1)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

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

is admitted at Pierre, South Dakota, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary of Department of Standards

**FORM 2**

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

AUTHORIZATION TO PROCEED

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary of Department of Standards

**FORM 3**

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

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

is admitted at Pierre, South Dakota, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Legislative Research Council

For these rules, the Agency contact person is: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**FORM 4**

See SDCL subdivision 1-26-4(2)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

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

is hereby admitted at Pierre, South Dakota, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Bureau of Finance and Management



## FORM 5, BFM 50.10

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

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

	CODE	NAME
<b>DEPARTMENT</b>		
<b>DIVISION</b>		
<b>PROGRAM</b>		

PROPOSED RULE:  
Hearing Date:

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

**FISCAL NOTE SUMMARY:**  
List state agencies of local governmental subdivisions affected.

**COST INCREASES (DECREASES)**

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

**REVENUE INCREASES (DECREASES)**

<b>Revenue Increases (Decreases) State, Local &amp; Small Business :</b>		
<b>TOTAL</b>		

APPROVED \_\_\_\_\_ DATE \_\_\_\_\_  
Signature Department Secretary or Board or Commission Chairman

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

Revised June 2004

**FORM 6**  
See SDCL 1-26-4.1

Board of Metric Conversion  
Notice of Public Hearing to Adopt Rules

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

99:01:03:05

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

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

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

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

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Standards, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-1234. Material sent by mail must reach the Department of Standards by May 26, 20\_\_, to be considered.

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

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

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

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

Published at the approximate cost of \$\_\_\_\_\_.

**FORM 7**

See SDCL subdivision 1-26-4(3)

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

May 2, 20\_\_

Capital Journal  
333 West Dakota Avenue  
Pierre, South Dakota 57501

To whom it may concern:

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

Please include your Affidavit of Publication with your invoice.

Sincerely yours,

John Doe  
Supervisor

Enclosure

FORM 8

See SDCL 1-26-4.1



# Capital Journal

## AFFIDAVIT OF PUBLICATION

State of South Dakota, County of Hughes

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

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

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

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

Signed: \_\_\_\_\_

subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

\_\_\_\_\_

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

**FORM 9**

See SDCL 1-26-4.1

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

AFFIDAVIT OF MAILING NOTICE  
TO INTERESTED PARTIES

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

\_\_\_\_\_  
John Doe

Subscribed and sworn to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public - South Dakota

(Seal)

My Commission expires  
\_\_\_\_\_, 20\_\_.

## FORM 10

See SDCL subdivision 1-26-4(8)

### BOARD OF METRIC CONVERSION MINUTES OF PUBLIC HEARING

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

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

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

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

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

#### **Written Testimony**

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

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

#### **Oral Testimony**

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

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

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

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

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

Respectfully submitted,

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Charles Coe  
Secretary  
Board of Metric Conversions

**Adjournment:** 11:05 a.m.

**FORM 11**

See SDCL subdivisions 1-26-6(2) and (4)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

APPROVAL OF RULES

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

BOARD OF METRIC CONVERSIONS

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

\_\_\_\_\_  
Richard Roe

\_\_\_\_\_  
June Doe

\_\_\_\_\_  
Charles Coe

\_\_\_\_\_  
Mary Boe

\_\_\_\_\_  
Fred Moe

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



**FORM 12**

See SDCL subdivision 1-26-4(8)

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

AFFIDAVIT

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

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

99:01:03:05

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

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

Representative Julie Bartling  
[bjbart@gwtc.net](mailto:bjbart@gwtc.net)

Senator Craig Kennedy  
[Craig.Kennedy@sdlegislature.gov](mailto:Craig.Kennedy@sdlegislature.gov)

Representative Steven Haugaard  
[Steve@haugaardlaw.com](mailto:Steve@haugaardlaw.com)

Senator Lance Russell  
[Lance.Russell@sdlegislature.gov](mailto:Lance.Russell@sdlegislature.gov)

Representative Jean Hunhoff  
[DJHunhoff@iw.net](mailto:DJHunhoff@iw.net)

Senator Alan Solano  
[Alan.Solano@sdlegislature.gov](mailto:Alan.Solano@sdlegislature.gov)

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

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

Senator Craig Kennedy  
101 W. 31<sup>st</sup> St.  
Yankton, SD 57078

Representative Steven Haugaard  
47629 258<sup>th</sup> St.  
Sioux Falls, SD 57104

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

Representative Jean Hunhoff  
2511 Mulligan Dr.  
Yankton, SD 57078

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

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

\_\_\_\_\_  
Notary Public - South Dakota

\_\_\_\_\_  
June Roe

(Seal)

My Commission expires: \_\_\_\_\_.

**FORM 13**

See SDCL subdivision 1-26-6(5)

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

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

CERTIFICATE

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

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

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

\_\_\_\_\_  
Richard Roe, President  
Board of Metric Conversions

Subscribed and sworn to  
before me this \_\_\_\_ day  
of June, 20\_\_.

\_\_\_\_\_  
Notary Public - South Dakota

(Seal)

My Commission expires  
\_\_\_\_\_, 20\_\_.

## FORM 14

### SMALL BUSINESS IMPACT STATEMENT FORM

See SDCL 1-26-2.1

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

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
  - Direct impact (*please complete remainder of form*)
  - Indirect impact (*please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered*)
  - No impact (*please provide a brief explanation, sign, date, and submit form - Questions 2 through 8 do not need to be answered*)
  
2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:
  
  
  
  
  
  
  
  
  
  
3. What is the basis for the enactment of the rules(s)?
  - Required to meet changes in federal law
  - Required to meet changes in state law
  - Required solely due to changes in date (i.e. must be changed annually)Other: \_\_\_\_\_
  
  
  
  
  
  
  
  
  
  
4. Why is the rule(s) needed?
  
  
  
  
  
  
  
  
  
  
5. What small businesses or types of small businesses would be subject to the rule?

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

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name of Agency