



**Department of Transportation**  
**Office of Legal Counsel**  
700 East Broadway Avenue  
Pierre, South Dakota 57501-2586 605/773-3262  
FAX: 605/773-4442

## MEMORANDUM

TO: Darin Bergquist  
FROM: Karla L. Engle  
DATE: August 7, 2020  
RE: August 20, 2020 Aeronautics Commission Meeting

The Department of Transportation asks the Aeronautics Commission to approve amendment or repeal of the following administrative rules:

- Chapter 70:02:01 – Procedural rules.

The Department of Transportation also asks the Aeronautics Commission to approve repeal of the following administrative rules:

- Chapter 70:02:02 – Aerial applicators;
- Chapter 70:02:03 – Structures affecting aviation;
- Chapter 70:02:05 – Registration of aircraft; and
- Chapter 70:02:06 – Pilot and airport employee identification.

Copies of the following documents are enclosed with this memo for the commission's consideration:

1. The proposed rules;
2. The Rules Presentation Format Form, listing the procedural steps that have been taken so far in the rule adoption process; and
3. Copies of statutes relating to the repeal of rules.

Any written comments that are timely received will be provided to the commission at or before the meeting on August 20, 2020.

Thank you.

**ARTICLE 70:02**

**AERONAUTICS**

Chapter

- 70:02:01 Procedural rules.
- 70:02:02 Aerial applicators, Repealed.
- 70:02:03 Structures affecting aviation, Repealed.
- 70:02:04 Airport licensing.
- 70:02:05 Registration of aircraft, Repealed.
- 70:02:06 Pilot and airport employee identification, Repealed.

**CHAPTER 70:02:01**

**PROCEDURAL RULES**

Section

- 70:02:01:01 Superseded.
- 70:02:01:02 Public availability of rules, final orders, decisions and opinions, Repealed.
- 70:02:01:03 Petition for declaratory ruling.

~~**70:02:01:02. Public availability of rules, final orders, decisions and opinions.** All rules, final orders, decisions and opinions are on file in the office of the director of the Aeronautics Commission, Department of Transportation, Pierre, South Dakota, and may be examined by any person upon oral or written request during the regular office hours maintained by the director of the Aeronautics Commission, Department of Transportation. The files and records of the Aeronautics Commission may only be removed pursuant to a court order or while such records are in the custody of an employee of the Aeronautics Commission who has been authorized to remove the document~~

~~or file. Persons examining any file or record must be accompanied by a person designated by the director of the Aeronautics Commission Repealed.~~

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 1-26-2.~~

~~—**Law Implemented:** SDCL 1-26-2.~~

**70:02:01:03. Petition for declaratory ruling.** A person may request the Aeronautics Commission to issue a decision of as to the applicability of any statutory provision, rule, or order pertaining to matters of aviation by filing a petition with the ~~director of the Aeronautics Commission~~ secretary of the Department of Transportation. The ~~Aeronautics Commission~~ commission shall consider these petitions at ~~their monthly meetings in the order in which the petitions are received a~~ scheduled hearing date held during a regular meeting.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** SDCL 1-26-15.

**Law Implemented:** SDCL 1-26-15.

## CHAPTER 70:02:02 AERIAL APPLICATORS

(Repealed)

### Section

- 70:02:02:00     ~~Definitions.~~
- 70:02:02:01     ~~Commercial pilot's certificate required of aerial applicators.~~
- 70:02:02:02     ~~Experience requirements for Class A permit — Renewal.~~
- 70:02:02:03     ~~Experience requirements for Class B permit — Supervision necessary — Renewal.~~
- 70:02:02:04     ~~Requirements for aerial applicators spraying their own land.~~

- 70:02:02:05 ~~Aircraft to be certified by FAA.~~
- 70:02:02:06 ~~Aircraft to meet FAA weight and balance requirements.~~
- 70:02:02:07 ~~Aircraft prohibited on state trunk highways.~~
- 70:02:02:08 ~~Aircraft prohibited on county or township highways — Exceptions.~~
- 70:02:02:09 ~~Pilot's responsibility for safe operation.~~

**70:02:02:00. Definitions.** ~~Terms used in this chapter mean:~~

- (1) ~~"Type and class of aircraft," single engine fixed wing aircraft or helicopter;~~
- (2) ~~"Agricultural spray aircraft," an aircraft specifically designed for aerial spray application, including conventional gear commonly known as tail dragger aircraft Repealed.~~

**Source:** 20 SDR 183, effective May 9, 1994.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— **Law Implemented:** SDCL 50-2-2.1.~~

**70:02:02:01. Commercial pilot's certificate required of aerial applicators.** ~~Any person piloting or flying aircraft as an aerial applicator must be the holder of a current commercial pilot certificate issued by the Federal Aviation Administration or its authorized agency and be otherwise qualified as set forth in § 70:02:02:02 or 70:02:02:03 Repealed.~~

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— **Law Implemented:** SDCL 50-2-2.1.~~

**70:02:02:02. Experience requirements for Class A permit -- Renewal.** ~~For a Class A permit to pilot an aerial applicator aircraft, a pilot must have completed a minimum of 750 hours of solo flight time, 250 hours of which must have been in the type and class of aircraft to be used, with 125 of the 250 hours obtained within the 12 months immediately preceding the date when flight~~

~~operations are to begin. Anyone who has not sprayed under a Class B permit as described in § 70:02:02:03 for two years before applying for a Class A aerial applicator permit must successfully complete an FAA-approved aerial applicator school or have a current aerial applicator's license from another state whose requirements meet or exceed those of the state of South Dakota at the time of application for an aerial applicator permit.~~

~~In lieu of 750 hours of solo flight time, a pilot must have completed 500 hours of solo flight time, 250 hours of which must have been in the type and class of aircraft to be used, with 125 of the 250 hours obtained within the 12 months immediately preceding the date when flight operations are to begin. In addition, within that 12-month period the pilot must have had a minimum of 25 hours of flight time while actually engaged in applying any material, substance, or chemical or in flight experience which, in the judgment of the Aeronautics Commission is equivalent to aerial application.~~

~~Pilots who have completed 2,000 hours of solo flight time and who have completed 50 hours of solo flight time in agricultural spray aircraft in the 12-month period immediately preceding the start of the flying operation may apply any material, substance, or chemical.~~

~~Pilots who have completed 2,000 hours of solo flight time and have previously been permitted under this section may renew an aerial applicator permit with 5 hours in the type and class of aircraft to be used within the 30 days immediately preceding the date when the actual chemical application is to begin Repealed.~~

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 20 SDR 183, effective May 9, 1994; 23 SDR 180, effective May 1, 1997.

**General Authority:** SDCL 50-2-2.1.

~~**Law Implemented:** SDCL 50-2-2.1.~~

**70:02:02:03. Experience requirements for Class B permit -- Supervision necessary --**

~~Renewal. For a Class B permit to pilot an aerial applicator aircraft, an applicant must have completed a minimum of 250 solo flight hours in the type and class of aircraft to be used, 125 hours of which must have been in agricultural spray aircraft, with 100 of the 250 hours obtained within the 12 months immediately preceding the date when flight operations are to begin. Fifty hours of the experience obtained within the past 12 months must have been in agricultural spray aircraft. In addition, the pilot must have obtained 15 of the 50 hours practice spraying under the supervision of a pilot with a Class A permit. The pilot who supervises the practice spraying must be the same person under whom the Class B applicant will work. The practice spraying must be with water under conditions comparable to actual spraying.~~

~~The supervising pilot must have held a valid Class A permit for at least the immediately preceding year and must have 2,000 solo flight hours.~~

~~While actually engaged in spraying operations in the immediate area being sprayed, a Class B permittee must be under the direct and immediate supervision of a Class A permittee who meets the requirements of a supervising pilot.~~

~~For renewal under this section, a pilot who has previously been licensed as a Class B permittee under this section must have 5 hours of practice in the aircraft to be used which must be obtained within the 30 days immediately preceding the beginning of actual chemical application. The hours must be obtained under the supervision of the chief pilot for the firm that will employ the pilot~~  
Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987; 20 SDR 183, effective May 9, 1994; 23 SDR 180, effective May 1, 1997.

**General Authority:** SDCL 50-2-2.1.

~~— Law Implemented: SDCL 50-2-2.1.~~

**70:02:02:04. Requirements for aerial applicators spraying their own land.** ~~A pilot who is the holder of a current private pilot certificate issued by the Federal Aviation Administration or an authorized agency thereof and who is the bona fide owner or lessee in possession of the land or area to be subjected to the application of any material, substance, or chemical shall be qualified to apply the same; provided, such pilot shall have completed a minimum of 750 hours of solo flight time, 250 hours of which shall have been in the type and class of aircraft to be used, and one half of which said 250 hours of solo flight time shall have been had within the 12 months next preceding the date when such flight operations are to commence~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— Law Implemented: SDCL 50-2-2.1.~~

**70:02:02:05. Aircraft to be certified by FAA.** ~~All aircraft shall be certified as to registration and airworthiness pursuant to the rules of the Federal Aviation Administration~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— Law Implemented: SDCL 50-2-2.1.~~

**70:02:02:06. Aircraft to meet FAA weight and balance requirements.** ~~All aircraft to be used in the application of any material, substance, or chemical, with equipment, must meet all weight and balance requirements prescribed by the Federal Aviation Administration~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— Law Implemented: SDCL 50-2-2.1.~~

**70:02:02:07. Aircraft prohibited on state trunk highways.** ~~No person shall operate, take off, or land an aircraft on any state trunk highway within the state for the purpose of servicing in preparation for aerial application of any materials, substance, or chemical~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

**General Authority:** ~~SDCL 50-2-2.1.~~

~~— Law Implemented: SDCL 50-2-2.1.~~

**70:02:02:08. Aircraft prohibited on county or township highways -- Exceptions.** ~~A person may not operate, take off, or land an aircraft on any county or township highway in the state of South Dakota for the purpose of servicing in preparation for aerial application of any materials, substance, or chemical until:~~

~~(1) The person has secured permission from the county commissioners of the county involved to do so;~~

~~(2) The person has posted warning signs or flagpersons at each end of the area which the person intends to use for take off, landing, and servicing the aircraft. The warning sign must be at least three feet tall, in the shape of an aircraft top or bottom profile, painted fluorescent orange with white lettering, and must state: "Caution. Spray planes using road." The sign shall be constructed so that it can be securely anchored in an upright position and not be blown over by passing traffic or light winds. If, in lieu of signs, a flagperson is used at either or both ends of the area, the flagperson shall use a red flag to wave down oncoming traffic; and~~

~~(3) The person has made a visual survey of the area to ensure that there is adequate length for the operation without blind spots for road traffic and that there is adequate clearance of telephone and power poles or lines or wire crossing the road~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.



~~General Authority: SDCL 50-2-2.1.~~

~~Law Implemented: SDCL 50-2-2.1.~~

~~70:02:02:09. Pilot's responsibility for safe operation. It is the pilot's full responsibility to insure a safe operation complying strictly with §§ 70:02:02:07 and 70:02:02:08 Repealed.~~

~~Source: SL 1975, ch 16, § 1; 13 SDR 129, 13 SDR 134, effective July 1, 1987.~~

~~General Authority: SDCL 50-2-2.1.~~

~~Law Implemented: SDCL 50-2-2.1.~~

## CHAPTER 70:02:03

### STRUCTURES AFFECTING AVIATION

(Repealed)

#### Section

~~70:02:03:01 to 70:02:03:16~~

~~70:02:03:17— Definitions.~~

~~70:02:03:18~~

~~70:02:03:19 Application for construction approval—Sixty days notice required.~~

~~70:02:03:20 Criteria for determining hazards to air navigation.~~

~~70:02:03:21 to 70:02:03:23 Repealed.~~

~~70:02:03:17. Definitions. Terms used in this chapter mean:~~

- ~~(1) "Commission," the South Dakota Aeronautics Commission;~~
- ~~(2) "FAA," Federal Aviation Administration Repealed.~~

~~Source: 14 SDR 170, effective June 26, 1988; 16 SDR 58, effective October 1, 1989; 29 SDR 34, effective September 17, 2002.~~

~~General Authority: SDCL 50-9-2, 50-9-9.~~

~~——Law Implemented: SDCL 50-9-1, 50-9-7.~~

**70:02:03:19. Application for construction approval -- Sixty days notice required.** A person shall submit an application for approval of construction of any structure over 200 feet in height or within two miles of any airport that has been approved by the commission, as required under SDCL 50-9-1 or 50-9-7, at least 60 days before the proposed date that construction is to begin Repealed.

**Source:** 14 SDR 170, effective June 26, 1988; 16 SDR 58, effective October 1, 1989; 29 SDR 34, effective September 17, 2002; 29 SDR 160, effective June 2, 2003.

**General Authority:** SDCL 50-9-2, 50-9-9.

~~——Law Implemented: SDCL 50-9-1, 50-9-7.~~

**70:02:03:20. Criteria for determining hazards to air navigation.** The commission shall grant approval to any structure defined by SDCL 50-9-1 and 50-9-7 that has received and submitted to the commission a written determination by the FAA that the proposed structure does not pose a hazard to air navigation. The approval shall be conditioned upon the structure's compliance with all requirements contained in the FAA's determination that the proposed structure does not pose a hazard to air navigation. If the FAA has not yet issued a written determination at the time the application is submitted, the commission may grant conditional approval contingent upon submittal prior to commencing construction of a written determination by the FAA that the proposed structure does not pose a hazard to air navigation Repealed.

**Source:** 14 SDR 170, effective June 26, 1988; 16 SDR 58, effective October 1, 1989; 29 SDR 34, effective September 17, 2002.

**General Authority:** SDCL 50-9-2, 50-9-9.

~~——Law Implemented: SDCL 50-9-1, 50-9-7.~~

CHAPTER 70:02:05

REGISTRATION OF AIRCRAFT

(Repealed)

Section

~~70:02:05:01 Identification decal.~~

~~70:02:05:02 Display of decal.~~

**70:02:05:01. Identification decal.** ~~The director of aeronautics shall provide an identification decal for aircraft bearing the same identification number as the registration certificate~~ Repealed.

**Source:** 9 SDR 91, effective January 16, 1983; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

~~**General Authority:** SDCL 50-11-10.~~

~~**Law Implemented:** SDCL 50-11-10.~~

**70:02:05:02. Display of decal.** ~~The decal shall be displayed on the aircraft immediately upon receipt. It must be easily visible from the right outside of the aircraft~~ Repealed.

**Source:** 9 SDR 91, effective January 16, 1983; 13 SDR 129, 13 SDR 134, effective July 1, 1987.

~~**General Authority:** SDCL 50-11-10~~

~~**Law Implemented:** SDCL 50-11-10.~~

CHAPTER 70:02:06

PILOT AND AIRPORT EMPLOYEE IDENTIFICATION

(Repealed)

Section

~~70:02:06:01 Definitions~~

~~70:02:06:02 and 70:02:06:03— Repealed.~~

70:02:06:04 Issuance of airport employee photo identification.

70:02:06:05 ~~Display of airport employee photo identification.~~

70:02:06:06 ~~Access and movement privileges.~~

70:02:06:07 ~~Expiration of airport employee photo identification.~~

70:02:06:08 ~~Fee.~~

**70:02:06:01. Definitions.** Terms used in this chapter mean:

(1) ~~"Airport," any area, either of land or water, that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant area that is used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon;~~

(2) ~~"Airport employee," any employee of an airport, airline, fixed base operator, or a charter service who is not otherwise required by section 107 of the Federal Aviation Regulations, or any other federal law, to have in possession a photograph identification;~~

(3) ~~"Airport employee photo identification," the photographic identification provided by the State of South Dakota to airport employees within the state Repealed.~~

**Source:** 29 SDR 34, effective September 17, 2002; 30 SDR 21, effective August 25, 2003.

**General Authority:** ~~SDCL 50-11-36.~~

~~—**Law Implemented:** SDCL 50-11-24, 50-11-36.~~

**70:02:06:04. Issuance of airport employee photo identification.** ~~On or before December 1, 2002, the manager of each airport in this state shall send to the director of aeronautics a list of the names and driver's license numbers for each airport employee. Within 30 days of the commencement of employment of a new airport employee at an airport, the airport manager shall provide to the~~

~~director of aeronautics the airport employee's name, employer, and driver's license number. Upon receipt of the information, the director of aeronautics shall issue an airport employee photo identification to each airport employee. The photographic identification shall display an identifying photograph of the airport employee, the airport employee's name, employer, identification number, and access and movement privileges.~~

~~The photograph for the airport employee photo identification shall be obtained from the driver's license photographs maintained by the South Dakota Department of Commerce. If the Department of Commerce does not have available a driver's license photograph for an airport employee, the director of aeronautics shall immediately so notify the employer in writing. Upon receipt of the written notification, the airport employee shall, within 30 days, obtain a photograph from any driver licensing office.~~

~~The manager of each airport shall distribute the airport employee photo identifications to each individual, collect the airport employee photo identification immediately upon the termination of an airport employee's employment, and request replacement airport employee identification from the director of aeronautics if an airport employee's photo identification is lost, destroyed, or expired. Upon the collection of the photo identification from an airport employee whose employment has terminated, the airport manager shall immediately send the photo identification to the director of aeronautics Repealed.~~

**Source:** 29 SDR 34, effective September 17, 2002.

**General Authority:** SDCL 50-11-36.

~~—**Law Implemented:** SDCL 50-11-36.~~

**70:02:06:05. Display of airport employee photo identification.** ~~If an airport employee is on the grounds of an airport and within the boundary of any area designated or actually being used~~

~~for aviation activities, the airport employee shall display the airport employee photo identification on the outside of the employee's clothing in such a manner as to be readily visible to all others~~  
Repealed.

**Source:** 29 SDR 34, effective September 17, 2002.

**General Authority:** ~~SDCL 50-11-36.~~

~~— **Law Implemented:** SDCL 50-11-36.~~

**70:02:06:06. Access and movement privileges.** ~~In addition to the information required pursuant to § 70:02:06:04, the manager of each airport shall designate the access and movement privileges for each employee. The access and movement privileges shall be designated as all access, general aviation ramp access, or air carrier ramp access. The manager of each airport shall designate the general aviation ramp and air carrier ramp areas of the airport. The airport employee photo identification issued to each airport employee shall indicate the access and movement privileges to which the employee is entitled~~ Repealed.

**Source:** 29 SDR 34, effective September 17, 2002.

**General Authority:** ~~SDCL 50-11-36.~~

~~— **Law Implemented:** SDCL 50-11-36.~~

**70:02:06:07. Expiration of airport employee photo identification.** ~~Each airport employee photo identification issued pursuant to the provisions of this chapter expires five years after the date of issuance.~~

~~At least 30 days prior to the expiration of an airport employee's photo identification, the manager of each airport shall request the director of aeronautics to issue a new airport employee photo identification for the airport employee~~ Repealed.

**Source:** 29 SDR 34, effective September 17, 2002.

~~General Authority: SDCL 50-11-36.~~

~~Law Implemented: SDCL 50-11-36.~~

**70:02:06:08. Fee.** ~~The fee for issuance of each airport employee photo identification, and the fee for the renewal of an expired airport employee photo identification, is five dollars. The fee shall be submitted to the director of aeronautics with the information required pursuant to §§ 70:02:06:04 and 70:02:06:06~~ Repealed.

**Source:** 29 SDR 34, effective September 17, 2002.

~~General Authority: SDCL 50-11-36.~~

~~Law Implemented: SDCL 50-11-36.~~

**FORM 15**

## Rules Presentation Format

Department/Board/Commission Name: South Dakota Aeronautics Commission

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   X   No \_\_\_\_\_ Date   July 15, 2020
  
- Date of public hearing   August 20, 2020
  
- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management   July 17, 2020  
  - 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   July 22, 2020   Newspaper   Aberdeen American News
  - Date   July 22, 2020   Newspaper   Rapid City Journal
  - Date   July 23, 2020   Newspaper   Pierre Capital Journal
  - Date   July 23, 2020   Newspaper   Sioux Falls Argus Leader
  
- Summary of how, when, and number of interested persons, if any, were contacted.
 

**On July 20, 2020, copies of the hearing notice and proposed rules were mailed to the twelve individuals or entities who have requested mail notification of rule-making by the commission. On July 17, 2020, electronic copies of the hearing notice and proposed rules were sent to the three individuals who have requested electronic notification of rule-making. A copy of the hearing notice was also provided to the Executive Director of the South Dakota Pilots Association. The hearing notice, proposed rules, and related documents were also posted on the Open SD website for the State of South Dakota.**
  
- 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 the preceding session, the number of the bill:
 

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

\_\_\_\_\_



MEMORANDUM

TO: South Dakota Aeronautics Commission  
FROM: Dustin W. DeBoer, SDDOT Office of Legal Counsel  
DATE: August 10, 2020

RE: Explanation of statutes repealed or amended and the corresponding effects upon current Administrative Rules of South Dakota (A.R.S.D.)

**I. 70:02:01 Procedural rules.**

- A. **70:02:01:02. Public availability of rules, final orders, decisions and opinions. (FOR REPEAL)**
- B. LRC has requested repeal of this rule as the intent of the rule is fully addressed in SDCL Ch. 1-27 (Public Records and Files), also known as South Dakota's Open Records Laws.

**II. 70:02:02 Aerial applicators. (FOR REPEAL)**

- A. The statute providing General Authority for the rules, SDCL 50-2-2.1, was repealed in 2019.
- B. The statute which designated as the Law Implemented for the respective rules, SDCL 50-2-2.1, was repealed in 2019.
- C. The South Dakota Department of Agriculture is the state agency which currently provides the necessary permits and licensing of agricultural aerial applicators and the products dispersed by the aerial applicators.
- D. The South Dakota Department of Transportation, Office of Air, Rail & Transit, simply confirms the aerial applicator aircraft in question is properly licensed in South Dakota.

**III. 70:02:03 Structures affecting aviation. (FOR REPEAL)**

- A. There are two statutes providing General Authority for the rule which have now been repealed.
  - 1. SDCL 50-9-2 was repealed in 2019.
  - 2. SDCL 50-9-9 was repealed in 2014.
- B. There are two statutes which are designated as the Law Implemented for the rule which have now been amended or repealed.
  - 1. SDCL 50-9-1 was amended in 2019.

2. SDCL 50-9-7 was repealed in 2014.
- C. The changes made to the Aeronautics Commission oversight of tall structures are based on the decision in *Big Stone Broadcasting, Inc. v. Lindbloom*, 161 F. Supp. 2d 1009 (D.S.D. 2001).
1. Plaintiff Big Stone Broadcasting, Inc. instituted an action for declaratory and injunctive relief against the seven members of the South Dakota Aeronautics Commission (SDAC) and the South Dakota Attorney General (collectively "defendants"), claiming that SDCL Chapter 50-9 and ARSD 70:02:03, which govern the construction of structures over 200 feet in height, were preempted by the Federal Aviation Act of 1958 ("the Act"), 49 U.S.C. § 1301 et. seq., and by Part 77 of the Federal Aviation Administration (FAA) Regulations governing "Objects Affecting Navigable Airspace," 14 C.F.R. § 77.
  2. The court enjoined defendants from acting to prohibit the construction of proposed broadcast towers when the FAA, in adherence to its statutory and regulatory provisions, determines that the proposed tower poses no hazard to air traffic and safety.
  3. In essence, then, the court enjoined defendants and their successors from vetoing a FAA determination of "no hazard" in connection with radio broadcast towers.
- B. Previous statute providing for Aeronautics Commission Oversight of Structures Affecting Navigation (amended in 2019):

50-9-1. Approval required for construction or alteration of certain structures. Any person or organization who intends to construct or alter a structure shall submit an application and obtain an approval permit from the commission for any construction or alteration that:

- (1) Exceeds two hundred feet above ground level;
- (2) Is within twenty thousand feet of a state approved public airport or military airport that has at least one runway more than three thousand two hundred feet in actual length and the construction or alteration exceeds a one hundred to one surface ratio from any point on the runway;
- (3) Is within ten thousand feet of a state approved public airport or military airport that has its longest runway no more than three thousand two hundred feet in actual length and the construction or alteration exceeds a fifty to one surface ratio from any point on the runway;
- (4) Is within five thousand feet of a state approved public heliport and the construction or alteration exceeds a twenty-five to one surface ratio; or
- (5) Is a highway, railroad, or other traverse way that the prescribed adjusted height exceeds the standards provided in this section.

No application is needed if the construction or alteration of a structure would be shielded by an existing structure of a permanent and substantial character within the corporate limits of a municipality or by natural terrain or

topographic features of equal or greater height. It must be evident beyond any reasonable doubt that the construction or alteration of the structure so shielded does not adversely affect safety in aviation.

Any person or organization, who intends to construct or alter a structure that exceeds two hundred feet above ground level and that is outside the zones described in this section and who has obtained a Federal Aviation Administration determination of no hazard, may provide that determination to the commission prior to the start of construction in lieu of the application and permit required by this chapter.

C. Current statute (effective July 1, 2019):

50-9-1. FAA determination of no hazard to be provided to commission before construction or alteration of structure--Violation as misdemeanor. A person or organization that has obtained a Federal Aviation Administration determination of no hazard, shall provide the determination to the commission prior to the start of construction or alteration of any structure that is subject to the jurisdiction of the Federal Aviation Administration.

A violation of this section is a Class 1 misdemeanor.

**IV. 70:02:05 Registration of aircraft (FOR REPEAL)**

A. The two rules proposed for repeal, 70:02:05:01 (Identification decal) and 70:02:05:02 (Display of decal) are now codified in SDCL 50-11-5.

B. Current statute (effective July 1, 2019):

50-11-5. Posting of aircraft registration certificate--Decal--Violation as misdemeanor. The aircraft registration certificate shall at all times be conspicuously posted within the aircraft so as to be readily seen by passengers and inspectors. The department shall provide a decal bearing the same identification number as the registration certificate. The aircraft owner shall display the decal in a location easily visible from the right outside of the aircraft. A violation of this section is a Class 2 misdemeanor.

**V. 70:02:06 Pilot and airport employee identification (FOR REPEAL)**

A. The statute providing General Authority for the rules, SDCL 50-11-36, was repealed in 2014.

B. There are two statutes which are designated as the Law Implemented for the rules which have now been repealed.

1. SDCL 50-11-24 was repealed in 2004.
2. SDCL 50-11-36 was repealed in 2014.

- C. Airport and pilot identification have been generally preempted nationally by FAA requirements established in 2003.