

**Legislative Research Council  
Proposed Rules Research Review Checklist**

Date Proposed Rules Received by LRC:	December 15, 2023
Date Public Hearing Scheduled:	February 7, 2024
Proposed Rules Reviewed by:	Mary Merxbauer
Fiscal Note Reviewed by:	Bill Douglas

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

**Staff:**

**Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.**

**KEY**

ENTRY:	"[Initials]"	"N/A"	"[Initials]*"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue
1. Verify the rules packet includes ( <a href="#">SDCL 1-26-4(2)</a> ):			MM
a. The proposed rules:			MM
i. Any incorporated material:			MM
b. Notice of hearing (Form 6):			MM
2. Verify all documents have correct citations to the proposed rules provided in the packet.			MM
3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. ( <a href="#">SDCL 1-26-4(1)</a> )			MM
<b>4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.</b>			
5. Review proposed rules for:			
a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language).			MM*
i. Verify the most recent rule is used. ( <a href="#">Manual</a> , pg. 5)			MM
ii. Verify all cross-references in text are current. ( <a href="#">Manual</a> , pg. 6)			MM*
iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. ( <a href="#">Manual</a> , pg. 6)			MM
iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. ( <a href="#">Manual</a> , pg. 7)			MM

b. Legality, including:

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| i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ( <a href="#">Manual</a> , pg. 8)   | MM*<br>_____ |
| ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ( <a href="#">Manual</a> , pg. 8)  | MM*<br>_____ |
| iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ( <a href="#">SDCL 1-26-6.6</a> ; <a href="#">Manual</a> , pg. 11)  | MM<br>_____  |
| For incorporated material that is not CFR, USC, Fed. Reg., Stat.:   |              |
| 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained.  | N/A<br>_____ |
| 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC.   | N/A<br>_____ |
| iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ( <a href="#">SDCL 1-26-6.1</a> )   | MM<br>_____  |
| v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ( <a href="#">SDCL 1-26-6.10</a> )   | MM<br>_____  |
| vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ <a href="#">23</a> (9), <a href="#">26</a> )  | MM<br>_____  |
| vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL <a href="#">1-26-4</a> , <a href="#">1-26-6.5</a> , <a href="#">1-26-6.6</a> , <a href="#">1-26-38</a> (2))                           | MM<br>_____  |
| viii. Verify the rule does not contain the agency's internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per <a href="#">SDCL 1-26-1</a> (8).  | MM<br>_____  |
| ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. ( <a href="#">State v. Johnson</a> , <a href="#">84 S.D. 556</a> , <a href="#">173 N.W.2d 894</a> (1970)) | MM<br>_____  |
| x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ( <a href="#">Manual</a> , pg. 8)   | MM<br>_____  |

6. Review Notice of Public Hearing ([SDCL 1-26-4.1](#)):

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| a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. | MM<br>_____ |
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| b. Verify the notice contains a narrative description of the effect of the proposed rule.   | MM  |
| c. Verify the notice contains the reason for adopting the proposed rule.  | MM  |
| d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing.  | MM  |
| e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented.   | MM  |
| f. Verify the notice contains a deadline for submission of comments.  | MM  |
| i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. ( <a href="#">SDCL 1-26-4(6)</a> )  | MM  |
| ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). ( <a href="#">SDCL 1-26-4(6)</a> ).                              | N/A |
| g. Verify the notice contains information for how the public may obtain copies of the proposed rules.   | MM  |
| 7. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. ( <a href="#">SDCL 1-26-11</a> ) | N/A |

Reviewed by Code Counsel on January 25, 2024