

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

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"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 (SDCL 1-26-4(2)):			
a. The proposed rules:			
i. Any incorporated material:			
b. Notice of hearing (Form 6):			
2. Verify all documents have correct citations to the proposed rules provided in the packet.			
3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. (SDCL 1-26-4(1))			
4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.			
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).			
i. Verify the most recent rule is used. (Manual , pg. 5)			
ii. Verify all cross-references in text are current. (Manual , pg. 6)			
iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. (Manual , pg. 6)			
iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. (Manual , pg. 7)			

b. Legality, including:

- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 8) _____
- ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 8) _____
- iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pg. 11) _____

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. _____
 - 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. _____
- 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. ([SDCL 1-26-6.1](#)) _____
- v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) _____
- vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23](#)(9), [26](#)) _____
- 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 [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38](#)(2)) _____
- 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 [SDCL 1-26-1](#)(8). _____
- 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. ([State v. Johnson](#), 84 S.D. 556, 173 N.W.2d 894 (1970)) _____
- x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ([Manual](#), pg. 8) _____

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

- a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. _____

- b. Verify the notice contains a narrative description of the effect of the proposed rule. _____
- c. Verify the notice contains the reason for adopting the proposed rule. _____
- d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. _____
- e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. _____
- f. Verify the notice contains a deadline for submission of comments. _____
 - i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. ([SDCL 1-26-4](#)(6)) _____
 - 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). ([SDCL 1-26-4](#)(6)). _____
- g. Verify the notice contains information for how the public may obtain copies of the proposed rules. _____
- 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. ([SDCL 1-26-11](#)) _____

Reviewed by Code Counsel on _____

Legislative Research Council
Proposed Rules Fiscal Review Checklist

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"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 ([SDCL 1-26-4\(2\)](#)):
 - a. Fiscal Note (Form 5): _____
 - b. Regulatory Impact Analysis (Form 14): _____
 - c. Housing Cost Impact Statement (Form 16), if applicable: _____
 - d. Agency Financial Resources (Form 17), if applicable: _____
2. Indicate whether the rulemaking increases a fee of a professional or occupational licensing board or commission for which no maximum fee is established in statute, in which case, initial. If the fee increases by more than 20%, note the issue. ([SDCL 1-26-6.9](#)) _____
3. Review the Fiscal Note ([SDCL 1-26-4.2](#)):
 - a. Verify the Fiscal Note states whether the rulemaking will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: _____
 - i. Verify whether the form summarizes the changes resulting from the rulemaking to processes or activities of any state or local government entities. _____
 - ii. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed. _____
 - iii. Verify if the depicted effect is reasonable. _____
 - iv. If there is an effect on subdivisions, is that effect described? _____

4. Review Regulatory Impact Analysis ([SDCL 1-26-4.11](#)), verify:

- a. The form lists the articles, chapters, and sections added, revised, or repealed in the rulemaking. _____
- b. The explanation of whether the rulemaking is a "major rule" ([SDCL 1-26-1](#)) is reasonable. _____
 - i. If the rulemaking qualifies as a "major rule," also verify the agency's "sufficient authority" explanation is accurate and aligns with the description in the footer of the form. _____
- c. There is a reasonable, narrative explanation of the need for the rulemaking at this time. _____
 - i. Also verify there is no indication that the rulemaking is artificially structured with recent prior rulemakings to circumvent the "major rule" threshold. _____
 - ii. Also verify that if the rulemaking covers disparate types of rules, an explanation of the need is provided for each type. _____
- d. There is a reasonable, narrative explanation of the alternative options, if any, to satisfy the need that is the basis for the rulemaking, but were not pursued. _____
- e. The estimated primary or direct benefits resulting from the rulemaking are reasonable. _____
- f. The estimated cost savings or financial benefits to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable. _____
- g. The estimated costs of implementation or compliance to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable and are provided in sufficient detail. _____
- h. The estimated secondary or indirect costs to individuals and entities other than the federal or state government, which result from the rulemaking, are reasonable. _____
- i. The estimated cost of compliance because of the removal of private capital from the marketplace by the rulemaking is reasonable. _____
- j. The sources consulted by the agency in preparing this analysis appear to be reasonably accurate. _____
- k. If the rulemaking has any small business impact on its face. _____
- l. The identification of and estimated number of small businesses subject to the proposed rules revised in the rulemaking is reasonably accurate. _____
- m. The agency provides a reasonable statement of the probable effect of the rulemaking on impacted small business. _____

- n. The projected small business reporting and record-keeping required for compliance with the rulemaking is reasonable. _____
- o. The types of professional skills necessary for preparation of required reports or records are reasonable. _____
- 5. Agency Financial Resources ([SDCL 1-26-4.8](#)), if applicable, verify:
 - a. The revenue of the fund into which the fee is paid is accurately depicted. _____
 - b. The fee's estimated revenue is reasonably reflected in the form. _____
 - c. The expenses paid out of the fund are accurately depicted (and future expenses are reasonably estimated) _____
- 6. Review Housing Cost Impact Statement ([SDCL 1-26-2.3](#)), if applicable, verify:
 - a. The agency has indicated what building sectors will be impacted by the rule change. _____
 - b. A description of and explanation of necessity for each standard and requirement is included. _____
 - c. The statement includes the average estimated cost of each standard and requirement. _____
 - d. That contact and estimate information is included for three licensed contractors or building trades professionals. _____

Reviewed by Code Counsel on _____

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

Rules Review Meeting Schedule for the 2026 Interim: The Interim Rules Review Committee will meet April 21, May 5, June 9, July 14, August 18, September 8, and October 14. Meeting notices will be posted on the LRC website and at the Capitol.

A. Committee: The following materials must be served on the Committee at least seven calendar days before the committee meeting via first-class mail, e-mail, or both:

1. Form 12 – Affidavit and all its referenced documents (for final rules, please three-hole punch and number by page the final rules):
 - a. Form 10 – Minutes of Public Hearing;
 - b. A record of written comments;
 - c. Form 14 – Small Business Impact Statement;
 - d. Form 5 – Fiscal Note;
 - e. For any rules that increase a fee, per SDCL 1-26-4.8, a completed Form 17;
 - f. For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the Form 16 – Housing Cost Impact Statement; and
 - g. The final rules as adopted;
2. Form 15 – Rules Presentation Format;
3. First draft of proposed rules containing LRC recommendations for style, form, clarity, and legality; and
4. Letter from the LRC to the agency.

B. Legislative Research Council: The following materials must be submitted to the LRC at least seven calendar days before the committee meeting:

1. Final draft of adopted rules, double-spaced and containing only amended, repealed, or adopted rules, and showing overstrikes and underscores;
2. Original Form 11; and
3. Copies of:
 - a. Form 10 – Minutes of Public Hearing
 - b. A record of written comments;
 - c. Form 12 – Affidavit of Service;
 - d. Form 15 - Rules Presentation Format; and
 - e. Form 17 – Agency Financial Resources, if applicable.

C. Office of the Secretary of State: Following Committee hearing, each agency must complete and sign all documents before filing:

1. Form 13 - Certificate of rule completion;
2. Final draft of the adopted rules; and
3. Form 11 (per Secretary's request).