

North Dakota

State Regulatory Processes

Rulemaking Process

The total time required for completion of administrative rules can be from 3 to 5 months. The following timelines must be followed in order to get administrative rules changes completed:

20+ days: There must be at least 20 days between the last publication of the notice and the date of the hearing.

Note that a majority of the newspapers within the state are weekly publications and if publication is missed for whatever reason by a weekly newspaper, the delay is seven (7) more days.

10+ days: There must be at least 10 days between the hearing date and the last date to accept comments on the rules. N.D.C.C. § 28-32-12

Agency approval: Time must be allowed following the comment period for the agency or board head to meet, review the comments, and approve the final proposed rules before submission to the Attorney General. The amount of time varies among agencies or boards.

2 - 4 weeks: There is a minimum of two (2) weeks following submission of the final rules packet to the Attorney General's Office for issuance of the rules opinion

Outline of Rules Process

Prepare and finalize amended or new administrative rules.

Schedule the hearing date.

Schedule a hearing to start the administrative rules process.

The total time required for completion of administrative rules can range from three to five (3-5) months.

When setting the date, allow enough time for:

Publishing the Notice: This must be done in every county newspaper in North Dakota.

There must be a minimum of 20 days between the last date of publication and the date of the hearing.

Prepare the following documents as soon as possible after the hearing date is set:

Full Notice of Intent to [Adopt, Amend, Repeal] Administrative Rules (Full Notice);

Abbreviated Notice of Intent to [Adopt, Amend, Repeal] Administrative Rules (Abbreviated Notice);

Regulatory Analysis;

Takings Assessment;

Small Entity Regulatory Analysis;

Small Entity Economic Impact Statement; and

Fiscal Note.

Send the Full Notice and the agency's administrative rules/amendments to the Legislative Council.

Mail/email a copy of the Full Notice and proposed rules to specific members of the legislative assembly, if applicable, and to each person who has made a request to the agency for a copy of the Full Notice.

Publish the Abbreviated Notice

Hold the Public Hearing

The agency must request that the abbreviated notice be published at least once in each official county newspaper in the state.

Prepare a summary of all oral comments and responses to all comments

Agencies or boards must consider all comments received concerning the rules and make a written summary of each oral comment. A written record of the agency's or board's consideration of each comment – written and oral – must also be prepared.

Get final approval of the rules or amendments from the agency or board, contingent upon the Attorney General's approval.

Submit required materials to the Attorney General's Office; receive Attorney General Rules Opinion.

File final documents with the Legislative Council.

Attend a scheduled Legislative Rules Committee meeting.

Emergency Rulemaking

All of the same requirements and procedures for creating administrative rules must be followed along with these additional requirements:

An agency or board must first seek the approval of the Governor to obtain emergency rules. Once this approval is given, the proposed rules act as interim final rules as of the first date they are filed with the Legislative Council.

Rules may only be declared as emergency rules if they meet one of the following:

Imminent peril threatens public health, safety, or welfare;

A delay in the rule is likely to cause a loss of funds appropriated to support a duty;

To avoid a delay in implementing an appropriations measure; or

To meet a mandate of federal law

An agency or board must also notify the chairman of the Administrative Rules Committee that these are emergency rules, declare the effective date, and state the grounds for the emergency status.

The Full Notice must identify the emergency status and declare the effective date of the rules.

When the agency is ready to send the final documents to the Legislative Council, it must include the agency's finding of emergency rules, and a brief statement of the agency's or board's reasons for the finding along with the remaining documents for final approval by the Administrative Rules Committee.

After approval by the Administrative Rules Committee, the final rules are effective as of the declared effective date of the interim rules.

North Dakota Register

North Dakota Administrative Procedure Act