

SMALL ENTITY ECONOMIC IMPACT

NORTH DAKOTA ADMINISTRATIVE CODE
ADOPTING OF NEW N.D. ADMIN. CODE CH. 72-03-02

NAME AVAILABILITY STANDARDS

1. **Which small entities are subject to the proposed rule?** Individuals and/or groups wishing to register and form any of the following in North Dakota are subject to the proposed rule:

- Cooperatives – NDCC § 10-15-08.1 (3)
- Corporations – NDCC § 10-19.1-13 (2)
- Limited Liability Company – NDCC § 10-32.1-11 (2)
- Nonprofits – NDCC § 10-33-10 (2)
- Real Estate Investment Trusts – NDCC § 10-34-04 (3)
- Limited Partnerships – NDCC § 45-10.2-10 (2)
- Fictitious Partnership Names – NDCC § 45-11-01 (4)
- Partnerships (general) – NDCC § 45-13-04.1 (2)
- Limited Liability Partnerships – NDCC § 45-22-04 (2)
- Limited Liability Limited Partnerships – NDCC § 45-23-03 (2)
- Trade Names – NDCC § 47-25-03 (2)

2. **What are the administrative and other costs required for compliance with the proposed rule?**

Applicable costs are registration fees which are statutorily prescribed in NDCC § 10-32.1-92.

In addition, entities wishing to reserve a trade name, fictitious partnership name, and trademark would have applicable costs as prescribed in NDCC ch. 47-25.

The secretary of state is in the process of updating its automated system and intends to direct programming to meet the standards laid out in these administrative rules. Rules would take effect upon the launch of this updated system in late 2025.

3. **What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?** The proposed rules address standards related to name availability for business registration with the secretary of state under the entity types outlined in question 1, which includes trade name, trade mark and fictitious partnership reservations.

The proposed rules add clarity to make reasonable or necessary determinations under the “distinguishable in the record” standard. This includes specific criteria to make these determinations.

4. **What is the probable effect of the proposed rule on state revenues?** There should be no impact to state revenue. Revenue is generated from fees which are statutorily prescribed and are unchanged by this rulemaking.

5. **Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?** No, this is the least intrusive and cost affective timing for implementation of this proposed rule. The determinations as specified assist in establishing the “distinguishable in the record” standards needed. They will create greater efficiencies in the process and allow businesses filing online greater certainty that the proposed name they chose will be approved by the secretary of state.

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