NORTH DAKOTA
SECRETARY OF STATE
MICHAEL HOWE

600 E. BOULEVARD AVENUE, DEPT. 108
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August 1, 2025

Ms. Liz Fordahl
Assistant Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Ms. Fordahl:

The Notice of Intent to Adopt Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,

Michael Howe
Secretary of State

Enclosures

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NOTICE OF INTENT TO ADOPT ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Office of the Secretary of State will hold a public hearing to address proposed new N.D. Admin. Code 72-03-02 at 10 am on Wednesday, September 18, Office of the Secretary of State conference room at the North Dakota State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota.

The purpose of the proposed rule is to adopt standards to change the process for name availability for business from "deceptively similar" to "distinguishable in the record." The proposed rules will enhance timely processing of business registrations by creating specific criteria to be used in determinations which make registrations "distinguishable in the record." The proposed rule addresses name availability standards under the authority granted in (NDCC – North Dakota Century Code):

- 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)

The proposed rule is not expected to have an impact on the regulated community in excess of $50,000.

The proposed rulemaking implements bill number House Bill 1127, enacted during the 2019 legislative session, concerning name availability.

The proposed rules may be reviewed at the Office of the Secretary of State, 600 East Boulevard Avenue, Bismarck, North Dakota. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address, by email at sos@nd.gov, or by calling 701-328-3660.

Written or oral comments on the proposed rules sent to the above address or telephone number and received by September 28, 2025, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Office of the Secretary of State at the above telephone number or address at least two days prior to the public hearing.

Dated this 1st day of August, 2025.

Sandra McMerty
Deputy Secretary of State

FISCAL NOTE
Proposed New N.D. Admin. Code Chapter 72-03-02
Name Availability Administrative Rules

1. **A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2023 - 2025 Biennium		2025 - 2027 Biennium		2027 - 2029 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

B. County, city, school district and township fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

	2023 - 2025 Biennium	2025 - 2027 Biennium	2027 - 2029 Biennium
Counties	$0	$0	$0
Cities	$0	$0	$0
School Districts	$0	$0	$0
Townships	$0	$0	$0

2. **A. Fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1127, passed in the 2019 legislative session, creating authority to establish rules to aid in the determination of name availability for business registration that are “distinguishable in the record,” moving away from the current standard of “deceptively similar.”

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Secretary of State’s FirstStop software (public and back office) is currently in the process of an upgrade. No additional costs are required as the new rules will be used in the programming of the system to accommodate the change to “distinguishable in the record.”

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A: Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No change in revenue is expected. Current fees for business registrations will remain the same.

B: Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2.B. for details.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No appropriation was provided to the Secretary of State to accommodate the creation of this new entity type with the passage of HB 1127 in the 2019 legislative session.

Name: Sandra McMerty
Agency: Secretary of State
Telephone: **(**701) 328- 3660
Date Prepared: 8/1/2025

NORTH DAKOTA
SECRETARY OF STATE

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 intents to direct programming to meet the standards laid out in these administrative rules. Rules would take affect upon the launch of this updated system in late 2025.

3. **What is the probably 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.

Sandra McMerty
Deputy Secretary of State
August 1, 2025

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SMALL ENTITY REGULATORY ANALYSIS

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

NAME AVAILABILITY STANDARDS

1. **Was establishment of less stringent compliance or reporting requirements for small entities considered?** The change from "deceptively similar" to "distinguishable in the record" only changes the determination with which a proposed business or other name is reviewed for registration. It enhances the certainty for businesses and the timely processing of business registration documents by the secretary of state.

2. **Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities?** The proposed rules do not require any schedules.

3. **Was consolidation or simplification of compliance or reporting requirements for small entities considered?** The proposed rules do not impact any compliance or reporting requirements beyond the standards under which a proposed business or other name is considered for registration.

4. **Were performance standards established for small entities for replacement design or operational standards required in the proposed rule?** The proposed rules do not affect any design or operational standards; therefore, there are no performance standards in the proposed rule.

5. **Was exemption of small entities from all or any part of the requirements in the proposed rule considered?** Such exemption of small entities would not be possible given the statutory requirements relating to business registration under the following:

- Cooperatives – NDCC § 10-15-08
- Corporations – NDCC § 10-19.1-13
- Limited Liability Company – NDCC § 10-32
- Nonprofits – NDCC § 10-33-10
- Real Estate Invest. Trusts – NDCC § 10-34-04
- Limited Partnerships – NDCC § 45-10.2-10
- Fictitious Partnership Names – NDCC § 45-11-01
- Partnerships (general) – NDCC § 45-13-04.1
- Limited Liability Partnerships – NDCC § 45-22-04
- Limited Liability Limited Partnerships – NDCC § 45-23-03
- Trade Names – NDCC § 47-25-03

Sandra McMerty
Deputy Secretary of State
August 1, 2025