

ADMINISTRATIVE RULES REVIEW - BACKGROUND MEMORANDUM

NORTH DAKOTA ADMINISTRATIVE CODE

The North Dakota Administrative Code, published by the Legislative Council office pursuant to North Dakota Century Code (NDCC) Section 28-32-19, contains all rules adopted by administrative agencies subject to NDCC Chapter 28-32 (the Administrative Agencies Practice Act). The Administrative Code consists of 116 titles. Eighty-nine titles contain rules of administrative agencies. The Dairy Promotion Commission and the Parks and Recreation Department voluntarily publish their rules in the Administrative Code, although these agencies are excluded from the definition of administrative agency.

Before 1977, agencies were authorized to adopt administrative rules, but there was no compilation or central source for administrative rules. In 1977 the Legislative Assembly enacted NDCC Section 28-32-19 (originally Section 28-32-03.1), which requires the Legislative Council to compile and publish the North Dakota Administrative Code. Administrative Code supplements are published the month after rules are filed with the Legislative Council office for publication. Except for May 1979; March 1981; August 1982; April 1983; November 1984; May, August, and October 1985; February 1987; February 1989; and July 1999, a supplement has been published every month since the initial publication of the Administrative Code on July 1, 1978.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the Administrative Rules Committee since its creation in 1979. The following table shows the number of sections of the North Dakota Administrative Code amended, repealed, created, superseded, reserved, or redesignated during each identified time period:

Time Period	Number of Sections
July 1979 - October 1980	1,440
November 1980 - August 1982	916
September 1982 - November 1984	1,856
December 1984 - October 1986	1,280
November 1986 - October 1988	2,681
November 1988 - October 1990	2,325
November 1990 - October 1992	3,079
November 1992 - October 1994	3,235
November 1994 - October 1996	2,762
November 1996 - October 1998	2,789
November 1998 - November 2000	2,074

For committee review of rules, the Legislative Council staff prepares an Administrative Rules Committee (ARC) supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts--changes are indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during each designated time period:

Time Period	Supplement Pages
November 1992 - October 1994	3,809
November 1994 - October 1996	3,140
November 1996 - October 1998	4,123
November 1998 - November 2000	1,947

Under NDCC Section 28-32-20, the Administrative Code is distributed free to each county auditor, Supreme Court justice, district court judge, and to certain state agencies. The Legislative Council is required by Section 28-32-20 to establish prices for paid subscriptions to the North Dakota Administrative Code. Since July 1, 1999, prices for paid subscriptions are \$440 for the initial code set and \$250 per year for supplements.

The numbering for the Administrative Code is similar to the numbering used for the North Dakota Century Code. However, while Century Code sections are designated by numbers having three parts separated by hyphens, Administrative Code section numbers consist of four parts--the first part designates the agency (title); the second part designates the major activity or division within the agency (article); the third part designates the subject within the major activity (chapter); and the fourth part designates the rule (section).

STATUTORY PROVISIONS FOR RULES REVIEW

In 1979 the Legislative Assembly enacted the statutes providing for legislative review of administrative rules. In 2001 the Legislative Assembly enacted House Bill No. 1030, recommended by the Administrative Rules Committee, which reorganized the provisions of NDCC Chapter 28-32 without substantive change. Attached as Appendix A is a derivation table that may be used to locate provisions from the previous chapter in the revised chapter or vice versa.

North Dakota Century Code Section 54-35-02.5 directs the Legislative Council to appoint biennially an

Administrative Rules Committee and to designate the chairman of the committee. The committee is to operate according to the statutes and procedures governing the operation of Legislative Council interim committees. However, because the committee is established by statute, it is not discharged upon making its report to the Legislative Council at the end of the interim, and the committee could be called to meet at any time, including during a legislative session.

North Dakota Century Code Section 54-35-02.5 provides that it is the standing duty of the committee to review administrative rules adopted under Chapter 28-32. Section 54-35-02.5 requires the committee membership to include at least one member from each standing committee of the House of Representatives or Senate in the most recently completed regular legislative session.

In 1981 the Legislative Assembly enacted NDCC Section 28-32-17 (originally Section 28-32-03.3) authorizing the Administrative Rules Committee to make formal objections to agency rules. If the committee objects to a rule because the committee determines the rule to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the Legislative Council office. The objection must contain a concise statement of the committee's reasons for its action. The Legislative Council office is to transmit a copy of the objection to the agency adopting the rule in question. The Legislative Council office is also to publish the objection in the next issue of the Administrative Code supplement. Within 14 days after the filing of an objection, the adopting agency is to respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the rule is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court is to declare the rule invalid, and judgment is to be rendered against the agency for court costs, including a reasonable attorney's fee.

In 1995 legislation was enacted to expand the authority of the Administrative Rules Committee in reviewing rules. North Dakota Century Code Section 28-32-18 allows the committee to find that all or any portion of a rule is void if the committee makes the specific finding that there is:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. A failure to comply with express legislative intent or to substantially meet the procedural requirements of Chapter 28-32 regarding adoption of the rule.

4. A conflict with state law.
5. Arbitrariness and capriciousness.
6. A failure to make a written record of its consideration or written and oral submissions respecting the rule during the hearing process and comment period.

North Dakota Century Code Section 28-32-18 allows the committee to find a rule void if the rule is initially considered by the committee within 90 days after the date of the Administrative Code supplement in which the rule change appears. An exception provides that for rules appearing in the Administrative Code supplement during the period from November 1 through May 1 encompassing a regular session of the Legislative Assembly, the committee is not limited to 90 days to initially consider a rule but may initially consider the rule at the first meeting of the committee following the regular session of the Legislative Assembly. The committee may carry consideration of a rule to one subsequent committee meeting for purposes of the decision on whether to void a rule.

If the Administrative Rules Committee finds a rule to be void, the office of the Legislative Council is to provide written notice of the finding to the adopting agency and to the chairman of the Legislative Council. Within 14 days after receipt of the notice, the adopting agency may file a petition with the chairman of the Legislative Council for review by the Legislative Council of the decision of the committee. If the adopting agency does not file a petition for review, the rule becomes void on the 15th day after receiving the notice from the office of the Legislative Council to the adopting agency. If within 60 days after receipt of the petition from the adopting agency the Legislative Council has not disapproved the finding of the Administrative Rules Committee, the rule is void.

North Dakota Century Code Section 28-32-18 allows a rule change to be made after consideration of rules by the Administrative Rules Committee if the agency and committee agree that the rule change is necessary to address any of the considerations for which the committee may find a rule to be void. This allows an agency to change an administrative rule when the committee expresses concerns, and the agency is not required to commence a new rulemaking proceeding. If a rule change is agreed to by the Administrative Rules Committee and the agency, it must be reconsidered at a subsequent Administrative Rules Committee meeting, and public comment on the agreed rule change must be allowed.

Because the Legislative Assembly recognized there were constitutional questions about the Administrative Rules Committee voiding rules, if the North Dakota Supreme Court rules that the authority to void rules is unconstitutional, an alternative amendment to NDCC Section 28-32-18 will take effect. The alternative amendment is the same in all respects as the

amendment allowing the committee to find rules void except that under the alternative amendment the committee may not find a rule to be void but may suspend a rule or portion of a rule. The effect of a suspension is that the rule becomes ineffective temporarily and will become permanently ineffective unless it is ratified by both houses of the Legislative Assembly during the next legislative session. The amendment requires the agency seeking ratification of a suspended rule to introduce a bill for that purpose. The authority of the Legislative Council to reverse the decision of the committee also applies in the case of a suspension of a rule.

The Legislative Council has assigned the Administrative Rules Committee the responsibility under NDCC Sections 28-32-07, 28-32-10, and 28-32-42 to approve extensions of time for administrative agencies to adopt rules, establish a procedure to distribute copies of administrative agency filings of notice of proposed rule-making, and receive notice of appeal of an administrative agency's rulemaking action.

RULEMAKING PROCEDURES

North Dakota Century Code Section 28-32-01(2) defines administrative agency as:

[E]ach board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.

- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The state department of health with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

North Dakota Century Code Section 28-32-01(11) defines a rule as:

[T]he whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:

- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.

- b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

North Dakota Century Code Section 28-32-07 provides that any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The

legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

Subsections 1 and 2 of NDCC Section 28-32-10 provide:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
 - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the address and telephone number to use to obtain a copy of the proposed rules or to submit written comments and the location, date, and time of the public hearing on the rules.

2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.

North Dakota Century Code Sections 28-32-11 and 28-32-12 provide:

28-32-11. Conduct of hearings - Consideration and written record of comments. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

28-32-12. Comment period. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

In addition to other notice requirements, the Superintendent of Public Instruction is required by Section 28-32-10 to provide notice of any proposed rulemaking to each statewide association with a focus on education issues which has requested to receive notice and to the superintendent of each public school district, or the president of the school board if the district has no superintendent. Notice under this provision must be by first-class mail or by electronic mail if requested by the recipient.

North Dakota Century Code Section 28-32-10 requires the Legislative Council to establish guidelines for agencies to comply with notice requirements of Chapter 28-32. Attached as Appendix B is a copy of the guidelines adopted by the committee in October 1996.

North Dakota Century Code Section 28-32-03 allows an agency, with approval of the Governor, to adopt rules on an emergency basis because of imminent peril to the public health, safety, or welfare; because a delay is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency; when reasonably necessary to avoid a delay in implementing an appropriations measure; or when necessary to meet a mandate of federal law. An emergency rule may be declared effective no earlier than the date of filing notice of rulemaking with the Legislative Council. An emergency rule becomes ineffective if it is not adopted as a final rule within 180 days after its declared effective date.

North Dakota Century Code Section 28-32-14 requires review by the Attorney General of all administrative rules and provides that the Attorney General may not approve a rule as to legality when the rule exceeds the statutory authority of the agency, the rule is written in a manner that is not concise or easily understandable, or procedural requirements for adopting the rule are not substantially met.

Under NDCC Section 28-32-10, the Legislative Council is to establish a procedure to allow any interested person to receive mailed copies of every rulemaking notice filed with the Legislative Council, and the Administrative Rules Committee may establish a fee to receive these notices. The notices must be mailed to subscribers to this service on the first business day of each month, and the mailing must include each notice received during the previous month. The Administrative Rules Committee has set the annual charge for providing copies of the filings of notice of proposed rulemaking at \$50. As of June 1, 1997, there were 31 paid subscribers to this service. As of June 1, 2001, there were 25 paid subscribers to this service. Some of the reduction in paid subscriptions may be attributable to the fact that notices have been made available on the legislative branch web page since in 1998.

North Dakota Century Code Section 28-32-09 requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of real property. The assessment must:

1. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
2. Clearly and specifically identify the purpose of the proposed rule.
3. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
4. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

5. Identify the source of payment within the agency's budget for any compensation that may be ordered.
6. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Under NDCC Section 28-32-09, any private landowner affected by a rule that limits the use of the landowner's private real property may file a written request for reconsideration of the application or need for the rule. Within 30 days of receiving the request, the agency must consider the request and provide a written response to the landowner of whether the agency intends to keep the rule in place, modify the rule, or repeal the rule.

North Dakota Century Code Section 23-25-03.3 prohibits the State Department of Health from adopting air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act. The statute also prohibits the department from adopting air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards unless the rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the risk assessment and the cost-benefit analysis is independently peer reviewed by qualified experts selected by the Air Pollution Control Advisory Council.

North Dakota Century Code Section 28-32-04 prohibits agencies from adopting rules from federal guidelines that are not relevant to state regulatory programs. The section also provides that an agency is required to repeal or amend any existing rule adopted from federal guidelines which is not relevant to state regulatory programs.

North Dakota Century Code Section 28-32-06 provides that administrative rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the Administrative Rules Committee, or determined repealed by the office of the Legislative Council because the authority for adoption of the rules is repealed or transferred to another agency. The fact that administrative rules have the "force and effect of law" is significant. The North Dakota Supreme Court has held that administrative practice or policy of an agency subject to the North Dakota Administrative Agencies Practice Act is invalid unless it has been adopted as an administrative rule in compliance with the Act. *Little v. Spaeth*, 394 N.W.2d 700 (1986). A more difficult question arises in considering the force and effect of rules adopted by an agency

excluded from coverage under the Administrative Agencies Practice Act. In *Jensen v. Little*, 459 N.W.2d 237 (1990), a State Penitentiary inmate challenged the validity of the Penitentiary drug testing program and penalties as being adopted in violation of the Administrative Agencies Practice Act. The Supreme Court observed that the Department of Corrections and Rehabilitation was at that time a part of the office of the Director of Institutions and that the Director of Institutions was excluded from the definition of administrative agency and not subject to the Administrative Agencies Practice Act. Although the court did not directly address the effect of rules adopted by an agency outside the Administrative Agencies Practice Act, and in a footnote urged the director and warden to adopt more formal approval procedures for Penitentiary rules to diminish future challenges to the rules, the court tacitly upheld the Penitentiary rules by allowing the penalty to stand.

2001 LEGISLATION

House Bill No. 1027 requires agencies to adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the Administrative Rules Committee.

House Bill No. 1028 requires approval of the Governor before an agency may adopt an administrative rule effective on an emergency basis. The bill also adds an additional reason for adoption of emergency rules, when necessary to meet a mandate of federal law.

House Bill No. 1029 requires a copy of each written comment and a written summary of each oral comment on rules to be filed with the Legislative Council when the rule is filed for publication in the North Dakota Administrative Code.

House Bill No. 1228 was vetoed by the Governor. The bill would have allowed the Administrative Rules Committee to reopen review of existing administrative rules. This bill was similar to 1997 House Bill No. 1191, which also was vetoed.

House Bill No. 1451 allows the Administrative Rules Committee to request an administrative agency briefing on existing administrative rules and provides that the agency point out any provisions that appear to be obsolete and any areas in which statutory authority has changed or been repealed since the rules were adopted or amended. The bill allows an agency to amend or repeal a rule without complying with the usual proceedings for rulemaking provided the agency initiates the request for consideration of the amendment or repeal, the agency provides notice to the regulated community in a manner reasonably calculated to provide notice to interested persons of the time and place the Administrative Rules Committee will consider the request for amendment or repeal of the rule, and the agency and

the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

Senate Bill No. 2032 created the Department of Commerce and inserted a reference to the Department of Commerce in the definitions for Chapter 28-32 that exempt the Division of Economic Development and Finance from the Administrative Agencies Practice Act. The bill also eliminates obsolete references to the state building code and model energy code under the rule-making jurisdiction of the Office of Management and Budget.

Senate Bill No. 2103 eliminates the requirement that the State Seed Commission establish by rule the fees for commodity grade inspections. The bill substitutes a provision that the Agriculture Commissioner, with the approval of the Seed Commission, may establish and charge fees for commodity grade inspections. Because the Agriculture Commissioner is an "administrative agency" subject to NDCC Chapter 28-32, a question remains of whether the Agriculture Commissioner must go through administrative rulemaking procedures to establish commodity grade inspection fees under Section 4-09.1-03.

Senate Bill No. 2166 allows waiver by the Superintendent of Public Instruction of any rule governing the accreditation of schools if the waiver encourages innovation and has potential to improve educational opportunities or enhanced academic opportunities for students. If the Superintendent of Public Instruction approves a waiver, the Superintendent is to file a report with the committee designated by the Legislative Council. The report must cite the accreditation rule that was waived, provide a detailed account of the reasons for which the rule was waived, and state the time period for which the rule was waived. If the Superintendent denies an application for waiver, the Superintendent is to file a notice of denial with the committee designated by the Legislative Council. If requested by the chairman of the designated committee, the Superintendent is to appear before the committee and respond to questions regarding the approval or denial of any application for a waiver.

Senate Bill No. 2251 changes from Educational Telecommunications Council to Educational Technology Council the reference to that agency in the definitions section of NDCC Chapter 28-32, to comply with the name change of the agency in Senate Bill No. 2251.

Senate Bill No. 2446 provides that the Attorney General is not an administrative agency for purposes of NDCC Chapter 28-32 with respect to guidelines adopted for risk assessment of sexual offenders, the

risk level review process, and public disclosure of information regarding sexual offenders.

GUIDELINES

As pointed out earlier in this memorandum, Appendix B is a copy of guidelines for agencies to follow in publishing notice of rulemaking. The committee should update these guidelines in light of 1999 and 2001 amendments to the statutory provisions. The committee may also wish to consider recommending legislation to incorporate the guidelines in statute.

POSSIBLE RULE REVIEW

During the 1979-80 interim, the Administrative Rules Committee reviewed all rules of the Board of Barber Examiners, the Game and Fish Department, and the Highway Department. During the 1981-82 interim, the Administrative Rules Committee reviewed all rules of the Department of Human Services. Since the 1981-82 interim, preexisting rules have not been reviewed.

During the 1999-2000 interim, as rules were scheduled for review, each adopting agency was requested to provide the committee with written information in this format:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation.
3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rule is expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued. Please provide a copy if one was prepared.
6. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff) of developing and adopting the rules.
7. An explanation of the subject matter of the rules and the reasons for adopting the rules.

8. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-02.5. Please provide a copy if one was prepared.
9. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-02(6), provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration.

ATTACH:2