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NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT, 2007

THE RULE MAKING PROCESS REGULATIONS OF NITDA



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S. I. No. 25 of 2017

NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT, 2007

THE RULE MAKING PROCESS REGULATIONS OF NITDA

[9th Day of August, 2017]

Commence-
ment.

In exercise of the powers conferred on it by section 6 of the National Information Technology Development Agency Act of 2007, NITDA in compliance with the provisions of Section 32 of the NITDA Act hereby issues the following Rule Making Process Regulation—

PART ONE—SHORT TITLE, SCOPE, OBJECTIVES AND INTERPRETATION

1.—(1) This Regulation may be cited as Rule Making Process Regulation Of NITDA. Short Title.

2. This Regulation shall apply in all instances where the Agency seeks to develop any Regulation, Guidelines, Standards or Rules pursuant to its mandate under the NITDA Act 2007. Scope.

3. This Regulation is issued for the purpose of achieving the following objectives— Objectives.

- (1) Ensuring professionalism in the development of Rules ;
- (2) Ensuring standardization of the rule making process ;
- (3) Ensuring stakeholder inclusiveness in the rule making process ;
- (4) The development of the Information Technology industry in Nigeria through regulations ; and

(5) The development of other sectors of the Nigerian economy using Information Technology.

4. In this Regulation—

Interpretation.

“Act” means the National Information Technology Development Agency Act, 2007 ;

“Agency” means NITDA or the National Information Technology Development Agency ;

“Calendar Month” means a calendar month reckoned according to the Gregorian calendar ;

“Committee” means Committee created by the Director-General of the Agency for giving effect to this Regulation ;

“Draft Rule” means a proposed Rule to be developed using this Regulation ;

“Management Committee” means a Committee of Management staff duly constituted for decision making within the Agency ;

“*Media platform*” includes radio and television stations, social media platform and any other form of electronic or broadcast communication ;

“*Originator*” means the person or group of persons that submitted a proposal or draft Rule for consideration at the Registry of the Director General/Chief Executive Officer, Offices of Heads of Departments/Units or the Agency’s official email ;

“*Proposal*” includes a written request for the development of a draft rule, which is not accompanied by the draft rule itself ;

“*Rule*” means Standards, Guidelines and Regulations, which the Act empowers the Agency or the Governing Board to develop ;

“*Regulatory Plan*” means the regulatory action plan of NITDA stipulating the areas of regulation, the proposed regulations and the period for making those regulations ;

“*Stakeholders engagement*” means meetings, interactions or negotiations involving NITDA and the representatives of Information Technology establishments and organisations who are the Agency’s stakeholders.

PART TWO—POWERS AND REGULATORY PLAN

Powers to make regulatory instrument.

5. Pursuant to its mandate, the Agency may make and publish on its website, Regulations, Guidelines, Standards and any other Rule for giving full effect to the provisions of the Act.

Publication of Regulatory Plan.

6. The Agency may publish on its website a Regulatory Plan at least once a year, stipulating future rulemaking activities and updating the public on pending and completed regulatory actions.

PART THREE—INITIATION OF PROCESS

Proposal to create regulatory instrument.

7. The Agency may receive a proposal by writing through any media, from an Originator, to develop any Rule subject to the provisions of this Regulation. Such Originator may include but not limited to the following—

- (a) professional bodies ;
- (b) Industry Stakeholders ;
- (c) Commissions or Agencies ;
- (d) Advisory Committees ;
- (e) Any Department of the Agency ; or
- (f) Any member of the Public.

Considerations for Rule Making.

8. Subject to its mandate, the Agency may consider the following in deciding which issues or goals have priority for rule making: They are—

- (a) New technologies or new data on existing issues ;
- (b) Concerns arising from various problems affecting society ;

- (c) Recommendations from NITDA Committees ;
- (d) Petitions from interest groups, corporations, and members of the public ;
- (e) Lawsuits filed by interest groups, corporations, States, and members of the public ;
- (f) Presidential directives ;
- (g) Letters from the Office of the Attorney-General of the Federation or Office of the National Security Adviser or other notable offices of the Government ;
- (h) Requests from other Agencies ; and
- (h) Studies and recommendations of Agency staff.

9. Any proposal or draft Rule brought pursuant to Section 7 above shall be addressed to the Director-General.

Submission
of Proposal.

PART FOUR—REVIEW, CONSIDERATION OF PROPOSALS BY THE AGENCY AND STAKEHOLDERS ENGAGEMENT

10. Every proposal or draft Rule received pursuant to Section 7 above, shall be reviewed by the Department mandated by the Director-General for that purpose or where none is mandated, by the Department in charge of Regulation.

Draft Rules
to be
scrutinized
by appointed
department.

11. The Department mandated pursuant to section 10 above shall be responsible for vetting, editing and reviewing any proposal or draft Rule and shall within 15 calendar days of receiving the proposal or draft rule, notify the Director-General as well as the originator of its findings.

Responsibility
of appointed
department.

12. Subject to the overriding decision of the Director-General, where the Department in Section 11 above finds that the Rule should be created, the Department in charge of Regulations shall—

Issuance
of public
hearing
notice.

(1) At the end of 5 Calendar days after the Director-General as well as the Originator have notified of the Report of Findings on the proposal or Draft Rule; the Agency shall publish the Report on its website and or any media platform. Such report shall among others contain the following information—

- (a) Preambles or summary of the issues and actions under consideration;
- (b) The legal authority for issuing the rule ;
- (c) Reasons or rationale for the rule ;
- (d) The draft rule ;
- (e) Invitation to the public to comment on the draft Regulatory instrument ;
- (f) Set date for comments to be submitted ;
- (g) Various methods for conveying comments, which may include but not limited to, email, private courier, and the official electronic comment portal ; and

(h) Supplementary Information portion, which may include important data and other information used to develop the Rule.

(2) The Report mentioned in (1) shall also indicate to the general public and invitation to make comments on the draft rule in a format, manner and period to be designated by the Agency.

Publication
of public
hearing
notice.

13. After the designated period indicated by the Agency in Section 12 (2) the Department in Charge of Regulations shall collate and harmonise all comments and contributions within 10 Calendar days for presentation at the Stakeholder Engagement.

Creation of
joint
Committee.

14. Pursuant to Section 13 above, a Stakeholders engagement notice shall be published in not less than 21 calendar days prior to the Stakeholders engagement; in at least two national newspapers, one nationwide radio and one nationwide television station; which shall specify the venue, time and date.

Publication
of Draft
Rule on the
website.

15. Pursuant to Section 14 Above, the Agency shall host a Stakeholder Engagement within Nigeria at a place and time so designated.

Condition
for
publication
on the
website.

PART FIVE—EVALUATION AND PUBLICATION

16. After the Stakeholders engagement, a Joint Committee made up of the originator, representatives of the Agency and representatives of the relevant Stakeholders, shall be constituted within 5 calendar days by the Department in charge of Regulations to further consider and harmonize the draft Rule within 14 days based on the inputs from the Stakeholder Engagement.

Content of
the Draft
Rule.

17. Pursuant to Section 16 of this Regulation, the harmonized version from the Joint Committee, shall be indicated as "draft" and published on the website of the Agency and in any media platform designated by the Agency for additional comments and suggestions from members of the public.

Creation of
portal for
comments.

18. Subject to the decision of the Agency to designate additional number of days, members of the public or stakeholders shall make their additional comments within 21 days.

Comments or
suggestions
by public.

19. Upon the completion of 21 days stated in Section 18 above, all modifications on the draft rule by the Joint Committee shall be made within 10 calendar days or such number of days as may be extended by the Agency.

Modification
on the Draft
Rule.

20. The Agency may at its discretion host an additional Stakeholder Engagement based on the recommendation of the Department in charge of Regulations.

When Draft
Rule comes
into force.

21. A Rule shall come into force upon approval by the Governing Board of the Agency, or in the absence the Governing Board, the Minister supervising the Agency and signed by the Director-General.

22. The new Rule shall be gazetted in the Official *Gazette* of the Federal Republic of Nigeria and published on the website of NITDA.

Condition
for coming
into force.

PART SIX—MISCELLANEOUS

23. No Draft Rule shall be published on the website unless the Rule has complied with the provisions of this Rule making Process.

Abridged
period.

24. The Agency may create a portal for Petitions against the enacted Rule, and where the portal is so created, the Agency may announce the petition on its website for public comments on the issue.

Portal for
Petition.

25. The Agency may amend any Rule, made pursuant to this Regulation, at any time after it has been gazetted, provided that the amendment shall be in compliance with foregoing as though it were a new Rule.

Amendment
of
Regulatory
instrument.

26. The Agency may amend this Regulation, subject to the following conditions—

Amendment
of the rule
making
process.

(a) Amendment or enactment of an Act of the National Assembly that may affect the implementation of the Regulation ;

(b) Global trend and practices in Information Technology ;

(c) Specific request from Stakeholders ;

(d) Any other circumstances or conditions that in the opinion of the Agency that will affect the implementation of this Rule Making Process.

MADE at Abuja this 9th day of August, 2017.

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National Information Technology
Development Agency (NITDA)

ABDUL-RAHEEM ADEBAYO SHITTU
Honourable Minister of Communications