

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapters)	<u>REPORT OF THE</u>
75-02-04 and 75-02-04.2, Child)	<u>DEPT. OF HUMAN SERVICES</u>
Support Division & State)	
Disbursement Unit)	September 12, 2018
(Pages 2368-2369))	

.....

For its report, the North Dakota Department of Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code chapters 75-02-04 and 75-02-04.2 are not related to statutory changes made by the Legislative Assembly.
2. The proposed amendments to N.D. Admin. Code chapter 75-02-04.2 are necessary to comply with federal law, namely, the Bipartisan Budget Action of 2018, section 53117, Modernization Child Support Enforcement Fees.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking

documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on May 31, 2018. The record was held open until 5:00 p.m. on June 11, 2018, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No written comments were received within the comment period. The Department changed the proposed amendment to correctly reflect the repeal date of October 1, 2018, instead of January 1, 2018. The "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,426.08.
6. The proposed rules repeal chapter 75-02-04 and amend chapter 75-02-04.2. The following specific changes were made:
Chapter 75-02-04. Chapter 75-02-04 is repealed as it has become obsolete due to the passage of time.
Section 75-02-04.2-02. Section 75-02-04.2-02 is amended to comply with federal and state statutory requirements regarding annual fees. As a result of the language attached to the federal budget continuing resolution, the proposed rules implement the express federal requirement to impose a thirty-five dollar annual fee in applicable IV-D

cases. The proposed amendment also implements the requirement under state law, N.D.C.C. § 14-09-09.36, to impose a higher fee, on an annual basis on non-IV-D cases. The proposed rule amends the monthly fee from two dollars and ten cents a month to five dollars a month.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. The anticipated fiscal impact resulting from the implementation of the proposed amendments is projected to result in increased revenue of \$221,226 per year.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
September 10, 2018



Doug Burgum, Governor
Christopher Jones, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-02-04 AND 75-02-04.2
CHILD SUPPORT DIVISION AND STATE DISBURSEMENT UNIT**

The North Dakota Department of Human Services held a public hearing on May 31, 2018, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code Chapters 75-02-04 and 75-02-04.2, Child Support Division and State Disbursement Unit.

Written comments on these proposed amendments could be offered through 5:00 p.m. on June 11, 2018.

No one attending the public hearing provided comments. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

There will be no change to the proposed amendment due to any comment as no comments were received. However, the Department changed the proposed amendment to correctly reflect the repeal date of October 1, 2018, instead of January 1, 2018, to chapter 75-02-04.

Prepared by:

Jonathan Alm, Director
Legal Advisory Unit
N.D. Dept. of Human Services

June 21, 2018

Cc: Paulette Oberst, Child Support



Doug Burgum, Governor
Christopher Jones, Executive Director

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Paulette Oberst, Policy Administrator/Lead Attorney, Child Support Division *Paulette Oberst*

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapter 75-02-04.2, State Disbursement Unit

DATE: April 18, 2018

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code Chapter 75-02-04.2. The fiscal impact of the proposed rules cannot be precisely calculated but it is expected to exceed \$50,000.

Child Support is also proposing to repeal N.D. Admin. Code ch. 75-02-04 because it has become obsolete due to the passage of time.

Purpose

The purpose of these proposed rules is to comply with federal and state statutory requirements. As a result of language attached to the federal budget continuing resolution, it is necessary to increase the annual fee to \$35 (up from \$25) in each case in which an individual has never received assistance under a program funded under title IV-A of the Social Security Act and for whom Child Support has collected at least \$550 of support (up from \$500). Under state law (N.D.C.C. § 14-09-09.36), any annual fee imposed to conform to federal law must be imposed on the obligee and must be less, on an annual basis, than the fee in a case that is not being enforced by Child Support. The proposed rules increase the fee in a case not being enforced by Child Support to \$5 per month (up from \$2.10 per month). (Hereinafter, cases being enforced by Child Support are referred to as "IV-D cases" and cases not being enforced by Child Support are referred to as "nonIV-D cases.")

Classes of Persons Who Will be Affected

The persons who will most likely be affected by these rules are obligees in IV-D and nonIV-D cases on whom the fee will be imposed. Children in the obligee's household may also be affected by the proposed rules.

Probable Impact

The proposed rules implement federal and state laws that require the imposition of a fee for child support services. Under the proposed rules, in IV-D cases in which an individual has never received assistance under a program funded under title IV-A of the Social Security Act and for whom at least \$550 (formerly \$500) in support has been collected, an annual fee of \$35 (formerly \$25) will be imposed on the obligee and will be retained from support collections once the \$550 trigger is met. As applied to a particular IV-D case, the result will be to nominally reduce the child support disbursed to the obligee for the benefit of the children in the obligee's household.

Under the proposed rules, in nonIV-D cases, a monthly fee of up to \$5 (formerly \$2.10) will be imposed on the obligee and will be retained from support collections for each month that a collection is received. As applied to a particular nonIV-D case, the result will be to nominally reduce the child support disbursed to the obligee for the benefit of the children in the obligee's household.

Probable Cost of Implementation

There will be some effect on state revenues in terms of income generated and costs incurred.

The \$35 annual fee on IV-D cases is projected to result in increased revenue of \$107,520 per year. The revenue is treated as program income to Child Support and will affect the amount of federal financial participation in the program.

The \$5 per month fee on nonIV-D cases is projected to result in increased revenue of \$113,706 per year.

Total projected increased revenue is \$221,226 per year.

Changing the fees will require some changes to the program's automated system. At this time, the scope of changes is expected to be very modest so as to keep the costs in check but the amount cannot be quantified at this time.

Child Support will also incur costs related to a mass mailing to inform obligees of the changes to the fees. The estimated cost for the mass mailing is \$10,250.

Consideration of Alternative Methods

Since the proposed rules are required to implement express federal and state law requirements, there are no meaningful alternative methods to be considered.



Doug Burgum, Governor
Christopher Jones, Executive Director

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Paulette Oberst, Policy Administrator/Lead Attorney, Child Support Division *Paulette Oberst*

DATE: April 18, 2018

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-04.2.

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1(2). This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapter 75-02-04.2. The proposed rules are necessary to comply with federal and state statutory requirements. As a result of language attached to the federal budget continuing resolution, it is necessary to increase the annual fee to \$35 (up from \$25) in each case in which an individual has never received assistance under a program funded under title IV-A of the Social Security Act and for whom Child Support has collected at least \$550 of support (up from \$500). Under state law (N.D.C.C. § 14-09-09.36), any annual fee imposed to conform to federal law must be imposed on the obligee and must be less, on an annual basis, than the fee in a case that is not being enforced by Child Support. The proposed rules increase the fee in a case not being enforced by Child Support to \$5 per month (up from \$2.10 per month).

Child Support is also proposing to repeal N.D. Admin. Code ch. 75-02-04 because it has become obsolete due to the passage of time.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the impact of the proposed rules on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The proposed rules will not alter in any material way any compliance or reporting requirements of small entities. Therefore, establishment of less stringent compliance or reporting requirements for small entities was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed rules will not alter in any material way any required schedules or deadlines for compliance or reporting requirements of small entities. Therefore, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed rules will not alter in any material way any required compliance or reporting requirements of small entities. Therefore, neither consolidation nor simplification of compliance or reporting requirements for small entities was considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The proposed rules do not impose any design standards or any additional operational standards and will not alter in any material way any required performance standards or operational standards for small entities. Therefore, establishment of new performance standards to replace operational standards was not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

The proposed rules do not impose any requirements on small entities. Therefore, exempting small entities from all or part of the requirements contained in the proposed rules was not considered.

Doug Burgum, Governor
Christopher Jones, Executive Director

MEMORANDUM

TO: Jonathan Alm, Director, Legal Advisory Unit

FROM: Paulette Oberst, Policy Administrator/Lead Attorney, Child Support Division *Paulette Oberst*

DATE: April 18, 2018

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapter 75-02-04.2.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1(3). This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 75-02-04.2.

The purpose of these proposed rules is to comply with federal and state statutory requirements. As a result of language attached to the federal budget continuing resolution, it is necessary to increase the annual fee to \$35 (up from \$25) in each case in which an individual has never received assistance under a program funded under title IV-A of the Social Security Act and for whom Child Support has collected at least \$550 of support (up from \$500). Under state law (N.D.C.C. § 14-09-09.36), any annual fee imposed to conform to federal law must be imposed on the obligee and must be less, on an annual basis, than the fee in a case that is not being enforced by Child Support. The proposed rules increase the fee in a case not being enforced by Child Support to \$5 per month (up from \$2.10 per month). (Hereinafter, cases being enforced by Child Support are referred to as "IV-D cases" and cases not being enforced by Child Support are referred to as "nonIV-D cases.")

The proposed rules are not anticipated to have an adverse economic impact on small entities.

Child Support is also proposing to repeal N.D. Admin. Code ch. 75-02-04 because it has become obsolete due to the passage of time.

1. Small Entities Subject to the Proposed Rules

Small entities are not subject to and are not expected to be affected by the proposed rules. The proposed rules will affect individuals who are child support obligees and children in the obligees' households.

2. Costs For Compliance

Small entities are not expected to incur any costs for compliance with the proposed rules.

3. Costs and Benefits

Under the proposed rules, in IV-D cases in which an individual has never received assistance under a state program funded under title IV-A of the Social Security Act and for whom at least \$550 (formerly \$500) in support has been collected, an annual fee of \$35 (formerly \$25) will be imposed on the obligee and will be retained from support collections once the \$550 trigger is met. As applied to a particular IV-D case, the result will be to nominally reduce the child support disbursed to the obligee for the benefit of the children in the obligee's household.

Under the proposed amendments, in nonIV-D cases, a monthly fee of up to \$5 (formerly \$2.10) will be imposed on the obligee and will be retained from support collections for each month that a collection is received. As applied to a particular nonIV-D case, the result will be to reduce the child support disbursed to the obligee for the benefit of the children in the obligee's household.

4. Probable Effect on State Revenue

There will be some effect on state revenues in terms of income generated and costs incurred.

The \$35 annual fee on IV-D cases is projected to result in increased revenue of \$107,520 per year. The revenue is treated as program income to Child Support and will affect the amount of federal financial participation in the program.

The \$5 per month fee on nonIV-D cases is projected to result in increased revenue of \$113,706 per year.

Total projected increased revenue is \$221,226 per year.

Changing the fees will require some changes to the program's automated system. At this time, the scope of changes is expected to be very modest so as to keep the costs in check but the amount cannot be quantified at this time.

Child Support will also incur costs related to a mass mailing to inform obligees of the changes to the fees. The estimated cost for the mass mailing is \$10,250.

5. Alternative Methods

Since the proposed rules are required to implement express federal and state statutory requirements, there are no meaningful alternative methods to consider.

FISCAL IMPACT

The \$35 annual fee on IV-D cases is projected to result in increased revenue of \$107,520 per year. The revenue is treated as program income to Child Support and will affect the amount of federal financial participation in the program. The \$5 per month fee on non IV-D cases is projected to result in increased revenue of \$113,706 per year.

Child Support will also incur costs related to a mass mailing to inform obliges of the changes to the fees. The estimated cost for the mass mailing is \$10,250.

Changing the fees will require some changes to the Child Support's automated system. At this time, the scope of the changes is expected to be very modest so as to keep the costs in check but the amount cannot be quantified at this time.



Doug Burgum, Governor
Christopher Jones, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendments of N.D. Admin. Code chapters 75-02-04 and 75-02-04.2.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 10th day of April, 2018.

by:

A handwritten signature in black ink, appearing to be "C. Jones", is written over a horizontal line.

N.D. Dept. of Human Services