

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

N.D. Admin. Code Chapter 33-33-08 Food Establishment License Fees (Pages 151-152)	)))))))	<u>REPORT OF THE DEPT. OF HEALTH AND HUMAN SERVICES</u> December 3, 2025
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For its report, the North Dakota Department of Health and Human Services (Department) states:

1. The proposed amendments to N.D. Admin. Code Chapter 33-33-08, relating to Food Establishment License Fees, are necessary, in part, to comply with the provisions of 2025 House Bill No. 1012.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking, which may include contacting specific persons. The Department uses a basic mailing list for each rulemaking project that includes all persons who have asked to be on the basic list, the human service zone directors, the state-operated behavioral health clinics, Legal Services offices in North Dakota, 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 commissioner, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments and the Attorney General's review.

4. A public hearing on the proposed rules was held in Bismarck on September 17, 2025. The record was held open until 5:00 PM on September 29, 2025, to allow written comments to be submitted. No one attended or provided comments at the public hearing. No one submitted written comments within the comment period. A 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 \$3,065.18.
6. The proposed rules amend chapter 33-33-08. The following specific changes were made:
Section 33-33-08-01 is amended to increase the annual license fee for food establishment proprietors and applicants, establish a plan review fee for food establishment proprietors and applicants, establish a license application administration fee for food establishment applicants, and update language and terminology.
7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not 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 implementation of the proposed amendments is minimal.
 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:

Julie Wagendorf
Food & Lodging
North Dakota Department of Health and Human Services
December 2, 2025

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTER 33-33-08
FOOD ESTABLISHMENT LICENSE FEES**

The North Dakota Department of Health and Human Services held a public hearing on Wednesday, September 17, 2025, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code chapter 33-33-08, Food Establishment License Fees.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, September 29, 2025.

No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

No comments were received.

Prepared by:

Jonathan Alm
Legal Division
N.D. Dept. of Health and Human Services

September 30, 2025

Cc: Julie Wagendorf, Food & Lodging
Amy Illg, Food & Lodging
Tim Wiedrich, Health Response & Licensure
Dirk Wilke, Executive Director of Public Health Division

LEGAL



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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Drew H. Wrigley
ATTORNEY GENERAL

OPINION

October 21, 2025

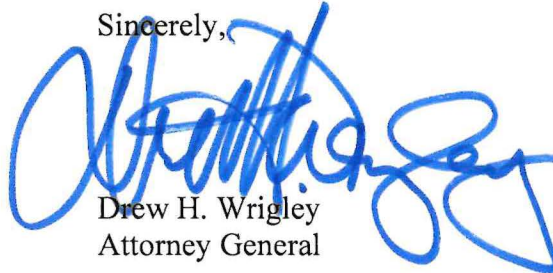
Ms. Emily O'Brien, Deputy Commissioner
North Dakota Department of Health and Human Services
600 E Boulevard Ave Dept. 325
Bismarck, ND 58505-0250

Dear Ms. O'Brien,

The Office of Attorney General has examined the proposed amendments to N.D. Admin. Code ch. 33-33-08 concerning Food Establishment License Fees, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,



Drew H. Wrigley
Attorney General

WDW

copy Liz Fordahl, Legislative Council – lfordahl@ndlegis.gov
Reagan Volkman – rvolkman@nd.gov

MEMO

TO: Jonathan Alm, Legal Division

FROM: Julie Wagendorf, Director, Food and Lodging Unit

RE: Regulatory Analysis of Proposed Amendments to North Dakota Administrative Code Chapter 33-33-08, Food Establishment License Fees.

DATE: May 21, 2025

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 33-33-08. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This impact statement pertains to proposed amendments to N.D. Admin. Code chapter 33-33-08. Federal law does not mandate the proposed rules. The proposed amendments to chapter 33-33-08 are the result of 2025 House Bill No. 1012.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

- Food establishment operators in the State of North Dakota.
- Customers of food establishments in the State of North Dakota.

Probable Impact

The proposed amendments may impact the regulated community as follows:

- Food establishment license fees will be increased by approximately 20%.
- Food processing license fees will be increased to \$130.00, from \$60.00, similar to the proposed base restaurant and small retail food store fees. The inspection process for food processors is the same as restaurants and retail food stores and requires the same operational expenses by the Department. Furthermore, changes to the U.S. Food and Drug Administration (FDA) inspection capacity is anticipated to decrease and inspection requirements will be deferred to state regulatory programs, increasing the Department's workload and costs.

- Assisted living facilities will be increased to \$170.00 dollars, or by approximately 40%, to align with school license fees. The inspection process for assisted living facilities is the same as schools and requires the same operational expenses.
- When a plan review is required for a proprietor, 50% of the annual license fee will be charged to process and review the plan review application.
- The initial application administration fee will be established at \$100.00.
- When a plan review is required as part of the initial application fee, an additional 50% of the annual license fee will be charged to process and review the plan review application.

Probable Cost of Implementation

The cost to the state should be minimal, as food establishments are already required to pay licensing fees, and this change in fee amount will not change the implemented process.

Consideration of Alternative Methods

No alternative methods of achieving the purpose of the proposed rules were identified. The proposed amendments are a result, in part, of 2025 House Bill No. 1012.

MEMORANDUM

TO: Jonathan Alm, Legal Division

FROM: Julie Wagendorf, Director, Food and Lodging Unit

DATE: May 21, 2025

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code Chapter 33-33-08, Food Establishment License Fees.

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code Chapter 33-33-08 as a result, in part, of 2025 House Bill No. 1012. Federal law does not mandate the proposed rules.

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 rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The small entities affected by these proposed amendments are food establishments operating within the State of North Dakota. Less stringent requirements were considered for small entities in the form of a sliding license fee scale which accounts for the size and food safety risk of the establishment.

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

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance of food establishment operators which are currently in law required to pay license fees annually. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

The proposed amendments will not alter in any material way any required compliance or reporting requirements of food establishment operators annual

license fee payments. Annual renewal processes currently in place have been simplified and automated. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

The proposed amendments do not change or add any new performance, design, or operational standards for food establishment operators. For this reason, the establishment of modified performance standards for these small entities was not considered.

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

The requirements of the proposed amendments exempt smaller and lower risk food establishments from paying the highest license fees due to the sliding license fee scale, which accounts for the total number of seats or square footage for some food establishments. Smaller restaurants, retail food stores, meat markets, bakeries, and multiple establishment food establishments will pay a lower fee, which reflects the size of the operation. The proposed amendments are a result, in part, of 2025 House Bill No. 1012.

M E M O R A N D U M

TO: Jonathan Alm, Legal Division

FROM: Julie Wagendorf, Director, Food and Lodging Unit

DATE: May 21, 2025

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code Chapter 33-33-08, Food Establishment License Fees.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code Chapter 33-33-08. The proposed amendments to 33-33-08 are a result, in part, of 2025 House Bill No. 1012. The proposed rules could have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are food establishment operators within the State of North Dakota. There are no other small entities subject to the proposed amendments.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be an average 20% increase of annual license fees and will range from a \$10.00 to \$160.00 increase per year for a food establishment license fee.

When a plan review is required for a proprietor, 50% of the annual license fee will be charged to process and review the plan submittal application and layout.

For initial applications, an annual license fee and a one-time administration fee of \$100.00 is charged. When a plan review is required during the initial application, an additional 50% of the annual license fee will be charged to process and review the plans submittal application and layout and will range from \$20.00 to \$225.00.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule is unknown but perceived to be nominal.

The probable benefit to private persons and consumers who are affected by the proposed rule is none.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be minimal as the licensing fees by law must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, reinspection, and necessary enforcement action. Therefore, the fees are expected to cover the expenses of the oversight of the Department.

5. Alternative Methods

No less intrusive or less costly alternative method of achieving the purpose of the proposed rules was identified. The proposed amendments are a result, in part, of 2025 House Bill No. 1012.

FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is minimal.

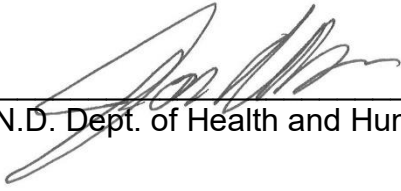
TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 33-33-08.

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 21st day of May, 2025.

by: 
N.D. Dept. of Health and Human Services

LEGAL