

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

N.D. Admin. Code Chapter 75-02-04.2, State Disbursement Unit (Pages 225-226))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> <u>March 12, 2008</u>
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For its report, the North Dakota Department of Human Services states:

1. The proposed creation of N.D. Admin. Code Chapter 75-02-04.2 is in response to 2007 Senate Bill No. 2129, Section 10. That legislation, codified at N.D.C.C. section 14-09-09.36, provides that any annual fee for child support services imposed to conform to federal law must be imposed on the obligee and that the amount of the fee must be less, on an annual basis, than the fee in a case that is not being enforced by Child Support Enforcement.
2. These rules are created in response to section 7310 of the Deficit Reduction Act of 2005, codified at 42 U.S.C. § 654(6)(B)(ii), which provides that a child support state plan must provide for the imposition of an annual fee of \$25 in each case 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 the state has collected at least \$500 of support.
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 boards, 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 rulemaking. 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 change occasioned by the comments.

4. A public hearing on these proposed rules was held in Bismarck on November 15, 2007. The record was held open until November 28, 2007, to allow written comments to be submitted. None were received. 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 \$1946.96.

6. This chapter is being created to comply with 2007 Senate Bill No. 2129, Section 10, which provides that any annual fee for child support services imposed to conform to federal law must be imposed on the obligee and that the amount of the fee must be less, on an annual basis, than the fee in a case that is not being enforced by Child Support Enforcement. The following specific changes were made:

Section 75-02-04.2-01. This section contains definitions relative to the state disbursement unit. These definitions are created to provide accurate, consistent descriptions of the terms used throughout the chapter.

Section 75-02-04.2-02. This section, Fees for Child Support Enforcement Services, is created to set forth the process by which Child Support Enforcement Services collects the necessary annual fees.

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. A constitutional takings assessment was prepared and is attached to this report.

10. These rules were adopted as emergency (interim final) rules under N.D.C.C. section 28-32-03. The statutory ground for declaring the rules to be an emergency is that they are necessary to meet a mandate of federal law. A copy of the Governor's approval of the emergency status of the rules is attached.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
March 12, 2008



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n Hoeven, Governor
ol K. Olson, Executive Director

SUMMARY OF COMMENTS RECEIVED REGARDING INTENT TO CREATE N.D. ADMIN. CODE CHAPTER 75-02-04.2 STATE DISBURSEMENT UNIT

The North Dakota Department of Human Services (the Department) held a public hearing on November 15, 2007, in Bismarck, ND, concerning the intent to create N.D. Administrative Code Chapter 75-02-04.2, State Disbursement Unit. The Department also allowed time for interested persons to submit written comments on these proposed rules. No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

CHAPTER 75-02-04.2 – STATE DISBURSEMENT UNIT

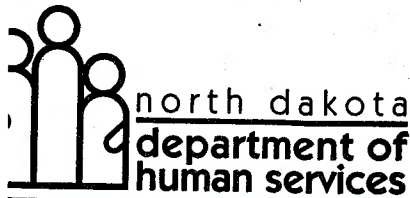
No comments were received.

Prepared by:

A handwritten signature in cursive script that reads "Julie Leer".

Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

January 28, 2008



Child Support Enforcement

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John Hoeven, Governor

Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: James C. Fleming, Deputy Director/Chief Legal Counsel *J*

RE: Regulatory Analysis of Proposed Creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit

DATE: September 18, 2007

The purpose of this regulatory analysis of the proposed creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit, is to fulfill the requirements of N.D.C.C. § 28-32-08. The fiscal impact of the proposed rules cannot be precisely calculated but it is expected to exceed \$50,000.

Purpose of Proposed Rules

The purpose of these proposed rules is to comply with federal and state statutory requirements. Under federal law (section 7310 of the Deficit Reduction Act of 2005, codified at 42 U.S.C. § 654(6)(B)(ii)), Child Support Enforcement's state plan must provide for the imposition of an annual fee of \$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 Enforcement has collected at least \$500 of support. Under state law (section 10 of 2007 SB 2129, codified at 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 Enforcement. (Hereinafter, cases being enforced by Child Support Enforcement are referred to as "IV-D cases" and cases not being enforced by Child Support Enforcement are referred to as "nonIV-D cases.")

Classes of Persons Who Will Probably be Affected by the Proposed Rules

The persons who will be most affected by these proposed 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 statutes 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 state program funded under title IV-A of the Social Security Act and for whom at least \$500 in support has been collected, an annual fee of \$25 will be imposed on the obligee and will be retained from support collections once the \$500 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 \$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 \$25 annual fee on IV-D cases is projected to result in revenue of \$321,825 per year. This revenue is treated as program income to Child Support Enforcement and will affect the amount of federal financial participation in the program.

The \$2.10 per month fee on nonIV-D cases is projected to result in revenue of \$149,562 per year.

Total projected revenue is \$471,387 per year ($\$321,825 + 149,562$).

Child Support Enforcement will incur costs related to developing automated system support for the fees. To date, development costs of \$99,693.20 have been incurred. An additional \$53,399.80 in development costs is projected. In addition, ongoing maintenance of the system support for this functionality is projected to cost \$279 per working day or approximately \$70,029 per year.

Child Support Enforcement will also incur costs related to a one-time mass mailing to inform obligees of the fees. The estimated cost for the mass mailing is \$6,103.50.

Consideration of Alternative Methods

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



John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

To: Julie Leer, Director, Legal Advisory Unit

From: James C. Fleming, Deputy Director/Chief Legal Counsel *J*

Date: September 18, 2007

Subject: Small Entity Regulatory Analysis Regarding Proposed Creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit

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 the proposed creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit. The proposed rules are necessary to comply with federal and state statutory requirements. Under federal law (section 7310 of the Deficit Reduction Act of 2005, codified at 42 U.S.C. § 654(6)(B)(ii)), Child Support Enforcement's state plan must provide for the imposition of an annual fee of \$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 Enforcement has collected at least \$500 of support. Under state law (section 10 of 2007 SB 2129, codified at 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 Enforcement.

Consistent with public health, safety, and welfare, the Department of Human Services has considered using regulatory methods that will accomplish the objective of the applicable statute while minimizing any 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

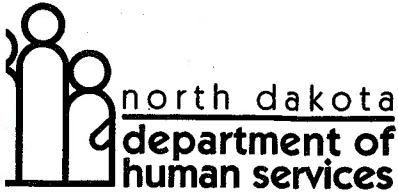
The proposed rules will not alter in any material way any required compliance or reporting requirements of small entities. Therefore, neither consolidation nor simplification of compliance or reporting requirements for small entities was considered.

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.



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in Hoeven, Governor
ol K. Olson, Executive Director

MEMORANDUM

To: Julie Leer, Director, Legal Advisory Unit

From: James C. Fleming, Deputy Director/Chief Legal Counsel *J*

Date: September 18, 2007

Subject: Small Entity Economic Impact Statement Regarding Proposed Creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit

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 the proposed creation of N.D. Admin. Code ch. 75-02-04.2, State Disbursement Unit. The proposed rules are necessary to comply with federal and state statutory requirements. Under federal law (section 7310 of the Deficit Reduction Act of 2005, codified at 42 U.S.C. § 654(6)(B)(ii)), Child Support Enforcement's state plan must provide for the imposition of an annual fee of \$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 Enforcement has collected at least \$500 of support. Under state law (section 10 of 2007 SB 2129, codified at 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 Enforcement. (Hereinafter, cases being enforced by Child Support Enforcement are referred to as "IV-D cases" and cases not being enforced by Child Support Enforcement are referred to as "nonIV-D cases.")

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

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. Administrative And Other Costs For Compliance With The Proposed Rules

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

3. Probable Costs And Benefits To Private Persons And Consumers Affected By The Proposed Rules

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 \$500 in support has been collected, an annual fee of \$25 will be imposed on the obligee and will be retained from support collections once the \$500 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 \$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 Of The Proposed Rules On State Revenues

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

The \$25 annual fee on IV-D cases is projected to result in revenue of \$321,825 per year. This revenue is treated as program income to Child Support Enforcement and will affect the amount of federal financial participation in the program.

The \$2.10 per month fee on nonIV-D cases is projected to result in revenue of \$149,562 per year.

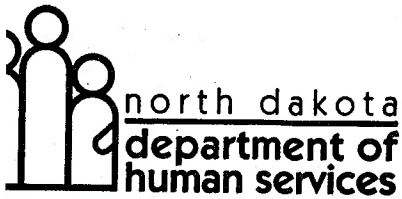
Total projected revenue is \$471,387 per year ($\$321,825 + 149,562$).

Child Support Enforcement will incur costs related to developing automated system support for the fees. To date, development costs of \$99,693.20 have been incurred. An additional \$53,399.80 in development costs is projected. In addition, ongoing maintenance of the system support for this functionality is projected to cost \$279 per working day or approximately \$70,029 per year.

Child Support Enforcement will also incur costs related to a one-time mass mailing to inform obligees of the fees. The estimated cost for the mass mailing is \$6,103.50.

5. Less Intrusive Or Less Costly Alternative Methods Of Achieving The Purpose Of The Proposed Rules

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



John Hoeven, Governor
Carol K. Olson, Executive Director

TAKINGS ASSESSMENT

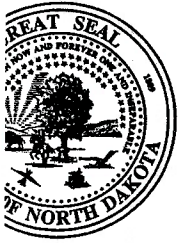
concerning proposed creation of N.D. Admin. Code chapter 75-02-04.02.

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 18th day of September, 2007.

by: Julie Leen
N.D. Dept. of Human Services



— State of —
North Dakota
Office of the Governor

John Hoeven
Governor

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SEP 26 2007

September 25, 2007

**CUTIVE DIRECTOR
OF HUMAN SERVICES**

Carol Olson
Executive Director
Department of Human Services
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

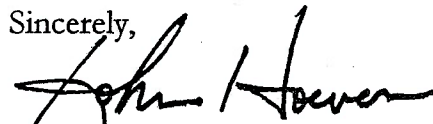
Dear Carol,

On September 24, 2007, I received your request for approval of emergency rulemaking to create North Dakota Administrative Code chapter 75-02-04.2 relating to the State Disbursement Unit for child support.

I have reviewed the request pursuant to N.D.C.C. § 28-32-03(2) and find that emergency rulemaking is necessary to meet a mandate of federal law.

Parties seeking comment on the rules will be able to present their written and oral comments before the rules become final. The rules shall have the status of interim rules and be effective for no longer than one hundred eighty days unless adopted as a final rule.

Sincerely,


John Hoeven
Governor

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