

Testimony
Administrative Rules Committee
March 14, 2012
North Dakota Department of Health
Environmental Health Practitioner Licensure, Food Code, Bed and Breakfasts, and
Assisted Living Facilities

Good morning Chairman Koppelman and members of the Administrative Rules Committee. My name is Kenan Bullinger, Director of the Division of Food and Lodging, North Dakota Department of Health. In the interest of time, I will be presenting information on four sets of regulations the Environmental Health Practitioners Licensure Board and the Department of Health have recently proposed for changes.

1. These rule changes did not result from any statutory changes made by the Legislative Assembly.
2. These rules are not related to any federal statute or regulation. However, the changes to our state's food code regulations are modeled after the 2009 Food and Drug Administration's Food Code. We periodically make changes to our state's food code as the federal model code is updated, which is every four years.
3. A Notice of Intent to Amend Administrative Rules was sent to Legislative Council on July 29, 2011. Public notices on the administrative rules hearing were printed in the state's major newspapers in early August of 2011. A public hearing was held on September 8, 2011, and a thirteen-day written comment period after the hearing date was established.
4. A summary of the comments received and the department's consideration of those comments is attached for your information.
5. The approximate cost of giving the public notice and holding the hearing on the rules for all divisions was approximately \$1,814.
6. As mentioned earlier, the Division of Food and Lodging was involved with four sets of rules as follows:

Environmental Health Practitioner Licensure: The Environmental Health Practitioner Licensure Board, of which State Health Officer, Dr. Terry Dwelle serves as chairperson, proposed some changes to the rules involving the credentialing of the certified professionals in food safety. In addition to a simple definition change, an experience track was added as an option for licensure to the existing required degree track for qualified candidates.

Food Code: The department updated its' state food code regulations which are periodically amended to maintain uniformity with the federal model food code. These regulations are updated every four to five years.

Bed and Breakfasts: These changes were proposed to bring the food safety requirements of these facilities into uniformity with current science dealing with cold holding temperatures and potentially hazardous foods. In addition, a housekeeping change involving pools or spas in these facilities was amended as it referenced a repealed Article of code dealing with requirements for pool facilities.

Assisted Living Facilities: A small but very important chapter of rules dealing with fire/life safety provisions in assisted living facilities was proposed for adoption. Provisions for emergency lighting, the requirement for development of a written emergency evacuation plan, and if sprinkler systems are installed, those systems should be inspected and maintained according to National Fire Protection Association standards we've also proposed for adoption.

7. Attached for your information are the regulatory analyses for each set of regulations.
8. Also attached for your information are the economic impact statements on small entities.
9. These rules will not have a fiscal effect on state revenues and expenditures.
10. A constitutional takings assessment was not prepared as these rules will not limit the use of private real property.
11. These rules were not adopted as emergency rules under NDCC 28-32-03.

I am happy to answer any questions you may have.

SUMMARY OF ORAL AND WRITTEN COMMENTS RECEIVED

DIVISION OF FOOD AND LODGING

Changes to NDAC 33-33-04, Requirements for Food and Beverage Establishments/State Food Code: No oral comments received. Written letter of support from Fargo/Cass Public Health in full support of all proposed changes.

Changes to NDAC 33-33-06, Bed and Breakfast Facilities: No written or oral comments received.

Changes to NDAC Article 33-30, Environmental Practitioner Licensure: No written or oral comments received.

New Chapter 33-33-09, Assisted Living Facilities: No oral comments received. Written comments received from the North Dakota Long Term Care Association:

- Comment 1, dealt with the renaming of the second section dealing with emergency plans and drills with a suggestion to simply name the section "Emergency Plans". The department agrees with this suggestion and made that change.
- Comment 2, strongly recommended the elimination of the requirement for having an automated external defibrillator (AED) in most assisted living facilities. The ND Long Term Care Association stated that having an AED in each assisted living facility would give tenants, family members and the public a false sense of security. In addition, staffing in assisted living centers is based on tenant needs and having staff trained in the use of AED's 24/7 would not be available in most assisted living facilities. The commenter's also stated each assisted living facility should be able to determine if they want or need an AED and that this should not be a part of the regulatory process. The department agrees with this comment and eliminated the requirement for an AED.

Environmental Health Practitioners Licensure

Regulatory Analysis:

1. Describe the classes of people likely to be affected by the proposed rule, including classes bearing the cost of the proposed rule and classes benefiting from the proposed rule: *Licensed environmental health practitioners in North Dakota will be able to be licensed based not only on the appropriate degree but also with experience.*
2. Describe the probable impact, including the economic impact, of the proposed rule: *These rules will have no impact on the regulated community.*
3. Describe the probable costs to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues: *There will be no additional implementation or enforcement costs or effect on state revenues with these rule changes.*
4. Describe any alternative methods of achieving the purpose of the proposed rule that were considered: *There are no alternative methods to achieve the purpose of these rules.*

Small Entity Regulatory Analysis:

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? *Less stringent requirements were not considered. Uniformity with national standards was the intent.*
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? *These rule changes will have no impact on small entities.*
3. Was consolidation or simplification of compliance or reporting considered? *These new rules have no impact on small entities or their compliance or reporting.*
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rules? *No changes in performance or operational standards were part of these rules.*
5. Was exemption for small entities from all or part of these requirements in the proposed rules considered? *No entities are impacted by these rules.*

Small Entity Economic Impact Statement:

1. Which small entities will be subject to these proposed rules? *No entities are impacted.*
2. What are the administrative and other costs required for compliance with the proposed rules? *There are no additional costs for anyone for compliance with these rules.*
3. What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules? *Licensed environmental health practitioners will now be able to pursue licensure with not only an appropriate academic degree but also with pertinent work experience.*
4. What is the probable affect on state revenues? *These proposed rules will have no affect on state revenues.*
5. Are there less intrusive or less costly methods of achieving the purpose of the proposed rules? *These rules have no bearing on costs.*

ND Requirements for Food and Beverage Establishments

Regulatory Analysis:

1. Describe the classes of people likely to be affected by the proposed rule, including classes bearing the cost of the proposed rule and classes benefiting from the proposed rule: *The owners of various retail food, foodservice and beverage establishments will be better protected with the adoption of these rules. These Food Code rules are science-based and are modeled after the Food and Drug Administration's 2009 Model Food Code. This model code is used extensively across the country by state and local health jurisdictions, with input from the industry. This code will bring North Dakota into uniformity with other jurisdictions and protect the public and owners of various establishments with sound and enforceable regulations.*
2. Describe the probable impact, including the economic impact, of the proposed rule: *These rules will have little economic impact on the regulated community but will improve the conditions for which food is prepared and sold in our state and offer sound public health protection to the consuming public.*
3. Describe the probable costs to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues: *The only additional costs to the department will be the cost of updating and printing new hard copies of the state food code so it can be distributed to the licensed food and beverages establishments, which is estimated at \$3,500. There will be no additional enforcement costs or effect on state revenues with these rule changes.*
4. Describe any alternative methods of achieving the purpose of the proposed rule that were considered: *The department has always used the federal model food code as the basis for food establishment regulations. This provides uniformity nationally and state-wide and this code is based on sound science with input from the food industry. The industry prefers we adopt a uniform code and not create our own regulations.*

Small Entity Regulatory Analysis:

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? *Less stringent requirements were not considered. Food safety regulations are extremely important and should not be lessened for smaller entities or foodborne outbreaks could result.*
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? *These were also not considered as the rule changes will not have significant impact on small entities for compliance and no effect on reporting.*
3. Was consolidation or simplification of compliance or reporting considered? *These new rules will not be difficult to comply with and simplification of food safety regulations could jeopardize public health.*
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rules? *No changes in performance or operational standards were part of these rules.*
5. Was exemption for small entities from all or part of these requirements in the proposed rules considered? *Food safety regulations are vitally important for all segments of the food industry, whether large or small. Compromising food safety is not an option.*

Small Entity Economic Impact Statement:

1. Which small entities will be subject to these proposed rules? *All food and beverage establishments, large and small, are subject to these proposed rules.*
2. What are the administrative and other costs required for compliance with the proposed rules? *There should be no additional costs for any establishment for compliance with these rules.*
3. What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules? *These rules will result in better public health protection for all citizens who frequent licensed establishments.*
4. What is the probable affect on state revenues? *These proposed rules will have no affect on state revenues.*
5. Are there less intrusive or less costly methods of achieving the purpose of the proposed rules? *Less intrusive rules would result in lesser public health protection and protection for the licensed facilities. These rules have no bearing on costs.*

NDAC 33-33-09

Assisted Living Facilities

Regulatory Analysis:

1. Describe the classes of people likely to be affected by the proposed rule, including classes bearing the cost of the proposed rule and classes benefiting from the proposed rule: *The owners of assisted living facilities and the tenants will be better protected with the adoption of these rules.*
2. Describe the probable impact, including the economic impact, of the proposed rule: *These rules will have little economic impact on the regulated community but will improve the fire/life/safety conditions for tenants in such facilities.*
3. Describe the probable costs to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues: *There will be no additional implementation or enforcement costs or effect on state revenues with these rule changes.*
4. Describe any alternative methods of achieving the purpose of the proposed rule that were considered: *There are no alternative methods of achieving the purpose of these rules.*

Small Entity Regulatory Analysis:

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? *Less stringent requirements were not considered. Fire/life/safety regulations are extremely important and should not be lessened for smaller entities.*
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? *These were also not considered as the rule changes will not have significant impact on small entities for compliance and no effect on reporting.*
3. Was consolidation or simplification of compliance or reporting considered? *These new rules will not be difficult to comply with and simplification of fire/life/safety regulations could jeopardize the safety of tenants.*
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rules? *No changes in performance or operational standards were part of these rules.*
5. Was exemption for small entities from all or part of these requirements in the proposed rules considered? *Fire/life/safety regulations are vitally important for all segments of the assisted living industry, whether large or small. Compromising fire/life/safety is not an option.*

Small Entity Economic Impact Statement:

1. Which small entities will be subject to these proposed rules? *All assisted living facilities, large and small, are subject to these proposed rules.*
2. What are the administrative and other costs required for compliance with the proposed rules? *There should be little additional costs for any establishment for compliance with these rules.*
3. What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules? *These rules will result in better protection for all tenants who reside and work in these facilities.*
4. What is the probable affect on state revenues? *These proposed rules will have no affect on state revenues.*

5. Are there less intrusive or less costly methods of achieving the purpose of the proposed rules?
Less intrusive rules would result in lesser protection for these facilities. These rules have little bearing on costs.

Bed and Breakfast Facilities

Regulatory Analysis:

1. Describe the classes of people likely to be affected by the proposed rule, including classes bearing the cost of the proposed rule and classes benefiting from the proposed rule: *The owners of bed and breakfast facilities and the public who stay at a bed and breakfast facility will be better protected with the adoption of these rules.*
2. Describe the probable impact, including the economic impact, of the proposed rule: *These rules will have little economic impact on the regulated community but will improve the conditions for which food is prepared in a bed and breakfast facility and offer sound public health protection to the consuming public.*
3. Describe the probable costs to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues: *There will be no additional implementation or enforcement costs or effect on state revenues with these rule changes.*
4. Describe any alternative methods of achieving the purpose of the proposed rule that were considered: *There are no alternative methods of achieving the purpose of these proposed rules. Less stringent requirements would result in lesser protection to the guests who stay at such a facility.*

Small Entity Regulatory Analysis:

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? *Less stringent requirements were not considered. Food safety regulations and general public health provisions are extremely important and should not be lessened for smaller entities.*
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? *These were also not considered as the rule changes will not have significant impact on small entities for compliance and no effect on reporting.*
3. Was consolidation or simplification of compliance or reporting considered? *These new rules will not be difficult to comply with and simplification of food safety regulations could jeopardize public health.*
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rules? *No changes in performance or operational standards were part of these rules.*
5. Was exemption for small entities from all or part of these requirements in the proposed rules considered? *Food safety regulations and sound public health protection provisions are vitally important for all segments of this industry, whether large or small.*

Small Entity Economic Impact Statement:

1. Which small entities will be subject to these proposed rules? *All bed and breakfast facilities, large and small, are subject to these proposed rules.*
2. What are the administrative and other costs required for compliance with the proposed rules? *There should be no additional costs for any establishment for compliance with these rules.*

3. What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules? *These rules will result in better public health protection for all citizens who frequent bed and breakfast facilities.*
4. What is the probable affect on state revenues? *These proposed rules will have no affect on state revenues.*
5. Are there less intrusive or less costly methods of achieving the purpose of the proposed rules? *Less intrusive rules would result in lesser public health protection and protection for these facilities. These rules have no bearing on costs.*