

09-16-88

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF HENNEPIN

COMMISSIONER OF HEALTH

IN THE MATTER OF AMENDMENT TO RULES RELATING TO LICENSE FEES
CHARGED TO OPERATE FOOD, BEVERAGE AND LODGING ESTABLISHMENTS.

STATEMENT OF NEED AND REASONABLENESS

Amendments to Minnesota Rules, Chapter 4625 are being proposed to increase the license fees to cover the costs of the licensing and inspection programs mandated by Minn. Stats., Section 157.03 (1986).

LEGAL BASIS -

State law requires that fees charged for services cover the costs for providing those services (Minn. Stats., Section 16A.128 [1986]). The Section of Environmental Field Services in the Minnesota Department of Health (MDH) inspects all food beverage and lodging establishments which are not under the licensing and inspection control of a Community Health Services (CHS) agency (local health agency composed of one or more cities, or one or more counties). The purpose of the proposed fee increase is to assure that the state's program costs will be covered by the revenues generated from the license fees. The fees were last increased by an average of 25% beginning in 1986.

Program demands have expanded and operating costs have continued to rise during the three year period since the last increase, resulting in costs exceeding current revenue estimates.

BACKGROUND -

Minnesota law mandates that the costs of programs which set and collect fees be covered by the revenues generated from those fees (Minn. Stats., Section 16A.128 [1986]). For the past

several years, the food, beverage and lodging establishment inspection program has run at an increasing deficit.

In 1987, the State Legislature mandated an inspection frequency for each establishment that is based upon public health risk (Minn. Stats., Section 157.04, 1987 Supp.). Since the MDH was unable to meet the new statutory inspection frequency, the 1988 Legislature authorized five new public health sanitarian positions and one half-time clerical position to meet inspection frequency requirements and program clerical needs (Minnesota Laws, Chapter 689, Section 247 [1988]). The new staff positions were specifically designated for licensing, inspection and enforcement activities for food, beverage or lodging establishments and manufactured home parks or recreational camping areas. The Legislature also authorized the commissioner of health to increase license fees charged for food, beverage and lodging establishments in order to cover the portion of expenses incurred from the new 5.5 positions for this program activity.

It is estimated that the new staff will spend 88% of their time on food, beverage and lodging program activities, and the remaining 12% in manufactured home parks and recreational camping areas.

The program deficit is rising sharply in FY89 due to increasing costs for existing staff (averaging 4% annually) and the need to support newly hired staff and their related travel expenses. In addition, as counties with larger numbers of licenseable establishments assume responsibility for this program activity, the state is left with establishments which are generally smaller and located in more isolated areas, resulting

in increased travel expenses. The following illustrates the rise in mileage for inspections over the last few years.

MILES DRIVEN PER LICENSED ESTABLISHMENT

Calendar Year						
1978	1980	1982	1984	1985	1986	1987
14.1	14.2	16.2	16.0	19.2	24.1	23.1

In addition to mileage costs, other travel expenses for such things as meals and lodging are necessary as staff are responsible for larger territories.

These factors when combined necessitate that the food, beverage and lodging license fees be increased, starting in 1989, by a factor of 34%. Additional detail is provided in Table 1, footnote 3. Since the cost increase is due, in part, to more frequent inspections, facilities will enjoy an improved level of service, which will inure to the benefit of all clients who visit these establishments by providing a higher level of public health protection.

COST OF IMPLEMENTATION -

Provisions of the Administrative Procedures Act require that certain costs of implementation of proposed rules be considered and addressed (Minn. Stats., Sections 14.11 and 14.115 [1986]). The costs to be considered are those which might be incurred by local units of government and small businesses.

COSTS OF IMPLEMENTATION TO LOCAL GOVERNMENT -

If the adoption of a rule by an agency will require the expenditure of public monies by local public bodies, Minn. Stats., Section 14.11, subdivision 1 (1986), requires the agency

to give a reasonable estimate of total costs to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rules, if the estimated cost exceeds \$100,000 in either of the two years. The following is the Department's estimate of costs to local units of government for implementation of the proposed rules.

In Minnesota, local units of government may enter into a delegation of authority agreement with the MDH (Minn. Stats., Chapter 145A, 1987 Supp.). Under these agreements, the MDH delegates certain licensing, inspection and enforcement responsibilities to local health agencies. As a part of this delegation agreement, a local health agency may determine that it wants to adopt a license fee schedule similar to the state's fee schedule. Many CHS agencies have always charged the same fee as that charged by the state and they may now be able to increase their fees with less local opposition if they can use the new state fee structure as a guide.

Similar to the state, a local health agency may increase its own license fees taking into account any costs that would be incurred by administrative procedures necessary to raise the fees. If a local unit of government incurs some administrative costs for increasing its license fees, these costs will be incurred as a result of their decision to raise the fees and not a result of the proposed amendments. Since the proposed amendments are not mandatory for local health agencies, local units of government will not incur costs attributable to the proposed amendments which would exceed \$100,000 per year.

SMALL BUSINESS CONSIDERATIONS -

Minn. Stats., Section 14.115 (1986), requires that an agency consider five factors for reducing the impact of proposed rules on small businesses. Small business is defined as "...a business entity, including its affiliates that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full time employees or has gross annual sales of less than 4 million dollars...." Many of the establishments governed by Chapter 157 (Minn. Stats. 1986) would come under the definition of small business. The MDH has considered each of the five factors as follows:

1. The establishment of less stringent compliance or reporting requirements. The proposed amendments do not impose more stringent standards than those already in effect for operating these types of establishments.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements. The proposed amendments do not impose any new reporting requirements upon operators of food, beverage and lodging establishments.

3. The consolidation or simplification of compliance or reporting requirements. Since there are no reporting requirements under these proposed rules, there is no opportunity for consolidation or simplification.

4. The establishment of design standards for small businesses. The proposed amendments do not affect the regulations governing the operation of food, beverage and lodging establishments. Therefore, it is not relevant to establish

design standards for small businesses in order to comply with the proposed amendments.

5. The exemption of small businesses from the rules. State law (Minn. Stats., Section 157.03 [1986]) already establishes that license fees must cover program costs. The legislature has determined that all food, beverage and lodging establishments shall pay a license fee and did not provide for the exemption of small businesses. The Department would violate the legislative intent if it were to exempt small businesses.

OUTLINE OF PROPOSED CHANGES -

Minn. Rules, part 4625.2300, Subpart 1. Lodging Establishment Fees.

The existing lodging establishment fee schedule is a \$50.00 base fee plus a \$2.00 fee per room/cabin/unit up to 100 rooms/cabins/units. The proposed increases raise both the base fee and the individual room/cabin/unit fee by 34%. The MDH proposes to increase state license fees for lodging establishments as follows:

<u>Proposed</u> <u>Base Fee</u>	<u>+</u>	<u>Proposed</u> <u>Unit Fee</u>	<u>@</u>	<u>No. of Units</u>	<u>Present Fee</u>	<u>Proposed Fee</u>
\$67.00		\$2.70		5	\$ 60.00	\$ 80.50
				20	\$ 90.00	\$121.00
				50	\$150.00	\$202.00
				55	\$160.00	\$215.50
				70	\$190.00	\$256.00
				85	\$220.00	\$296.50
				100	\$250.00	\$337.00

Minn. Rules, part 4625.2300 Subp. 4. Lodging Establishment Late Fee.

The MDH proposes to increase the late fee for lodging establishment licenses from \$10 to \$20. This increase is proposed to cover the increase in costs for the effort to handle late payments, which may include several follow-up letters and an on-site visit to see if the establishment is still in operation. In FY87 the MDH collected 665 penalty fees on food, beverage and lodging establishments totaling \$6,650. During FY88, 566 penalties were collected totaling \$5,660. The fee has not been changed since the late 1970's.

Minn. Rules, part 4625.500 Subpart 1. Food and Beverage Establishment Fees.

The MDH proposes to increase state license fees for food and beverage establishments by 34%, as follows:

<u>No. of Employees</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
1 - 4	\$ 52.50	\$ 70.35
5 - 18	\$ 90.00	\$120.60
19 - 28	\$135.00	\$180.90
29 - 35	\$187.50	\$251.25
36 and over	\$225.00	\$301.50

Limited food or beverage establishments (places that sell only prepackaged foods which receive heat treatment and are served in the package, mobile units, itinerent and special event stands serving food or beverages for 14 days or less in any single location) shall be raised from:

\$ 37.50 \$ 50.25

Minn. Rules, part 4625.5000 Subp. 4. Food and Beverage
Establishment Late Fee.

See justification above for rule part 4625.2300, Subp. 4.

The recent cost/revenue history for the licensing, inspection and enforcement service along with the estimated cost/revenue for FY89 - FY91 is listed in Table 1. This table shows program costs, deficits and revenues that are necessary to cover anticipated program costs.

Table 1

COSTS AND REVENUES FOR FOOD, BEVERAGE AND LODGING PROGRAM

	Actual		Estimated		
	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>
Revenue	\$590.2 ¹	584.7	751.3 ²	751.3	751.3
Costs	\$599.6 ³	576.5 ⁴	666.0	772.8 ⁵	811.4 ⁶
Difference	(9.4)	8.2	85.3	(21.5)	(60.1)
Accumulated Difference		(1.2)	84.1	62.6	2.5
Number Paying Fee	6,672	6,801	6,559	6,559 ⁷	6,559

1. Dollars in thousands (\$137,787 = 137.8)

2. Estimated revenue is based on fees being increased by 34% starting January 1989. Delegation of licensing to Beltrami County results in a loss of \$24,000 from the 1988 revenue amount.

3. Costs for inspection and licensing of food, beverage and lodging establishments are calculated on the basis of the percentage of staff time spent on the activity. The percentage is obtained from daily reports which are kept by all professional staff in the Section who are responsible for more than a single activity. Time reports are recorded at 5-minute intervals to show a complete day's effort. The costs include salary, supplies and expenses, travel and indirect costs. As of 01/01/89, the Legislature authorized five additional public health sanitarians and one half-time clerical position. Costs for FY89 reflect the new staff position expenses that will be incurred during the last six months of FY89 in which they will be employed. Eighty-eight percent (88%) of their time will be spent on FB&L program activities.

4. Cost reduction reflects reassignment of higher salaried staff to other programs.

5. Costs include 4% (inflation) increase over 1989 costs, purchase of new computer and replacement of outdated or failing field testing equipment.

6. Cost increase includes annual maintenance of new equipment + 4% (inflation) increase over 1990 costs.

7. Estimated number of licenses is shown as not changing because of the uncertainty about new facilities becoming licensed vs. existing facilities being licensed by local units of government.

CONCLUSION -

This statement has addressed the legal basis for promulgating these amendments as well as the necessary consideration for local governments and small businesses. It also addresses, on an individual basis, each proposed amendment and the reasoning behind it.

It is our opinion that these proposed changes are both necessary and reasonable. They are necessary in that the Legislature has mandated that the commissioner of health determine and assess the necessary fees to cover food, beverage and lodging establishment licensing, inspection and enforcement program costs.

The proposed rules are reasonable in that the increase is calculated to generate that amount of revenue which will equal costs through 1991, thus eliminating the need for another fee increase within the next three fiscal years.