

STATE OF MINNESOTA

MINNESOTA DEPARTMENT OF HEALTH

IN THE MATTER OF PROPOSED
AMENDMENTS TO MINNESOTA
RULES, PARTS 4625.2300 AND
4625.5000 GOVERNING LICENSE
FEES FOR FOOD, BEVERAGE AND
LODGING ESTABLISHMENTS

STATEMENT OF NEED
AND REASONABLENESS

Amendments to Minnesota Rules, parts 4625.2300 and 4625.5000 are proposed to increase the fees required under Minnesota Statutes, sections 157.03 and 157.045 to pay for the state inspection of restaurants, places of refreshment, hotels, motels, lodging houses, boarding houses, and resorts (food, beverage and lodging establishments) required under Minnesota Statutes, section 157.04. The inspection is performed to ensure compliance with standards applicable to food preparation, filth and vermin, water supply, sewage disposal, swimming pool operation, and size of establishment. To ensure compliance with applicable statutes and rules, technical assistance is provided to food and beverage establishments and complaints about food and beverage establishments are addressed.

STATUTORY AUTHORITY TO ADOPT RULES

Authority for the proposed amendments is found in Minnesota Statutes, section 144.05, paragraphs (b) and (c), section 144.122, paragraph (a), section 157.03 and section 157.045. The amount of fees charged must comply with Minnesota Statutes, section 144.122, paragraph (a), which requires that: "The fees shall be in an amount so that the total fees collected by the commissioner will, where practical, approximate the cost to the commissioner in administering the program." Minnesota Statutes, 1992, section 157.03 requires licenses and fees for food, beverage, and lodging establishments. Section 157.045 allows the commissioner of health to increase fees to a level "sufficient to recover all expenses related to licensing, inspection and enforcement activities."

EFFECT ON AGRICULTURAL LAND

Amendments to Minnesota Rules, parts 4765.2300 and 4765.5000 will have no direct or substantial adverse impact on agricultural land.

FISCAL IMPACT

If the adoption of a rule by an agency requires the expenditure of public moneys by local public bodies, Minnesota Statutes, section 14.11, subdivision 1, requires the agency to give a reasonable estimate of the total cost to all local bodies in the state to implement the rule for two years immediately following adoption of the rule, if the estimated cost exceeds \$100,000 in either of the two years. The proposed fees will not cost local bodies in excess of \$100,000 in either of the two years immediately following adoption of the rule. The

increased fees proposed in parts 4625.2300 and 4625.5000 will apply to municipally owned liquor stores and eating establishments in city or county parks. No city or county has enough establishments that require food or beverage licenses that would cost more than \$100,000 annually.

The commissioner of health is empowered to delegate responsibility for licensing and inspecting food and beverage establishments to boards of health. The boards of health may impose license fees to cover inspection costs. These fees are not affected by the increase in fees under Minnesota Rules, parts 4625.2300 and 4625.5000.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115 requires that an agency consider five factors for reducing the impact of proposed rules on small business. The proposed amendments will have an impact on the number of establishments that meet the definition of small business in 14.115. Many lodging establishments and over 80 percent of the establishments serving food or beverages and licensed by the state fall under the definition of small business.

The methods delineated in Minnesota Statutes, section 14.115 for reducing the impact of the rule on small business include:

- a) the establishment of less stringent compliance or reporting requirements for small businesses;
- b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) the consolidation or simplification of compliance or reporting for small businesses;
- d) the establishment of performance standards for small businesses to replace design or operational standards required in rule; and
- e) the exemption of small businesses from any or all the requirements of the rule.

The proposed amendments include a revised fee schedule for restaurants, places of refreshment, hotels, motels, boarding houses, lodging houses, and resorts.

a) The establishment of less stringent compliance or reporting requirements for small businesses is not reasonable because the adopted rules governing sanitation and food safety apply to all businesses regardless of size. The establishment of less stringent reporting requirements does not apply to these amendments.

b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses would mean that small businesses would not have to pay their license fees on the same schedule as other licensees. Annual licenses and appropriate fees are required by Minnesota Statutes, section 157.03. Licenses are valid only

for one year. Different license and fee schedules would require legislative action. Since fees are established to cover annual program costs, it is impractical to allow certain licensees to pay license fees on a schedule other than once a year. The establishment of less stringent schedules for reporting requirements does not apply to these amendments.

c) The consolidation or simplification of compliance or reporting for small businesses is not reasonable because the rules and procedures for complying with the payment of fees are concise and simple, and pose no excess burden on small businesses.

d) The establishment of performance standards for small businesses to replace design or operational standards required in rule does not apply to these amendments since a change in fees is proposed.

e) The exemption of small businesses from any or all the requirements of the proposed rule would not be reasonable. Sanitation safety and food preparation safety is as much a public health issue for small establishments as for large ones. The legislature has not provided for an exemption for small facilities from sanitation standards.

While none of the above criteria address fees, the MDH has considered small businesses by restructuring the fee schedule for food and beverage establishments. See discussion of fees under rule part 4625.5000.

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

The Notice of Intent to Solicit Outside Opinion was published in the State Register on January 11, 1993 at 17 S.R. 1761.

APPROVAL FROM MINNESOTA DEPARTMENT OF FINANCE, NOTICE TO HOUSE AND SENATE

With regard to the requirements of Minnesota Statutes, section 16A.128, the Minnesota Department of Health (MDH) has received approval from the Minnesota Department of Finance and notified Senate and House committees of the MDH's intent to adopt the above entitled matter prior to the publication of this notice in the State Register. A copy of the MDH's notice to the Senate and House, and the commissioner of Finance's approval are attached.

NEED FOR AND REASONABLENESS OF AMENDMENTS

The amendments to parts 4625.2300 and 4625.5000 are proposed to revise the current fee schedule to comply with the requirements of Minnesota Statutes, sections 144.122, 157.03 and 157.045.

The fees were last adjusted in 1988 effective for the 1989 calendar year. Examination of the revenue generated from the annual fees charged for licensing and inspection of hotels, motels, restaurants, lodging houses, boarding houses, resorts or places of refreshment

indicates that the existing fee schedule is insufficient to cover past and anticipated program costs. Table 1 illustrates the difference between past costs and revenues (based on the current fee schedule) and estimates how increased fees (and a revised fee schedule) will cover both past and future costs. (See Table 1.)

TABLE 1

Program Costs and Revenue: Licenses for hotels, motels, boarding houses, restaurants, places of refreshment, and resorts.

	1991	1992	1993	1994	1995	1996	1997	1998
	(\$ in thousands)							
Annual Program Costs	966	1,041 ¹	1,039	1,023 ²	1,023	1,058	1,095	1,134
Annual Receipts	722	714	787	1,264	1,264	1,264	1,264	1,264
Annual Difference	(244)	(327)	(252)	241	241	205	168	129
Accumulated Difference	(391) ⁴	(718)	(970)	(728)	(487)	(282)	(113)	16

NOTE: Parentheses denote a negative number.

¹The increase in program costs is due to an increase in the percentage of staff time assigned for the inspection of food, beverage, and lodging establishments.

²The decrease in costs between 1993 and 1994 is due to a budget reduction required by the Governor of all programs for the proposed biennial budget for 1994-1995.

³The increase in costs between 1995, 1996, 1997, and 1998 is due to a projected inflationary increase of 3.5 percent annually.

⁴The accumulated difference includes \$147,000 from fiscal year 1990.

The MDH licenses and inspects all food, beverage, and lodging establishments in counties in which boards of health have not chosen to assume responsibility for licensing and inspection. The department issues approximately 8,000 licenses annually, and inspects approximately 37 percent of all the food, beverage, and lodging establishments statewide. The other 63 percent are inspected by cities and counties under delegation agreements with the commissioner of health. Many of the establishments which the MDH must inspect are small establishments in counties with low populations. Establishments are widely scattered making travel costs high for inspectors.

Minnesota Statutes, section 157.04 requires that every hotel, motel, restaurant, lodging house, boarding house, resort, or place of refreshment in the state must be inspected on a frequency based on degree of hazard to the public.

Currently, approximately 66.5 percent, or 3726 facilities inspected fall into the category of "high risk" facilities that are inspected annually. These facilities have the highest potential for the occurrence of foodborne or waterborne disease and are categorized as high risk if they meet the criteria specified in Minnesota Statutes, section 157.01:

- (1) serves potentially hazardous foods that require extensive processing on the premises, including manual handling, cooling, reheating, or holding for service;
- (2) prepares foods several hours or days before service;
- (3) serves menu items that epidemiologic experience has demonstrated to be common vehicles of foodborne illness;
- (4) has a public swimming pool;
- (5) draws its drinking water from a surface water supply; or
- (6) has an on-site sewage disposal system and is located in an area where conditions are less favorable for the successful operation of such a system.

Approximately 18 percent or 1,010 "medium risk" facilities which have less potential than high risk facilities for the occurrence of foodborne and waterborne disease, must be inspected once every 18 months. "Medium risk" establishments are categorized in section 157.01 as such if they meet the following criteria:

- (1) serves potentially hazardous foods but with minimal holding between preparation and service;
- (2) serves low-risk foods that may or may not be potentially hazardous but require extensive handling, such as baked goods and pizza;
- (3) serves large volumes of food even though the foodborne illness risk is low; or
- (4) is a lodging establishments with 25 or more units.

Approximately 15.4 percent or 863 "low risk" facilities must be inspected once every two years. These facilities serve food or beverage or provide lodging space, but do not meet the criteria of either the "high" or "medium" risk establishments.

Since the fees were last adjusted in 1988, Douglas, Pope, and Wilkin counties entered into delegation agreements with the commissioner of health to inspect all food, beverage, and lodging establishments in those counties. Although the MDH is no longer responsible for inspecting establishments in the counties that assumed licensing and inspection responsibilities, fee revenues for the MDH have remained fairly constant. This suggests that establishments may have expanded and consequently paid higher license fees.

The MDH uses staff in the Environmental Field Service program to support activities related to licensing and inspection of food, beverage, and lodging establishments and licensing and inspection of campgrounds, manufactured home parks, childrens' camps, wayside rest areas, and correctional facilities.

Based upon ongoing time studies, ten percent of staff resources are allocated to the licensing and inspection of campgrounds and manufactured home parks. Approximately ten percent of staff resources are allocated to the inspection of facilities for which no fees are collected, and approximately 80 percent of staff resources are allocated for licensing and inspecting food, beverage, and lodging establishments.

Approximately 70 percent of staff effort was allocated for licensing and inspection of food, beverage, and lodging establishments. Staff effort for that activity has increased. Program costs for 1994 and 1995 will be based on approximately 80 percent of staff effort. An inflationary increase of 3.5 percent per year is assumed in 1996 and 1997. Table 2 shows the breakdown of program costs, by personnel services, supplies and expense and indirect cost.

TABLE 2

Licensing, inspection, and enforcement costs related to food, beverage, and lodging establishments.

	1993	1994	1995	1996	1997	1998
			(\$ in thousands)			
Personnel Services (18 FTEs)	790	818	845	874	905	937
Supplies and Equipment	117	70	44	47	48	50
Indirect Cost*	132	135	134	137	142	147
Total	1,039	1,023	1,023	1,058	1,095	1,134

*The Indirect Cost rate is 13% annually.

The amount of fee-generated revenue must be increased if program costs are to be covered and the requirements of Minnesota Statutes, section 144.122 is to be met. The fee increases proposed in rule will cover prior years', current and projected program costs.

PART 4625.2300

The proposal to increase the current fee for licensing and inspecting lodging establishments is reasonable because the increase in fees will cover the share of staff effort allocated for licensing, inspection, and enforcement related to lodging establishments. The staff effort allocated for lodging establishments is approximately 13 percent of the total effort in the food, beverage, and lodging program. If fees are not increased, the MDH will be unable to maintain the inspection frequency mandated under Minnesota Statutes, section 157.04, or recover costs pursuant to statutory requirements. Also, if fees are not increased, staff resources would have to be decreased by approximately 4.3 FTEs.

The difference between the current and proposed fees is described below.

Current Fees

Base Fee: \$67.00
 Room Fee: 2.70
 Maximum Fee: 337.00

Proposed Fees

Base Fee: \$ 75.00
 Room Fee: 4.00
 Maximum Fee: 475.00

Establishments with:

10 rooms \$ 94
 20 rooms 121
 50 rooms 202
 100 rooms 337

Establishments with:

10 rooms \$115
 20 rooms 155
 50 rooms 275
 100 rooms 475

The increase in fees will make the fees comparable with several local lodging license fees. Some examples are listed below:

LODGING FEES

<u># of Rooms</u>	<u>Ramsey</u>	<u>Hennepin</u>	<u>Anoka</u>	<u>St. Louis</u>	<u>Ottertail</u>	<u>Douglas</u>	<u>Todd</u>	<u>Morrison</u>	<u>Olmsted</u>	<u>Proposed State</u>
25	\$125.00	\$172.00	\$208.00	\$220.00	\$129.50	\$142.57	\$134.50	\$123.75	\$ 100.00	\$175.00
50	157.00	222.00	233.00	330.00	197.00	214.12	202.00	192.50	250.00	275.00
75	206.00	272.00	158.00	330.00	264.50	285.67	269.50	261.25	250.00	375.00
101	267.00	324.00	184.00	440.00	332.00	257.22	337.00	332.75	450.00	475.00
TOP	426.00	NONE	NONE	440.00			337.00		1,200.00	475.00

Part 4625.5000

In addition to increasing fees for licensing food and beverage establishments, this rule part sets new fees based on different numbers of employees. For purposes of fee calculation, an employee is one 40-hour per week full time equivalent (FTE). The reason for adding fees for different numbers of employees is to relieve the financial burden for smaller establishments. If fees are not raised for the food and beverage establishments, the MDH will be unable to meet the mandated inspection frequency and the potential for foodborne and waterborne disease outbreaks may increase. If fees are not increased, staff resources would have to be decreased by approximately 4.3 FTEs. Changes in inspection frequency require legislative action. Table 3 compares current fees with proposed fees.

TABLE 3

Current and Proposed Fees: Licenses for establishments serving food and beverages.

Type of Fee: Food License or Beverage License

# of Employees	Current Fee	Proposed Fee
(1 to 4 employees)	\$70.35	\$106.00
(5 to 10)		175.00
(11 to 20)		245.00
(5 to 18)	120.60	
(21 to 30)		295.00
(19 to 28)	180.90	
(29 to 35)	251.25	
(31 to 40)		365.00
(36 and over)	301.50	
(41 and over)		430.00

Type of Fee	Current Fee	Proposed Fee
Limited Food or Beverage License*	\$50.25	\$106.00
State Fair Food or Beverage License (1 to 4 employees)	70.35	106.00
State Fair (limited)	50.25	106.00
Construction or Remodeling Fee	N/A	150.00

**The fee for a limited food or beverage license is for establishments that sell only prepackaged foods that receive heat treatment and are served in the package and for mobile units or itinerant and special event stands serving food or beverages for 14 days or less in any single location. (Minnesota Rule 4625.5000, subpart 1, (f).)*

This rule part also provides for an initial license fee to cover the costs of the construction or remodeling plan review required under Minnesota Rules, part 4625.2701. The effort associated with review of construction and remodeling plans varies considerably. That is why a flat fee rather than a graduated fee is proposed.

The increase in fees and the addition of a new fee are reasonable, because the increase will cover the costs of licensing and inspection of food and beverage establishments. The proposed fees change the distribution of cost among licensees. For example: licenses for operators with one to four employees will increase from \$70.35 to \$106, while licenses for operators with ten employees will increase from \$120.60 to \$175. Table 4 shows the distribution of licenses by size of establishment.

Historically the fee schedule has been set up based on the size of establishment. Consultation with the regulated industry representation prior to the current proposed fee schedule increase indicated a desire to maintain the differentiation between size of establishment and the fee charged for licensure.

TABLE 4

Proposed License Fee Increase for Food and Beverage Establishments.

Food and Beverage Licenses

Number of Employees	Food			Beverage		
	Proposed Fee	Number of Licenses	Proposed Revenue	Proposed Fee	Number of Licenses	Proposed Revenue
1 - 4	\$106	2,220	\$235,320	\$106	1,884	\$199,704
5 - 10	175	406	71,050	175	82	14,350
11 - 20	245	746	182,770	245	151	36,995
21 - 30	295	164	48,380	295	25	7,375
31 - 40	365	117	42,705	365	3	1,095
41 +	430	75	32,250	430	1	430
Limited Food	106	1,490	157,940	106	147	15,582
St. Fair (1-4)	106	13	1,378	106	13	1,378
St. Fair (lim.)	106	<u>236</u>	<u>25,016</u>	106	<u>21</u>	<u>2,226</u>
Totals		5,467	\$796,809		2,327	\$279,135

Proposed Construction and Remodeling Fee

Number of Establishments: 300
 Proposed Fee: \$150
 Proposed Revenue: \$45,000

Total Collected Revenue

Food Licenses: \$796,809
 Beverage Licenses: \$279,135
 Construction/Remodeling: \$45,000

The proposed fees are reasonable compared with license fees for food and beverage establishments in counties and cities which are responsible for licensing and inspecting the establishments under delegation with the commissioner of health.

See Table 5 below for a comparison of state and local fees.

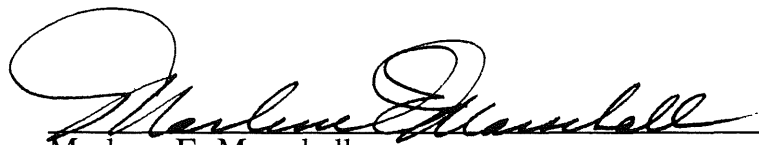
TABLE 5

FOOD AND BEVERAGE FEES

<u>Size of Facility</u>	<u>Ramsey</u>	<u>Hennepin</u>	<u>Anoka</u>	<u>St. Louis</u>	<u>Ottertail</u>	<u>Douglas</u>	<u>Todd</u>	<u>Morrison</u>	<u>Olmsted</u>	<u>Proposed State</u>
small	\$147.00	\$144.00	\$194.00	\$160.00	\$ 70.35	\$ 74.57	\$ 70.35	60.50	\$330.00	\$106.00
medium	399-455.00	292.00	194.00	320-480.00	180.90	191.75	180.90	104.50	430.00	245.00
large	680.00	292 + 71.00*	458.00	640.00	301.50	319.50	301.50	260.70	580.00	430.00

*\$71.00 for each additional facility

May 4, 1993
Date


Marlene E. Marschall
Commissioner



Minnesota Department of Health

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Minneapolis, MN 55440-9441
(612) 623-5000

May 10, 1993

The Honorable Loren Solberg
Minnesota House of Representatives
Ways and Means Committee
343 State Office Building
St. Paul, Minnesota 55155

Dear Representative Solberg:

Pursuant to Minnesota Statutes, section 16A.128, the department is notifying you of the submission of a permanent rule governing Fees for Food and Beverage Establishments, part 4625.5000; and Fees for Lodging Establishments, part 4625.2300 to the State Register for publication on May 24, 1993.

Attached to this letter is a copy of the proposed rule, the notices to adopt, and the notification to the commissioner of finance in accordance with Minnesota Statutes, section 16A.128.

If you have any questions about this matter, please contact Chris Moore at 623-5463.

Sincerely,

Marlene E. Marschall
Commissioner

MEM:JN:rlk

Enclosures



Minnesota Department of Health

717 Delaware Street Southeast
P.O. Box 9441
Minneapolis, MN 55440-9441
(612) 623-5000

May 10, 1993

The Honorable Gene Merriam
Minnesota Senate Finance Committee
Room 122
State Capitol Building
St. Paul, Minnesota 55155

Dear Representative Merriam:

Pursuant to Minnesota Statutes, section 16A.128, the department is notifying you of the submission of a permanent rule governing Fees for Food and Beverage Establishments, part 4625.5000; and Fees for Lodging Establishments, part 4625.2300 to the State Register for publication on May 24, 1993.

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If you have any questions about this matter, please contact Chris Moore at 623-5463.

Sincerely,

Marlene E. Marschall
Commissioner

MEM:JN:rlk

Enclosures