

## Report From Agency

### ADMINISTRATIVE RULES REPORT TO LEGISLATURE CLEARINGHOUSE RULE 08-073

By the Department of Health Services relating to chs. HFS 173, 175, 178, 195, 196, 197, 198, relating to tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments, vending of food.

#### Basis and Purpose of Proposed Rule

Section 227.11 (2) (a), Stats., provides the department, as a state agency, with general rulemaking authority interpreting the provisions of any statute enforced or administered by the department, if the department considers it necessary to effectuate the purpose of the statute. Section 250.04 (1), (2) (a), and (7), Stats., designates the department as having general responsibility for the public's health, gives the department all powers necessary to fulfill its duties, and authorizes the department to enforce and promulgate rules and orders governing the duties of local public health departments that effect public health. Additional authority to promulgate the proposed rules is as follows:

- **Tattooists and tattoo establishments:** Section 252.23 (2), Stats., requires the department to provide statewide licensing and regulation of tattooists and tattoo establishments, and to inspect a tattoo establishment before issuing a license to the establishment, and authorizes the department to conduct additional inspections as determined necessary by department. Section 252.23 (4) (a) and (b), Stats., requires the department to establish by rule standards and procedures, including fee payments to offset the cost of licensing tattooists and tattoo establishments, for the annual issuance of licenses as tattooists or as tattoo establishments to applicants, and the standards for the performance of tattoos by licensed tattooists and the maintenance of licensed tattoo establishments. Section 252.245 (1) and (4), Stats., authorizes the department to grant agent status to certain local health departments for issuing licenses to and making investigations or inspections of tattooists and tattoo establishments and permits local health departments with agent status to establish separate fees for licensure, including fees for preinspections. Chapter HFS 173 contains the department's regulations authorized under ss. 252.23 (2) and (4) (a) and (b) and 252.245 (1) and (4), Stats., for tattooists and tattoo establishments.
- **Body piercing and body piercing establishments:** Section 252.24, (2), Stats., requires the department to provide statewide licensing and regulation of body piercers and body piercing establishments and to inspect a body piercing establishment before issuing a license to the establishment, and authorizes the department to conduct additional inspections as determined necessary by department. Section 252.24 (4) (a) and (b), Stats., requires the department to establish by rule standards and procedures, including fee payments, to offset the cost of licensing body piercers and body piercing establishments, for the annual issuance of licenses as body piercers or as body piercing establishments to applicants, and the standards for the performance of body piercing by licensed body piercers and the maintenance of licensed body piercing establishments. Section 252.245 (1) and (4), Stats., authorizes the department to grant agent status to certain local health departments for issuing licenses to and making investigations or inspections of body piercers and body piercing establishments and permits local health departments with agent status to establish separate fees licensure, including fees for preinspections. Chapter HFS 173 contains the department's regulations authorized under s. 252.24 (2) and (4) (a) and (b), Stats., for body piercers and body piercing establishments.
- **Recreational and educational camps:** Section 254.47 (1), Stats., authorizes the department to issue permits to and regulate recreational and educational camps, as defined under rules. Section 254.47 (1m),

Stats., requires the department to conduct a preinspection before a permit is granted to a person intending to operate a new recreational or educational camp or to a person intending to be the new operator of an existing recreational or educational camp. Section 254.47 (4), Stats., requires the department to establish by rule, permit fees, preinspection fees, reinspection fees, fees for operating without a permit, and late fees for untimely permit renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of recreational and educational camps and permits local health departments with agent status to establish separate fees licensure, including fees for preinspections. Section 254.85 (1) and (2), Stats., authorizes the department to enter the premises of recreational and educational camps to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorizes the department to suspend, revoke, or refuse to issue a permit required under s. 254.47, Stats. Chapter HFS 175 contains the department's regulations authorized under ss. 254.47 (1) and (4) and 254.69 (2), Stats., for recreational and educational camps.

- **Campgrounds:** Section 254.47 (1), Stats., authorizes the department to issue permits to and regulate campgrounds, as defined under rules. Section 254.47 (1m), Stats., requires the department to conduct a preinspection before a permit is granted to a person intending to operate a new campground or to a person intending to be the new operator of an existing campground. Section 254.47 (4), Stats., requires the department to establish by rule, permit fees, preinspection fees, reinspection fees, fees for operating without a permit, and late fees for untimely permit renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of campgrounds and permits local health departments with agent status to establish separate fees licensure, including fees for preinspections. Section 254.85 (1) and (2), Stats., authorizes the department to enter the premises of campgrounds to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorizes the department to suspend, revoke, or refuse to issue a permit required under s. 254.47, Stats. Chapter HFS 178 contains the department's regulations authorized under ss. 254.47 (1) and (4) and 254.69 (2), Stats., for campgrounds.

**Hotels, motels, bed and breakfast, tourist rooming houses, restaurants, temporary restaurants, vending machines, and vending machine commissaries:** Section 254.68, Stats., require the department to establish by rule, permit fees, preinspection fees, reinspection fees, fees for operating without a permit, and fees for untimely permit or license renewal. Section 254.69 (2) (am) and (d), Stats., authorizes the department to grant agent status to certain local health departments for issuing permits to and making investigations or inspections of hotels, bed and breakfast establishments, tourist rooming houses, restaurants, and temporary restaurants, and permits local health departments with agent status to establish separate fees licensure, including fees for preinspections. Section 254.71 (6) (a) and (c), Stats., requires the department to promulgate rules establishing a fee for certification and recertification of food protection practices to individuals and for issuing of certificates, including application, submittal and review. Section 254.74 (1) (a) and (d), Stats., requires the department to administer, enforce, and prescribe rules and standards for hotels, bed and breakfast establishments, tourist rooming houses, restaurants, temporary restaurants, vending machines, and vending machine commissaries. Section 254.85 (1), and (2), Stats., authorizes the department to enter the premises of lodging and food establishments to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare. Section 254.86, Stats., authorize the department to suspend, revoke, refuse to issue a permit required under s. 254.68, Stats. Chapter HFS 195 are the department's regulations authorized under s. 254.68, Stats., for hotels, motels, and tourist rooming houses. Chapter HFS 196 are the department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for restaurants. Chapter HFS 197 are the

department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for bed and breakfast establishments. Chapter HFS 198 are the department's regulations authorized under ss. 254.68, 254.69, 254.71, 254.74, 254.85, 254.86, Stats., for vending machines and vending machine commissaries.

Before a person may operate a tattooing or body piercing establishment, recreational or educational camp, campground, hotel, motel, tourist rooming house, bed and breakfast establishment, restaurant, vending machine, or vending machine commissary, the person is required by state law to have a permit or a license issued by the department. In addition, state law prohibits a person from being a tattooist or body piercer without a license, or operating or maintaining a restaurant unless the person or a manager holds a current, valid certified manager's certificate from the department.

The department's Food Safety and Recreational Licensing (FSRL) section conducts the licensing and permitting, inspection, and enforcement activities required under state law for practitioners and establishments regulated under chs. HFS 173, 175, 178, 195, 196, 197, and 198. In addition, FSRL staff conducts complaint investigations, and provides training and consultation activities to persons seeking a license or permit. As part of the department's general responsibility for oversight of public health, FSRL staff also routinely conducts inspections, without reimbursement, for state, local and private sector entities for activities that are not directly related to the department's regulatory responsibilities. Examples of special condition inspections include sanitation inspections of liquor establishments for liquor licenses, establishment pre-purchase compliance inspections for persons intending to purchase a department regulated facility.

The activities conducted by FSRL staff are supported entirely by fee revenue paid by practitioners and persons licensed or applying to operate an establishment. The department does not receive general purpose revenue for its licensing, permitting, inspection, or enforcement activities. At current fee revenue levels, the Department projects a program deficit of \$699,540 in state fiscal year (SFY) 2009 that will increase to \$1,799,056 in SFY 2010.

To maintain revenue sufficient to conduct the department's public health regulatory activities, the department proposes to increase current fees, create new fees and promulgate rules. In order to ease the impact of increases fees, the FSRL program is proposing a two-phase fee increase. An initial fee increase will go into effect in state fiscal year 2010 and a second, and generally smaller, fee increase will go into effect in SFY 2012. This two-phased fee increase approach should ensure that the FSRL program can operate without a deficit until 2014. The changes are as follows:

- HFS 173, relating to tattooing and body piercing establishments, the department proposes to increase license fees, preinspection fees, and practitioner fees and to create a reinspection fee, a fee for late renewal, a fee for operating without a license, a fee for a duplicate license, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a licensee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 175, relating to recreational and educational camps, the department proposes to increase permit, preinspection, and late renewal fees and to create a reinspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 178, relating to campgrounds, the department proposes to increase permit and late renewal fees and to create preinspection and reinspection fees, a fee for operating without a permit, and a fee for special condition inspections.
- HFS 195, relating to hotels, motels, and tourist rooming houses, the department proposes to increase permit, preinspection, and late renewal fees and to create a reinspection fee, a fee for operating without a permit, and a fee for special condition inspections. The proposed rules include fee schedules, provisions clarifying the department's

authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

- HFS 196, relating to restaurants, the department proposes to increase permit, preinspection, and late renewal fees; and to create a reinspection fee, a fee for operating without a permit, a fee for operating without a certified operator, and a fee for special condition inspections. In addition to proposed changes relating to fees, the department also proposes to modify ch. HFS 196 to revise the complexity rating formula under s. HFS 196.04 for restaurants that handle frozen pre-formed meat patties, chicken breasts, and breaded, chopped or comminuted meats. Specifically, the department intends to re-categorize entities that handle frozen pre-formed meat patties, chicken breasts, and breaded, chopped or comminuted meats to the same level that applies to raw meat handling. Entities that handle frozen and preformed meat patties, chicken breasts, or breaded, chopped or comminuted meats are currently categorized as less complex. Retail food service establishments are rated for complexity based on an evaluative formula. Entities that handle raw meat, poultry and seafood pose a greater risk for introducing food-borne contamination and, as such, have a higher level of complexity and an expectation for more frequent and detailed inspections. However, the department has determined through program evaluation that there is no discernable difference in risk between handling frozen pre-formed meats and raw poultry, meat or seafood. The revision of the risk-based complexity rating formula may, in some instances, result in higher fees. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 197, relating to bed and breakfast establishments, the department proposes to increase permit, preinspection, and late renewal fees; and to create a reinspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.
- HFS 198, relating to vending of food, the department proposes to increase permit, preinspection, and late renewal fees; and to create a reinspection fee, a fee for operating without a permit, and a fee for special condition inspections. In addition to modifying and creating fees, the department may update the rules as needed to ensure continued consistency between rules and current practice. The proposed rules include fee schedules, provisions clarifying the department's authority or a permittee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

#### **Responses to Legislative Council Rules Clearinghouse Recommendations.**

The department accepted the comments made by the Legislative Rules Council Clearinghouse and modified the proposed rule where suggested.

#### **Final Regulatory Flexibility Analysis**

The proposed fees and proposed rule changes to chs. HFS 173, 175, 178, 195, 196, 197, and 198, will affect a substantial number of small businesses, however, the proposed fees and proposed rule changes will not have a significant economic impact on those businesses.

The direct impact of the proposed fee changes on businesses is limited to the fees associated with obtaining initial and renewal licenses or permits or licenses and preinspections to operate an establishment. Licenses or permits and preinspections, and the associated fees are required by the legislature. Reinspection fees, fees for late renewal, fees for operating without a permit or license, for the majority of the entities affected by the proposed changes are also required by the legislature. The department cannot exempt businesses from the fee requirements.

Reinspection fees, fees for late renewal, fees for operating without license or permit only affect an entity if the entity is out of compliance with the state law or regulations. Proposed fees for special condition inspections only affect persons without a license or permit who request inspection or consultation services from the department.

The proposed rules should not add costs in addition to fees to businesses, as the rules are intended to update and clarify existing rules and statutes. The proposed rules do not contain schedules or deadlines for compliance, reporting requirements, operational or performance standards.

### Changes to the Analysis or Fiscal Estimate

#### Analysis

In addition to the changes suggested by the Legislative Council Rules Clearinghouse, the department revised the analysis to reflect the changes the department made to permit fees for tourist rooming houses and bed and breakfast establishments and revised the proposed fees for reinspection fees for each industry affected by the proposed rules as follows:

- Based on public comment to make permit fees for tourist rooming houses and bed and breakfast establishments the same, the department revised the analysis and rule to reflect the reduction of the proposed SFY 2010 and 2012 permit fee for tourist rooming houses. The department's initial proposed permit fee for tourist rooming houses was \$120 in SFY 2010 and \$135 in SFY 2012. The department now proposes for SFY 2010 a permit fee of \$100 and for SFY 2012 a permit fee of \$110. The result is a \$20 reduction in the proposed SFY 2010 permit fee for tourist rooming houses and a \$25 reduction in the proposed SFY 2012 permit fee for tourist rooming houses:
- Based on public comment that the proposed reinspection fees were too high, the department revised the proposed reinspection fees for all industries affected by the proposed rules as follows:

#### Tattoo and Body Piercing Establishments

##### SFY 2010 (April 1, 2009 through March 31, 2011)

Type of License	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Tattoo Establishment	<del>\$150</del> <u>113</u>	<u>\$150</u>
Body Piercing Establishment	<del>\$150</del> <u>113</u>	<u>\$150</u>
Combined Tattoo and Body Piercing Establishment	<del>\$240</del> <u>180</u>	<u>\$240</u>
Temporary Establishment	\$0	\$0

##### SFY 2012 (April 1, 2011- )

Type of License	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Tattoo Establishment	<del>\$180</del> <u>135</u>	<u>\$180</u>
Body Piercing Establishment	<del>\$180</del> <u>135</u>	<u>\$180</u>
Combined Tattoo and Body Piercing Establishment	<del>\$295</del> <u>221</u>	<u>\$295</u>
Practitioner		
Temporary Establishment		

#### Recreational or Educational Camps

##### SFY 2010 (April 1, 2009 through March 31, 2011)

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Recreational Educational Campground	<del>\$630</del> 473	<del>\$630</del>

**SFY 2012**  
**(April 1, 2011 - )**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Recreational Educational Campground	<del>\$720</del> 540	<del>\$720</del>

**Campgrounds**

**SFY 2010**  
**(April 1, 2009 through March 31, 2011)**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Campground Permit Fee 1-25 sites	<del>\$240</del> 158	<del>\$210</del>
Campground Permit Fee 26-50 sites	<del>\$300</del> 225	<del>\$300</del>
Campground Permit Fee 51-100 sites	<del>\$370</del> 278	<del>\$370</del>
Campground Permit Fee 101-199 sites	<del>\$440</del> 330	<del>\$440</del>
Campground Permit Fee 200 + sites	<del>\$505</del> 379	<del>\$505</del>
Special Event Campground 1-25 sites	\$0	\$0
Special Event Campground 26-50 sites	\$0	\$0
Special Event Campground 51-100 sites	\$0	\$0
Special Event Campground 101-199 sites	\$0	\$0
Special Event Campground 200 + sites	\$0	\$0

**SFY 2012**  
**(April 1, 2011 - )**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Campground Permit Fee 1-25 sites	<del>\$240</del> 180	<del>\$240</del>
Campground Permit Fee 26-50 sites	<del>\$350</del> 263	<del>\$350</del>
Campground Permit Fee 51-100 sites	<del>\$425</del> 319	<del>\$425</del>
Campground Permit Fee 101-199 sites	<del>\$500</del> 375	<del>\$500</del>
Campground Permit Fee 200 + sites	<del>\$580</del> 435	<del>\$580</del>
Special Event Campground 1-25 sites	\$0	\$0
Special Event Campground 26-50 sites	\$0	\$0
Special Event Campground 51-100 sites	\$0	\$0

Special Event Campground 101-199 sites	\$0	\$0
Special Event Campground 200 + sites	\$0	\$0

#### Hotels, motels, and tourist rooming houses

**SFY 2010**  
**(April 1, 2009 through March 31, 2011)**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	<del>\$170</del> <u>120</u>	<u>\$160</u>
Hotel / Motel Permit Fee 5-30 Rooms	<del>\$230</del> <u>173</u>	<u>\$230</u>
Hotel / Motel Permit Fee 31-99 Rooms	<del>\$365</del> <u>274</u>	<u>\$365</u>
Hotel / Motel Permit Fee 100-199 Rooms	<del>\$470</del> <u>353</u>	<u>\$470</u>
Hotel / Motel Permit Fee 200 + Rooms	<del>\$575</del> <u>431</u>	<u>\$575</u>

**SFY 2012**  
**(April 1, 2011 - )**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	<del>\$185</del> <u>128</u>	<u>\$170</u>
Hotel / Motel Permit Fee 5-30 Rooms	<del>\$290</del> <u>218</u>	<u>\$290</u>
Hotel / Motel Permit Fee 31-99 Rooms	<del>\$400</del> <u>300</u>	<u>\$400</u>
Hotel / Motel Permit Fee 100-199 Rooms	<del>\$505</del> <u>379</u>	<u>\$505</u>
Hotel / Motel Permit Fee 200 + Rooms	<del>\$700</del> <u>525</u>	<u>\$700</u>

#### Restaurants

**SFY 2010**  
**(April 1, 2009 through March 31, 2011)**

Permit Category	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	<del>\$175</del> <u>86</u>	<u>\$115</u>
Simple Restaurant	<del>\$430</del> <u>199</u>	<u>\$265</u>
Moderate Restaurant	<del>\$705</del> <u>319</u>	<u>\$425</u>
Complex Restaurant	<del>\$1020</del> <u>458</u>	<u>\$610</u>
Temporary Restaurant		
Mobile Restaurant Base with no food preparation	<del>\$175</del> <u>86</u>	<u>\$115</u>
Additional Area	\$0	\$0

**SFY 2012**  
**For permits issued on or after April 1, 2011**

Permit Category	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	<del>\$195</del> 98	<del>\$130</del>
Simple Restaurant	<del>\$520</del> 240	<del>\$320</del>
Moderate Restaurant	<del>\$770</del> 353	<del>\$470</del>
Complex Restaurant	<del>\$1285</del> 578	<del>\$770</del>
Temporary Restaurant		
Mobile Restaurant Base with no food preparation	<del>\$95</del> 98	<del>\$130</del>
Additional Area		

#### Bed and breakfast establishment

**SFY 2010**  
**(April 1, 2009 through March 31, 2011)**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Bed and breakfast establishment	<del>\$140</del> 120	<del>\$160</del>

**SFY 2012**  
**(April 1, 2011 - )**

Type of Facility	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Bed and breakfast establishment	<del>\$150</del> 128	<del>\$170</del>

#### Vending

**SFY 2010**  
**(April 1, 2009 through March 31, 2011)**

Type of Permit	First Re-inspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	<del>\$335</del> 252	<del>\$335</del>
Vending Machine Commissary - Storage	<del>\$240</del> 158	<del>\$210</del>
Vending Machine Operator	\$0	\$0
Vending Machine permit (each machine)	\$0	\$0

**SFY 2012**  
**(April 1, 2011 - )**

Type of Permit	First Re-	Second and
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	<b>inspection Fee</b>	<b>Subsequent Re-inspection Fee</b>
Vending Machine Commissary	<del>\$400</del> 300	<del>\$400</del>
Vending Machine Commissary - Storage	<del>\$310</del> 233	<del>\$310</del>
Vending Machine Operator	\$0	\$0
Vending Machine permit (each machine)	\$0	\$0

### **Fiscal Estimate**

No changes were made to the fiscal estimate

### **Public Hearing Summary**

The department began accepting comments on July 15, 2008, when the proposed rule was posted on the Wisconsin Administrative Rules Website. Five public hearings were held on the proposed rules. The Department held public hearings on the proposed rules on August 11, 2008, in Eau Claire, August 12, 2008, in Rhinelander, August 13, 2008, in Green Bay, August 14, 2008, in Milwaukee, and August 15, 2008, in Madison. The hearing record remained open until 4:30 pm. on August 15, 2008.

### **List of Public Hearing Attendees and Commenters**

The following is a complete list of the persons who attended the public hearing or submitted written comments on the proposed rules. With each individual's name and affiliation is an indication of the individual's position on the proposed rule and whether or not the individual testified or provided written comments. The number preceding the name corresponds to the specific comment made in the attached summary of hearing comments.

<b>Name and Address</b>		<b>Position Taken (Support or Opposed)</b>	<b>Action (Oral or Written)</b>
1.	Chris Hinz Tri County Environmental Health 230 W. Park Street P.O. Box 837 Wautoma, WI 54982-0837	Support	Written
2.	John Burgess Wisconsin Farmers Union Kamp Kenwood 19161 79 <sup>th</sup> Ave. Chippewa Falls, WI 54729	Oppose	Oral
3.	Mark A. Smith 3109 Kern Drive Eau Claire, WI 54701	Oppose	Oral
4.	Tracy Ellis Price County Health Department 104 S. Eyder Phillips, WI 54555	Support	Oral
5.	Linda Conlon Oneida County Health Department P.O. Box 400 Rhinelander, WI 54501	Support	Oral
6.	Gina Egan Vilas County Health Department 303 Court Street	Support	Oral

<b>Name and Address</b>		<b>Position Taken</b> (Support or Opposed)	<b>Action</b> (Oral or Written)
	Eagle River, WI 54521		
7.	Karen Pfeiffer Iron County Health Department 502 Copper Street Hurley, WI 54534	Support	Oral
8.	Tom A. Robertson Fort Wilderness P.O. Box 715 MC Naughton, WI 54543	No Position Taken	Oral
9.	Tom Tiffany 4973 Willow Dam Rd Hazelhurst, WI 54531	Oppose	Oral
10.	Ray Harris 3204N River Dr Radisson, WI 54867	Oppose	Written
11.	Linda Walter Washington County Health Department 333 E. Washington St., Suite 1100 PO Box 2003 West Bend, WI 53095-2003	Support	Written / Oral
12.	Tina Hinchley Hinchley's Dairy Farm Tours 2844 Hwy 73 Cambridge, WI 53523	Oppose	Written
13.	Rev. Earl Martin Trail W. Kilbourn Ave. Milwaukee, WI 53208	Oppose	Oral
14.	William M Wucherer City of Franklin Health Department 9229 W. Loomis Road Franklin, WI 53132	Support	Oral
15.	James Beix City of Wauwatosa 7725 W. North Ave Wauwatosa, WI 53213	No Comment	Observer
16.	Robert Harris Southeastern Regional Office	No Comment	Observer
17.	Margaret Anderson 333 E. Washington St Suite 1100 West Bend, WI 53095	Support	Oral
18.	Kenneth F. Walz 4613 N. River park Blvd. Milwaukee, WI 53209	Support	Oral
19.	Trisha Pugal Wisconsin Innkeepers Association 1025 S. Mooreland Rd. Suite 200 Brookfield, WI 53005	Support with Concerns	Oral / Written
20.	Beitlich Sue Wisconsin Farmers Union	Opposed	Written

<b>Name and Address</b>		<b>Position Taken</b> (Support or Opposed)	<b>Action</b> (Oral or Written)
	117 West Spring Street Chippewa Falls, WI 54729		
21.	Ms. Mary Krug 23761 Misslich Dr. Richland Center, WI 53581	Opposed	Written
22.	Jim and Ruby Swanson 2006 W. Mead St. Eau Claire, WI 54703	Opposed	Written
23.	Ed Lump Wisconsin Restaurant Association 2801 Fish Hatchery Road Madison, WI 53713	Support	Written / Oral
24.	Brian B. Allen National Automatic Merchandising Association 20 N. Wacker Drive, Suite 3500 Chicago, IL 60606	Oppose	Written
25.	Jeanie Jahn N6186 Dunning Road Pardeeville, WI 53954	Oppose	Oral
26.	Ray Voss P.O. Box 402 Portage, WI	Oppose	Oral
27.	Chet Gerlach Association of Wisconsin Tourism Attractions 100 Wisconsin Ave, Suite 700 Madison, WI 53703	Support	Oral
28.	Patrick Finnegan P.O. Box 30 Wisconsin Dells, WI 53965	Support	Oral
29.	Mike Kaminski 995 S. Grove Lane Wisconsin Dells, WI	Support	Oral
30.	Jeff Kindrai 111 S. Jefferson Street Lancaster, WI 57813	Support	Observation Only
31.	Michael Barnett DATCP	Observation	No Comment
32.	Michael Steinhauer 2913 Pelham Road Madison, WI 53713	Support	No comment
33.	Susan Quam WRA 2801 Fish Hatchery Road Madison, WI 53713	No comment	Observation Only
34.	Chuck Warzecha 215 E. Franklin Street Portage, WI 53907	No comment	Observation Only
35.	Marjary Givens Madison, WI	No Comment	Observation Only
36.	Sam Austin	No Comment	Observation Only

<b>Name and Address</b>		<b>Position Taken</b> (Support or Opposed)	<b>Action</b> (Oral or Written)
	State Legislature		
37.	Charles Morgan State Legislature	No Comment	Observation Only
38.	Gregory Scott Hatchett N 7640 Pine knolls Dr. Whitewater, WI 53180	Oppose	Oral / Written
39.	Randy Tanis P.O. Box 26 Chetek, WI 54728	Oppose	Written
40.	Delores Waggoner 655 Elm Street Black River Falls, WI 54615	Oppose	Written
41.	Mardell Johnson 4795 W Maple Leaf Circle Milwaukee, WI 53220-2782	Oppose	Written
42.	Margaret Gebhard 3317 S. 57 <sup>th</sup> Street Milwaukee, WI 53219-4447	Oppose	Written
43.	Linda Kelly 4271 W. Granda Street Greenfield, WI 53221-4570	Oppose	Written
44.	Kathy Knaack 4785 W. Maple Leaf Circle Greenfield, WI 53220-2782	Oppose	Written

#### **Public Comments and Department Responses**

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

<b>Rule Provision</b>	<b>Public Comment</b>	<b>Department Response</b>
General	Support the proposed fee increase. [1], [4], [5], [6], [7], [11], [14], [17], [18], [19], [23], [27], [28], [29], [30], [32].	The department thanks you for your support.
General	Local agents increase their fees as result of state fee increases [19]	Local health departments that are agents for the department have statutory authority to establish and collect fees for permits or licenses issued by the local health department. The statute requires that no fee may exceed the local health department's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishments.
General	Suggest that the department develop a standing advisory committee for the FSRL program. [27], [28]	The department agrees with the industry suggestion and will create a standing advisory committee.
General	Use technology to help the FSRL program be more efficient. [27], [28], [29]	The department will look into ways that current technology could make inspectors more efficient. The department will also

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HFS 175.06 (1)	Concerned with the permit fee increase on recreational and educational camps, including Christian based or other non-profit camps. [2], [10], [13], [20], [21], [22], [38], [39], [40], [41], [42], [43], [44].	<p>explore other ways for inspectors maximize efficiency.</p> <p>Recreational and educational camp permit fees have not been increased since 2002, the increase amounts to \$28 per year since fees were last increased. Existing recreational and educational camp permit fees are not reflective of the time that the department spends conducting an inspection of the camp. Christian camps or other non-profit recreational or educational camps are not different than for-profit camps. The public health and safety in both non-profit and for-profit camps are the same. It takes the department the same amount of time and effort to inspect and administer the program to both groups. The members of the Wisconsin Fee Structure Revision Workgroup, which advised the department on the proposed rules, asked the department to discard the current fee model and develop a fee model that accurately reflected the cost to perform the oversight and inspection work associated with each industry we license and inspect. The department developed a fee model that broke down the cost of the program by industry. The model reflects the costs attributed to each industry based on the amount of time inspectors spent in their facilities and the percentage of overhead needed to administer the program. It is not uncommon, because of the complexity of these facilities, that an inspector may spend 4 or more hours performing an inspection. The proposed fees for recreational and educational camps more accurately reflect the administrative and inspection costs associated with this industry group.</p>
HFS 196.05 (4)	This is a bad time for a restaurant license fee increase. Businesses will have a hard time staying in business if fees continue to increase. The state should be providing some money to offset the cost to administer the food safety and recreational licensing program. [3], [ 9]	<p>Restaurant permit fees have not increased since 2002. Restaurant fees are based on the complexity of the food service operation. The more complex a facility the more involved is the inspection of that facility. Based on complexity the proposed impact is as follows:</p> <p>Pre-package restaurants: the equivalent of an annual increase of approximately \$3 per year since the fees were last revised in 2002;</p> <p>Simple restaurants: the equivalent of an annual increase of approximately \$7 per</p>

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		<p>year since the fees were last revised in 2002;</p> <p>Moderate restaurant: the equivalent of an annual increase of approximately \$11 per year since the fees were last revised in 2002;</p> <p>Complex restaurants: the equivalent of an annual increase of approximately \$23 per year since the fees were last revised in 2002.</p> <p>Although the department agrees that no time is a good time for a fee increase, the proposed fees do not have a significant economic impact on restaurants.</p> <p>The legislature providing funding to the department to support the food safety and recreational licensing program is the decision of the legislature and is beyond the scope of the proposed changes.</p>
DHS 195.05 (1) and DHS 197.05 (1)	Bed and Breakfast establishments and Tourist Rooming Houses because of their similar size should have a similar fees.[19]	The department agrees that the permit fees for tourist rooming houses and bed and breakfast establishments should be the same based on a similar type of inspection. The department revised the permit fees for tourist rooming houses and bed and breakfast establishments to be the same.
DHS 195.05 (2)(d)	Inspectors may perform a reinspection and charge a reinspection fee for minor concerns. [19]	The department has made a commitment to industry to ensure that reinspections will only be conducted on violations that reveal the existence of a violation that is potentially hazardous to the health or safety of patrons or employees as indicated under s. DHS 195.06 (1) (b).
DHS 195.05 (2)(d)	Reinspection fees are too high. The fees should be tiered. [19]	The department has revised the reinspection fees for all industries affected by the proposed rules using a tiered approach. The fee for a first reinspection is smaller than second and subsequent reinspections.
DHS 195.05 (2) (a)	Preinspection fees have gone up considerably to what was in draft rules. [19]	Preinspection fees are charged the first time a facility opens. Existing preinspections fees have not accounted for the actual inspection costs to the department. The proposed preinspection fees more accurately reflect the multiple visits inspectors make during the construction or opening process. The preinspection fee also includes costs for the review of the building plan for design and

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		layout and that all code provisions are met during the construction or the facility opening phase.
DHS 195.05 (1)	Rate of fee increase on lodging facilities is too high. [19], [25], [26]	<p>Lodging permit fees have not increased since 2002. Lodging fees are based on the number of rooms. The more rooms a facility has the more involved is the inspection of that facility.</p> <p>Based on the number of rooms per establishment, the proposed permit fee for these businesses for the state fiscal years 2010 and 2012 are as follows:</p> <ul style="list-style-type: none"> <li>• Lodging establishments that are tourist rooming houses: the equivalent of an annual increase of approximately \$5 per year since the fees were last revised in 2002;</li> <li>• Lodging establishments with 5-30 rooms: the equivalent of an annual increase of approximately \$7 per year since the fees were last revised in 2002;</li> <li>• Lodging establishments with 31-99 rooms: the equivalent of an annual increase of approximately \$8 per year since the fees were last revised in 2002;</li> <li>• Lodging establishments with 100-199 rooms: the equivalent of an annual increase of approximately \$10 per year since the fees were last revised in 2002;</li> <li>• Lodging establishments with 200 or more rooms: the equivalent of an annual increase of approximately \$17 per year since the fees were last revised in 2002.</li> </ul>
DHS 198.05 (1)	Vending permit increases compared to pre-packaged restaurants are higher.[24]	Vending fees and prepackaged restaurant fees are not the same. In your analysis you lump in vending machine stickers with your total cost. Vending stickers cannot be lumped into commissary and operators licenses because these machines are permitted and inspected separately. If you remove the vending machine stickers from the total, an average

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		<p>vending machine operator with a commissary would pay \$405, which is considerably less than the cost of a complex restaurant permit when comparing apples to apples. The costs associated with the vending commissary storage fee and prepackaged restaurant fee cannot be compared. The fees are based on two core components, the department's costs associated with administering the program and the inspection time/risk involved for the inspector to perform his or her work. This new model of fees was proposed based on a request by the Wisconsin Fee Structure Revision Workgroup which advised the department on proposed rules. The fees proposed are based on what it takes to perform the work for that particular industry group. Based on the type of license or permit, the proposed permit fee for these businesses for the state fiscal years 2010 and 2012 are as follows:</p> <ul style="list-style-type: none"> <li>• Vending machine commissaries, the equivalent of an annual increase of approximately \$10 per year since the fees were last revised in 2002;</li> <li>• Vending machine commissary storage, the equivalent of an annual increase of approximately \$12 per year since the fees were last revised in 2002;</li> <li>• Vending machine operators, the equivalent of an annual increase of approximately \$3 per year since the fees were last revised in 2002;</li> <li>• Vending machine stickers, the equivalent of an annual increase of approximately \$.30 per year since the fees were last revised in 2002.</li> </ul>
DHS 198.05 (2) (d)	There may be misuse of reinspections to get fees. [24]	The department has made a commitment to industry to ensure that reinspections will only be conducted on violations that reveal the existence of a violation that is potentially hazardous to the health and safety of patrons or employee as indicated under DHS 198.06 (1) (b).



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		<p>The department has revised the reinspection fees for all industries affected by the proposed rules using a tiered approach. The fee for a first reinspection is smaller than second and subsequent reinspections.</p>
DHS 178.06 (1)	<p>Increasing campground fees will place an undue burden on operators. [41], [42], [43], [44].</p>	<p>The department's reasons for the increase are already stated in the above comments as to the process used in developing the fees. Campground fees are based on the number of campsites per campground, the proposed permit fee for these businesses for state fiscal years 2010 and 2012 are as follows:</p> <ul style="list-style-type: none"> <li>• Campgrounds with 1-25 campsites, the equivalent of an annual increase of approximately \$6 per year since the fees were last revised in 2002;</li> <li>• Campgrounds with 26-50 campsites, the equivalent of an annual increase of approximately \$9 per year since the fees were last revised in 2002;</li> <li>• Campgrounds with 51-100 campgrounds: the equivalent of an annual increase of approximately \$12 per year since the fees were last revised in 2002;</li> <li>• Campgrounds with 101-199 camp sites: the equivalent of an annual increase of approximately \$15 per year since the fees were last revised in 2002;</li> <li>• Campgrounds with 200 or more camp sites: the equivalent of an annual increase of approximately \$17 per year since the fees were last revised in 2002.</li> </ul>
None	<p>Concerned with the rising costs associated with day camps.[12]</p>	<p>The department does not license or regulate day camps, nor are day camp fees a part of the proposed rule order.</p>