

98-035 AFS 172-198-FEES-REGR.
ESTABLISHMENTS

PROPOSED ADMINISTRATIVE RULES - HFS 172, 175, 178 & 195 to 198
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase permit fees for all facilities by 18%, to increase the penalty for late payment of a permit fee from \$50 to \$75, to increase the pre-inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries) and to impose a one-time technology improvement surcharge of \$15 to \$25 payable on July 1, 1998 by all facilities.

Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one-time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This order does not affect facilities regulated by local health departments granted agent status under s. 254.69, Stats. Permit fees for those facilities are established by the local health departments pursuant to s. 254.69 (2) (d), Stats.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted, except the following:

2.c. Comment: SECTION 12 of the rulemaking order should be incorporated into SECTION 10 of the order. The renumbered section of the rule should be renumbered and amended in the same section of the order.

Response: No change. That would throw off the sequence of rule parts. The Department on other occasions has renumbered and later amended what was renumbered. In this instance, the one section of the order in between the renumbering and amending creates a definition of a term that is used in the amending, and so should precede the amended part.

Public Hearings

The Department held 3 public hearings on the proposed changes to chs. HFS 172, 175, 178 and 195 to 198. The hearings were in Madison, La Crosse and Green Bay in April 1998. No one presented testimony at the hearings on the proposed fee increases. No one sent in written comments on the proposed fee increases during the public review period ending one week after the last hearing.

Final Regulatory Flexibility Analysis

These rule changes apply to all restaurants, hotels, motels, tourist rooming houses, bed and breakfast establishments, food and beverage vending operations and commissaries, campgrounds, camps and public swimming pools in Wisconsin that are issued permits by the Department. Most of the 16,051 facilities are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

The order amends the Department's rules to provide for an increase of about 18% in permit fees, a \$25 increase in the penalty fee when a permit fee is paid late and an increase ranging from \$70 to \$ 220 in the preinspection fee before issuance of the initial permit (this fee does not apply to swimming pools, camps, campgrounds or vending machines), and a one-time technology improvement surcharge of \$15 to \$25 to be paid by each permit holder which will enable the Department to update its computerized information and processing system for the regulatory program.

The regulatory program is operated exclusively on the basis of fee revenue.

The fee increases and one-time technology improvement surcharge will enable the Department to maintain this regulatory program at its current levels for frequency of routine inspections to protect public health, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

Some variation is provided for in the amount of a permit fee and the technology improvement surcharge, based on the number of sites for a campground, the number of rooms in a hotel or motel, and both the type and seating capacity of a restaurant.

The amount of a permit fee as well as the amount of a preinspection fee reflect the costs of regulation, in particular the costs of inspecting a facility.

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING AND CREATING RULES

To renumber HFS 195.04 (1m) (d) and 196.04 (1m) (a) to (d); to amend HFS 172.04 (1m), 175.04 (1m), 178.05 (1m), 195.04 (1m) (a) to (c) and (d) 1. (intro.), as renumbered, 196.04 (1m) (b) to (e) (intro.), as renumbered, 197.04 (1m) and 198.04 (1m); and to create HFS 172.04 (1m) (d), 175.04 (1m) (d), 178.05 (1m) (d), 195.04 (1m) (d) 1. a. to c. and (e), 196.04 (1m) (a) 196.04 (1m) (e) 1. to 3. and (f), 197.04 (1m) (e) and 198.04 (1m) (f), relating to permit fees and related fees, including a one-time technology improvement surcharge, for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Analysis Prepared by the Department of Health and Family Services

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase permit fees for all facilities by 18%, to increase the penalty for late payment of a permit fee from \$50 to \$75, to increase the pre-inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries) and to impose a one-time technology improvement surcharge payable on July 1, 1998 by all facilities.

Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one-time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This order does not affect facilities regulated by local health departments granted agent status under s. 254.69, Stats. Permit fees for those facilities are established by the local health departments pursuant to s. 254.69 (2) (d), Stats.

The Department's authority to renumber, amend and create these rules is found in ss. 254.47 (4) and 254.68, Stats. The rules interpret ss. 254.47 and 254.68, Stats.

SECTION 1. HFS 172.04 (1m) is amended to read:

HFS 172.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a public swimming pool shall pay an annual permit fee of ~~\$110~~ \$130 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit renewal period, the department shall require the operator of the public swimming pool to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a public swimming pool \$10 for a duplicate permit.

SECTION 2. HFS 172.04 (1m) (d) is created to read:

HFS 172.04 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a public swimming pool shall pay to the department a one-time technology improvement surcharge of \$20.

SECTION 3. HFS 175.04 (1m) is amended to read:

HFS 175.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a camp shall pay an annual permit fee of ~~\$65~~ \$77 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual fee is not paid within the first 15 days of the permit renewal period, the department shall require the operator of the camp to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995 the~~ The department shall charge the operator of a camp \$10 for a duplicate permit.

SECTION 4. HFS 175.04 (1m) (d) is created to read:

HFS 175.04 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a camp shall pay to the department a one-time technology improvement surcharge of \$20.

SECTION 5. HFS 178.05 (1m) is amended to read:

HFS 178.05 (1m) DEPARTMENT FEES. (a) Annual permit fee. 1. The operator of a campground shall pay an annual permit fee to the department.

2. Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:

- a. For a campground with 1-25 sites, ~~\$90~~ \$106;
- b. For a campground with 26-50 sites, ~~\$110~~ \$130;
- c. For a campground with 51-100 sites, ~~\$130~~ \$153; and
- d. For a campground with over 100 sites, ~~\$145~~ \$171.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual fee is not paid within the first 15 days of the permit period, the department shall require the operator of the campground to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate fee. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a campground \$10 for a duplicate permit.

SECTION 6. HFS 178.05 (1m) (d) is created to read

HFS 178.05 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a campground shall pay to the department a one-time technology improvement surcharge based on the number of sites in the campground, as follows:

1. For a campground with 1 to 25 sites, \$15;
2. For a campground with 26 to 50 sites, \$20; and
3. For a campground with 51 or more sites, \$25.

SECTION 7. HFS 195.04 (1m) (a) to (c) are amended to read:

HFS 195.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. 1. The operator of a hotel, motel or tourist rooming house shall pay an annual permit fee to the department.

2. Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:
 - a. For a hotel or motel with 5 to 30 rooms, ~~\$105~~ \$124;
 - b. For a hotel or motel with 31 to 99 rooms, ~~\$140~~ \$165;
 - c. For a hotel or motel with 100 or more rooms, ~~\$180~~ \$212; and

d. For a tourist rooming house, ~~\$50~~ \$59.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the department shall require the operator of the hotel, motel or tourist rooming house to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a hotel, motel or tourist rooming house \$10 for a duplicate permit.

SECTION 8. HFS 195.04 (1m) (d) is renumbered 195.04 (1m) (d) 1. (intro.) and amended to read:

HFS 195.04 (1m) (d) Preinspection fee. 1. 'Hotel or motel.' ~~Beginning July 1, 1996, the~~ The operator of a hotel or motel shall pay to the department a preinspection fee of ~~\$55, and the operator of a tourist rooming house shall pay to the department a preinspection fee of \$25.~~ The preinspection fee shall be as follows:

SECTION 9. HFS 195.04 (1m) (d) 1. a. to c. and 2. and (e) are created to read:

- a. For a hotel or motel with 5 to 30 rooms, \$125;
- b. For a hotel or motel with 31 to 99 rooms, \$200; and
- c. For a hotel or motel with 100 or more rooms, \$275.

2. 'Tourist rooming house.' The operator of a tourist rooming house shall pay to the department a preinspection fee of \$125.

(e) Technology improvement surcharge. 1. 'Hotel or motel.' For the permit period July 1, 1998 to June 30, 1999, the operator of a hotel or motel shall pay to the department a one-time technology improvement surcharge based on the number of rooms for rent by the hotel or motel, as follows:

- a. For a hotel or motel with 5 to 30 rooms, \$15;
- b. For a hotel or motel with 31 to 99 rooms, \$20; and
- c. For a hotel or motel with 100 or more rooms, \$25.

2. 'Tourist rooming house.' For the permit period July 1, 1998 to June 30, 1999, the operator of a tourist rooming house shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 10. HFS 196.04 (1m) (a) to (d) are renumbered 196.04 (1m) (b) to (e) (intro.).

SECTION 11. HFS 196.04 (1m) (a) is created to read:

HFS 196.04 (1m) DEPARTMENT FEES. (a) Definition. In this subsection, "seating capacity" means the number of seats available for use by patrons of the facility.

SECTION 12. HFS 196.04 (1m) (b) to (e) (intro.), as renumbered, are amended to read:

HFS 196.04 (1m) (b) Annual permit fee. ~~1.~~ The operator of a restaurant shall pay an annual permit fee to the department. ~~2.~~ Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:

1. For a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods, ~~\$125~~ \$148 and, in addition, ~~\$65~~ \$77 per area for any physically separate food holding, serving or preparation area;
2. For a restaurant that serves only individually wrapped, hermetically sealed single food servings supplied by a licensed processor, ~~\$55~~ \$65; and
3. For a temporary restaurant, ~~\$65~~ \$77, and for a mobile restaurant base with no food preparation, ~~\$55~~ \$65.

(c) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the department shall require the operator of the restaurant to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(d) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge a restaurant operator \$10 for a duplicate permit.

(e) Preinspection fee. ~~Beginning July 1, 1996, the~~ The operator of a restaurant shall pay to the department a preinspection fee of ~~\$55~~ before issuance of the initial permit. The preinspection fee shall be based on the seating capacity of the restaurant, as follows:

SECTION 13. HFS 196.04 (1m) (e) 1. to 3. and (f) are created to read:

HFS 196.04 (1m) (e) 1. For a restaurant with no seating capacity or a seating capacity of 1 to 50, the preinspection fee shall be \$125;

2. For a restaurant with a seating capacity of 51 to 150, the preinspection fee shall be \$200; and

3. For a restaurant with a seating capacity of 151 or more, the preinspection fee shall be \$275.

(f) Technology improvement surcharge. 1. 'Regular restaurant.' For the permit period July 1, 1998 to June 30, 1999, the operator of a regular restaurant shall pay to the department a one-time technology improvement surcharge based on the seating capacity of the restaurant, as follows:

a. For a restaurant with no seating capacity or a seating capacity of 1 to 50, \$15;

b. For a restaurant with a seating capacity of 51 to 150, \$20; and

c. For a restaurant with a seating capacity of 151 and up, \$25.

2. 'Temporary restaurant.' For the permit period July 1, 1998 to June 30, 1999, the operator of a temporary restaurant shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 14. HFS 197.04 (1m) is amended to read:

HFS 197.04 (1m) DEPARTMENT FEES. (a) Permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a bed and breakfast establishment shall pay a biennial permit fee of ~~\$90~~ \$106 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the biennial fee is not paid within the first 15 days of the permit period, the operator of the bed and breakfast facility shall pay to the department a penalty fee of ~~\$50~~ \$75, in addition to the biennial permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge a bed and breakfast operator \$10 for a duplicate permit.

(d) Preinspection fee. Beginning July 1, ~~1996~~ 1998, the operator of a bed and breakfast establishment shall pay to the department a preinspection fee of ~~\$30~~ \$125 before issuance of the initial permit.

SECTION 15. HFS 197.04 (1m) (e) is created to read:

HFS 197.04 (1m) (e) Technology improvement surcharge. For the period July 1, 1998 to June 30, 1999, the operator of a camp shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 16. HFS 198.04 (1m) is amended to read:

HFS 198.04 (1m) DEPARTMENT FEES. (a) Annual permit fee for the operator of a vending machine. The operator of a vending machine shall pay an annual permit fee to the department. The annual permit fee shall be as follows:

1. For the vending machine operator , ~~\$60~~ \$71 beginning July 1, ~~1996~~ 1998;
and
2. For each vending machine, ~~\$5~~ \$6.

(b) Annual permit fee for the operator of a vending machine commissary. The operator of a vending machine commissary shall pay an annual permit fee to the department. The annual permit fee shall be as follows:

1. For a vending machine commissary where food is prepared, ~~\$125~~ \$148 beginning July 1, ~~1996~~ 1998; and
2. For a vending machine commissary where food, transport equipment and vending supplies are only stored, ~~\$50~~ \$59.

(c) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the operator of the vending machine or vending machine commissary shall pay the department a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(d) Fee for duplicate permit. 1. The department shall charge the operator of a vending machine \$1 for a duplicate permit for the vending machine.

2. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a vending machine \$10 for a duplicate vending machine operator permit.

3. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a vending machine commissary \$10 for a duplicate permit.

(e) Preinspection fee. Beginning July 1, ~~1996~~ 1998, the operator of a vending machine commissary shall pay to the department a preinspection fee of ~~\$55~~ \$125 before issuance of the initial permit.

SECTION 17. HFS 198.04 (1m) (f) is created to read:

HFS 198.04(1m) (f) Technology improvement surcharge. 1. 'Vending machine operator.' For the permit period July 1, 1998 to June 30, 1999, a vending machine

operator shall pay to the department a one-time technology improvement surcharge of \$20.

2. 'Vending machine commissary operator.' For the permit period July 1, 1998 to June 30, 1999, the operator of a vending machine commissary shall pay to the department a one-time technology improvement surcharge, as follows:

- a. For a vending machine commissary where food is prepared, \$25; and
- b. For a vending machine commissary where food, transportation equipment and vending supplies are only stored, \$15.

The rules included in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

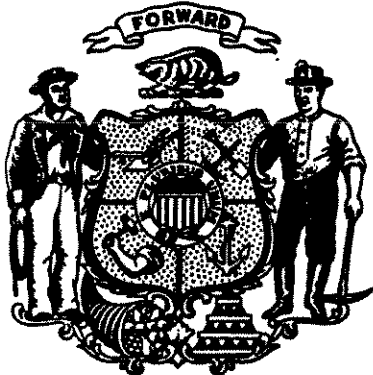
Wisconsin Department of Health and
Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL:

END



END



Carol Roessler
STATE SENATOR

To: Health, Family Service and Aging Committee Members
From: Sen. Carol Roessler, Chair
RE: Clearinghouse Rules
Date: June 4, 1998

Attached please find CR 98-035, relating to fees and recreational establishments. The committee has until July 3 to review the rules. Please contact my office by June 26 if you would like a hearing on the rules (6-5300).

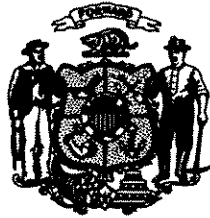
WISCONSIN LEGISLATIVE COUNCIL STAFF



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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-035

AN ORDER to renumber HFS 195.04 (1m) (d) and 196.04 (1m) (a) to (d); to amend HFS 172.04 (1m), 175.04 (1m), 178.05 (1m), 195.04 (1m) (a) to (c) and (d) 1. (intro.), 196.04 (1m) (b) to (e) (intro.), 197.04 (1m) and 198.04 (1m); and to create HFS 172.04 (1m) (d), 175.04 (1m) (d), 178.05 (1m) (d), 195.04 (1m) (d) 1. a. to c. and (e), 196.04 (1m) (a), (e) 1. to 3. and (f), 197.04 (1m) (e) and 198.04 (1m) (f), relating to permit fees and related fees, including a one-time technology improvement surcharge, for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

03-02-98 RECEIVED BY LEGISLATIVE COUNCIL.
03-30-98 REPORT SENT TO AGENCY.

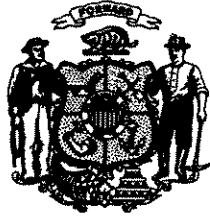
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CLEARINGHOUSE RULE 98-035

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

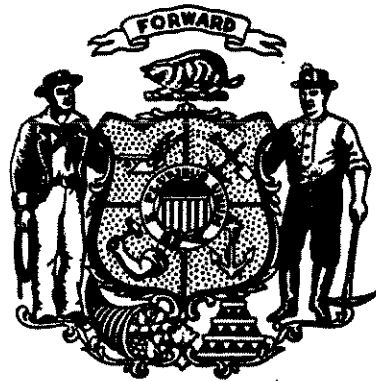
2. Form, Style and Placement in Administrative Code

- a. In the final paragraph of the analysis, the notation "s." should be inserted before the last citation to the statutes.
- b. In s. HFS 178.05 (1m) (d) 1. and 2., the hyphen should be replaced by the word "to."
- c. SECTION 12 of the rule should be incorporated into SECTION 10 of the rule. The renumbered section should be renumbered and amended in the same section of the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the first paragraph of the analysis, the word "of" should be inserted before the first citation to the statutes.
- b. In SECTION 11 of the rule, there are two periods at the end of the sentence in s. HFS 196.04 (1m) (a). One of the periods should be deleted.
- c. In s. HFS 198.04 (1m) (f) 2. b., one occurrence of the word "are" should be deleted.

END



END

June 24, 1998

The Honorable Joseph Leann
Secretary, Department of Health and Family Services
P.O. Box 7850
Madison, WI 53707-7850

Dear Secretary Leann:

It has recently come to our attention that the Department plans the imminent promulgation of an emergency rule amending administrative code chapters HFS 172, 175, 178, 195, 196, 197, and 198. The proposed emergency rule deals with two unrelated topics. The first is the one-time technology improvement surcharge on certain regulated entities. The other adjusts the definition of a "restaurant" pursuant to the agreement reached on the grocer fee issue a few months ago with the Department of Agriculture, Trade and Consumer Protection. It is our belief that the interests of the public and of proper and adequate rulemaking as referenced in ss. 227.26 (2)(a), the interest of the public and the legislature are better served by through a separate rulemaking order for the surcharge fee and one dealing with restaurants.

We appreciate the efforts of the Department to address by emergency rule the grocery inspection fee agreement we reached a few months ago. Since each issue is important, it should be reviewed on its own merits so that the public and the legislature can appreciate what is intended through each rule. The proposed permanent rules which correspond to these two issues are should be contained under two separate clearinghouse rule reports; each with its own identification number. Customarily, agencies promulgating both emergency and permanent rules on the same issue will create roughly equivalent and parallel orders for each. We believe that this customary route makes the most sense in this case, and we are requesting that the Department undertake its planned promulgation in this fashion.

Thank you for your attention to this request. Please feel free to contact us if we can be of any assistance or service.

Sincerely,

Robert T. Welch
Senate Co-Chairman

Glenn Grothman
Assembly Co-Chairman

BTW:GSG:swk:lw

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING AND CREATING RULES

29

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase, for Department-regulated facilities only, permit fees by 18%, the penalty for late payment of a permit fee from \$50 to \$75 and the pre-inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries), and to impose on Department-regulated facilities only a one-time technology improvement surcharge of \$15 to \$25 payable on July 1, 1998.

These rule changes are being promulgated by emergency order to protect public health and safety. Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one-time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This rulemaking order also amends the definition of "incidental food service" in ch. HFS 196, the Department's rules for restaurants. The significance of that definition is that s. HFS 196.04 (1) (b) exempts an incidental food service from the requirement to have a restaurant license. An incidental food service is currently defined as meals offered to the general public by a retail food establishment, such as a

grocery store, a convenience store or a bakery, licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP), which are not a primary activity of the retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order modifies the definition, mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals from at most 25% to less than 50%. The effect of the change is to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken jointly by the Department and DATCP to eliminate "double licensing," that is, regulation (inspections, approvals and fees, enforcement) of an establishment by both the Department and DATCP for the same purpose of protecting the public's health.

The modification of the definition of "incidental food service" will be effective for permits issued by the Department starting with the permit period beginning July 1, 1998, but as a mandated change will be delayed for one year, by amendment of the agent agreements, for permits issued by agent local health departments.

This rule change is being promulgated by emergency order for preservation of the public welfare. Retail food establishments licensed by DATCP that serve meals on the premises to the public will be required to have only a license issued by DATCP and not also a permit issued by the Department. It has become possible at this time, at the beginning of a new restaurant permit period and regulatory cycle and in view of changes occurring lately in the retail food industry, to eliminate duplicative and at times conflicting regulation that does not serve a public purpose, and therefore it should be eliminated promptly.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 254.47 (4), 254.64 (1) (d) and 254.68, Stats., the Department of Health and Family Services hereby renumbers, amends and creates rules interpreting ss. 254.47, 254.64 (1) (d) and 254.68, Stats., as follows:

SECTION 1. HFS 172.04 (1m) is amended to read:

HFS 172.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a public swimming pool shall pay an annual permit fee of ~~\$110~~ \$130 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit renewal period, the department shall require the operator of the public swimming pool to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a public swimming pool \$10 for a duplicate permit.

SECTION 2. HFS 172.04 (1m) (d) is created to read:

HFS 172.04 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a public swimming pool shall pay to the department a one-time technology improvement surcharge of \$20.

SECTION 3. HFS 175.04 (1m) is amended to read:

HFS 175.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a camp shall pay an annual permit fee of ~~\$65~~ \$77 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual fee is not paid within the first 15 days of the permit renewal period, the department shall require the operator of the camp to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995 the~~ The department shall charge the operator of a camp \$10 for a duplicate permit.

SECTION 4. HFS 175.04 (1m) (d) is created to read:

HFS 175.04 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a camp shall pay to the department a one-time technology improvement surcharge of \$20.

SECTION 5. HFS 178.05 (1m) is amended to read:

HFS 178.05 (1m) DEPARTMENT FEES. (a) Annual permit fee. 1. The operator of a campground shall pay an annual permit fee to the department.

2. Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:

- a. For a campground with 1-25 sites, ~~\$90~~ \$106;
- b. For a campground with 26-50 sites, ~~\$110~~ \$130;
- c. For a campground with 51-100 sites, ~~\$130~~ \$153; and
- d. For a campground with over 100 sites, ~~\$145~~ \$171.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual fee is not paid within the first 15 days of the permit period, the department shall require the operator of the campground to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate fee. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a campground \$10 for a duplicate permit.

SECTION 6. HFS 178.05 (1m) (d) is created to read

HFS 178.05 (1m) (d) Technology improvement surcharge. For the permit period July 1, 1998 to June 30, 1999, the operator of a campground shall pay to the department a one-time technology improvement surcharge based on the number of sites in the campground, as follows:

1. For a campground with 1 to 25 sites, \$15;
2. For a campground with 26 to 50 sites, \$20; and
3. For a campground with 51 or more sites, \$25.

SECTION 7. HFS 195.04 (1m) (a) to (c) are amended to read:

HFS 195.04 (1m) DEPARTMENT FEES. (a) Annual permit fee. 1. The operator of a hotel, motel or tourist rooming house shall pay an annual permit fee to the department.

2. Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:

- a. For a hotel or motel with 5 to 30 rooms, ~~\$105~~ \$124;
- b. For a hotel or motel with 31 to 99 rooms, ~~\$140~~ \$165;
- c. For a hotel or motel with 100 or more rooms, ~~\$180~~; \$212; and
- d. For a tourist rooming house, ~~\$50~~ \$59.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the department shall require the operator of the hotel, motel or tourist rooming house to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a hotel, motel or tourist rooming house \$10 for a duplicate permit.

SECTION 8. HFS 195.04 (1m) (d) is renumbered 195.04 (1m) (d) 1. (intro.) and amended to read:

HFS 195.04 (1m) (d) Preinspection fee. 1. 'Hotel or motel.' ~~Beginning July 1, 1996, the~~ The operator of a hotel or motel shall pay to the department a preinspection fee of \$55, ~~and the operator of a tourist rooming house shall pay to the department a preinspection fee of \$25.~~ The preinspection fee shall be as follows:

SECTION 9. HFS 195.04 (1m) (d) 1. a. to c. and 2. and (e) are created to read:

- a. For a hotel or motel with 5 to 30 rooms, \$125;
- b. For a hotel or motel with 31 to 99 rooms, \$200; and
- c. For a hotel or motel with 100 or more rooms, \$275.

2. 'Tourist rooming house.' The operator of a tourist rooming house shall pay to the department a preinspection fee of \$125.

(e) Technology improvement surcharge. 1. 'Hotel or motel.' For the permit period July 1, 1998 to June 30, 1999, the operator of a hotel or motel shall pay to the department a one-time technology improvement surcharge based on the number of rooms for rent by the hotel or motel, as follows:

- a. For a hotel or motel with 5 to 30 rooms, \$15;
- b. For a hotel or motel with 31 to 99 rooms, \$20; and
- c. For a hotel or motel with 100 or more rooms, \$25.

2. 'Tourist rooming house.' For the permit period July 1, 1998 to June 30, 1999, the operator of a tourist rooming house shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 10. HFS 196.03 (11r) is amended to read:

HFS 196.03 (11r) "Incidental food service" means meals offered to the general public that are not a primary activity of ~~the~~ an establishment licensed by the department of agriculture, trade and consumer protection as a retail food establishment under ch. 97 s. 97.30, Stat., or by a local health department serving under s. 97.41. Stats., as an agent of the department of agriculture, trade and consumer protection for this purpose, and that comprise no more than 25% less than 50% of gross annual food sales of the establishment, excluding sales of alcoholic beverages, and do not entail full service

~~food preparation. A restaurant that operates within an establishment licensed under s. 97.30 or 97.41, Stats., as an independent business with its own separate kitchen facilities is not an "incidental food service." Incidental food service includes:~~

~~(a) Sale of a beverage with a bakery item for carry out only.~~

~~(b) Individually wrapped, hermetically-sealed single food servings obtained from an approved source located off premises, with preparation limited to heating and serving with single service utensils.~~

~~(c) Self service prewrapped sandwiches for carry out prepared in an on-premises delicatessen licensed by the department of agriculture, trade and consumer protection under ch. 97, Stats.~~

SECTION 11. HFS 196.04 (1m) (a) to (d) are renumbered 196.04 (1m) (b) to (e) (intro.).

SECTION 12. HFS 196.04 (1m) (a) is created to read:

HFS 196.04 (1m) DEPARTMENT FEES. (a) Definition. In this subsection, "seating capacity" means the number of seats available for use by patrons of the facility.

SECTION 13. HFS 196.04 (1m) (b) to (e) (intro.), as renumbered, are amended to read:

HFS 196.04 (1m) (b) Annual permit fee. ~~1-~~ The operator of a restaurant shall pay an annual permit fee to the department. ~~2-~~ Beginning July 1, ~~1996~~ 1998, the annual permit fee shall be as follows:

1. For a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods, ~~\$125~~ \$148 and, in addition, ~~\$65~~ \$77 per area for any physically separate food holding, serving or preparation area;

2. For a restaurant that serves only individually wrapped, hermetically sealed single food servings supplied by a licensed processor, ~~\$55~~ \$65; and

3. For a temporary restaurant, ~~\$65~~ \$77, and for a mobile restaurant base with no food preparation, ~~\$55~~ \$65.

(c) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the department shall require the operator of the restaurant to pay a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(d) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge a restaurant operator \$10 for a duplicate permit.

(e) Preinspection fee. ~~Beginning July 1, 1996, the~~ The operator of a restaurant shall pay to the department a preinspection fee of ~~\$55~~ before issuance of the initial permit. The preinspection fee shall be based on the seating capacity of the restaurant, as follows:

SECTION 14. HFS 196.04 (1m) (e) 1. to 3. and (f) are created to read:

HFS 196.04 (1m) (e) 1. For a restaurant with no seating capacity or a seating capacity of 1 to 50, the preinspection fee shall be \$125;

2. For a restaurant with a seating capacity of 51 to 150, the preinspection fee shall be \$200; and

3. For a restaurant with a seating capacity of 151 or more, the preinspection fee shall be \$275.

(f) Technology improvement surcharge. 1. 'Regular restaurant.' For the permit period July 1, 1998 to June 30, 1999, the operator of a regular restaurant shall pay to the department a one-time technology improvement surcharge based on the seating capacity of the restaurant, as follows:

a. For a restaurant with no seating capacity or a seating capacity of 1 to 50, \$15;

b. For a restaurant with a seating capacity of 51 to 150, \$20; and

c. For a restaurant with a seating capacity of 151 and up, \$25.

2. 'Temporary restaurant.' For the permit period July 1, 1998 to June 30, 1999, the operator of a temporary restaurant shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 15. HFS 197.04 (1m) is amended to read:

HFS 197.04 (1m) DEPARTMENT FEES. (a) Permit fee. Beginning July 1, ~~1996~~ 1998, the operator of a bed and breakfast establishment shall pay a biennial permit fee of ~~\$90~~ \$106 to the department.

(b) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the biennial fee is not paid within the first 15 days of the permit period, the operator of the bed and breakfast facility shall pay to the department a penalty fee of ~~\$50~~ \$75, in addition to the biennial permit fee, for renewal of the permit.

(c) Fee for duplicate permit. ~~Beginning July 1, 1995, the~~ The department shall charge a bed and breakfast operator \$10 for a duplicate permit.

(d) Preinspection fee. Beginning July 1, ~~1996~~ 1998, the operator of a bed and breakfast establishment shall pay to the department a preinspection fee of ~~\$30~~ \$125 before issuance of the initial permit.

SECTION 16. HFS 197.04 (1m) (e) is created to read:

HFS 197.04 (1m) (e) Technology improvement surcharge. For the period July 1, 1998 to June 30, 1999, the operator of a camp shall pay to the department a one-time technology improvement surcharge of \$15.

SECTION 17. HFS 198.04 (1m) is amended to read:

HFS 198.04 (1m) DEPARTMENT FEES. (a) Annual permit fee for the operator of a vending machine. The operator of a vending machine shall pay an annual permit fee to the department. The annual permit fee shall be as follows:

1. For the vending machine operator , ~~\$60~~ \$71 beginning July 1, ~~1996~~ 1998;
and
2. For each vending machine, ~~\$5~~ \$6.

(b) Annual permit fee for the operator of a vending machine commissary. The operator of a vending machine commissary shall pay an annual permit fee to the department. The annual permit fee shall be as follows:

1. For a vending machine commissary where food is prepared, ~~\$125~~ \$148 beginning July 1, ~~1996~~ 1998; and
2. For a vending machine commissary where food, transport equipment and vending supplies are only stored, ~~\$50~~ \$59.

(c) Penalty fee. Beginning July 1, ~~1995~~ 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the operator of the vending machine or vending machine commissary shall pay the department a penalty fee of ~~\$50~~ \$75, in addition to the annual permit fee, for renewal of the permit.

(d) Fee for duplicate permit. 1. The department shall charge the operator of a vending machine \$1 for a duplicate permit for the vending machine.

2. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a vending machine \$10 for a duplicate vending machine operator permit.

3. ~~Beginning July 1, 1995, the~~ The department shall charge the operator of a vending machine commissary \$10 for a duplicate permit.

(e) Preinspection fee. Beginning July 1, ~~1996~~ 1998, the operator of a vending machine commissary shall pay to the department a preinspection fee of ~~\$55~~ \$125 before issuance of the initial permit.

SECTION 18. HFS 198.04 (1m) (f) is created to read:

HFS 198.04(1m) (f) Technology improvement surcharge. 1. 'Vending machine operator.' For the permit period July 1, 1998 to June 30, 1999, a vending machine operator shall pay to the department a one-time technology improvement surcharge of \$20.

2. 'Vending machine commissary operator.' For the permit period July 1, 1998 to June 30, 1999, the operator of a vending machine commissary shall pay to the department a one-time technology improvement surcharge, as follows:

a. For a vending machine commissary where food is prepared, \$25; and

b. For a vending machine commissary where food, transportation equipment and vending supplies are only stored, \$15.

The rules included in this order shall take effect as emergency rules on July 1, 1998.

Wisconsin Department of Health and
Family Services

Dated: June 11, 1998

By: 

Joseph Leean
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.
HFS 172, 175, 178&195-198
Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 N(R10/96)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

FEES FOR CAMPGROUNDS, CAMPS, PUBLIC SWIMMING POOLS, RESTAURANTS, HOTELS, MOTELS & TOURIST ROOMING HOUSES, BED & BREAKFAST ESTABLISHMENTS AND FOOD VENDING OPERATIONS, AND "INCIDENTAL FOOD SERVICE" DEFINITION IN RULES FOR RESTAURANTS

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs – May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The Department issues permits for the operation of campgrounds, camps, public swimming pools, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending machines, operators and commissaries. An annual fee (biennial for a bed and breakfast establishment) is charged for a permit. An additional fee is charged if a permit fee is paid late. There is a one-time pre-inspection fee for a new facility, which applies only to hotels, motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries. These fees must cover the costs of regulation by the Department. Fee revenue for FY 1998-99 is projected at about \$2.2 million a year without fee increases..

This order increases Department fees effective July 1, 1998, to cover increased program costs. The fee increases are expected to generate \$637,557 annually in increased program revenues (\$372,557 from permit fees, \$240,000 from preinspection fees and \$25,000 from late fees).

This order also provides for a one-time technology improvement surcharge of \$15 to \$25 to be paid by each permit-holder at the time the permit fee is paid for the July 1, 1998 to June 30, 1999 permit period. The one-time technology improvement surcharge is expected to generate \$332,355, which will be used to update the regulatory program's computerized information and processing system.

The Department directly regulates 9469 restaurants, 2346 hotels and motels, 1663 tourist rooming houses, 384 bed and breakfast establishments, 107 food vending operations (70 operators and 37 commissaries), 909 campgrounds, 196 educational and recreational camps and 977 swimming pools. A few campgrounds, camps and swimming pools are operated by the Wisconsin Department of Natural Resources (DNR), the University System and local governments. Permit fees are increased 18% and the technology improvement surcharge is a one-time payment of \$15 to \$25 for each permit-holder, which means that the impacts of the revised fees and the one-time surcharge on state government and local governments are minimal.

This order in addition modifies the definition of "incidental food service" in ch. HFS 196, the rules for restaurants. An incidental food service is a food service operation located within and operated by a retail food establishment. It currently does

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

H&FS/ Edward Rabotski, 266-8294

Authorized Signature/Telephone No.

Richard W. Lorang, 266-9622

Date

6-10-98

FISCAL ESTIMATE FOR HFS 172, 175, 178 & 195-198E (continued)

not account for more than 25% of the gross annual food sales of the retail food establishment. Section HFS 196.04 (1) (b) exempts an incidental food service from the requirement that it have a restaurant permit. The incidental food service definition is modified mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals to less than 50%. This will have the effect of eliminating "double licensing" of some retail food establishments by the Department and the Department of Agriculture, Trade and Consumer Protection, because a separate restaurant permit will no longer be required. The change will also have the effect of reducing Department revenues from permit and related fees. The change, which will take effect for permits issued by the Department starting with the permit period that begins July 1, 1998, is expected to reduce fee revenue for the 1998-99 SFY by \$148,000 (1000 establishments x average fee of \$148).

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/96)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
HFS 172, 175, 178 &195-198E

Amendment No.

Subject

FEEs FOR CAMPGROUNDS, CAMPS, PUBLIC SWIMMING POOLS, RESTAURANTS, HOTELS, MOTELS & TOURIST ROOMING HOUSES, BED & BRKFST ESTABLISHMENTS AND FOOD VENDING OPERATIONS, AND "INCIDENTAL FOOD SERVICE" DEFINITION IN RULES FOR RESTAURANTS

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
One-time State Government revenue increase of \$332,355 expected July 1, 1998 for technology improvement

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		637,557	(148,000)
SEG/SEG-S			-
TOTAL State Revenues		\$ 637,557	\$ (148,000)

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS \$ Minimal \$ Indeterminate
NET CHANGE IN REVENUES \$ 489,557 \$ -----

Agency/Prepared by: (Name & Phone No.)

H&FS/ Edward Rabotski, 266-8294

Authorized Signature Telephone No.


Richard W. Lorang, 266-9622

Date

6-10-98