ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES

The Wisconsin Department of Health Services proposes to **repeal** HFS 173.12, 175.18, 178.17, 195.12, 197.11, 198.15**; to renumber** HFS 173.01 to 173.03, and 173.05 to 173.10, 175.01 to 175.04, and 175.06 to 175.17, 178.01 to 178.04 and 178.06 to 178.16, 195.01 to 195.03, and 195.05 to 195.11, 196.01 to 196.03 and 196.045 to 196.07, 197.01 to 197.03 and 197.05 to 197.10, and 198.01 to 198.03 and 198.05 to 198.14; **to renumber and amend** HFS 173.03 (10), 173.11, 173.13, 175.03 (8), 178.03 (5), 195.03 (4), 196.03 (2), 197.03 (4), 198.03 (5)**; to repeal and recreate** HFS 173.04 175.05, 178.05, 195.04, 196.04, Table HFS 196.05 A, 196.06, 197.04, 198.04**; and to create** DHS 173.03 (11m), 173.05 and Tables DHS 173.05 A and B, 173.06 to 173.09, 175.06 and Tables DHS 175.06 A and B, 175.07 to 175.10, 178.06 and Table DHS 178.06 A and B, 178.07 to 178.10, 195.05 and Tables DHS 195.05 A and B, 195.06 to 195.09, 196.05 and Tables DHS 196.05 B and C, 196.07, to 196.09, 197.05 and Tables DHS 197.05 A and B, 197.06 to 197.09, 198.05 and Tables DHS 198.05 A and B, 198.06 to 198.10, relating to creating and increasing fees for tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments, vending of food, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 254.015, 250.04, 250.041, 252.23, 252.24, 252.241, 252.245, 252.25, , 254.47, , 254.61, 254.62, 254.64, 254.65, 254.67, 254.68, 254.69, 254.70, 254.71, 254.72, 254.74, 254.85, 254.86, 254.87, and 254.88, Stats.

Statutory authority: Sections 227.11 (2) (a), 250.04 (1), (2) (a), and (7), 252.23 (4), 252.24 (4), 254.47 (4), 254.64, 254.65, 254.68, 254.74 (1) (d), 254.71 (6), 254.85, 254.86, and 254.88, Stats.

Explanation of agency authority:

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.

Related statute or rule:

See "Statutes interpreted" section.

Plain language analysis:
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 FRSL 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 permitee'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 permitee'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 permitee'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 permitee'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 permitee's requirements under state law relating to the initial and renewal application process, failure to pay fees, and enforcement.

Summary of, and comparison with, existing or proposed federal regulations:

There appear to be no proposed or existing federal regulations relating to fees or general operating requirements for the businesses operating.

Comparison with rules in adjacent states:

Illinois:
The State of Illinois has very little centralized environmental health regulatory infrastructure. Illinois has no state fee structure for providing environmental health regulatory services such as restaurant, lodging, or public pool inspections. Each local public health jurisdiction may create its own environmental health services fee structure. Given the different regional levels of affluence and local costs of living in Illinois, local environmental health regulatory fees vary widely. For this reason, it is difficult to compare Wisconsin's state FSRL fees to similar fees in Illinois.

According to the Illinois Department of Public Health's website (www.idph.state.il.us), "Currently, [the Illinois Department of Public Health] IDPH provides very limited direct environmental health services through some of its regional offices. IDPH staff only respond to complaints about food service establishments; no routine inspections are provided to promote quality food handling practices in restaurants."

Iowa:
In Iowa, food service establishments, lodging facilities, and vending machines are regulated by the Iowa Department of Inspections and Appeals' Food and Consumer Safety Bureau. Pools and water attractions and tattooing and body piercing are regulated by the Iowa Department of Public Health.

Food Service Establishment Fees. The Iowa Department of Inspections and Appeals (IDIA) raised their environmental health service fees on July 1, 2007. The IDIA sets fees according to a food service establishment's (restaurant's) annual gross sales. According to Judy Harrison, Chief of the Food and Consumer Safety Bureau, food service establishments must provide proof (i.e. quarterly financial reports) of gross sales or they will be charged the highest fee.

Iowa and Wisconsin based their food service establishment fees structures on very different principles: food establishment annual gross sales versus risk of food-borne illness due to food preparation complexity. Iowa's existing fee schedule and Wisconsin's proposed schedule are presented side-by-side below. Although the basis for the fee schedules is quite different, Wisconsin's proposed fees are in relatively the same range as Iowa's fees for food service establishments.

Iowa's 2007 Food Service Fee Schedule		**Wisconsin's Proposed Food Service Fee Schedule**		
Food Service Establishment Annual Gross Sales	**Fee**	**Food Service Establishment Type**	**Proposed 2010 Fee**	**Proposed 2012 Fee**
$1 to <$50,000	$67.50			
$50,000 to <$100,000	$114.50	Restaurant, Pre-Packaged	$90.00	$105.00
$100,000 to <$250,000	$236.25	Restaurant, Simple	$195.00	$230.00
$250,000 to <$500,000	$275.00	Restaurant, Moderate	$300.00	$330.00
≥$500,000	$303.75	Restaurant, Complex	$430.00	$540.00
Mobile Food Unit	$27.00			
Temporary Food	$33.50	Temporary Restaurant	$165.00	$170.00

Establishment				
Farmer's Market	$100.00			

Lodging Fees. Iowa's fees for lodging facilities are based on the number of guest rooms per facility. Iowa does not differentiate among tourist rooming houses (TRHs), bed and breakfasts (B&Bs) and hotels. Wisconsin sets different fees for TRHs, B&Bs and hotels. In Wisconsin, hotels have base fees with proposed additional, per-room fee. Although the different bases for Iowa's and Wisconsin's lodging fees make a comparison difficult, the respective current and proposed lodging fees are presented below.

Iowa's 2007 Lodging Fee Schedule		**Wisconsin's Proposed Lodging Fee Schedule**		
Number of Lodging Facility Guest Rooms	**Fee**	**Lodging Type**	**Proposed 2010 Fee**	**Proposed 2012 Fee**
1 – 15 Rooms	$27.00	Bed and Breakfast	$100.00	$110.00
16 – 30 Rooms	$40.50	Tourist Rooming House	$110.00	$110.00
31 – 75 Rooms	$54.00			
76 – 149 Rooms	$57.50	Hotel, 5 – 30 Rooms	$165.00	$205.00
≥150 Rooms	$101.25	Hotel, 31 – 99 Rooms	$260.00	$280.00
		Hotel, 100 – 199 Rooms	$330.00	$355.00
		Hotel, 200 + Rooms	$400.00	$490.00

Vending. Iowa and Wisconsin take different approaches to ensuring the safety of food in vending machines – making a comparison of these fees very difficult. The respective food vending fees are as follows:

Iowa's 2007 Vending Fee Schedule		**Wisconsin's Proposed Vending Fee Schedule**		
Units	**Fee**	**Unit or Vending Type**	**Proposed 2010 Fee**	**Proposed 2012 Fee**
		Vending Machine Commissary	$230.00	$280.00
		Vending Machine Storage	$150.00	$215.00
		Vending Machine Operator	$125.00	$125.00
Vending Machine (First Machine)	$20.00	Vending Machine Sticker	$8.00	$9.00
Each Additional Vending Machine	$5.00			

The department was not able to compare its fees for campground and recreational and educational camps with Iowa's fees.

Michigan:

Michigan has no statewide structure or schedule for environmental health regulatory service fees. Similarly, Michigan state agencies do not provide environmental health services. Each local jurisdiction (typically county) in Michigan is required to have a local public health agency and each local agency must provide environmental health regulatory services. Fees are locally set. With each fee, a surcharge is remitted to the state for maintenance of a centralized office to provide oversight and technical support.

In Michigan, differing levels of affluence and local costs of living result in widely varying local fee structures. The State's annual surcharge fees are developed and are raised each year based on specific cost-of-living indexes. A letter, dated August 31, 2007, from the Michigan Department of Agriculture to all Local Health Departments detailed the 2008/2009 state adjustments to food service license fees. The state surcharges on local health departments fees will be as follows:

Michigan's 2008/2009 Additional State Fees ("Surcharges") onto Local Health Department Fees	
Pool or Pool Feature Type	**Fee**
Food Service Establishment	$27.00
Food Service Establishment, Non-Profit [501(C)(3)]	$0.00/$5.00
Mobile Food Establishment	$27.00
Mobile Food Commissary	$27.00
Temporary Food	$8.00
Temporary Food, Non-Profit [501(C)(3)]	$5.00
Special Transitory Food Unit	$40.00
Special Transitory Food Unit, Non-Profit [501(C)(3)]	$5.00
Schools	$27.00
Vending Machine Location	$3.00

In Michigan, local public health agencies collect annual environmental health regulatory service license fees. The state surcharge is added to the local fee and is remitted to the state. Local food service fees are based on facility size (seating).

Minnesota:
Minnesota maintains a fee schedule and environmental health regulatory service system very similar to Wisconsin. Chapter 157 of the Minnesota Statute entitled, "Food, Beverage, and Lodging Establishments", contains Minnesota's 2007 fee schedule. As in Wisconsin, local public environmental health regulatory agencies may, and often do, assess higher fees. Minnesota's fees in comparison to Wisconsin's proposed 2008 fees are as follows:

Minnesota's 2007 Environmental Health Service Fee Schedule	
License Type	**Fee**
Annual Hospitality Fee (All food, beverage and lodging establishments)	$35.00
Annual Base Fee (All food, beverage and lodging establishment except Special Event Food Stands)	$150.00
Annual Base Fee (Special Event Food Stand)	$40.00
Food Service, Limited Menu/Pre-Packaged*	$235.00

Wisconsin's Proposed Food Service Fee Schedule		
License Type	**Proposed 2010 Fee**	**Proposed 2012 Fee**
Restaurant, Pre-Packaged	$90.00	$105.00

Food Service , Small/Simple*	$285.00	Restaurant, Simple	$195.00	$230.00
Food Service, Medium/Moderate*	$345.00	Restaurant, Moderate	$300.00	$330.00
Food Service, Large/Complex*	$545.00	Restaurant, Complex	$430.00	$540.00
Temporary/Mobile Food Carts/Stands*	$240.00	Temporary Restaurant	$165.00	$170.00
Certified Food Manager	$28.00	Certified Food Manager	$10.00	$10.00
School, Second Annual Inspection	$300.00			
Lodging*	$185.00	Hotel, 5 – 30 Rooms	$165.00	$205.00
Lodging (per sleeping accommodation unit, not to exceed $800)	$8.00	Hotel, 31 – 99 Rooms	$260.00	$280.00
		Hotel, 100 – 199 Rooms	$330.00	$355.00
		Hotel, 200 + Rooms	$400.00	$490.00
Operating without a License (mobile food unit, seasonal or special event food stand)	$50.00	Operating without a License	$749.00	$749.00
Operating without a License for ≤30 days (restaurant, food cart, lodging establishment)	$100.00	Operating without a License	$749.00	$749.00
Operating without a License for >30 days (restaurant, food cart, lodging establishment)	$300.00	Operating without a License	$749.00	$749.00

*Includes Annual Hospitality Fee and applicable Annual Base Fee

In almost every license type, the environmental health regulatory service fees assessed by the Minnesota Department of Health exceed those proposed by the Wisconsin Division of Public Health.

Summary of factual data and analytical methodologies:

The department developed the proposed fees by researching demographic trends, economic growth, the number of regulated establishments, environmental health regulatory staffing levels, and operating costs. The proposed fees and related administrative codes were established in collaboration with representatives of the regulated industry and its small businesses. The department's collaborative efforts were intended to ensure that any regulatory burdens and fiscal impacts were minimized. In many cases, the department and the collaborating regulated industry representatives replaced flat fees (fees not based on facility size, complexity or risk) with a series of graduated fees that were differentiated according to facility size, complexity and public health risk. From an evaluation of past and present conditions, the department developed projections for future workloads and operating costs. Operating expenses for SYF 2010 were used as the benchmark for the revenue neutral fee increases. The department relied on all of the following sources to determine the impact the proposed fees and rules may have on small businesses:

- The 2002 Economic Census – Wisconsin Geographic Series, which is compiled by the U.S. census bureau every five years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin.

- Criteria adopted by the department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the department's proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to the department's criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of this rulemaking, 2007 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2007 is 2.8 percent.

- Records maintained in the department's Digital Health Department Field Licensing and Inspection Program (FLIP) on the regulated entities, as of August 2007. This data was used to determine the number of entities licensed or certified by the department or its agents.

- An August 10, 2005, press release (Scott Larrivee, Public Information Officer) from the Wisconsin Department of Administration, entitled *Wisconsin Population Continues to Rise,* that states "Estimates released by the Department of Administration's Demographic Services Center today show a four percent increase in Wisconsin's population since the 2000 U.S. Census." Over a five-year period, the four percent increase represented an average population growth of 0.8% per year. Because the department had no historical data on the rate of increase of regulated establishments, the department determined that the number of regulated facilities will grow at a rate roughly equivalent to the growth of Wisconsin's population. Therefore, for the purpose of projecting programmatic inspection loads and eventual fee revenue, regulated establishment growth was projected at 0.8% per year.

- Inflation rates from the Bureau of Labor Statistics for a 20 year period from 1987 through 2007, for use in projecting future department operating costs.

- Department data regarding historical staffing levels of department environmental health inspectors during the period 1999 through 2007. The following are the results.

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
#Inspectors	26	26	25.75	26	25	24	23.5	22	22

- W
age increase data from the Wisconsin Science Professionals (WSP). Additional wage increase data was obtained from the State of Wisconsin Office of State Employment Relations' (OSER) *Compensation Plan 2005-2007*, to assess the influence of wage increases on program operating costs and to accurately project future operating costs. The WSP provided the FSRL program with draft *Wage Adjustment Summaries, 1989 through 2003-05 Contracts*. The summary, dated January 2006, was prepared by Marie Stewart. From the WSP and from OSER data, the FSRL program determined that, for the period 1987 through 2007, the wages of FSRL program staff rose an average of 2.3% per year. In its November 2007 *WSP Bargaining Bulletin*, the WSP referenced an October 2007 presentation by the union to the Wisconsin legislature's Joint Committee

on Employment Relations. The presentation highlighted the "Forgotten 8" job classifications – which includes Environmental Health Specialists and Public Health Sanitarians – whose wages have not kept pace with similar or identical classifications in neighboring states. The WSP discovered the following average hourly pay differentials for Environmental Health Specialists and Public Health Sanitarians between Wisconsin and neighboring Midwestern states. In each case, the hourly wages of Wisconsin Environmental Health Specialists and Public Health Sanitarians, as shown below, trailed behind those of the colleagues in neighboring midwestern states.

Classification	Environmental Health Specialist – Advanced	Environmental Health Specialist	Public Health Sanitarian – Advanced	Public Health Sanitarian - Senior
Average Wisconsin Hourly Pay Differential to Neighboring Midwestern States:	-$6.16	-$3.35	-$5.56	-$5.18

- Standards published in the draft *Voluntary National Retail Food Regulatory Program Standards* (January 2005) published by the U.S. Food and Drug Administration (FDA) which includes recommendations on resource and staffing levels. The FDA in Standard No. 8 Program Support and Services, recommends staffing levels of one full-time staff devoted to food for every 280 – 320 inspections performed to determine an estimate or recommended levels of inspections.

- Department data on the number of inspections performed by department inspectors. The department determined that approximately 30% of licensed facilities will require reinspection each year. Therefore, inspectors will perform 1.3 annual inspections per facility. Using the FDA recommended level of 280 – 320 inspections per inspector; each inspector should have a workload of 215 – 246 establishments. The department determined that its workforce of 22 inspectors (as of August 2007) had a workload of 734 licenses establishments per department inspector. This workload is three times higher than that recommended by the FDA.

- Time study data of state and local agent health department inspectors, conducted by the department in Summer 2007. The study sought to determine the amount of time that was spent by a representative group of inspectors on the categories of food safety and recreational licensing licenses. In the survey, the department asked inspectors to identify the amount of time (as percent) they spent on restaurants, schools (food service inspections), lodging, campgrounds, public pools and water attractions, campgrounds, vending machines and body art (tattooing and piercing). The study determined that inspectors were allocating their time in the following manner:

Category	Restaurants	Schools (Food Service)	Lodging	Pools & Water Attractions	Campgrounds	Vending Machines	Body Art

% of Time	52%	8%	18%	8%	6%	1%	7%

In meetings with trade associations representing sectors of the regulated community, the trade associations sought to have licensing and inspection fees based on the time required to perform the inspections. Therefore, these time study data were used as the basis of allocating the FSRL program operating costs to the various regulated community sectors

- Fee data from the FDA, the Centers for Disease Control and Prevention, and state and local public health agencies in California, Kentucky, Massachusetts, Ohio, Oregon, and West Virginia. The data revealed no single trend or set of principals upon which most environmental health regulatory fee structures are based. Jurisdictions in general base their fees on facility risk, facility size, gross revenue, inspection time, programmatic costs, flat fees or various combinations of those factors.

- The Wisconsin Fee Structure Revision Workgroup, a workgroup assembled by the department to assist the department in developing the proposed fees and rules. The following individuals were members of the workgroup. The Committee met formally on September 11, 2007 and November 15, 2007. Informal meetings and conversations were held in between meetings:

Name	Office	Organization
Susan Quam	Executive Director	Wisconsin Restaurant Association
Peter Madland	Executive Director	Tavern League of Wisconsin
Tricia Pugal	President, Chief Executive Officer	Wisconsin Innkeepers Association
Kris Ullmer	Administrator	Wisconsin Bed & Breakfast Association
Lori Severson	Executive Director	Wisconsin Association of Campground Owners
Andrea Yenter	Camp Operations Manager	Wisconsin Lions Camp
Patrick Finnegan	Aquatics Director	Chula Vista Resort
Chet Gerlack	Executive Director	Association of Wisconsin Tourism Attractions
Cliff May	Owner	In Your Face Tattooz
Jeff Parks	President & Chief Operating Officer	CL Swanson (Vending)
Dale Grosskurth	Environmental Health Director	Marathon County Health Department
Tim Banwell	Environmental Health Director	Rock County Health Department
Jeff Kindrai	Health Officer	Grant County Health Department
Susan Lorenz	Health Officer	Columbia County Division of Health
Carol Drury	Sanitarian	Wisconsin Division of Public Health
Scott	Program Manager – Campgrounds,	Wisconsin Division of Public Health

Vesely	Body Art	
James Kaplanek	Section Chief	Wisconsin Division of Public Health
David Pluymers	Program Manager – Recreational Waters	Wisconsin Division of Public Health

- Department data on existing and potential local health department agents to ascertain the number of local health departments that would begin as agents of the department and deliver environmental health service delivery in SFY 2008 and 2009. Educated estimates were made regarding the number of additional local public health jurisdictions that would provide environmental health regulatory services in subsequent years. The current and projected number of state and local agent health department licensed facilities were as follows:

State Fiscal Year	Total Number of Facilities*	Number of DPH Inspected Facilities	Number of Agent Local Public Health Department Inspected Facilities
2006			
2007**	32,256	16,154	16,102
2008	32,514	14,525	17,989
2009	32,774	13,471	19,303
2010	33,036	13,207	19,829
2011	33,301	12,939	20,362
2012	33,567	12,665	20,902
2013	33,836	12,386	21,450
2014	34,106	12,102	22,005
2015	34,379	11,812	22,567
2016	34,654	11,517	23,137

Assumptions:

* Projected 0.8% growth per year.

** Count of facilities in FLIP on 7/23/07.

In SFY 2008, Sauk, Juneau, Adams, Franklin Counties will become Agent LPHDs.

In SFY 2009, Vernon, Richland, Grant, Iowa, Lafayette and Crawford Counties will become Agent LPHDs.

After SFY 2009, 2.5 new Agent LPHDs per year with an average of 362.55 facilities per LPHD.

Analysis and supporting documents used to determine effect on small business:

The FSRL program provides licensing and inspection regulatory services for restaurants, lodging, public pool and water attraction, body art and vending establishments. The state's service delivery is supported entirely by program revenue through licensing, inspection and other regulatory service fees. The proposed changes to the fee schedules contained in HFS 173 -Tattooing and Body Piercing; HFS 175 – Recreational and Educational Camps; HFS 178 – Campgrounds; HFS 195 – Hotels, Motels and Tourist Rooming Houses; HFS 196 – Restaurants; HFS 197 – Bed and Breakfast Establishments; and HFS 198 – Vending of Food will increase the fees for environmental health regulatory service delivery for state-licensed establishments. In order to better sustain the program and ease the impact of increases fees, the FSRL program has proposed a two-phase fee increase. An initial fee increase will go into effect in SFY 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 proposed fee increases should raise FSRL program revenue to a level where, for an approximately two-year period, the program's revenue will support program operating expenses.

Despite losing permanent full-time employee positions and keeping operating costs increases at a level lower than that of inflation, current program fee revenue is not adequate to support the FSRL program. The proposed fee increases will allow the FSRL program to once again cover its operating costs.

The impact of the proposed fee increases on small businesses will be varied. The proposed fees schedules generally reflect a typical increase of $20 to $100 for an annual operating license. Most FSRL fees have not kept pace with the rate of inflation for the past several years and, in general, the current and proposed annual license fee burdens are small. The proposed fees will increase operating costs for small businesses. However, the annual impact of most fees is small – particularly when evaluated in respect to the rate of inflation. The proposed fee increases will be at a level well below the revenue and expense increases brought about by the change in the 2007 consumer price index of 2.8%.

Based on input from regulated industry representatives, the financial burden will be less on those businesses that comply with state codes and act to protect public health and safety. A greater fiscal burden will be borne by those establishments that require repeated reinspections and operate without licenses. Small business revenues should not be impacted by these fee increases.

The direct impact of the proposed fee changes on businesses is limited to the respective license or permit fees and fees for preinspections. Licenses and the associated fees are required under state law. Licensing and permit fees generally help the department to off-set the required annual inspections and consulting activities of the regulated entities by the department.

The preinspection fee reflects the department's cost of the activities performed by department staff to help an entity achieve compliance with applicable statutes and rules for department licensure. A preinspection by the department may include, but is not limited, to a review of an entity's site and operational plans, multiple on-site inspections, and unlimited consultation periods. The legislature, under the authorizing statutes, requires the department to conduct at least one preinspection of an establishment before the department issues a license to the establishment and requires the department to establish, by rule, fee costs of the preinspection. The preinspection and resulting preinspection fee is a one-time only fee charged to applicants for a new initial license to operate an establishment. The preinspection requirement and resulting fee does not affect licensed operators, unless changing to a new establishment.

The proposed reinspection fee, fee for late renewal, fee for operating without a license (or in the case of restaurant, a fee for operating without a certified food manager) will only affect entities found by the department to be out of compliance with state law or the department's administrative rules. For example, an entity may be assessed a reinspection fee if upon a routine inspection or complaint investigation, the entity is found to have a violation that can affect public health and safety causing a follow-up inspection to determine whether the violation has been corrected as ordered. The newly created reinspection fee paid by deficient operators helps to minimize the programmatic fee increases on code-compliant operators.

The proposed special condition inspection fee will only affect non-licensed entities. As part of the department's general responsibility for oversight of public health, FSRL staff currently 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

department regulated facilities, and food safety inspections at schools participating in the NSLP or SBP.

At current fee revenue levels, the department projects a program deficit of $699,540 in SFY 2009 that will increase to $1,799,056 in SFY 2010, and projected to continue to increase each state fiscal year unless the fee changes proposed in this order are implemented. If this occurs, the department would be forced to reduce staff, which would lead to less frequent inspections, and impede public health and safety.

To maintain revenue sufficient to conduct the department's public health regulatory activities for SFY 2010 through SFY 2012, the department proposes to increase current fees and create new fees. To ease the impact of increases fees, the FSRL program proposes a two-phase fee increase. A fee change will go into effect in SFY 2010 and a second, and generally smaller fee increase will go into effect in SFY 2012. Fee information specific to the regulated entities follows.

HFS 173 – Tattoo and Body Piercing

Proposed fees for tattoo and body piercing establishments
for SFY 2010 (applicable for licenses issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for licenses issued on or after April 1, 2011)

Business Category	Current Fee	Proposed SFY 2010 Fee	Difference from Current to 2010 Proposed		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee	
			Amount			Amount	
Tattoo or Body Piercing License Fee	$100	$125	$25		$135	$10	
Tattoo or Body Piercing Preinspection Fee	$75	$240	$165		$255	$15	
Tattoo or Body Piercing - First Reinspection Fee	$0	$113	$113		$135	$22	
Tatoo or Body Piercing - Second and Subsequent Reinpsection Fee	$0	$150	$150		$180	$30	
Tattoo and Body Piercing (Combined) License Fee	$ 150	$ 205	$ 55		$ 220	$ 15	
Tattoo and Body Piercing (Combined) Preinspection	$ 75	$ 375	$ 300		$ 400	$ 25	
Tattoo and Body Piercing (Combined) First ReInspection	$0	$180	$180		$221	$41	
Tatoo and Body	$0	$ 240	$240		$ 295	$ 55	

Piercing (Combined) Second Reinpsection							
Tattoo and/or Body Piercing Practitioner's License	$ 50	$ 50	$ 0		$ 60	$ 10	
Tattoo and/or Body Piercing Temporary Event License Fee (per event)	$ 100	$ 100	$ 0		$ 100	$ 0	

Late Fee	Fee for Operating Without a License	Duplicate Fee	Fee for special condition inspections
$85	$749 ($150 for practioners)	$15	$175

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.

The department regulates tattooists, tattoo establishment, body piercers, and body piercing establishments, and combined tattoo and body piercing establishments under ch. HFS 173. The department does not regulate establishments that engage only in ear piercing.

Data obtained from the department's FLIP database indicate that the department licenses approximately 38 establishments that perform tattooing or body piercing and 45 establishments that perform both tattooing and body piercing, for a total of 83 licensed establishments. The department's data also shows that approximately 837 individuals are licensed to practice in these establishments. These industries are included under the NAICS industry code 812199. According to the NAICS data, the total gross annual receipts for the 226 establishments included under industry code 812199 is $36,514,000 making average gross annual receipts for 226 establishments to be $161,566. NAICS reports that the total number of paid employees in these 226 establishments is 1,273 for an average of 5.6 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 173, are small businesses as that term is defined under s. 227.114, Stats.

The proposed license fee for these businesses for the 2010 and 2012 state fiscal years, represent for either a tattoo or body piercing establishment the equivalent of an annual increase of approximately $3 since the fee was established in 1998. For a combined tattooing and body piercing establishment the proposed fee is equivalent to an annual increase of approximately $6 since the fee was established in 1998.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety, and to the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a license would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate license is assessed only if the licensee requests a duplicate license. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on tattoo and body piercing establishments.

HFS 175 – Recreational and Educational Camps

Proposed fees for recreational and educational camps
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

Permit type	Current fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee Amount		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee Amount	
Recreational-Educational Camps	$200	$440	$240		$505	$65	
Rec-Ed Camps Preinspection	$0	$1,050	$1,050		$1,200	$150	
Rec-Ed Camps - First Reinspection	$0	$473	$473		$540	$67	
Rec-Ed Camps - Second and Subsequent Reinspection	$0	$630	$630		$720	$90	

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition inspections
$85	$749	$15	$175

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

The department regulates recreational and educational camps under ch. HFS 175. Often, these camps are run by religious, educational, community service and/or other not-for-profit organizations. Recreational and educational camps do not include overnight planned programs

at permitted hotels or motels or sports team tournaments or training camps. Although there is no formal data, there appears to be little diversity in the size of Wisconsin's recreational and educational camp establishments. Anecdotally, most camps are located in rural or wooded settings and provide seasonal camping experiences to groups of children and young adults.

Data obtained from the department's FLIP database indicates that the department permits approximately 256 establishments that provide recreational and educational services. Roughly 35 of these camps are inspected by department inspectors. The other 221 camps are inspected and permitted by local agent public health departments.

This industry is included under the NAICS industry code 721214. According to the NAICS data, the total gross annual receipts for the 124 establishments included under industry code 721214 is $70,154,000 making average gross annual receipts for 124 establishments reported by NAICS to be $565,758. NAICS reports that the total number of paid employees in these 124 establishments is 843 for an average of 6.8 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 175, are small businesses as that term is defined under s. 227.114, Stats.

The proposed permit fee for these businesses for the 2010 and 2012 state fiscal years represent the equivalent of an annual increase of approximately $28 per year since the fees were last revised in 2002.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new camp. The amount of the increase represents the complexity of the services needed and provided to open a new camp and the value of the services to public health and safety and the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a permit would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the licensee requests a duplicate permit. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on recreational and educational camps.

HFS 178 – Campgrounds

Proposed fees for campgrounds
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

Permit type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee Amount		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee Amount	
Campground Fee: 1-25 Sites	$106	$150	$44		$175	$25	

Campground Preinspection: 1-25 Sites	$0	$335	$335		$380	$45	
Campground - First Reinspection: 1-25 Sites	$0	$158	$158		$180	$22	
Campground -Second and Subsequent Reinspection: 1-25 Sites	$0	$210	$210		$240	$30	
Campground Fee: 26-50 Sites	$147	$215	$68		$250	$35	
Campground Preinspection: 26-50 Sites	$0	$495	$495		$565	$70	
Campground - First Reinspection: 26-50 Sites	$0	$225	$225		$263	$38	
Campground - Second and Subsequent Reinspection: 26-50 Sites	$0	$300	$300		$350	$50	
Campground Fee: 51-100 Sites	$175	$265	$90		$305	$40	
Campground Preinspection: 51 -100 Sites	$0	$610	$610		$700	$90	
Campground – First Reinspection: 51-100 Sites	$0	$278	$278		319	41	
Campground – Second and Subsequent Reinspection: 51-100 Sites	$0	$370	$370		$425	$55	
Campground Fee: 101-199 Sites	$195	$310	$115		$355	$45	
Campground Preinspection: 101-199 Sites	$0	$725	$725		$830	$105	
Campground – First Reinspection: 101-199 Sites	$0	$330	$330		$375	$45	
Campground – Second and Subsequent Reinspection: 101-199 Sites	$0	$440	$440		$500	$60	
Campground Fee: 200 + Sites	$225	$355	$130		$410	$55	
Campground Preinspection: 200+ Sites	$0	$840	$840		$965	$125	

Campground First Reinspection: 200+ Sites	$0	$379	$379		$435	$56	
Campground Second and Subsequent Reinspection: 200 + Sites	$0	$505	$505		$580	$75	
Special Event Campground: 1-25 Sites	$106	$150	$44		$175	$25	
Special Event Campground: 26-50 Sites	$147	$215	$68		$250	$35	
Special Event Campground: 51-100 Sites	$175	$265	$90		$305	$40	
Special Event Campground: 101-199 Sties	$195	$310	$115		$355	$45	
Special Event Campground: 200+ Sites	$225	$355	$130		$410	$55	

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition inspections
$85	$749 ($150 for practioners)	$15	$175

The department regulates campgrounds under ch. HFS 178. The range of businesses regulated by HFS 178 – Campgrounds includes those establishments where a parcel or tract of land is designed, maintained, or intended for non-permanent overnight use by temporary dwellings that are no larger than 400 square feet.

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.

Data obtained from the department's FLIP database indicates approximately 429 campgrounds with 1-25 camp sites, 259 campgrounds with 26-56 campsites, 202 campgrounds with 51-100 campsites, 130 campgrounds with 101-199 campsites, and 69 campgrounds with 200 or more campsites. Some campgrounds are owned, operated or franchised by large companies with national scope while other campgrounds are local businesses owned and operated by individuals. Roughly 63% of permitted campgrounds have 50 or fewer camp sites. Slightly more than 37% of the campgrounds have more than 50 camp sites.

This industry is included under theNAICS industry code 721211. According to the NAICS data, the total gross annual receipts for the 148 establishments included under industry code 721211 is $50,293,000 making average gross annual receipts for the 148 establishments reported by

NAICS to be $339,818. NAICS reports that the total number of paid employees in these 148 establishments is 344 for an average of 2.32 employees per establishment.

The difference in the department and NAICS data may be the result of the U.S. Census not identifying some campgrounds, the non-reporting of some campgrounds, or ownership of multiple campgrounds by a single owner.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely most of the businesses regulated under ch. HFS 178, are small businesses as that term is defined under s. 227.114, Stats.

Based on the number of campsites per campground, the proposed permit fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Campgrounds with 1-25 campsites, the equivalent of an annual increase of approximately $6 per year since the fees were last revised in 2002;
- Campgrounds with 26-50 campsites, the equivalent of an annual increase of approximately $9 per year since the fees were last revised in 2002;
- Campgrounds with 51-100 campgrounds, the equivalent of an annual increase of approximately $12 per year since the fees were last revised in 2002;
- 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;
- 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.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking an initial permit or to operate a new campground. The amount of the increase represents the complexity of the services needed and provided to open a new camp and the value of the services to public health and safety and the person seeking a permit.

The reinspection fee, fee for late renewal, and fee for operating without a permit would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the licensee requests a duplicate permit. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on campgrounds.

HFS 195 – Hotels, Motels and Tourist Rooming Houses

Proposed fees for hotels, motels and tourist rooming houses
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

License type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed	Proposed 2012 Fee	Difference from SFY 2010 Fee to SFY 2012

			Fee Amount			Proposed Fee Amount	
Tourist Rooming House	$85	$100	$15		$110	$10	
TRH Preinspection	$125	$280	$155		$300	$20	
TRH – First Reinspection	$0	$120	$120		$128	$8	
TRH – Second and Subsequent Reinspection	$0	$160	$160		$170	$10	
Hotel Base Fee 5-30	$124	$165	$41		$205	$40	
Hotel 5-30 Preinspection	$125	$380	$255		$480	$100	
Hotel 5-30 First Reinspection	$0	$173	$173		$218	$30	
Hotel 5-30 Second and Subsequent Reinspection	$0	$230	$230		$290	$60	
Hotel Base Fee 31-99	$190	$260	$70		$280	$20	
Hotel 31-99 Preinspection	$200	$615	$415		$665	$50	
Hotel 31-99 First Reinspection	$0	$274	$$274		$300	$26	
Hotel 31-99 Second and Subsequent Reinspection	$0	$365	$365		$400	$35	
Hotel Base Fee 100-199	$250	$330	$80		$355	$25	
Hotel 100-199 Preinspection	$275	$795	$520		$795	$0	
Hotel 100-199 First Reinspection	$0	$353	$353		$379	$26	
Hotel 100-199 Second and Subsequent Reinspection	$0	$470	$470		$505	$35	
Hotel Base Fee 200+	$300	$400	$100		$490	$90	
Hotel 200+ Preinspection	$350	$950	$600		$1,185	$235	
Hotel 200+ First Reinspection	$0	$431	$431		$525	$94	
Hotel 200+ Second and Subsequent Reinspection	$0	$575	$575		$700	$125	

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition

			inspections
$85	$749	$15	$175

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

The department regulates hotels, motels, and tourist rooming houses under ch. HFS 195. Many tourist rooming houses are owned by individuals or families who rent their seasonal cottages or homes to tourists when the cottage or home is not used by the owner. In addition, many small hotels and motels operate in Wisconsin's northern tourist areas on a seasonal basis. Based on department data and an anecdotal understanding of the regulated community, there appears to be significant diversity in the size of Wisconsin's hotel, motel and tourist room house businesses. The businesses range from large luxury hotels owned by national or international corporations to single tourist rooming houses owned by families or individuals.

Data obtained from the department's FLIP database indicates that the department permits approximately 5,011 establishments. Department inspectors inspect 50% of these establishments. The other 50% are inspected and permitted by local agent public health departments. Almost 45% of the businesses regulated by HFS 195 are tourist rooming houses. Roughly 40% of the businesses are hotels or motels with between 5 and 99 guest rooms. Slightly more than 5% of the businesses are hotels or motels with over 100 guest rooms.

Except for tourist rooming houses, this industry is included under the NAICS industry code 721110. Tourist homes are included under NAICS industry code 721199. According to the NAICS data, the total gross annual receipts for the 1,261 establishments included under industry code 721110 (and 721199) is $1,154,024,000, making average gross annual receipts for 1,261 establishments reported by NAICS to be $915,166. NAICS reports that the total number of paid employees in these 1,261 establishments is 25,255 for an average of 20.19 employees per establishment.

The difference in number of establishments between the department's data and the 2002 U.S. Census data is probably due to numerous tourist rooming houses not being counted. Many tourist rooming houses are owned by individuals or families who rent their seasonal cottages or homes to tourists when the owner does not use the cottage or home. In addition, many small hotels and motels operate in Wisconsin's northern tourist areas on a seasonal basis. They may have been missed in the national census process.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that the majority of the businesses regulated under ch. HFS 195, are small businesses as that term is defined under s. 227.114, Stats.

Based on the number of rooms per establishment, the proposed permit fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- 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;

- 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;
- 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;
- 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;
- 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.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided to open a new establishment and the value of the services to public health and safety and the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a permit would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the licensee requests a duplicate permit. The special condition inspection fee would only be charged to un-permitted persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on lodging establishments.

HFS 196 – Restaurants

Proposed fees for restaurants
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

Permit type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee Amount		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee Amount	
Pre-Packaged Restaurant	$75	$90	$15		$105	$15	
Pre-Packaged – First Reinspection	$0	$86	$86		$98	$12	
Pre-Packaged – Second and Subsequent Reinpsection	$0	$115	$115		$130	$15	
Pre-Packaged Preinspection	$125	$175	$50		$195	$20	
Simple Restaurant	$148	$195	$47		$230	$35	
Simple – First Reinspection	$0	$199	$199		$240	$41	

Simple – Second and Subsequent Reinspection	$0	$265	$265		$320	$55	
Simple Preinspection	$150	$430	$280		$520	$90	
Moderate Restaurant	$210	$300	$90		$330	$30	
Moderate – First Reinspection	$0	$319	$319		$353	$34	
Moderate – Second and Subsequent Reinspection	$0	$425	$425		$470	$45	
Moderate Preinspection	$250	$705	$455		$770	$65	
Complex Restaurant	$290	$430	$140		$540	$110	
Complex – First Reinspection	$0	$458	$458		$578	$120	
Complex – Second and Subsequent Reinspection	$0	$610	$610		$770	$160	
Complex Preinspection	$350	$1,020	$670		$1,285	$265	
Temporary Restaurant Fee	$100	$165	$50		$170	$20	

Late Fee	Fee for Operating Without a Permit	Fee for Operating Without a Certified Food Manager	Duplicate Fee	Fee for special condition inspections
$85	$749	$150	$15	$175

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

The department regulates restaurants under ch. HFS 196. The restaurants regulated by the department include food carts, national chains, fast food, pre-packaged food concessions, full service and fine dining restaurants.. The department permits restaurants according to size and complexity of food service.

Data obtained from the department's FLIP database indicates permits issued to approximately 21,837 restaurants. Approximately one quarter of the permitted restaurants are inspected by the department. The food industry are included under the NAICS subsector 722. According to the NAICS data, the total gross annual receipts for the 8,730 establishments included under subsector 722 is $4,917,401,000, making average gross annual receipts for these establishments to be $563,276. NAICS reports that the total number of paid employees in these 8,730 establishments is 158,886 for an average of 18.20 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that at least 10% of the businesses regulated under ch. HFS 196, are small businesses as that term is defined under s. 227.114, Stats.

Based on size and complexity, the proposed permit fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Pre-package restaurants, the equivalent of an annual increase of approximately $3 per year since the fees were last revised in 2002;
- Simple restaurants the equivalent of an annual increase of approximately $7 per year since the fees were last revised in 2002;
- Moderate restaurants the equivalent of an annual increase of approximately $11 per year since the fees were last revised in 2002;
- Complex restaurants the equivalent of an annual increase of approximately $23 per year since the fees were last revised in 2002;
- Temporary restaurants the equivalent of an annual increase of approximately $6 per year since the fees were last revised in 2002;
- DPI (School) Satellite the equivalent of an annual increase of approximately $3 per year since the fees were last revised in 2002;
- DPI (School) Production the equivalent of an annual increase of approximately $11 per year.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or moving to open a new establishment. The amount of the increase

represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a permit, or fees for operating without a certified food operator would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the permittee requests a duplicate permit. The special condition inspection fee would only be charged to un-licensed persons seeking inspection and consultation services from the department.

The proposed fee and rules changes do not have a significant economic impact on restaurants.

HFS 197 – Bed and Breakfast Establishments

Proposed fees for bed and breakfast establishments
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

Permit type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee Amount		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee Amount	
Bed and Breakfast	$65	$100	$35		$110	$10	
B&B Preinspection	$125	$280	$155		$300	$20	
B&B - First Reinspection	$0	$120	$$120		$$128	$8	
B&B – Second and Subsequent Reinspection	$0	$160	$160		$170	$10	

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition inspections
$85	$749	$15	$175

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

The department regulates bed and breakfast establishments under ch. HFS 197. Bed and Breakfast establishments are personal residences that also serve as lodging facilities with 8 or fewer guest rooms and the only meal served to guests is breakfast. Bed and breakfast establishments may have no more than 20 guests per night and those guests may not stay longer than 10 nights per stay.

Data obtained from the department's FLIP database indicates that the department permits approximately 408 establishments. This industry is included under the NAICS industry code 721191. According to the NAICS data, the total gross annual receipts for the 81 establishments included under industry code 721191 is $16,171,000, making average gross annual receipts for 81 establishments to be $199,642. NAICS reports that the total number of paid employees in these 81 establishments is 391 for an average of 4.83 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 197 are small businesses as that term is defined under s. 227.114, Stats.

The proposed permit fee for these businesses for the 2010 and 2012 state fiscal years represent the equivalent of an annual increase of approximately $4 per year since the fees were last revised in 2002.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or moving to open a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a permit would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the permittee requests a duplicate permit. The special condition inspection fee would only be charged to un-permitted persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on bed and breakfast establishments.

HFS 198 – Vending of Food

Proposed fees for vending of food
for SFY 2010 (applicable for permits issued from April 1, 2009 through March 31, 2011) and
for SFY 2012 (applicable for permits issued on or after April 1, 2011)

Permit type	Current Fee	Proposed SFY 2010 Fee	Difference from Current to SFY 2010 Proposed Fee Amount		Proposed SFY 2012 Fee	Difference from SFY 2010 Fee to SFY 2012 Proposed Fee Amount	
Vending Machine Commissary	$175	$230	$55		$280	$50	
Vending Comm Preinspection	$150	$455	$305		$675	$220	
Vending Comm – First Reinspection	$0	252	252		300	48	
Vending Comm – Second and Subsequent	$0	$335	$335		$400	$65	

Reinspection							
Vending Machine Storage	$85	$150	$65		$215	$65	
Vending Mach. Preinspection	$0	$285	$285		$515	$230	
Vending Mach. – First Reinspection	$0	$158	$158		$233	$75	
Vending Mach. – Second and Subsequent Reinspection	$0	$210	$210		$310	$100	
Vending Machine Operator	$100	$125	$25		$125	$0	
Vending Machine Sticker	$6	$8	$2		$9	$1	

Late Fee	Fee for Operating Without a Permit	Duplicate Fee	Fee for special condition inspections
$85	$749	$15	$175

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

The department regulates vending machine operators, vending machines, vending machine commissaries, and vending machine commissary storage under ch. HFS 198.

Data obtained from the department's FLIP database indicate the following permitted facilities: 26 food vending machine commissaries, 83 food vending machine storage facilities, and 170 food vending machine operators. This industry is included under the NAICS industry code 454210. According to the NAICS data, the total gross annual receipts for the 130 establishments included under industry code 454210 is $224,896,000, making average gross annual receipts for 130 establishments to be $1,729,969. NAICS reports that the total number of paid employees in these 130 establishments is 1,880 for an average of 14.5 employees per establishment.

Based on a review of the department's data and a review of the NAICS data from the 2002 U.S. Economic Census for Wisconsin, the department has determined that it is likely that all of the businesses regulated under ch. HFS 198, are small businesses as that term is defined under s. 227.114, Stats.

Based on the type of permit, the proposed permit fee for these businesses for the 2010 and 2012 state fiscal years are as follows:

- Vending machine commissaries, the equivalent of an annual increase of approximately $10 per year since the fees were last revised in 2002;
- Vending machine commissary storage, the equivalent of an annual increase of approximately $12 per year since the fees were last revised in 2002;
- Vending machine operators, the equivalent of an annual increase of approximately $3 per year since the fees were last revised in 2002;
- Vending machine stickers, the equivalent of an annual increase of approximately $.30 per year since the fees were last revised in 2002.

The proposed preinspection fee for these businesses is a one-time only fee for operators seeking initial licensure or to operate a new establishment. The amount of the increase represents the complexity of the services needed and provided and the value of the services to public health and safety and to the person seeking licensure.

The reinspection fee, fee for late renewal, and fee for operating without a permit would not affect entities that are in compliance with state law and applicable administrative rules. The fee for a duplicate permit is assessed only if the permittee requests a duplicate license. The special condition inspection fee would only be charged to un-permitted persons seeking inspection and consultation services from the department.

The proposed fee changes do not have a significant economic impact on persons vending food.

Effects on small business:
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.

Agency contact person:
James Kaplanek, R.S.
Chief
Food Safety and Recreational Licensing Section

Bureau of Environmental and Occupational Health
608-261-8361
kaplajh@dhs.state.wi.us

Place where comments are to be submitted and deadline for submission:
Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. HFS 173.01 to 173.03 is renumbered DHS 173.01 to 173.03 and DHS 173.03 (10) as renumbered is amended to read:

DHS 173.03 (10) "Department" means the Wisconsin department of health ~~and family~~ services.

SECTION 2. DHS 173.03 (11m) is created to read:

DHS 173.03 (11m) “Establishment” means a body-piercing establishment, a tattoo establishment, or combined tattoo and body piercing establishment.

SECTION 3. HFS 173.04 is repealed and recreated to read:

DHS 173.04 Licenses. (1) LICENSE REQUIRED. (a) *Establishments.* 1. No person may operate an establishment until the person has obtained a license from the department or its agent by submitting an application under sub. (3) and paying the applicable fee specified under s. DHS 173.05. A separate license is required for each establishment.

Note: Local health departments that are agents for the department have authority under s. 252.245 (4), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

2. The operator of an establishment shall notify the department or its agent of the operator’s intention to cease operations and shall supply the department with the name and mailing address of any new operator. An establishment license is not transferable. If an operator sells or otherwise transfers ownership or operation of an establishment to another person, a new initial license is required, and the establishment may not be opened to the public until the department has issued a new initial license.

(b) *Practitioner.* No person may tattoo or body pierce another person, use or assume the title of tattooist or body piercer or designate or represent himself or herself as a body piercer unless the person has obtained a license from the department by application made upon a form furnished by the department under sub. (3).

(2) LICENSE DURATION AND RENEWAL. (a) Each establishment and practitioner’s license issued under this chapter shall expire on June 30, except that a license initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each license shall be renewed annually as provided in sub. (3) (b).

(3) LICENSE APPLICATION. (a) *Initial license*. Application for an initial or new practitioner or establishment license shall be made on an application form furnished by the department or its agent and accompanied by all of the following:

1. The applicable fees specified under s. DHS 173.05 and any fees previously due to the department or its agent.

Note: Local health departments that are agents for the department have authority under s. 252.245 (4), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

2. Information, as determined by the department or its agent, indicating that the establishment will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the establishment that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the practitioner application form or an establishment application form, or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal License*. 1. To renew the license of an establishment, the operator shall pay the department, the applicable establishment license fee specified under s. DHS 173.05 before the license expires. If the payment to renew the license of an establishment is not made to the department before the expiration date of the establishment license, the late fee specified under s. DHS 173.05 (2) (c) shall be paid in addition to the license fee.

2. To renew a practitioner's license, the practitioner shall pay the department the fee specified under s. DHS 173.05 before the license expires.

Note: Local health departments that are agents for the department have authority under s. 252.245 (4), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(4) DEPARTMENT AND AGENT ACTION ON LICENSE APPLICATION. (a) The department or its agent shall issue or deny a license within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (3).

(b) Except as provided in ss. 250.041 and 252.241, Stats., the initial issuance, renewal or continued validity of a license issued under this subsection may be conditioned upon the requirement that the licensee correct a violation of this chapter, s. 252.23 or 252.24, Stats., or ordinances adopted under s. 252.245, Stats., within the period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the license is void. No person may operate an establishment or practice as a tattooist or body piercer after the person's license has been

voided under this paragraph, and any person who does may be subject to the penalties under s. 252.25, Stats. A person whose license is voided under this paragraph may appeal the decision under s. DHS 173.08.

(c) The department or its agent may refuse to issue or renew a license to operate an establishment under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of an establishment for which an initial or new license is required under sub. (1).

2. The operator of an establishment has not corrected a condition for which the department or agent has issued a written health or safety–related order.

3. All applicable fees owed to the department or its agent have not been paid, including the license fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the establishment in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The operator, license applicant, or licensee has failed to provide the department or its agent with information required under sub. (3).

6. The operator or license applicant has violated ch. 252, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of an establishment.

(d) The department may refuse to issue or renew a license to practice as a tattooist or body piercer if the practitioner or applicant for a practitioner's license has violated ch. 252, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of an establishment or the practice of tattooing or body piercing.

(e) If the department or its agent denies an application for a license, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 173.08.

(5) VOIDED LICENSE FOR FAILURE TO PAY FEES. If a license applicant, operator, or practitioner fails to pay all applicable fees and processing charges under s. DHS173.05 within 15 days after the license applicant, operator, or practitioner receives notice of an insufficiency under s. DHS 173.05, or within 45 days after the expiration of the license, whichever occurs first, the license is void. An operator or practitioner whose license is voided under this subsection may appeal the decision under s. DHS 173.08. In an appeal concerning a voided license under this subsection, the burden is on the license applicant, operator, or practitioner to show that the entire applicable fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of an establishment, or practice as a tattooist or body piercer, is deemed to be operation or practice without a license and is subject to the fees under s. DHS 173.05 (2) (e) in addition to the fees otherwise due, unless the license applicant, operator, or practitioner meets its burden of proof under this subsection.

(7) DISPLAY OF LICENSE. The operator of an establishment shall display in the establishment, in a place visible to the public, the licenses issued by the department or its agent for the establishment and for all practitioners working in the establishment. A license may not be altered or defaced.

SECTION 4. HFS 173.05 is renumbered DHS 173.10.

SECTION 5. HFS 173.06 is renumbered DHS 173.11.

SECTION 6. HFS 173.07 is renumbered DHS 173.12.

SECTION 7. HFS 173.08 is renumbered DHS 173.13.

SECTION 8. HFS 173.09 is renumbered DHS 173.14.

SECTION 9. HFS 173.10 is renumbered DHS 173.15.

SECTION 10. HFS 173.11 is renumbered DHS 173.16 (intro.) and as renumbered is amended to read:

DHS 173.16 Temporary establishments. (intro.) In addition to requirements under ss. ~~HFS~~ DHS 173.01 to ~~173.10~~173.15 that apply to all ~~tattoo and body piercing~~ establishments, the following requirements apply specifically to temporary establishments:

SECTION 11. HFS 173.12 is repealed.

SECTION 12. HFS 173.13 is renumbered DHS 173.17 and amended to read:

DHS 173.17 State fees. Pursuant to s. 252.245 (9), Stats., a local health department serving as an agent of the department for purposes of administering this chapter shall include a state fee in each fee the agent establishes for a license issued under this chapter. The state fee shall be 10% of the department's license fee established under ~~s. HFS 173.03 (1) or (2)~~s. DHS 173.05 (2) (b) 1., and shall be forwarded to the department.

SECTION 13. DHS 173.05 to 173.09 are created to read:

DHS 173.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 173.05 A shall apply to licenses issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 173.05 B shall apply to licenses issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 252.245 (4), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(2) TYPES OF FEES. (a) *Preinspection fee*. The operator of an establishment shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 173.05 A or B to the department before an initial or new license is issued under s. DHS 173.04.

(b) *License fee*. 1. 'Establishment'. The operator of an establishment shall, pursuant to sub. (1), pay the applicable license fee listed in Table DHS 173.05 A or B to the department for each establishment that the operator applies for a license to operate under s. DHS 173.04 (1) or (2).

2. ‘Practitioner’. A practitioner shall, pursuant to sub. (1), pay the applicable license fee listed in the Table DHS 173.05 A or B to the department.

(c) *Late fee.* If the license fee for a license renewal is not paid before the expiration date of the license, the operator shall pay to the department a late fee of $85.00 in addition to the renewal license fee.

(d) *Reinspection fee*. If the department conducts a reinspection of an establishment under s. DHS 173.06 (1) (b), the operator shall, pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table DHS 173.05 A or B. The department shall assess an additional reinspection fee as listed in Table DHS 173.05 A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 173.06 (1) (b) 4.

(e) *Fees for operating without a license.* An establishment found to be operating without a license shall pay to the department an amount of $749.00, in addition to all applicable fees and any processing charges under s. DHS 173.04 (5). A practitioner found to be practicing without a license shall pay to the department $150, in addition to all applicable fees and any processing charges under s. DHS 173.04 (5).

Note: Any person who willfully violates or obstructs the execution of any state statute or rule, county, city or village ordinance or departmental order under this chapter and relating to the public health, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than $500 or both.

(f) *Duplicate license.* The department shall charge the operator or practitioner, as applicable, $15.00 for a duplicate license.

(g) *Fees for special condition inspections*. For inspection or consultation activities that are not directly related to the department’s licensing responsibilities, the department shall charge the operator or the entity requesting the inspection or consultation $175.00.

Table DHS 173.05 A
Fee Schedule - SFY 2010
For licenses issued April 1, 2009 through March 31, 2011

Type of License	License Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tattoo Establishment	$125	$240	$113	$150
Body Piercing Establishment	$125	$240	$113	$150
Combined Tattoo and Body Piercing Establishment	$205	$375	$180	$240
Practitioner	$50			
Temporary Establishment	$100			

Table DHS 173.05 B
Fee Schedule – SFY 2012
For licenses issued on or after April 1, 2011

Type of License	License Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tattoo Establishment	$135	$255	$135	$180
Body Piercing Establishment	$135	$255	$135	$180
Combined Tattoo and Body Piercing Establishment	$220	$400	$221	$295
Practitioner	$60			
Temporary Establishment	$100			

(3) METHOD OF PAYMENT. If the payment for an initial or renewal license is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 173.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under s. 252.23, 252.24, or 252.245, Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any establishment at any reasonable time, for any of the following purposes:

1. To inspect the establishment.

2. To determine if there has been a violation of this chapter, s. 252.23 or 252.24, Stats., or an ordinance enacted under s. 252.245, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the establishment.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections*. 1. The department or its agent may reinspect an establishment whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the establishment.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 173.05 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee. The department may order the operator to show just cause why the license should not be suspended or revoked under s. DHS 173.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of an establishment, the department or agent finds that the establishment is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct a violation is not carried out by the expiration of the time period stated in the order, or any extension of time granted by the department or agent, the department or agent may suspend or revoke the license to operate the establishment.

(c) Any person who fails to comply with an order of the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 173.08.

(3) TEMPORARY ORDERS. (a) As provided under ss. 227.51 (3) and 250.04 (1) and (2) (a), Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

3. Require a practitioner to cease tattooing or body piercing.

(b) 1. A temporary order shall take effect upon delivery to the operator, establishment, or practitioner, as applicable. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery. A temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 173.08. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 173.08 within 15 days after issuance of the notice.

(d) Pursuant to s. 252.25, Stats., any person who willfully violates or obstructs a departmental order relating to the public health, for which no other penalty is prescribed , shall be imprisoned for not more than 30 days or fined not more than $500 or both.

DHS 173.07 Suspension or revocation of license. The department may, after a hearing under s. HFS 173.08, suspend or revoke a license for violation of s. 252.23 or 252.24, Stats., this chapter, or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 173.08. (1).

DHS 173.08 Appeals of actions by the department. (1) (a) Except as specified under sub. (2) or (3), a request for a hearing to contest denial of a license, a voided license, suspension, revocation, forfeiture, or order given under s. DHS 173.06 (1) (b) 4. or (2), shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(2) As a condition for requesting a hearing to appeal the voiding of a license, a license applicant or operator, or practitioner, as applicable, shall comply with sub. (4). In an appeal concerning voiding a license, the burden is on the applicant or owner to show that the entire applicable fees and processing charges have been paid.

(3) A request for hearing on a temporary order given by the department under s. DHS 173.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the appellant agree to a later date, the immediate danger to health is removed, the order is not contested or the appellant and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following

the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (3) may be submitted by mail or hand-delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(4) If the department voids a license under s. DHS 173.04 (5), for failure to pay fees, the licensee shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 173.09 Appeals of actions by agent health departments. If an agent issues licenses directly under s. 252.245, Stats, the agent shall create enforcement and appeal procedures in accordance with s. 66.0417, Stats., which shall supersede enforcement and appeal procedures under s. DHS 173.08 (2) and (4).

SECTION 14. HFS 175.01 to 175.04 is renumbered DHS 175.01 to 175.04 and DHS 175.03 (8) as renumbered is amended to read:
:

DHS 175.03 (8) "Department" means the Wisconsin department of health ~~and family~~ services.

SECTION 15. HFS 175.05 is repealed and recreated to read:

DHS 175.05 Permits. (1) PERMIT REQUIRED. (a) No camp may be opened to the public until the operator of the camp has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified under s. DHS 175.06. A separate permit is required for each camp.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(b) If a permit holder sells or otherwise transfers ownership or operation of a camp to another person, except as provided in sub. (3), a new initial permit is required, and the camp may not be opened to the public until the department has issued a new permit.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. (a) An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2, Stats., if the individual is transferring operation of the camp.

(b) An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2., Stats., if the individual is transferring operation of the camp A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the hotel, motel or tourist rooming house remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 254.64 (4) (a) 2., Stats., "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under s. 254.64 (4) (a) 1. and s. 179.70 (1), Stats., a "business entity" means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(c) Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

(4) PERMIT APPLICATION. (a) *Initial Permit*. Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 175.06 and any fees previously due to the department or its agent.

2. Documentation that the department of commerce has approved plans and specifications for the camp, if required.

3. Information, as determined by the department or its agent, indicating that the camp will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the camp that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a camp or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal Permit.* To renew a permit, the operator shall pay the department, the applicable permit fee specified under s. DHS 175.06 before the permit expires. If the payment to renew the permit

is not made to the department before the expiration date of the permit, the late fee specified under s. DHS 175.06 (2) (c) shall be paid in addition to the permit fee.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, s. 254.47, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time approved by the department, the permit is void. No person may operate a camp after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.47 (3), Stats. An operator whose permit is voided under this paragraph may appeal the decision under s. DHS 175.09.

(c) The department or its agent may refuse to issue or renew a permit to operate a camp under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a camp for which an initial or new permit is required under sub. (1).

2. The operator of a camp has not corrected a condition for which the department or agent has issued a written health or safety–related order.

3. All applicable fees under s. DHS 175.06 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the camp in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The operator, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The operator or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the camp.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under DHS 175.09.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or operator fails to pay all applicable fees, late fees and processing charges under s. DHS 175.06 within 15 days after the applicant or operator receives notice of an insufficiency under s. DHS 175.06 (3), or within 45 days after

the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. DHS 175.09. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the camp is deemed to be operation without a permit and is subject to the fees under s. DHS 172.06 (2) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit from the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 16. HFS 175.06 is renumbered to DHS 175.11.

SECTION 17. HFS 175.07 is renumbered to DHS 175.12.

SECTION 18. HFS 175.08 is renumbered to DHS 175.13.

SECTION 19. HFS 175.09 is renumbered to DHS 175.14.

SECTION 20. HFS 175.10 is renumbered to DHS 175.15.

SECTION 21. HFS 175.11 is renumbered to DHS 175.16.

SECTION 22. HFS 175.12 is renumbered to DHS 175.17.

SECTION 23. HFS 175.13 is renumbered to DHS 175.18.

SECTION 24. HFS 175.14 is renumbered to DHS 175.19.

SECTION 25. HFS 175.15 is renumbered to DHS 175.20.

SECTION 26. HFS 175.16 is renumbered to DHS 175.21.

SECTION 27. HFS 175.17 is renumbered to DHS 175.22.

SECTION 28. HFS 175.18 is repealed:

SECTION 29. HFS 175.06 to HFS 175.10 are created to read:

DHS 175.06 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 175.06 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 175.06 B shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(2) TYPES OF FEES. (a) *Preinspection fee*. The operator of a camp shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 175.06 A or B to the department before an initial or new permit is issued under s. DHS 175.05.

(b) *Permit fee*. The operator of a camp shall, sub. (1), pay the applicable permit fee listed in Table DHS 175.06 A or B to the department for each camp that the operator applies for a permit to operate under s. DHS 175.05.

(c) *Late fee.* If the permit fee for a permit renewal is not paid before the expiration date of the permit, the operator of the camp shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee*. If the department conducts a reinspection of a camp under s. DHS 175.07 (1) (b), the operator shall, pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table DHS 175.06 A or B. The department shall assess an additional reinspection fee as listed in Table DHS 175.06 A or B, whichever is applicable, for any additional re-inspection conducted under s. DHS 175.07 (1) (b) 4.

(e) *Fees for operating without a permit*. Any camp found to be operating without a permit shall pay to the department a fee of $749.00, in addition to all applicable fees and any processing charges under section.

Note: Anyone operating a camp without a permit is also subject to a fine of not less than $25 nor more than $250 under s. 254.47 (3), Stats.

(f) *Duplicate permit.* The department shall charge the operator a camp $15 for a duplicate permit.

(g) *Fees for special condition inspections*. For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the department shall charge the operator or the entity requesting the inspection or consultation $175.00.

Table DHS 175.06 A
Fee Schedule – SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Recreational or Educational Campground	$440	$1050	$473	$630

Table DHS 175.06 B
Fee Schedule – SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Recreational or Educational Campground	$505	$1200	$540	$720

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or operator shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 175.07 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any camp at any reasonable time, for any of the following purposes:

1. To inspect the camp.

2. To determine if there has been a violation of this chapter or s. 254.47, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the camp.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a camp whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the camp.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 175.06 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee as authorized

under s. DHS 175.06 (2) (d), and the department may order the operator to show just cause why the permit should not be suspended or revoked under s. DHS 175.08.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a camp, the department or agent finds that the camp is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 175.08 to suspend or revoke the permit to operate the camp.

(c) Under s. 254.47 (3), Stats., any person who fails to comply with an order of the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 175.09.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 175.09 (2). The notice shall include a statement that the facility has a right to request a hearing under s. DHS 175.09 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her and, under s. 254.85 (5) (a), Stats., may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both. A person may appeal a forfeiture under s. DHS 175.09.

DHS 175.08 Suspension or revocation of permit. The department may, after a hearing under s. DHS 175.09, suspend or revoke a permit for violation of s. 254.47, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 175.09.

DHS 175.09 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 175.07 (1) (b) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or operator shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 175.07 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the operator agree to a later date, the immediate danger to health is removed, the order is not contested or the operator and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 175.05 (6), the operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 175.10 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

SECTION 30. HFS 178.01 to 178.04 is renumbered DHS 178.01 to 178.04 and as renumbered DHS 178.03 (5) is amended to read:

DHS 178.03 (5) "Department" means the Wisconsin department of health ~~and family~~ services.

SECTION 31. HFS 178.05 is repealed and recreated to read:

DHS 178.05 Permits. (1) PERMIT REQUIRED. (a) No campground may be opened to the public until the operator of the campground has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. DHS 178.06. A separate permit is required for each campground.

(b) If a permit holder sells or otherwise transfers ownership or operation of a campground to another person, except as provided in sub. (3), a new initial permit is required, and the campground may not be opened to the public until the department has issued a new permit.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2., Stats., if the individual is transferring operation of the campground. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the campground remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 254.64 (4) (a) 2., Stats., "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under ss. 254.64 (4) (a) 1 and 179.70 (1), Stats., a "business entity" means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial Permit.* Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 178.06 and any fees previously due to the department or its agent.

2. Documentation that the department of commerce under s. Comm 90.04 (1) has approved plans and specifications for the campground, if required.

3. Information, as determined by the department or its agent, indicating that the campground will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the campground that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a campground or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal Permit.* To renew the permit of an establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. DHS 178.06 before the license expires. If the payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. DHS 178.06 (2) (c) shall be paid in addition to the permit fee.

Note: Local health departments that are agents for the department have authority under s. 252.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(5) DEPARTMENT OR AGENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, s. 254.47, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified

time or after an extension of time approved by the department, the permit is void. No person may operate a campground after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.47 (3), Stats. An operator whose permit is voided under this paragraph may appeal the decision under s. DHS 178.09.

(c) The department or its agent may refuse to issue or renew a permit to operate a campground under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a campground for which an initial or new permit is required under sub. (1).

2. The operator of a campground has not corrected a condition for which the department or agent has issued a written a health or safety–related order.

3. All applicable fees under s. DHS 178.06 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the campground in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The operator, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The operator or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the campground.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 178.09

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or operator fails to pay all applicable fees, late fees and processing charges under s. DHS 178.06 within 15 days after the applicant or operator receives notice of an insufficiency under s. DHS 178.06 (3), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. DHS 178.09. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the campground is deemed to be operation without a permit and is subject to the fees under s. DHS 178.06 (2) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 32. HFS 178.06 is renumbered to DHS 178.11.

SECTION 33. HFS 178.07 is renumbered to DHS 178.12.

SECTION 34. HFS 178.08 is renumbered to DHS 178.13.

SECTION 35. HFS 178.09 is renumbered to DHS 178.14.

SECTION 36. HFS 178.10 is renumbered to DHS 178.15.

SECTION 37. HFS 178.11 is renumbered to DHS 178.16.

SECTION 38. HFS 178.12 is renumbered to DHS 178.17.

SECTION 39. HFS 178.13 is renumbered to DHS 178.18.

SECTION 40. HFS 178.14 is renumbered to DHS 178.19.

SECTION 41. HFS 178.15 is renumbered to DHS 178.20.

SECTION 42. HFS 178.16 is renumbered DHS 178.21.

SECTION 43. HFS 178.17 is repealed.

SECTION 44. DHS 178.06 to 178.10 are created to read:

DHS 178.06 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 178.06 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 178.06 B shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(2) TYPES OF FEES. (a) *Preinspection fee*. The operator of a campground shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 178.06 A or B to the department before an initial or new permit is issued under s. DHS 178.05

(b) *Permit fee*. The operator of a campground shall, pursuant to s. DHS 178.06 (1), pay the applicable permit fee listed in Table DHS 178.06 A or B to the department for each campground that the operator applies for a permit to operate under s. DHS 178.05 (1) or (2).

(c) *Late fee*. If the permit fee for a permit renewal is not paid before the expiration date of the permit, the operator of the campground shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee*. If the department conducts a reinspection of a campground under s. DHS 178.07 (1) (b) 1. and 2., the operator shall, pursuant to s. DHS 178.06 (1), pay to the department the applicable reinspection fee listed in Table DHS 178.06 A or B. The department shall assess an additional fee as listed in Table DHS 178.06 A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 178.07 (1) (b) 4.

(e) *Fees for operating without a permit*. Any campground found to be operating without a permit shall pay to the department a fee of $749.00, in addition to all applicable fees and any processing charges under s. DHS 178.05 (6).

Note: Anyone operating a campground without a permit is also subject to a fine of not less than $25 nor more than $250 under s. 254.47 (3), Stats.

(f) *Duplicate permit.* The department shall charge the operator of a campground $15 for a duplicate permit.

(g) *Fees for special condition inspections*. For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation $175.00.

Table DHS 178.06 A
Fee Schedule - SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Campground Permit Fee 1-25 sites	$150	$335	$158	$210
Campground Permit Fee 26-50 sites	$215	$495	$225	$300
Campground Permit Fee 51-100 sites	$265	$610	$278	$370
Campground Permit Fee 101-199 sites	$310	$725	$330	$440
Campground Permit Fee 200 + sites	$355	$840	$379	$505
Special Event Campground 1-25 sites	$150			
Special Event Campground 26-50 sites	$215			
Special Event Campground 51-100 sites	$265			
Special Event Campground 101-199 sites	$310			
Special Event Campground 200 + sites	$355			

Table DHS 178.06 B
Fee Schedule – SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Campground Permit Fee 1-25 sites	$175	$380	$180	$240
Campground Permit Fee 26-50 sites	$250	$565	$263	$350
Campground Permit Fee 51-100 sites	$305	$700	$319	$425
Campground Permit Fee 101-199 sites	$355	$830	$375	$500
Campground Permit Fee 200 + sites	$410	$965	$435	$580
Special Event Campground 1-25 sites	$175			
Special Event Campground 26-50 sites	$250			
Special Event Campground 51-100 sites	$305			
Special Event Campground 101-199 sites	$355			
Special Event Campground 200 + sites	$410			

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or operator shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 178.07 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any campground at any reasonable time, for any of the following purposes:

1. To inspect the campground.

2. To determine if there has been a violation of this chapter or s. 254.47, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the campground.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections*. 1. The department or its agent may reinspect a campground whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the campground.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 178.06 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess an additional reinspection fee according to Table DHS 178.06 A or B as authorized under s. DHS 178.06 (2) (d), and the department may order the operator to show just cause why the permit should not be suspended or revoked under s. DHS 178.08.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a campground, the department or agent finds that the campground is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 178.08 to suspend or revoke the permit to operate the campground.

(c) Any person who fails to comply with an order of the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 178.09.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 178.09. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 178.09 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her and, under s. 254.85 (5) (a), Stats., may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both. A person may appeal a forfeiture under s. DHS 178.09.

DHS 178.08 Suspension or revocation of permit. The department may, after a hearing under s. DHS 178.09, suspend or revoke a permit for violation of s. 254.47, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 178.09. (1).

DHS 178.09 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 178.07 (1) (b) 4. or (2) shall be submitted in writing to the department of administration’s division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or operator shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 178.07 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the operator agree to a later date, the immediate danger to health is removed, the order is not contested or the operator and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health and Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit for failure to pay fees under s. DHS 178.05 (6), the operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 178.10 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

SECTION 45. HFS 195.01 to 195.03is renumbered DHS 195.01 to 195.03 and 195.03 (4) as renumbered is amended to read:

DHS 195.03 (4) "Department" means the department of health ~~and family~~ services.

SECTION 46. HFS 195.04 is repealed and recreated to read:

DHS 195.04 Permits. (1) PERMIT REQUIRED. (a) No hotel, motel or tourist rooming house may be opened to the public until the operator of the facility has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. DHS 195.05. A separate permit is required for each hotel, motel or tourist rooming house.

(b) If any permit holder sells or otherwise transfers ownership or operation of a hotel, motel or tourist rooming house to another person, except as provided in sub. (3), a new initial permit is required, and the hotel, motel or tourist rooming house may not be opened to the public until the department has issued a new initial permit.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2., Stats., if the individual is transferring operation of the hotel, motel or tourist rooming house. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the hotel, motel or tourist rooming house remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 254.64 (4) (a) 2., Stats., “Immediate family member” means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild”. Under ss. 254.64(4)(a) 1 and 179.70 (1), Stats., a “business entity” means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial Permit*. Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 195.05 and any fees previously due to the department or its agent.

2. Information, as determined by the department or its agent, indicating that the hotel, motel and tourist rooming house will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the hotel, motel and tourist rooming house that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a hotel, motel and tourist rooming house or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal Permit.* To renew the license of a facility, the operator shall pay the department, the applicable establishment permit fee specified under s. DHS 195.05 before the permit expires. If the payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. HFS 195.05 (2) (c) shall be paid in addition to the license fee.

Note: Local health departments that are agents for the department have authority under s. 245.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(5) DEPARTMENT OR AGENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, s. 254.64, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the permit is void. No person may operate a hotel, motel or tourist rooming house after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.88, Stats. An operator whose permit is voided under this paragraph may appeal the decision under s. DHS 195.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a hotel, motel or tourist rooming house under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a hotel, motel or tourist rooming house for which an initial or new permit is required under sub. (1).

2. The operator of a hotel, motel or tourist rooming house has not corrected a condition for which the department or agent has issued a written a health or safety–related order.

3. All applicable fees under s. DHS 195.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the hotel, motel or tourist rooming house in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The operator, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The operator or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the hotel, motel or tourist rooming house.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 195.08

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or operator fails to pay all applicable fees, late fees and processing charges under s. DHS 195.05 within 15 days after the applicant or operator receives notice of an insufficiency under s. DHS 195.05, or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. DHS 195.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the hotel, motel or tourist rooming house is deemed to be operation without a permit and is subject to the fees under s. DHS 195.05 (1) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 47. HFS 195.05 is renumbered DHS 195.10.

SECTION 48. HFS 195.06 is renumbered DHS 195.11.

SECTION 49. HFS 195.07 is renumbered DHS 195.12.

SECTION 50. HFS 195.08 is renumbered DHS 195.13.

SECTION 51. HFS 195.09 is renumbered DHS 195.14.

SECTION 52. HFS 195.10 is renumbered DHS 195.15.

SECTION 53 HFS 195.11 is renumbered DHS 195.16.

SECTION 54. HFS 195.12 is repealed.

SECTION 55. DHS 195.05 to 195.09 are created to read:

DHS 195.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 195.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 195.05 B shall apply to permits issued on or after April 1, 2011.

(2) TYPES OF FEES. (a) *Preinspection fee*. The operator of a hotel, motel or tourist rooming house shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 195.05 A or B to the department before an initial or new permit is issued under s. DHS 195.04.

(b) *Permit fee*. The operator of a hotel, motel or tourist rooming house shall, pursuant to sub. (1), pay the applicable permit fee listed in Table DHS 195.05 A or B to the department for each hotel, motel or tourist rooming house that the operator applies for a permit to operate under s. DHS 195.04 (1) or (2).

(c) *Late fee*. If the permit fee for a permit renewal is not paid before the expiration date of the permit, the operator of the hotel, motel or tourist rooming house shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee.* If the department conducts a reinspection of a hotel, motel or tourist rooming house under s. DHS 195.06 (1) (b), the operator shall, pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table DHS 195.05 A or B. The department shall assess an additional reinspection fee as listed in Table DHS 195.05 (1) A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 195.06 (1) (b) 4.

(e) *Fees for operating without a permit.* Any hotel, motel or tourist rooming house found to be operating without a permit shall pay to the department an amount of $749.00, in addition to all applicable fees and any processing charges under s. DHS 195.04 (6).

Note: Anyone operating a hotel, motel or tourist rooming house without a permit is also subject to a fine of not less than $100 nor more than $1,000 under s. 254.88, Stats.

(f) *Duplicate permit*. The department shall charge the operator of a hotel, motel or tourist rooming house $15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the department shall charge the operator or the entity requesting the inspection or consultation $175.00.

Table DHS 195.05 A
Fee Schedule - SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	$100	$280	$120	$160
Hotel / Motel Permit Fee 5-30 Rooms	$165	$380	$173	$230
Hotel / Motel Permit Fee 31-99 Rooms	$260	$615	$274	$365
Hotel / Motel Permit Fee 100-199 Rooms	$330	$795	$353	$470
Hotel / Motel Permit Fee 200 + Rooms	$400	$950	$431	$575

Table DHS 195.05 B
Fee Schedule – SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	$110	$300	$128	$170
Hotel / Motel Permit Fee 5-30 Rooms	$205	$480	$218	$290
Hotel / Motel Permit Fee 31-99 Rooms	$280	$665	$300	$400
Hotel / Motel Permit Fee 100-199 Rooms	$355	$795	$379	$505
Hotel / Motel Permit Fee 200 + Rooms	$490	$1185	$525	$700

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or operator shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 195.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any hotel, motel or tourist rooming house at any reasonable time, for any of the following purposes:

1. To inspect the hotel, motel or tourist rooming house.

2. To determine if there has been a violation of this chapter or ss. 254.61 to 254.88, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the hotel, motel or tourist rooming house.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections*. 1. The department or its agent may reinspect a hotel, motel or tourist rooming house whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the hotel, motel or tourist rooming house.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. The reinspection fee under Table DHS 195.05 A or B or applicable charges as determined by an agent of the department shall be charged for the reinspection.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee according to Table DHS 195.05 and the department may order the operator to show just cause why the permit should not be suspended or revoked under s. DHS 195.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a hotel, motel or tourist rooming house, the department or agent finds that the hotel, motel or tourist rooming house is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 195.07 to suspend or revoke the permit to operate the hotel, motel or tourist rooming house.

(c) Under s. 254.88, Stats., any person who fails to comply with an order of the department shall forfeit $50 for each day of noncompliance after the order is served upon or directed to that person. A forfeiture may be appealed under s. DHS 195.08.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 195.08. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 195.08 within 15 days after issuance of the notice.

(d) Under s. 254.85 (5) (a),. Stats., may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both.

DHS 195.07 Suspension or revocation of permit. The department may, after a hearing under s. HFS 195.08, suspend or revoke a permit for violation of s. 254.64, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. HFS 195.08. (1).

DHS 195.08 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 195.06 (1) (b) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or operator shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 195.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the operator agree to a later date, the immediate danger to health is removed, the order is not contested or the operator and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following

the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 195.04 (6), the operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 195.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

SECTION 56. HFS 196.01 to 196.03 are renumbered DHS 196.01 to 196.03 and DHS 196.03 (2) as renumbered is amended to read:

DHS 196.03 (2) "Department" means the Wisconsin department of health ~~and family~~ services.

SECTION 57. HFS 196.04 is repealed and recreated to read:

DHS 196.04 Permits. (1) PERMIT REQUIRED. (a) Except as specified in pars. (c) and (d), no restaurant may be opened to the public until the owner of the restaurant has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. Table DHS 196.05 B or C, whichever is applicable. A separate permit is required for each restaurant.

(b) If any permit holder sells or otherwise transfers ownership or operation of a restaurant to another person, except as provided in sub. (3), a new initial permit is required, and the restaurant may not be opened to the public until the department has issued a new permit.

(c) A contract cook who adheres to all of the following is exempt from the permit requirement under par. (a):

1. The contract cook is paid for his or her service, culinary skills, technique, or expertise.

2. The contract cook either uses food provided by the person employing the cook’s services or the cook shops for food from a list provided by the person.

3. The contract cook uses only the home kitchen of the person requesting the food service to prepare food for the person.

4. The contract cook does not prepare or store food in bulk quantities for use at multiple sites or for meals served to the general public. If a contract cook prepares or stores food in bulk quantities for use at multiple sites or for meals served to the general public, the contract cook shall obtain a restaurant permit.

5. The contract cook does not transport any portion of a meal prepared by the contract cook from one location to another location. If a contract cook transports any portion of a meal prepared by the contract cook from one location to another location, the contract cook shall obtain a restaurant permit.

(d) A caterer operating from the caterer's permitted restaurant is not required to obtain a restaurant permit for the locations where the caterer serves food.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2, Stats., if the individual is transferring operation of the restaurant. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the restaurant remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. s. 254.64 (4) (a) 2., Stats., "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild". Under ss. 254.64 (4)(a) 1. and 179.70 (1), Stats., a "business entity" means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial Permit*. Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 196.05 and any fees previously due to the department or its agent.

2. Documentation that the department of commerce has approved plans and specifications for the restaurant, if required.

3. Information, as determined by the department or its agent, indicating that the restaurant will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the restaurant that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a restaurant or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhfs.wis.gov/fsrl.

(b) *Renewal Permit*. To renew the license of a restaurant, the owner shall pay the department, the license fee specified under s. Table DHS 196.05 B or C, as applicable, before the license expires. If the payment to renew the license of an establishment is not made to the department before the expiration date of the establishment license, the late fee specified under s. DHS 196.05 (5) (c) shall be paid in addition to the license fee.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this paragraph may be conditioned upon the requirement that the permit holder correct a violation of this chapter, s. 254.64, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time approved by the department, the permit is void. No person may operate a restaurant after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.88, Stats. An owner whose permit is voided under this paragraph may appeal the decision under s. DHS 196.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a restaurant under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a restaurant for which an initial or new permit is required under sub. (1).

2. The owner of a restaurant has not corrected a condition for which the department or agent has issued a written health or safety–related order.

3. All applicable fees under s. DHS 196.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The owner has modified, repaired or maintained the restaurant in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The owner, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The owner or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the restaurant.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 196.08

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or owner fails to pay all applicable fees, late fees and processing charges under s. DHS 196.05 within 15 days after the applicant or owner receives notice of an insufficiency under s. DHS 196.05 (6), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An owner whose permit is voided under this subsection may appeal the decision under s. DHS 196.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the restaurant is deemed to be operation without a permit and is subject to the fees under s. DHS 196.05 (5) (e) in addition to the fees otherwise due, unless the applicant or owner meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 58. HFS 196.045 and 196.05 are renumbered DHS 196.10 and DHS 196.11.

SECTION 59. DHS 196.05 is created to read:

DHS 196.05 Department fees. (1) DEFINITION. In this subsection, “seating capacity” means the number of seats available for use by restaurant patrons.

(2) RESTAURANT PERMIT CATEGORY ASSIGNMENT. (a) 1. Except with respect to a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the department shall assign a restaurant to a permit category by evaluating the complexity of the restaurant based on the criteria specified in Table DHS 196.05 A.

2.A restaurant whose point value equals zero, shall be included in the simple permit category.

3. A restaurant whose point value is at least one but not greater than 4 shall be included in the moderate permit category.

4. A restaurant whose point value equals 5 or greater shall be included in the complex permit category.

5. A restaurant that has been ordered closed by a state or local health department or that has caused a foodborne outbreak within the previous licensing year shall be included in the complex category.

Note: Cause of foodborne outbreaks are determined using standard epidemiological practices.

(b) The operator of a restaurant may ask the department to reconsider the restaurant's permit category assignment within 30 days of the category assignment.

Note: To request reconsideration of permit category assignment call the Bureau of Environmental Health at 608−266−2835 or send your written request to the Bureau of Environmental Health, P.O. Box 2659, Madison, WI 53701−2659.

Table DHS 196.05 A
Determination of Restaurant Permit Category Complexity Factors Point(s)

Food is not prepared until an order is placed.	0
Food items are held hot for one meal period or for a maximum of 4 hours, whichever is less.	0
Food preparation is limited to mixing together prepackaged products that do not need to be cooked further except for aesthetic reasons (such as frozen soup concentrate with milk), or to condiment preparation (such as slicing pickles and onions).	0
The restaurant contains a self-service salad or food bar.	1
The restaurant handles raw poultry, meat, or seafood.	1
The seating capacity of the restaurant or operation is 50 or more.	1
Food is served through a drive through window for food pickup.	1
The restaurant promotes delivery of ready-to-eat food products to customers.	1
Potentially hazardous foods are cooled, reheated, or hot or cold held for service longer than 4-hours.	1
Food is prepared in one location and then transported to be served in another location.	1
The restaurant contains or uses banquet facilities as well as main dining area.	1
Food is served that requires preparation activities such as chopping, dicing, slicing, boiling, cooling, blanching, or reheating in order for that product to be served.	1

(3) FEE SCHEDULES. The fees listed in Table DHS 196.05 B shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 196.05 C shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(4) TYPES OF FEES (a) *Preinspection fee*. The owner of a restaurant shall, pursuant to sub. (4), pay the applicable preinspection fee listed in Table DHS 196.05 B or C to the department before an initial or new permit is issued under s. DHS 196.04

(b) *Permit fee.* The operator of a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods shall , pursuant to sub. (4),pay an annual permit fee to the department as listed in Table DHS 196.05 B or C for each restaurant that the operator applies for a permit to operate under s. DHS 196.04 (1) or (2). Except for a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the annual permit fee shall be based on the permit category assigned to the restaurant under sub. (2). In addition, $100.00 shall be charged per area for any physically separate food holding, serving, or preparation area.

(c) *Late fee*. If the permit fee for a permit renewal is not paid before the expiration date of the permit, the owner of the restaurant shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee.* If the department conducts a reinspection of a restaurant under s. DHS 196.06 (1) (b) the owner shall, pursuant to sub. (4), pay to the department the applicable reinspection fee listed in Table DHS 196.05 B or C. The department shall assess an additional reinspection fee as listed in Table DHS 196.05 B or C, whichever is applicable. for any additional reinspection conducted under s. DHS 196.06 (1) (b) 4.

(e) *Fees for operating without a permit.* Any restaurant found to be operating without a permit shall pay to the department a fee of $749.00, in addition to all applicable fees and any processing charges under s. DHS 196.04 (6).

Note: Anyone operating a restaurant without a permit is also subject to a fine of not less than $100 nor more than $1,000 under s. 254.88, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a restaurant $15 for a duplicate permit.

(g) *Fees for special condition inspections*. For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation $175.

(h) *Fee for operating without a Wisconsin certified food manager.* The department shall charge the operator of a restaurant $150 for operating without a Wisconsin certified food manager.

Note: Requirements for certified food managers may be found in chapter 12 of the ch. DHS 196 appendix.

Table DHS 196.05 B

Fee Schedule - SFY 2010

For permit issued April 1, 2009 through March 31, 2011

Permit Category	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee

Prepackaged Restaurant	$90	$115	$86	$115
Simple Restaurant	$195	$265	$199	$265
Moderate Restaurant	$300	$425	$319	$425
Complex Restaurant	$430	$610	$458	$610
Temporary Restaurant	$165			
Mobile Restaurant Base with no food preparation	$90	$115	$86	$115
Additional Area	$100			

Table DHS 196.05 C
Fee Schedule – SFY 2012
For licenses issued on or after April 1, 2011

Permit Category	**Permit Fee**	**Preinspection Fee**	**First Reinspection Fee**	**Second and Subsequent Reinspection Fee**
Prepackaged Restaurant	$105	$130	$98	$130
Simple Restaurant	$230	$320	$240	$320
Moderate Restaurant	$330	$470	$353	$470
Complex Restaurant	$540	$770	$578	$770
Temporary Restaurant	$170			
Mobile Restaurant Base with no food preparation	$105	$165	$98	$130
Additional Area	$80			

(5) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (4) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

(6) CHANGE OF OPERATOR. The operator of a restaurant shall promptly notify the department in writing of his or her intention to cease operations and shall supply the department with the name and mailing address of any prospective new operator.

Note**:** To notify the Department of a change in operator, write: Bureau of Environmental Health, P.O. Box 2659, Madison, Wisconsin 53701−2659.

(7) PLAN REVIEW. The department or its agent, when it deems necessary, may require the operator of a new or extensively remodeled restaurant to submit equipment layout plans, equipment schedules, detailed descriptions of food processing operations, or menus to determine if the restaurant is complying with this chapter. A request for plans under this subsection does not replace or supersede plan review requirements of the Wisconsin department of commerce, division of buildings and safety.

SECTION 61. HFS 196.06 is repealed and recreated to read:

DHS 196.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any restaurant at any reasonable time, for any of the following purposes:

1. To inspect the restaurant.

2. To determine if there has been a violation of this chapter or ss. 254.61 to 254.88 Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the restaurant.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections*. 1. The department or its agent may reinspect a restaurant whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the restaurant.

2. A reinspection shall be scheduled to allow the owner a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 196.05 B or C, whichever is applicable, or the applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the owner an additional reinspection fee according to Table DHS 196.05 B or C, whichever is applicable, as authorized under s. DHS 196.05. The department may order the owner to show just cause why the permit should not be suspended or revoked under s. DHS 196.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a restaurant, the department or agent finds that the restaurant is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 196.07 to suspend or revoke the permit to operate the restaurant.

(c) Under s. 254.88, Stats., any person who fails to comply with an order of the department shall forfeit $50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 196.08.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 196.08. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 196.08 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both, under s. 254.85 (5) (a), Stats.

SECTION 62. HFS 196.07 is renumbered DHS 196.12.

SECTION 63. DHS 196.07, 196.08 and 196.09 are created to read:

DHS 196.07 Suspension or revocation of permit. The department may, after a hearing under s. DHS 196.08, suspend or revoke a permit for violation of ss. 254.61 to 254.88, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 196.08.

DHS 196.08 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 196.06 (1) (a) 4. or (2) shall be submitted in writing to the department of

administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 196.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health and Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 196.04 (6), the owner shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 196.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

SECTION 64. HFS 197.01 to 197.03 is renumbered DHS 197.01 to 197.03 and DHS 197.03 (4) as renumbered is amended to read:

DHS 197.03 (4) "Department" means the department of health ~~and family~~ services.

SECTION 65. HFS 197.04 is repealed and recreated to read:

DHS 197.04 Permits. (1) PERMIT REQUIRED. (a) No bed and breakfast establishment may be opened to the public until the operator of the bed and breakfast establishment has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. DHS 197.05. A separate permit is required for each bed and breakfast establishment.

(b) A new initial permit is required if a permit holder sells or otherwise transfers ownership or operation of a bed and breakfast establishment to another person, except as provided in sub. (3).

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2., Stats., if the individual is transferring operation of the bed and breakfast establishment. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the bed and breakfast establishment remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 254.64 (4) (a) 2., Stats., “Immediate family member” means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under ss. 254.64 (4) (a) 1 and 179.70 (1), Stats., a “business entity” means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial permit*. Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 197.05 and any fees previously due to the department or its agent.

2. Documentation that the department of commerce has approved plans and specifications for the bed and breakfast, if required.

3. Information, as determined by the department or its agent, indicating that the bed and breakfast establishment will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the bed and breakfast establishment that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a bed and breakfast establishment or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhfs.wis.gov/fsrl.

(b) *Renewal Permit*. To renew the permit of the bed and breakfast establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. DHS 197.05 before the permit expires. If the payment to renew the permit of a bread and breakfast establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. DHS 197.05 shall be paid in addition to the permit fee.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, ss. 254.61 to 254.88, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time approved by the department, the permit is void. No person may operate a bed and breakfast establishment after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.88, Stats. An owner whose permit is voided under this paragraph may appeal the decision under s. DHS 197.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a bed and breakfast establishment under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of the bed and breakfast establishment for which an initial or new permit is required under sub. (1).

2. The owner of a bed and breakfast establishment has not corrected a condition for which the department or agent has issued a written health or safety–related order.

3. All applicable fees under s. DHS 197.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The owner has modified, repaired or maintained the bed and breakfast establishment in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The owner, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The owner or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the bed and breakfast establishment.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 197.08

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or owner fails to pay all applicable fees, late fees and processing charges under s. DHS 197.05 within 15 days after the applicant or owner receives notice of an insufficiency under s. DHS 197.05, or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An owner whose permit is voided under this subsection may appeal the decision under s. DHS 197.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the bed and breakfast establishment is deemed to be operation without a permit and is subject to the fees under s. DHS 197.05 (2) in addition to the fees otherwise due, unless the applicant or owner meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 66. HFS 197.05 is renumbered DHS 197.10.

SECTION 67. HFS 197.06 is renumbered DHS 197.11.

SECTION 68. HFS 197.07 is renumbered DHS 197.12.

SECTION 69. HFS 197.08 is renumbered DHS 197.13.

SECTION 70. HFS 197.09 is renumbered DHS 197.14.

SECTION 71. HFS 197.10 is renumbered DHS 197.15.

SECTION 72. HFS 197.11 has been repealed.

SECTION 73. DHS 197.05, 197.06, 197.08 and 197.09 are created to read:

DHS 197.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 197.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 197.05 B shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(2) TYPES OF FEES. (a) *Preinspection fee*. The owner of a bed and breakfast establishment shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 197.05 A or B to the department before an initial or new permit is issued under s. DHS 197.04.

(b) *Permit fee*. The owner of a bed and breakfast establishment shall, pursuant to sub. (1), pay the applicable permit fee listed in Table DHS 197.05 A or B to the department for each bed and breakfast establishment that the operator applies for a permit to operate under s. DHS 197.04 (1) or (2).

(c) *Late fee*. If the permit fee for a permit renewal is not paid before the expiration date of the permit, the owner of the bed and breakfast establishment shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee*. If the department conducts a reinspection of a bed and breakfast establishment under s. DHS 197.06 (1) (b) 1. and 2., the owner shall, pursuant to s.sub. (1), pay to the department the applicable reinspection fee listed in Table DHS 197.05 A or B. The department shall assess an additional fee as specified in Table DHS 197.05 A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 197.06 (1) (b) 4.

(e) *Fees for operating without a permit*. Any bed and breakfast establishment found to be operating without a permit shall pay to the department an amount of $749.00, in addition to all applicable fees and any processing charges under s. DHS 197.04 (6).

Note: Anyone operating a bed and breakfast establishment without a permit is also subject to a fine of not less than $100 nor more than $1,000 under s. 254.88, Stats.

(f) *Duplicate permit*. The department shall charge the operator of a bed and breakfast establishment $15 for a duplicate permit.

(g) *Fees for special condition inspections*. For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation $175.00.

Table DHS 197.05 A

Fee Schedule - SFY 2010

For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinpsection Fee
Bed and breakfast establishment	$100	$280	$120	$160

Table DHS 197.05 B
Fee Schedule – SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Bed and breakfast establishment	$110	$300	$128	$170

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 197.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any bed and breakfast establishment at any reasonable time, for any of the following purposes:

1. To inspect the bed and breakfast establishment.

2. To determine if there has been a violation of this chapter or ss. 254.61 to 254.88, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the bed and breakfast establishment.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a bed and breakfast establishment whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the bed and breakfast establishment.

2. A reinspection shall be scheduled to allow the owner a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 197.05 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the owner an additional fee as specified in Table DHS 197.05 A or B as authorized under s. DHS 197.05 (2) (d), and the department may order the owner to show just cause why the permit should not be suspended or revoked under s. DHS 197.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a bed and breakfast establishment, the department or agent finds that the bed and breakfast establishment is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 197.07 to suspend or revoke the permit to operate the bed and breakfast establishment.

(c) Under s. 254.88, Stats., any person who fails to comply with an order of the department shall forfeit $50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 197.08.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 197.08.

The notice shall include a statement that the facility has a right to request a hearing under s. DHS 197.08 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department shall forfeit $10 for each day of noncompliance after the order is served upon or directed to him or her and, under s. 254.85 (5) (a),. Stats., may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both. A person may appeal a forfeiture under s. DHS 197.08.

DHS 197.07 Suspension or revocation of permit. The department may, after a hearing under s. DHS 197.08, suspend or revoke a permit for violation of ss. 254.61 to 254.88, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 197.08. (1).

DHS 197.08 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 197.06 (1) (b) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 197.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 197.04 (6), the owner shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 197.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

SECTION 74. HFS 198.01 to 198.03 is renumbered DHS 198.01 to 198.03 and DHS 198.03 (5) as renumbered is amended to read:

DHS 198.03 (5) "Department" means the department of health ~~and family~~ services.

SECTION 75. HFS 198.04 is repealed and recreated to read:

DHS 198.04 Permits. (1) PERMIT REQUIRED. (a) No person may operate a vending machine, vending machine commissary, or vending machine commissary storage unless the person, the vending machine, vending machine commissary, or vending machine commissary storage has a permit from the department. To receive an operator's permit or a permit for a vending machine, vending machine commissary, or vending machine commissary storage, the operator shall submit an application under sub. (4) and pay the applicable fee specified in Table DHS 198.05. A separate permit is required for each vending machine, vending machine commissary, or vending machine commissary storage.

(b) If a vending machine operator sells or otherwise transfers ownership or operation of a vending machine, vending machine commissary, or vending machine commissary storage except as provided under sub. (3), a new permit is required and the vending machine, vending machine commissary, or vending machine commissary storage may not be opened until the department has issued a new permit.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2., Stats., if the individual is transferring operation of a vending machine, vending machine commissary, or vending machine commissary storage. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (10), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the vending machine, vending machine

commissary, or vending machine commissary storage remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 254.64 (4) (a) 2., Stats., "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under s. 254.64(4)(a) 1 and s. 179.70 (1), Stats., a "business entity" means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial Permit.* Application for an initial or new permit shall be made on an application form furnished by the department and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 198.05 and any fees previously due to the department.

2. Information, as determined by the department, indicating that the vending machine, vending machine commissary, or vending machine storagewill be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the vending machine or vending machine commissary that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a vending machine or vending machine commissary, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701-2659 (608-266-2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal Permit.* To renew the permit of an establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. DHS 198.05 before the permit expires. If the payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. HFS 198.05 (1) (c) shall be paid in addition to the permit fee.

(5) DEPARTMENT OR AGENT ACTION ON PERMIT APPLICATION. (a) The department shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, ss. 254.61 to 254.88, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the permit is void. No person may operate a vending machine, vending machine commissary, or vending machine

commissary storage after the permit for the operator, vending machine, vending machine commissary, or vending machine commissary storage has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.88, Stats. An owner whose permit is voided under this subsection may appeal the decision under s. DHS 198.08.

(c) The department may refuse to issue or renew a permit to operate a vending machine commissary or vending machine commissary storage under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of the vending machine commissary or vending machine commissary storage for which an initial or new permit is required under sub. (1).

2. The operator of a vending machine, vending machine commissary, or vending machine commissary storage has not corrected a condition for which the department or agent has issued a written a health or safety–related order.

3. All applicable fees under s. DHS 198.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The vending machine operator has modified, repaired or maintained the vending machine, vending machine commissary, or vending machine commissary storage in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The vending machine operator, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The vending machine operator or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the vending machine, vending machine commissary, or vending machine commissary storage.

(d) If the department denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 198.08

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or vending machine operator fails to pay all applicable fees, late fees and processing charges under s. DHS 198.05 within 15 days after the applicant or operator receives notice of an insufficiency under s. DHS 198.05 (3), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. DHS 198.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the vending machine, vending machine commissary, or vending machine commissary storage is deemed to be operation without a permit and is subject to the fees under s. DHS 198.05 (2) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

SECTION 76. HFS 198.05 is renumbered DHS 198.11.

SECTION 77. HFS 198.06 is renumbered DHS 198.12.

SECTION 78. HFS 198.07 is renumbered DHS 198.13.

SECTION 79. HFS 198.08 is renumbered DHS 198.14.

SECTION 80. HFS 198.09 is renumbered DHS 198.15.

SECTION 81. HFS 198.10 is renumbered DHS 198.16.

SECTION 82. HFS 198.11 is renumbered DHS 198.17.

SECTION 83. HFS 198.12 is renumbered DHS 198.18.

SECTION 84. HFS 198.13 is renumbered DHS 198.19.

SECTION 85. HFS 198.14 is renumbered DHS 198.20.

SECTION 86. HFS 198.15 is repealed.

SECTION 87. DHS 198.05 to 198.10 are created to read:

DHS 198.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 198.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 198.05 B shall apply topermits issued on or after April 1, 2011.

(2) TYPES OF FEES. (a) *Preinspection fee*. The operator of a vending machine commissary or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 198.05 A or B to the department before an initial or new permit is issued under s. DHS 198.04

(b) *Permit fee.* The operator of a vending machine, vending machine commissary, or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable permit fee listed in Table DHS 198.05 A or B to the department for each vending machine, vending machine commissary, or vending machine commissary storage that the operator applies for a permit to operate under s. DHS 198.04 (1) or (2).

(c) *Late fee.* If the permit fee for an operator's, vending machine commissary, or vending machine commissary storage permit renewal is not paid before the expiration date of the permit, the operator of the vending machine commissary or vending machine commissary storage shall pay to the department a late fee of $85.00 in addition to the renewal permit feefor each permit for which the department receives after the expiration date of the permit.

(d) *Reinspection fee*. If the department conducts a reinspection of a vending machine commissary or vending machine commissary storage under s. DHS 198.06 (1) (b) 1. and 2., the vending machine operator shall pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table

DHS 198.05 A or B. The department shall assess an additional reinspection fee equal to the reinspection fee listed in Table DHS 198.05 A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 198.06 (1) (b) 4.

(e) *Fees for operating without a permit*. 1. For any operator, or vending machine commissary, or vending machine commissary storage found to be operating without a permit, the operator shall pay to the department $749 in addition to all applicable fees and processing charges under s. DHS 198.04 (6).

2. For any vending machine found to be operating without a permit, the operator shall pay to the department 3 times the annual vending machine permit fee listed in Table DHS 198.05, in addition to all applicable fees and processing charges under s. DHS 198.(6).

Note: Anyone operating a vending machine, vending machine commissary, or vending machine commissary storage without a permit is also subject to a fine of not less than $100 nor more than $1,000 under s. 254.88, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a vending machine commissary or vending machine commissary storage $15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation $175.

Table DHS 198.05 A
Fee Schedule - SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	$230	$455	$252	$335
Vending Machine Commissary - Storage	$150	$285	$158	$210
Vending Machine Operator	$125			
Vending Machine permit (each machine)	$8			

Table DHS 198.05 B
Fee Schedule – SFY 2012
For permits issued on or after April 1, 2011

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	$280	$675	$300	$400
Vending Machine Commissary - Storage	$215	$515	$233	$310
Vending Machine Operator	$125			
Vending Machine permit (each machine)	$9			

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

DHS 198.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections*. Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any vending machine, vending machine commissary, or vending machine commissary storage at any reasonable time, for any of the following purposes:

1. To inspect the vending machine, vending machine commissary, or vending machine commissary.

2. To determine if there has been a violation of this chapter or ss. 254.61 to 254.88, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the vending machine, vending machine commissary, or vending machine commissary.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections*. 1. The department or its agent may reinspect a vending machine, vending machine commissary, or vending machine commissary storage whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the

health and welfare of patrons or employees of the vending machine, vending machine commissary, vending machine commissary storage.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 198.05 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee equal to the reinspection fee in Table DHS 198.05 A or B, as applicable, as authorized under s. DHS 198.05 (2) (d), and the department may order the owner to show just cause why the permit should not be suspended or revoked under s. DHS 198.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a vending machine, vending machine commissary, or vending machine commissary storage, the department or agent finds that the vending machine, vending machine commissary, vending machine commissary storage is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 198.07 to suspend or revoke the permit to operate the vending machine or vending machine commissary.

(c) Under s. 254.88, Stats., any person who fails to comply with an order of the department shall forfeit $50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 198.08.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re-issued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in

subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1. shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 198.08. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 198.08 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both under s. 254.85 (5) (a), Stats.

DHS 198.07 Suspension or revocation of permit. The department may, after a hearing under s. DHS 198.08, suspend or revoke a permit for violation of ss. 254.61 to 254.88, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 198.08. (1).

DHS 198.08 Appeals of actions by the department. (1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 198.06 (1) (b) 4. or (2) shall be submitted in writing to the department of administration’s division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 198.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health and Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 198.04 (6), the vending machine operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

DHS 198.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

Note: To obtain a copy of the application form for a permit to operate vending machines or a vending machine commissary, write: Bureau of Public Health, P.O. Box 309, Madison, Wisconsin 53701.

DHS 198.10 Compliance with restaurant rules. An operator shall ensure that each vending machine commissary or vending machine commissary storage that is operated is in compliance with the provisions of ch. DHS 196. The department shall not grant a permit to a person intending to operate a new vending machine commissary or vending commissary storage or to a person intending to be the new operator of an existing vending machine commissary or vending machine commissary storage without a prior inspection of the commissary for compliance with the applicable provisions of this chapter and ch. DHS 196.

SECTION 88. EFFECTIVE DATE: This rule 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 Services

Dated: November 25, 2008

_____

Karen E. Timberlake, Department Secretary

SEAL: