
SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S RESPONSE & LIST OF CHANGES MADE TO THE FINAL RULE

Administration and Enforcement of Establishments Regulated by the Health Inspection Program (10-144 C.M.R. Chapter 201)

The Department of Health and Human Services (Department) held a public hearing on March 11, 2020, to accept comments on the proposed rule 10-144 C.M.R. Chapter 201 Administration and Enforcement of Establishments Regulated by the Health Inspection Program, at the Maine CDC, 286 Water Street in Augusta, Maine. This hearing was advertised in five major newspapers, the Secretary of State's Webpage and the Maine CDC's Rule Webpage on February 19, 2020. Written comments were accepted from February 19, 2020 through March 21, 2020, (the comment deadline). Comments were received from the following people:

TABLE OF COMMENTERS

ID #	First Name	Last Name	Date	Representing	Format
1	Greg	Dugal	2-19-2020	Hospitality Maine	Oral & Written
2	John	Erler	2-26-2020	Maine Youth Camp Association	Written
3	Kathy	Dyer	3-10-2020	Maine Campground Owners Association	Written
4	Kathryn	Kelly	3-11-2020	Lafayette Hotels	Oral

Commenters 2 and 4 presented oral comments, which are summarized in written comments, listed below. The Department's response follows each comment and explains whether the suggestions (if any) were followed by the Department. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made also is provided below. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality.

GENERAL COMMENTS

- Comment:** Commenter 1 stated that there is no proposed fee increase for Municipal fees. The commenter asked if this fee price staying the same amount was because LD 2063 had not been passed.

Response: The commenter is correct, the Department did not change the fee to municipalities in this rule, because LD 2063 has not yet passed. This bill proposes to fix a conflict between 22 M.R.S. § 2494 and §2499. Currently §2494 requires \$60 for each application for municipal delegated establishments. Section 2499, subsection 6 requires that licensee fees set forth in §2494 be waived and requires licensees to pay the Department a sum not to exceed \$100 to support the costs of mailing and handling. No changes were made to the rule based on this comment.

- Comment:** Commenters 1, 2 and 3 stated that if fee increases are necessary, that they not be as "onerous" as the approximately 35% increase proposed by the Department. The commenters added that if the proposed fee increases cannot be lowered, then they would recommend a phasing in of the proposed fee increases, such as what happened in 2010 through 2014. The commenters added that if fee increases cannot be gradually phased in, could the Department assure the public that fees would not increase for another six years? Commenter 1 stated that these proposed increases are sizable for the catering, mobile and take out (which includes some micro-businesses), bed and breakfasts, lodging, and tier 1 licensees with 4 to 15 rooms. Commenter 2 stated that many of the youth camps are small and non-profit, offering an exceptional educational experience on a small profit margin.

Response: In 2010 and 2011, the Department worked with its stakeholders on a four-year graduated fee schedule based on the size of the establishment. This graduated fee increase ended in FY 2014. Without a license fee increase, the Department's FY2020 budget's ending cash balance for its Health Inspection Program is projected to

be a deficit of -\$210,568. And in FY 2021, the projected budget is negative \$605,016. The fiscal gap is approximately \$115,000 per year that needs to be subsidized with the General Fund.

In order to meet expenses, the Department needed to increase license fees by 35%; however, due to the \$300 statutory cap, not all license fees are able to be increased to the full 35%. With an increase of 35%, FY 2021 projects a net cash flow balance of \$12,725 and FY 2022 projects a deficit of \$33,005, due to the cap restriction. The 35% increase is the minimum increase needed for the program to become financially solvent. Due to the small revenue margin, a phasing in of a gradual increase in fees is not possible. The Department's revenues and expenses are reviewed annually, however the Department cannot guarantee that fees will not increase in the next 6 years if expenses exceed revenue. No changes were made to the rule based on this comment.

- 3. Commenter 4** stated that she represents a large hotel chain in Maine with 25 Hotels, 14 restaurants and 26 pools. The commenter disagrees with the proposed fee increases and stated that, after initially feeling supportive of the new administration, that she now feels "attacked" and "disrespected". The commenter stated that restaurants in Maine are closing at an unprecedented rate, in large part due to increased costs, increases in the minimum wage, and being mandated to offer paid time off. The commenter added that more people will lose their jobs as a result. The commenter stated that the Legislature is considering legislation to increase taxes that "hit only" the hospitality business and will cause Maine to be perceived as being too expensive to visit. The commenter added that due to the coronavirus, the cancellation rate has "skyrocketed, as fears of coronavirus cause people to cancel." Cancellations include, business travelers, large conferences and individual guests. The commenter added that the stock market has plunged and has also caused guests to change and cancel plans.

The commenter asked, "at what point does the State think that it is fair to target one sector of the economy and put them out of business?" The commenter stated that profit margins are small and will be further eaten away by the increases proposed by the State. The commenter stated that business owners will need to decrease costs and services, and people will lose jobs, the fee increase targets the lowest paid licensees. The commenter asked the Department to stop attacking the hospitality industry and to start looking globally for solutions for the need for more income. The commenter recommended that the State should do what the hospitality industry must do, "tighten our belts and planning to get by with less." The commenter concluded that less customers lead directly to less revenue and to less jobs.

Response: The Department thanks the commenter for their comment and understands licensees' concerns; however, the Department's Maine CDC does not have enough funding to effectively operate its Health Inspection Program. The Department last significantly increased its licensing fees in a four-year plan with a significant increase in 2011, and small increases in 2012, 2013 and 2014, with no increases since then. These fee increases are necessary to keep the Health Inspection Program solvent. This increase will help to ensure that inspections continue to protect the health and safety of people served by HIP-licensed establishments. No changes were made to the rule based on this comment. No changes were made to the rule based on this comment.

SUMMARY OF CHANGES RESULTING FROM PUBLIC COMMENTS & AAG REVIEW FOR FORM AND LEGALITY:

As a result of OAG review as to form and legality, the Department finds that it must update the "Last Amended" date on the Summary Statement to reference the effective date of the current finally adopted rule.