

Fees by Program

FOOD SAFETY AND SANITATION (FSS)

As part of the regulation package to develop fees in response to the 1991 legislative directive, FSS proposed fees under 18 AAC 30 for food processors, food stores and markets; 18 AAC 31 for food service; and 18 AAC 34 for seafood processors and shellfish permits. The fees were based on personal services and administration costs calculated at \$75 per hour.

Seafood and Shellfish Fees

The first fees established in 1993 (Register 125) under 18 AAC 34 (Seafood Processing and Inspection) were annual permit fees in 18 AAC 34.905. Fees ranged from \$25 for a shellfish harvester to \$325 for a large cannery.

In 1997, 18 AAC 34 was completely reorganized and 18 AAC 34.905 was relocated to 18 AAC 34.900 and seafood permit fees were raised (Register 144).

18 AC 34.900 was amended in 1999 (Register 152), 2001 (Register 158), 2005 (Register 176), 2006 (Register 179), and 2007 (Register 2007).

In 1999, fees were raised after a legislative action that cut the program budget's GF authority by \$887.0 and added back \$548.0 GFPR fee receipt authority (Register 152).

In 2005 (Register 176), fees were increased to recover \$255.8 in new GFPR authority to pay for two new seafood/shellfish positions authorized by the Legislature.

In 2007, the program added new permit categories (Register 184).

Food Fees

In 1993, fees for annual permits and plan reviews were established in 18 AAC 30 (for food stores, markets, and processors) and 18 AAC 31 (for food services). Fees ranged from \$50 for a food service with 0-25 seats to \$200 for a food service with seating for more than 50 people. In 1997, regulations concerning food stores, markets, and processors at 18 AAC 30 were incorporated into the food service regulations at 18 AAC 31, creating the Alaska Food Code.

These regulations were amended in 1999 (Register 152), 2000 (Register 156), 2001 (Register 158), 2002 (Register 163), 2004 (Register 172) and 2006 (Register 180).

Fees were increased with a 1997 regulation change (Register 142) to cover approximately 40% of the program's personnel costs, derived from an hourly rate and average time spent to issue permits; conduct inspections, plan reviews, spot checks, and compliance activities; and provide technical assistance.

In 1999 (Register 152), the program took a \$339.0 GF budget reduction and the Legislature also changed the way the remaining program was funded, requiring that the program raise an additional \$548.0 GFPR through fees. Fees were increased only to the extent necessary to collect

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the additional \$548.0 and the program adjusted inspection rates, closed the Dutch Harbor (later reopened per Chapter 133 SLA 00), Tok, and Naknek offices, relocated the Cordova office to Valdez, eliminated seven inspector positions, including those associated with the program's Meat and Poultry program (which was relinquished to the USDA), and consolidated the programs under one manager.

During the 22nd legislative session, the Legislature included the following language in Chapter 94 SLA 02: "It is the intent of the legislature that FY03 will be used as a transition year to move food inspection responsibilities to local governments and that there will be no funding for food inspections in FY04." In keeping with the legislative intent to reduce the FY04 budget for food inspections, the Department proposed to revise the State's program and looked at new ways to implement standards in Alaska. These elements included on-line food worker training and testing, and certified food protection manager requirements. The program realized a \$653.6 cut, eliminating six positions (mainly in larger locales where the program expected local governments to assume the program), and reduced fees by approximately \$50 per permit in 2004 (Register 172).

ENVIRONMENTAL HEALTH LABORATORY (EHL)

Historic and Background Information

In 1997, the former 18 AAC 34.905 dealing with annual permit fees was relocated to 18 AAC 34.900 and 18 AAC 34.905 was reestablished to address laboratory fees (Register 144). The section was readopted in 1999 (Register 152), and amended in 2005 (Register 176).

Based on the historic information in Attachment A, fees were formulated using estimations of time and materials based on an estimated number of samples (sample load). For example, if 200 of Test A are to be run, and Test A costs \$2,000 in personal services and \$1,000 in supplies = \$3,000 total for 200 tests, the individual test fee = \$15.

Assumptions are made when using the above formula. Estimates must be made for how many samples will be received for Test A and 'how' the samples will arrive at the lab.

- If ten samples arrive per day, then they can be grouped or 'batched' together for analysis which allows for efficiencies in handling, quality control (QC) tests, media preparations, and data entry.
- If they arrive one sample at a time sporadically throughout an entire year, efficiencies of scale are lost and the true expense per sample is more.
- If you have a process that takes an hour to complete, performing it consecutively for three samples will take three hours of time.
- If you can start the task on the first sample and then start the second sample half an hour later and continue stacking the time, the time will be reduced 30% from three hours to two hours. This represents batch efficiencies.

Current Challenges in Fee Calculations

Fees in the past did not necessarily accurately reflect the cost to the State (lab) to perform the test. Considerations such as lab overhead; changes in regulatory limits, approved methods, and technology; and the increasing need for faster results were not factored in to previous calculations. We have not had an update to the fees in regulation for quite some time and have discussed the possibility of factoring in all of these variables when the opportunity to evaluate fees presents itself.

The current fees do not account for overhead, direct or indirect, required to maintain the ability to provide the testing service. Indirect overhead is the utilities, building space, maintenance, phone service, administrative contracts, IT support personnel/services, and capital equipment that support the laboratory as a whole. Direct expenses that are unaccounted for are test specific training, proficiency tests, shipping, couriers, audits and certifications, test specific equipment, maintenance contracts, and waste disposal that can be directly attributed to Test A. These expenses are incurred regardless of whether the lab receives samples or not because the lab must maintain the capacity to perform tests it offers.

The regulatory fee currently charged for paralytic shellfish toxin (PST) by mouse bioassay is \$125 per sample. A time and materials calculation performed in October 2011 showed the time and materials expense for one sample is \$482.03. If three samples arrive and can be processed at the same time, the expense drops to \$313.07. This is due to the batch efficiency variable noted in the “historic” section above.

The fees in regulation also have not kept up with changes in regulatory limits, approved methods, or technology. As research continues and technology advances, regulatory limits are decreasing.

A reduction in limits such as arsenic can make for more work adjusting standard operating procedures (SOPs), new calibration curves, new control standards purchased, new studies to verify method detection limits (MDLs), new initial demonstration of capabilities (IDSCs) for analysts, and, in some cases, will require new capital investments into equipment that can detect the smaller contaminant amounts the example regulation change required.

A new piece of equipment requires the formerly listed actions as well as instrument validations, training documentation, and creation of test codes and downloads for data transfer to laboratory information management system (LIMS).

Approved regulatory methods also change based on research and technology and can diverge based on regulatory body. These differences create additional expenses in order to keep our lab up to date.

For years the ‘normal’ test for aerobic (or heterotrophic) plate count was using an agar pour plate method, often called standard plate count or SPC and is approved by both the Food and Drug Administration (FDA) and Environmental Protection Agency (EPA) for dairy water and drinking water respectively.

Technology was developed to ‘simplify’ the test. One product, called SimPlate (by Idexx), is considered to provide equivalent results and is approved by EPA for drinking water. The FDA has approved Petri-Film (by 3M) as an equivalent to SPC for testing of dairy water. Both agencies agreed on SPC, and both agree that their ‘new’ method is ‘equivalent,’ but the FDA will not accept SimPlate and FDA will not accept Petri-Film.

These new methods are simpler and provide results faster, but the divergence requires two different Standard Operating Procedures (SOPs), materials/media, double the QC check, and multiple vendors. Efficiencies created by the ‘simpler’ methods are eroded by the extra work created by the bifurcation.

Advancing technology also presents challenges for the lab when calculating fees. Diseases spread very quickly and spending weeks with test tubes and petri plates is not always effective for giving timely results to protect public health or facilitate commerce. In the last 10-15 years, newly approved methods and technologies that can give a negative screened result in days, and in some cases hours, instead of weeks have been developed. A Listeria test can take four days by culture methods for enrichments and plating before confirming a negative result. This can be very important and cumbersome if you are a farmer waiting on the result to sell your lettuce.

Testing time can be reduced by half, or even more, with newer instruments using ELISA (enzyme-linked immunosorbent assay) or PCR (polymerase chain reaction) technology, allowing results to be returned faster to the customer.

- The downside to these technologies is that a sample that is not negative generally must go through the methods using culture and biochemistry to confirm results, but only the rare positive sample from the workload will trigger the more laborious route.
- The newer instruments equipped with upgraded technology are expensive to procure and maintain, but they tend to increase the volume throughput that one analyst can perform.
- The materials costs may be less than the cultural methods that fees might have been based on, but the maintenance expenses are higher.
- The rewards are faster results and increased sample capacity by the analyst.

In addition to the challenges mentioned before, the current regulatory fees have not been updated for quite some time, and have never kept pace with the Consumer Price Index (CPI) or even bargaining unit agreement cost of living increases (that affect salary costs).

DRINKING WATER

The Drinking Water Regulations, 18 AAC 80, had the first requirement for a fee in February 1993. The fees were for engineered plans and covered the Class A, B, and C systems. The initial development of the fees for engineered plan reviews and separation distance waivers was based upon the average time taken to complete the work. The fee was calculated by considering the:

- range in times to complete engineered plans/separation distance waivers for both ground water and surface water systems,
- level of expertise of staff (education and experience),

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- average time (initially ‘days’ in 1993) which was multiplied by an average hourly rate.

The Drinking Water program currently has fees for other activities (monitoring waivers, variances, exemptions, sanitary surveys, SWTR filtration avoidance inspections, corrosion control studies, etc). The total program fee receipt revenue for the DW program is only (approximately) \$230.0, or four per cent of their annual program budget.

The process for calculating fees is the same as originally used. The hourly fee is calculated based on the average salary, including benefits, for the Drinking Water Program staff working on the activity. For example, the fees for engineered plans and separation distance waivers looks at the average salary, including benefits, for all the staff in the Engineering Section, plus the average time (statewide) to complete the activity.

Fees are now increased every few years by the cumulative percentage increase in Bargaining Unit Agreements. For example, if a contract agreement increases by 1%, 1%, and 2.5% over three years, and if we increased fees at the end of the third year, we would propose an across the board 4.5% increase in the Drinking Water Program fees. This method produces fees that are not current with the actual costs, but it is a valid and well-defined process. These periodic fee increases cover the cost of doing business as required by the Legislature in 1991 which provided many DEC programs with statutory fee authority.

SOLID WASTE MANAGEMENT

The Solid Waste Program’s fees are listed in 18 AAC 60.700. The legal basis for the fee structure is in Alaska Statutes 37.10.050 – 37.10.058. This statute only allows the Solid Waste Program to assess fees for direct department costs to perform the regulatory items listed. The statute requires a fee review every four years. This law was enacted by the 21st Legislature in 2000 under House Bill 361. The Solid Waste Program’s authority to assess fees is in AS 44.46.025(a)(5).

The majority of Solid Waste Program fees in 18 AAC 60.700 are fixed annual fees that represent the average cost for the program to perform regulatory activities for a given classification of solid waste facility or activity. For activities that do not meet any of the fixed fee categories, the Solid Waste Program assesses an hourly fee that is based on the average salary and benefits for the staff. The benefit calculation is limited to 149% of the average employee salary by AS 37.10.058.

The Solid Waste Program tracks the number of hours to perform various classifications of solid waste regulatory activities and uses this data to compute fees during fee reviews.

PESTICIDE PROGRAM

The Pesticide Control Program assesses fees to producers of pesticides that are registered for sale in Alaska, and assesses fees to pesticide applicators certified to apply pesticides in Alaska.

The pesticide registration fees are listed in 18 AAC 90.850, and are currently set at \$90 for pesticides registered through the department’s internet registration process, and \$120 for pesticides registrations

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submitted directly (manually) to the department. The legal authority for pesticide registration fees is in Alaska Statute 44.46.025(a)(9), which sets a fee not to exceed \$120 per product. These fees are paid by pesticide producers, which are primarily located out of state.

The certified applicator fee is listed in 18 AAC 90.860, and is currently set at \$25, which is assessed at the initial issuance of certification, and at the time of each certification renewal. The legal authority for certification fees is in Alaska Statute 44.46.025(a)(10), which sets a fee not to exceed \$25.

Both fees were enacted into law by the 24th Legislature in 2005 under House Bill 19.