

# STATE OF COLORADO

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Colorado Department  
of Public Health  
and Environment

## **Recommended Fees For Retail Food Establishments C.R.S. 25-4-1607(11)(a)**

**Submitted to the Colorado Legislature**  
by the Division of Consumer Protection  
Colorado Department of Public Health and Environment  
January 1, 2001

### **DOCUMENT INFORMATION**

Title: Report to the Legislature Concerning Recommended Fees for Retail Food Establishments

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Subject: Lists the current fees used to conduct the Colorado Retail Food Safety Program and  
recommends changes to those fees.

Statute: C.R.S. 25-4-1607(11)(a)

Number of pages: 47

## **INTRODUCTION**

This report is submitted to the Colorado General Assembly to comply with 25-4-1607 (11) (a), CRS, 1998. The statute requires the Colorado Department of Public Health and Environment, working with the retail food industry and local health representatives, to submit this report that recommends fees for retail food establishments.

## **BACKGROUND**

- 1965 - Colorado passes the first restaurant law. The statute gave the department the authority to establish restaurant rules and regulations. The bill also established a \$10 license fee for all restaurants operating in Colorado. All license fees were returned to the Colorado General Fund.
- 1974 - The statute was revised to include convenience stores preparing foods and retail markets operating a delicatessen. The license fee was increased to \$20. The statute also defined these facilities as food service establishments. All new or extensively remodeled food service establishments were required to submit plans and specifications to health agencies for review before beginning construction. All of these license fees were returned to the State General Fund.
- 1980 - The statute was again revised. Restaurants operating in Denver were given a fee-free license. All other establishments paid a \$50 fee. In areas of Colorado where a local health agency was regulating an establishment, the local agency received \$30 of the fee and the State General Fund received \$20. In areas of Colorado where local health agencies did not exist, the entire \$50 was remitted to the General Fund.
- 1989 - The Colorado General Assembly passed legislation that increased license fees to \$80 for facilities conducting limited food preparation (fast food) and \$100 for establishments doing extensive food preparation (requires a lot of handling for preparation). In addition, authority was given for health agencies to charge \$75 to conduct a plan review of a new or extensively remodeled establishment.
- 1991 - A new statute was passed that established an inspection fee based upon the square footage for the portion of a grocery store not operating as a delicatessen; it granted authority to the Colorado Department of Public Health and Environment to adopt regulations for grocery stores, and it gave health agencies the authority to assess a civil penalty for grocery stores failing to comply with the statute or regulations.
- 1994 - Authority was given to health agencies to continue assessing civil penalties against food service establishments not complying with the applicable statute or regulations.
- 1998 - A statute was passed which combined food service establishments and grocery stores into retail food establishments; it modernized the existing statutes to recognize current food safety issues and practices; it increased existing license fees; it increased plan review fees from \$75 to a \$75 application fee and actual costs up to \$280; it established

other fees to be charged by health agencies and it earmarked dollars previously returned to the General Fund to the Department for activities related to retail food safety.

## **EXISTING STATUTE**

The 1998 legislative action was a compromise between health agencies and industry regarding license fees. Historically, the position of industry representatives participating in the legislative process has been that they should be responsible for the financial support of a portion of a retail food protection program, but not the entire amount. They believe the program is one that is conducted for the public good. During the 1998 process, industry did agree that there were elements of the program that should be supported by industry fees. The position of some local health agencies is that fees should solely support all costs associated with conducting a retail food protection program.

Industry and local health agencies agree that industry should pay the full cost for Hazard Analysis Critical Control Point (HACCP) plan review activities, industry training, real estate evaluations, special event coverage, enforcement, product/equipment approvals, and other requested services, including compliance assistance. Furthermore, it is agreed that industry fees should support statewide coordination activities conducted by the department. Industry and local health agencies also agree that public education is not an activity that should be supported by industry fees.

There remains a difference of opinion regarding who should be financially responsible for inspections, record keeping, complaint investigations and resolution, disease investigations, product sampling, and laboratory support. Industry believes they have a responsibility to pay a portion of the cost. A few local health agencies believe that industry should pay the total cost of the program.

The difference in philosophy is further complicated by the diversity of local government costs associated with program conduct throughout Colorado. The variability in salaries, administrative costs, and overhead rates utilized by local health agencies makes it impossible to determine a statewide cost associated with program activities. Furthermore, industry strongly objects to any system other than a statewide approach to the establishment of fees. They have voiced the concern that such an approach would lead to non-uniform fees being established throughout Colorado.

## **RECOMMENDATIONS**

During the past two years the department has communicated with local health agencies and industry on this subject. The Colorado Association of Local Public Health Leaders developed a white paper regarding the aspects and costs associated with conducting a Retail Food Safety Program. This document is included in Attachment II. The Colorado Association of Local Public Health Leaders and the Colorado Health Officer Association met on December 15, 2000 and concluded that county governments and local board of health should have the ability to establish fees for up to two-thirds of the cost of food safety programs directed toward for-profit establishments. In order to assure the industry and local taxpayers that fees are established at the appropriate level of cost-recovery, each local entity that offers this service shall include an itemized audit of retail food cost allocations on at least a bi-annual basis. In this case, retail food establishment fees would vary depending on where the establishments are located.

In order for this department to fulfill its statutory obligation in submitting this report, staff have gathered the necessary data, held extensive conversations with all parties, and developed the following recommendations. However, the decision on how best to fund this important public health activity rests not with the department, local health agencies, consumers, or industry. That decision rests solely with the Colorado General Assembly. While the department believes that the suggested approach is reasonable, the General Assembly has every right to consider alternatives suggested by other interested parties.

The department has abundant information and statistics available to those interested in reviewing them. They may be obtained by contacting the Consumer Protection Division. However, for brevity sake, they are not included in this report. The department's recommendations are as follows.

#1. The recommended annual license fees in this report are based on the Consumer Price Index (CPI) percentages plus 10 percent for the years 1990-1999. These fees account for the difference between the CPI for the above mentioned years and the last increase in fees that was accomplished through legislative action in 1998. Attachment I shows an example of the actual percent increase in licensing fees as a result of the 1998 legislation and the change in license fee when CPI percentages are applied. The additional 10 percent increase above the CPI addresses the comments received from the local health agencies. The CPI plus 10 percent achieves approximately 50 percent of the average cost of conducting the retail food program per establishment as reported by local health agencies. Some local health agencies have concern the 50 percent is based on what they are currently spending and not the total amount of resources necessary to provide what they feel is a comprehensive retail food safety program. Attachment II provides the written comments received from local health and other governmental agencies.

- Amend 25-4-1607 (1) (a) to establish the following revised annual license fees for restaurants.

<b>Seating Capacity</b>	<b>Current Fee</b>	<b>Recommended Fee</b>
0 to 100	\$110	\$151
101 to 200	125	171
Over 200	135	185

- Amend 25-4-1607 (1) (b) to establish the following revised annual license fees for grocery stores.

<b>Square Footage</b>	<b>Current Fee</b>	<b>Recommended Fee</b>
Less than 3,000	\$ 44	\$ 60
3,001 to 10,000	80	110
10,001 to 20,000	92	126
20,001 to 40,000	110	151
40,001 to 70,000	140	192

Over 70,000

200

274

- Amend 25-4-1607 (1) (c) to establish the following revised annual license fees for grocery stores with a deli.

<b>Square Footage</b>	<b>Current Fee</b>	<b>Recommended Fee</b>
Less than 3,000	\$110	\$151
3,001 to 10,000	180	247
10,001 to 20,000	192	263
20,001 to 40,000	210	289
40,001 to 70,000	240	329
Over 70,000	310	425

#2. The recommended application fees are based on the Consumer Price Index (CPI) percentages for the years 1990-1999. The maximum in actual cost limits is recommended to recover actual costs incurred to provide the service. Data indicates the current cap was exceeded in some cases when services were provided.

- Amend 25-4-1607 (2) to increase the fee for application for a plan review to \$100 (currently \$75) and increase an actual cost limit to \$500 (currently \$280).
- Amend 25-4-1607(3) to increase the fee for application for an equipment or product review to \$100 (currently \$75) and increase the actual cost limit to \$500 (currently \$280).
- Amend 25-4-1607 (4) to increase the Hazard Analysis Critical Control Point (HACCP) plan review of a specific written process to the actual cost not to exceed \$100 (currently \$80). Increase the plan review of a HACCP plan for a process conducted at a facility to the actual cost not to exceed \$250 (currently \$200).
- Amend 25-4-1607(5) to increase the minimum charge for real estate evaluation to \$100 (currently \$75).

#3. The amount collected that is transferred to the food protection cash fund of each fee has not changed since 1974. Funds received are dedicated for the department to grant, refuse, suspend or revoke licenses; promulgate rules, provide periodic examination and modification of the rules when needed; to hear and determine complaints against licensees; develop and enforce standards of program conduct and performance to be followed by the department and local boards of health; provide technical assistance, equipment and product reviews, training and standardization, program evaluation and other services necessary to assure the uniform interpretation and application of the rules.

- Amend 25-4-1608 (2) to increase the amount of each fee collected pursuant to 25-4-1607 (1) to \$25 (currently \$20).

#4. Experience gained in the assessment of civil penalties to obtain correction for non-compliance has shown this process can be very resource intensive. There has not been an

increase to the civil penalties since this authority was granted by the legislature in 1994.

- Amend 25-4-1611 (1) to increase the minimum civil penalty for violating the statute to \$500 (currently \$250) and the maximum civil penalty to \$2,000 (currently \$1,000).
- Amend 25-4-1611 (2) (c) (I) to increase the minimum civil penalty for violating the statute to \$500 (currently \$250) and the maximum civil penalty to \$750 (currently \$500).
- Amend 25-4-1611(2) (c) (II) to increase the minimum civil penalty for violating the rules and regulations to a minimum of \$750 (currently \$500) and the maximum civil penalty to \$2,000 (currently \$1,000).

## ATTACHMENT I

Using 100 retail food establishments, the subsequent pages illustrate the following:

- License fee charged and total revenues generated for retail food establishments prior to the 1998 legislation.
- License fee charged and total revenues generated for retail food establishments in 1995 and 1998 if the Consumer Price Index was applied.
- License fee charged and total revenues generated for retail food establishments in 1999 if the Consumer Price Index was applied to the fee schedule determined under the 1998 legislation.
- Actual license fee charged and total revenues generated for retail food establishments after the 1998 legislation.

Retail food establishments include restaurants, grocery stores, and grocery stores with delis. Each has a separate license fee schedule. One page for each type of retail food establishment is used for this illustration

### RESTAURANT

The following information is based on a population of 100 restaurants. The percentage of restaurants in each category is based on the calendar year 1999 licensing information from the Colorado Department of Revenue.

<u>Year</u>	<u>Category</u>	<u>Fee</u>	<u># Restaurants</u>	<u>Total Fee</u>
1990	Restaurant	\$ 80	8	\$ 640
	Restaurant with 0 – 100 seats	\$100	71	\$ 7,100
	Restaurant with 101 – 200 seats	\$100	13	\$ 1,300
	Restaurant with over 200 seats	\$100	8	<u>\$ 800</u>
				\$ 9,840
1995	Restaurant	\$98	8	\$ 784
	Restaurant with 0 – 100 seats	\$122	71	\$ 8,662
	Restaurant with 101 – 200 seats	\$122	13	\$ 1,586
	Restaurant with over 200 seats	\$122	8	<u>\$ 976</u>
				\$12,008

**(Reflects a 22.3% CPI increase of the 1990 fees between 1990 and 1995)**

1998	Restaurant	\$107	8	\$ 856
	Restaurant with 0 – 100 seats	\$134	71	\$ 9,514
	Restaurant with 101 – 200 seats	\$134	13	\$ 1,742
	Restaurant with over 200 seats	\$134	8	<u>\$ 1,072</u>
				\$13,184

**(Projects the 1998 fees under the old fee structure but with the 33.9% CPI increase between 1990 and 1998)**

1999	Restaurant with 0 – 100 seats	\$152	79	\$12,008
	Restaurant with 101 – 200 seats	\$172	13	\$ 2,236
	Restaurant with over 200 seats	\$186	8	<u>\$ 1,488</u>
				\$15,732

**(Reflects the fees to be collected for 1999 under the new fee structure, but with the 37.8% CPI increase between 1990 and 1999)**

<b>ACTUAL:</b>	Restaurant with 0 – 100 seats	\$110	79	\$ 8,690
1998	Restaurant with 101 – 200 seats	\$125	13	\$ 1,625
	Restaurant with over 200 seats	\$135	8	<u>\$ 1,080</u>
				\$11,395

**Actual increase from 1990 to 1998 is 16%**

### GROCERY STORE

The following information is based on a population of 100 grocery stores. The percentage of grocery stores in each category is based on the calendar year 1999 licensing information from the Colorado Department of Revenue.

<u>Year</u>	<u>Category</u>	<u>Fee</u>	<u># Grocery</u>	<u>Total Fee</u>
1991	Grocery <3,000 ft	\$40	88	\$3,520
	Grocery 3-10,000 ft	\$70	8	\$ 560
	Grocery 10-20,000 ft	\$80	2	\$ 160
	Grocery 20-40,000 ft	\$95	1	\$ 95
	Grocery >40,000 ft	\$120	1	<u>\$ 120</u>
				\$4,455
1995	Grocery <3,000 ft	\$47	88	\$4,336
	Grocery 3-10,000 ft	\$82	8	\$ 656
	Grocery 10-20,000 ft	\$94	2	\$ 188
	Grocery 20-40,000 ft	\$112	1	\$ 112
	Grocery >40,000 ft	\$141	1	<u>\$ 141</u>
				\$5,233

**(Reflects a 17.7% CPI increase of the 1991 fees between 1991 and 1995)**

1998	Grocery <3,000 ft	\$52	88	\$4,576
	Grocery 3-10,000 ft	\$90	8	\$ 720
	Grocery 10-20,000 ft	\$103	2	\$ 206



Grocery 20-40,000 ft	\$122	1	\$ 122
Grocery >40,000 ft	\$155	1	\$ 155
			<u>\$5,779</u>

**(Reflects the 1998 fees under the old fee structure but with the 28.9% CPI increase between 1991 to 1998)**

1999	Grocery <3,000 ft	\$58	88	\$5,104
	Grocery 3-10,000 ft	\$106	8	\$ 848
	Grocery 10-20,000 ft	\$122	2	\$ 244
	Grocery 20-40,000 ft	\$146	1	\$ 146
	Grocery 40-70,000 ft	\$186	.5	\$ 93
	Grocery >70,000 ft	\$265	.5	<u>\$ 133</u>
				<u>\$6,568</u>

**(Reflects the fees to be collected for 1999 under the new fee structure, but with the 32.6% CPI increase between 1991 and 1999)**

**\*Note: An additional square footage category was added during the 1998 legislation.**

<b>ACTUAL:</b>	Grocery <3,000 ft	\$44	88	\$3,872
1998	Grocery 3-10,000 ft	\$80	8	\$ 640
	Grocery 10-20,000 ft	\$92	2	\$ 184
	Grocery 20-40,000 ft	\$110	1	\$ 110
	Grocery 40-70,000 ft	\$140	.5	\$ 70
	Grocery >70,000 ft	\$200	.5	<u>\$ 100</u>
				<u>\$4,976</u>

**Actual increase from 1991 to 1998 is 12%**

### GROCERY STORE WITH DELI

The following information is based on a population of 100 grocery w/deli stores. The percentage of grocery w/deli stores in each category is based on the calendar year 1999 licensing information from the Colorado Department of Revenue.

<u>Year</u>	<u>Category</u>	<u>Fee</u>	<u># Grocery</u>	<u>Total Fee</u>
1991	Grocery <3,000 ft	\$100	67	\$ 6,700
	Grocery 3-10,000 ft	\$130	12	\$ 1,560
	Grocery 10-20,000 ft	\$140	3	\$ 420
	Grocery 20-40,000 ft	\$155	4	\$ 620
	Grocery >40,000 ft	\$180	14	<u>\$ 2,520</u>
				<u>\$11,820</u>

1995	Grocery <3,000 ft	\$118	67	\$ 7,906
	Grocery 3-10,000 ft	\$153	12	\$ 1,836
	Grocery 10-20,000 ft	\$165	3	\$ 495
	Grocery 20-40,000 ft	\$182	4	\$ 728
	Grocery >40,000 ft	\$212	14	<u>\$ 2,968</u>
				\$13,933

**(Reflects a 17.7% CPI increase of the 1991 fees between 1991 and 1995)**

1998	Grocery <3,000 ft	\$129	67	\$ 8,643
	Grocery 3-10,000 ft	\$168	12	\$ 2,016
	Grocery 10-20,000 ft	\$180	3	\$ 540
	Grocery 20-40,000 ft	\$200	4	\$ 800
	Grocery >40,000 ft	\$232	14	<u>\$ 3,248</u>
				\$15,247

**(Reflects the 1998 fees under the old fee structure and a 28.9% CPI increase between 1991 and 1998)**

1999	Grocery w/deli <3,000 ft	\$146	67	\$ 9,782
	Grocery w/deli 3-10,000 ft	\$239	12	\$ 2,868
	Grocery w/deli 10-20,000 ft	\$255	3	\$ 765
	Grocery w/deli 20-40,000 ft	\$278	4	\$ 1,112
	Grocery w/deli 40-70,000 ft	\$318	12	\$ 3,816
	Grocery w/deli >70,000 ft	\$411	2	<u>\$ 822</u>
				\$19,165

**(Reflects the fees to be collected for 1999 under the new fee structure, but with the 32.6% CPI increase between 1991 and 1999)**

**\*Note: An additional square footage category was added during the 1998 legislation.**

<b>ACTUAL:</b>	Grocery w/deli <3,000 ft	\$110	67	\$7,370
1998	Grocery w/deli 3-10,000 ft	\$180	12	\$2,160
	Grocery w/deli 10-20,000 ft	\$192	3	\$ 576
	Grocery w/deli 20-40,000 ft	\$210	4	\$ 840
	Grocery w/deli 40-70,000 ft	\$240	12	\$2,880
	Grocery w/deli >70,000 ft	\$310	2	<u>\$ 620</u>
				\$14,446

**Actual increase from 1991 to 1998 is 22%**

## **ATTACHMENT II**

The Colorado Retail Food Safety Program, Prepared by The Colorado Association of Local Public Health Leaders, September 2000.

Written comments received by local health agencies and other local governmental agencies:

Tri-County Health Department

Larimer County Board of Health via Adrienne LeBailly, Larimer County Department of Health and Environment

Larimer County Board of County Commissioners via Adrienne LeBailly, Larimer County Department of Health and Environment

Morgan County Board of County Commissioners

Northeast Colorado Health Department

Northeast Colorado Board of Health

Weld County Department of Public Health and Environment

Boulder County Board of County Commissioners

Boulder County Health Department

Boulder County Board of Health

Washington County Commissioners

Phillips County Commissioners

Logan County Commissioners

Pueblo County Board of Health via Heather Maio, Pueblo City-County Health Department

Colorado Directors of Environmental Health Consensus Position Statement

Pitkin County Board of County Commissioners via Tom Dunlop, Pitkin County Department of Health

Archuleta, LaPlata and San Juan Counties via Wano Urbanos, San Juan Basin Health Department

Jefferson County Board of Commissioners