
Environmental
Protection Authority
Te Mana Rauhi Taiao
Our fees are changing
Seeking your views
Consultation proposals on the fees charged to organisations and people who make applications under the Hazardous Substances and New Organisms Act, and on the requirement for import certificates for explosives
Quick summary
APRIL 2018

Quick summary of consultation paper: **Our fees are changing**

Prepared in accordance with section 21(2) of the Hazardous Substances and New Organisms Act 1996

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What is this document for?

This is a quick summary of proposals to amend the fees charged for applications and certificates under the Hazardous Substances and New Organisms Act 1996 (HSNO Act). We are seeking feedback on the fees proposals, and also on the requirement for import certificates for explosives and novelty fireworks.

The full consultation document, and an online submission form that may be used, may be accessed on https://www.epa.govt.nz/public-consultations/open-consultations/

The closing date for submissions is **21 May 2018**. Please email completed forms or other submissions to fees.submissions@epa.govt.nz

Introduction

The Government expects the EPA to set fees that recover a fair and reasonable proportion of the costs of providing services under the HSNO Act. The current fees, however, are recovering just 11 percent of the costs. It means the taxpayer is funding 89 percent.

Specifically, in the financial year ended 30 June 2017, the income from hazardous substances and new organisms' fees was $0.575 million. It compares to the cost to provide the services for which fees are paid of about $5.2 million (hazardous substances $3.9 million; new organisms $1.3 million).

One reason that the fees income is low is that the fees have been at the same level for over a decade (with most fees last set in 2003 and 2005.)

Effectively, less government funding is available for hazardous substances work supporting New Zealanders, as it is being used to subsidise application costs. In particular, less funding is available for reassessments of approvals and group standards, promoting awareness about keeping people and the environment safe when using, storing, and disposing of chemicals, and compliance monitoring and enforcement work.

Proposed revised fees have been calculated that rebalance the share of the costs that applicants pay. The proposals have been discussed with the Government, which expects the EPA to progress a programme of work to revise cost recovery levels that support a more financially sustainable organisation.

The proposed revised fees provide for applicants to pay between 16 percent and 57 percent of the processing costs, and for the government to contribute the remainder. The continued high government contribution to some fees recognises that charging applicants the estimated full costs of processing some applications would mean a considerable fees increase. Accordingly, we propose a two-step increase in fees, in order to smooth some increases.

The government contribution also recognises that there are a range of benefits to the public, the environment, innovation, and the economy associated with various applications.

We propose new fees will be in place by 1 October 2018.

We propose a second fees increase in 2021. This will take into consideration costing information from our new financial management system that commenced on 1 July 2017. As well, it will recognise any process improvements from our hazardous substances modernisation programme.

Matters we have taken into account when considering new fees

Underpinning principles

Based on the Treasury guidance on cost recovery, the following principles have been used to underpin setting the proposed revised HSNO Act fees:

- The basis of the fees charged is transparent, clear, predictable and easy to understand.
- The fees take into account EPA's commitment to efficiency and process improvements.
- The application fees do not discourage applications and recognise public benefits.
- There is recognition that, in many cases, an approval can be used by both the applicant and others.
- The fees take into account actual costs, as well as other fees payable to the government as well as to the EPA.
- The fees align with, and are not a barrier to, other outcomes desired by government, for example, economic growth, innovation, and environmental protection.
- Applicants see fees and charges as fair and reasonable.

Costs of processing applications

The full consultation document details the processes for considering applications. This is in line with the transparency principle. The EPA prepares a decision report for all approval applications. There is a range of analysis and documents that support the decision report.

Activity-based costing of EPA's services was undertaken in December 2016, based on best available data. Activity-based costing provides a snapshot analysis to better understand the true cost to deliver decision-making and monitoring and enforcement services. The data shows, on average, 30 percent of the costs of processing applications are direct costs, and 70 percent indirect costs. The data was tested against three years of EPA expenditure data which substantiated this ratio.

Private, industry, public benefit

For each application type, we also consider what are referred to as private, industry, and public benefits. This is in line with the Treasury cost recovery guidance. If the person applying for an approval, certificate, or some other EPA service is the beneficiary of the service then this is a private benefit. Some approvals and services may provide benefit to the wider industry. This is referred to as an industry benefit. A public benefit is where the community benefits from the services provided.

In most cases, there is some private and public benefit. For hazardous substances approvals, there is usually some industry benefit.

Hazardous substances benefits analysis example

An example of the assignment of the private, industry, and public benefit is a category C hazardous substances approval application. A category C application is for a substance that is new to New Zealand. The application is publicly notified. The conclusion is that the benefit split between the applicant's private benefit, the industry benefit, and the public benefit is fairly even, respectively: 40 percent: 30 percent: 30 percent.

The applicant benefits from an approved category C application by being able to market a new substance. Other importers and manufacturers also may benefit at some stage from the approval, if they make a category A or B or rapid application based on the substance. This is on the basis that their substance has some similarity to the already approved substance. Applicants will avoid the expense of a category C application. This includes the provision of studies that supported the original application. Accordingly, there is also an industry benefit from the approved application.

There is public benefit from encouraging new substances approvals, especially those that have lower hazard classifications, or are 'softer' chemistry. Softer chemistry means the substance has some environmental benefits or less potential for harm to people, as compared to existing approved substances.

The benefit weighting is more towards the applicant for rapid, category A, and category B applications. There is public benefit from a lower hazard classification, and also some benefit from encouraging the availability of similar substances and thus competitive suppliers. There is industry benefit from all approvals that can be used as a reference for applications. The conclusion is that the benefit split between the applicant's private benefit, the industry benefit, and the public benefit is respectively: 70 percent: 15 percent: 15 percent.

New organisms' benefits analysis example

New organisms' applicants range across public and private sector research organisations, universities, those wanting to test an innovative idea (which may or may not lead to a commercial success), those wanting some form of financial return on their investment, and zoos. This is different from hazardous substances applicants, who in most instances are seeking some private gain from their application.

Some of the new organisms' research and development work is cutting edge, and progress is often only seen over many years. Even if trials demonstrate positive findings, there is no guarantee there will be success in progressing the project as initially intended. Well-known research relates to biological control new organisms. This is not research with a financial benefit objective for the applicant and thus has an assessed high public benefit.

There are, also, major companies, Crown Research Institutes, and universities who make import or release of a new organism applications, and who will be seeking to have a financial benefit from the approval. There is a high applicant benefit, but also likely a public benefit associated with encouraging innovation and development of new approaches which are likely to benefit the economy or general wellbeing of New Zealanders. For zoos, there is a high public and conservation interest.

For many applicants, there is also a benefit associated with the social licence of having the EPA, as an independent authority, evaluate the application and assess that the benefits of the new organism approval outweigh the risks. For some applicants, this is an international social licence, having a New Zealand approval for a new organism that provides leverage for undertaking international research. Rapid applications have an applicant benefit associated with being able to get a quicker approval.

Examples of our benefit assessments are:

- containment approval, and import or release of a new organism that is a biological control agent: applicant benefit 30 percent: public benefit 70 percent
- rapid containment approval, and other import or release of a new organism: applicant benefit 60 percent: public benefit 40 percent.

Other factors taken into account

In considering the fee to charge, we also take into account other government fees the applicant may be paying, any international equivalent charges, future process efficiencies that may be achieved, and other factors that may be relevant.

Import certificates for explosives and novelty fireworks

In the discussion of possible new fees for certificates for explosives and novelty fireworks, one factor to take into account is whether there is a clear regulatory reason for import certificates.

There are particular characteristics of explosives that require specific regulation, which is provided for under the Health and Safety at Work Act 2015 and the Health and Safety at Work (Hazardous Substances) Regulations 2017, managed by WorkSafe New Zealand. This legislation addresses the uplift, transport, storage and labelling (including signage and safety data sheets), and tracking of explosives that cover both emergency management and worker safety.

In most cases, to possess a class 1 explosive a person must hold a controlled substance licence, and an explosive must not be supplied to anyone who does not hold a controlled substance licence. There are a number of exceptions, including gunpowder in amounts not exceeding 15 kilograms provided the person has a firearms licence, emergency flares and signalling devices, novelty and retail fireworks, railway track signal explosives, and cable cutters. A controlled substance licence must always be sighted by a person selling or transferring non-exempted explosives, and the transfer must be tracked.

To obtain a controlled substance licence, a person must: be a certified handler under the Health and Safety at Work (Hazardous Substances) Regulations; be 17 years of age or over; require possession of the explosive to carry out the person’s work; and be a fit and proper person to possess the explosive.

The Health and Safety at Work (Hazardous Substances) Regulations set out various requirements for class 1 explosives, related to location, securing the substance, and containing the substance. There are special requirements for pyrotechnic explosives. There are also tracking requirements, including

recording location and movement of the tracked substance at each phase of its life cycle. This is to give emergency management, and workplace competent persons, and workers all the necessary information about the explosives that will be on site, or have previously been on site over a certain period.

There is also specific regulation by EPA of retail fireworks under the Hazardous Substances (Fireworks) Regulations 2001. For example, there are requirements around the height range and decibel range of retail fireworks that are allowed to be sold in New Zealand. These must be checked before fireworks are sold to a retailer. A compliance certificate must be obtained.

An import certificate for explosives and novelty fireworks required under the HSNO Act is additional to these other regulatory requirements. The import certificate demonstrates to New Zealand Customs that the explosives or novelty fireworks are approved under the HSNO Act.

In the scheme of all the other regulatory requirements for explosives, it is questionable whether the import certificate provides any more than marginal regulatory value. In particular, there would appear to be no regulatory value for import certificates for novelty fireworks, and for the other explosives where a controlled substance licence is not required. These are gunpowder in amounts not exceeding 15 kilograms provided the person has a firearms licence, emergency flares and signalling devices, retail fireworks, railway track signal explosives, and cable cutters. Also of relevance to considering the ongoing need for import certificates is the government's general direction for health and safety at work reforms: that they should achieve more flexible, simpler, and less onerous regulation.

The status quo (no change) is compared to four regulatory options regarding the ongoing need for import certificates:

- requiring an import certificate only for explosives that are covered by the controlled substance licence requirements in the Health and Safety at Work (Hazardous Substances) Regulations
- requiring an annual import certificate as compared to a per shipment certificate
- not requiring import certificates for novelty fireworks, and only requiring an annual certificate for explosives covered by the Health and Safety at Work controlled substance licence requirements
- not requiring import certificates for any explosives.

There is no preferred option put forward. Feedback is being sought on the options alongside possible fees changes. If there is any change to the import certificate requirements, this will require an amendment to the EPA Hazardous Substances (Importers and Manufacturers Information) Amendment Notice 2017.

Proposed new fees

For all the EPA's hazardous substances and new organisms' applications and certificates services, the full consultation paper provides a range of revised fees considered, and a preferred option. The following tables summarise the preferred options for all the main application types.

Table 1: SUMMARY OF PROPOSED CHANGES TO HAZARDOUS SUBSTANCES FEES						
Application type	**Current Fee**	**Proposed Fee**	**Applicant % costs**	**Government % costs**	**Total EPA cost**	**Assessed applicant benefit**
S.26 Determination	$1,000	$3,000	50%	50%	$6,000	80-100%
S.28A approval rapid	$500	$4,000 (including $1,000 lodgement)	21%	79%	$19,000	70%
S.28 approval category A	$3,000	$5,000 (including $1,000 lodgement)	26%	74%	$19,500	70%
S.28 approval category B	$5,000	$10,000 (including $1,000 lodgement) +$5,000 per hearing	19%+	81%-	$54,000	70%
S.28 approval category C	$15,000	$25,000 (including $1,000 lodgement) + $5,000 per hearing + specialist report costs	23%+	77%-	$111,000	40%
S.31 manufacture or import in containment	$500	$2,000	25%	75%	$8,000	50%
S.51 transhipment	$500	$2,000	30%	70%	$6,700	100%
S.62 grounds for reassessment	$500	$3,000	19%	81%	$16,000	35%
S.63 reassessment	Negotiated	$22,000+$5,000 per hearing + specialist report costs	20%+	80%-	Estimated $111,000	35%
S.67A minor or technical amendment to approval	$100 or $500	$2,000	44%	56%	$4,500	70-80%
S.95A permission	$500	$4,000	57%	43%	$7,000	80%
Import certificate explosives	$100	$500	33%	67%	$1,500	100%
Import certificate novelty fireworks	$50	$250	36%	64%	$700	100%

Table 2: SUMMARY OF PROPOSED CHANGES TO NEW ORGANISMS FEES						
Application type	**Current Fee**	**Proposed Fee**	**Applicant % costs**	**Government % costs**	**Total EPA cost**	**Assessed applicant benefit**
S.26 Determination	$1,000	$3,000	17%	83%	$17,500	60%
S.34 Import or release no controls for research or biological control	$15,000	$20,000	17%	83%	$121,000	30%
S.34 Import or release no controls not research nor biological control	$15,000	$25,000 +$5,000 per hearing + specialist report costs	21%	79%	$121,000	60%
S.34 qualifying organism medicine or veterinary medicine rapid	$500	$10,000	16%	84%	$62,000	80%
S.40 import in containment non-notified	$2,000	$5,000	20%	80%	$25,300	30%
S.40 develop in containment non-notified	$2,000	$3,500	21%	79%	$17,000	30%
S.40 import or develop in containment rapid	$500	$2,000	40%	60%	$5,000	60%
S.51 transhipment	$1000	$4,000	(36% modelled)	(64% modelled)	$11,000 (modelled)	100%
S.67A minor or technical amendment	$100 or $500	$4,000	32+%	68-%	$12,600	90%