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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-490
VAC Chapter title(s)	Virginia Radiation Protection Regulations: Fee Schedule
Action title	Amend Regulation as a Result of Periodic Review
Date this document prepared	9/14/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Department of Health (VDH), Office of Radiological Health (ORH) is tasked with regulating sources of radiation within the Commonwealth in order to protect the public from unnecessary exposure. Section 32.1-229.1 of the Code of Virginia (Code) authorizes the Board of Health (Board) to establish fee schedules for the registration and inspection of x-ray machines, as well as the licensing of radioactive materials. ORH is almost entirely funded through revenues collected according to 12VAC5-490. Since the fee schedule was last amended in 2019, significant inflation and increases in operational costs warrant the consideration of changes to the fees assessed for registrations, inspections, and licensing of x-ray machines and radioactive materials. Additionally, internal and external evaluations of ORH's organizational structure have concluded that one additional x-ray inspector position and one additional radioactive materials inspector position are needed in Northern Virginia. ORH will

consider fee increases that take into account the minimum amount of revenue required to ensure the proper oversight of sources of radiation required by § 32.1-229 of the Code.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – Board of Health
Code – Code of Virginia
CPI – Consumer Price Index
ORH – Office of Radiological Health
VDH – Virginia Department of Health

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

ORH conducted a periodic review of 12VAC5-490 and posted the review result to Townhall on August 3, 2022. Section 32.1-229 of the Code mandates the Board maintain a program to regulate sources of radiation, as well as establish a fee schedule necessary to operate the program. After a review of the revenue generated by the current fee schedule and the program’s expenses, ORH has determined that the fee schedule must be amended. Since 12VAC5-490 was last amended in February 2019, inflation has risen significantly. The cost of business operations has also increased with statewide pay raises, higher mileage rates, and higher per diem rates as some examples.

ORH took several factors into account when considering changes to the fee schedule. First, ORH used the U.S. Bureau of Labor Statistics’ CPI Inflation Calculator to assess the change in buying power of the fees established in February 2019 to that of July 2022, which is the most recent data available. Second, ORH reviewed its revenues, expenditures, and anticipated new spending. ORH expects to incur several new spending initiatives and increased operational costs including, but not limited to hiring two new Safety/Compliance Officer positions, upgrading the mobile incident command/radiation laboratory, a five percent raise for state employees, and a \$1,000 bonus for state employees. The changes to the fee schedule under consideration should generate enough revenue to reduce the need to amend the fee schedule in the near future, likely for at least five years.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

1. The promulgating agency is the State Board of Health
2. State legal authority for retaining, amending, or repealing radiation protection regulations comes from the following sections of the Code of Virginia:
 - a. § 32.1-12, which authorizes the Board to “make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of [Title 32.1.]”
 - b. § 32.1-229, which directs the Board to establish fee schedules for the licensure of radioactive materials.
 - c. § 32.1-229.1, which directs the Board to promulgate fee schedules for the registration of x-ray machines, the inspections of x-ray machines by Department personnel.
 - d. § 32.1-229.2, which states that the fee schedule for inspections of x-ray machines by Department personnel shall include all reasonable costs of such inspections.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

As the state radiation control agency designated by § 32.1-228.1, VDH has a mandate to regulate and inspect sources of radiation in order to protect public health. ORH operations are funded almost entirely by revenues collected according to 12VAC5-490. In order to enforce the Radiation Protection Regulations found in 12VAC5-481, ORH must be able to amend the fee schedule to meet its financial obligations. ORH anticipates the proposed changes to the fee schedule may result in public comments challenging this proposal. However, § 32.1-229.2 of the Code directs the Board to develop a fee schedule that includes all reasonable costs of inspections conducted by VDH inspectors in order to minimize competition. Currently, the fee schedule for inspections conducted by VDH is lower than the fees assessed by private inspectors for identical inspections. ORH will propose the minimum fee increases necessary to maintain the regulation and control of sources of radiation required by § 32.1-229.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

12VAC5-490-10 Registration fees

ORH is considering a 25% increase to the registration fees for all x-ray machines.

12VAC5-490-20 Inspection fees and inspection frequencies for x-ray machines

ORH is considering a 25% increase to the fees charged for the inspection of x-ray machines by ORH personnel.

12VAC5-490-40 Application and licensing fees for radioactive materials licenses

1. ORH is considering a 25% increase to all specific license fees for radioactive materials.
2. ORH is considering changing the fees assessed to licensees with more than five sites to 1.5 times the specific license type fee currently in effect. The U.S. Nuclear Regulatory Commission (NRC) requires a certain percentage of sites listed on a radioactive materials license to receive an inspection. ORH Compliance/Safety Officers spend more time and effort inspecting licensees with six or more sites on a license than those with less.
3. ORH is considering raising the reciprocity fee from 50% to 75% of the specific license fee currently in effect. This change would improve the ability of Virginia licensees to compete for work with vendors holding a license from another NRC agreement state and operating under reciprocity at 50% of the standard license fee.

The Code of Virginia § 32.1-229.1 sets the private inspector application and annual fee at \$150. ORH is not currently considering a change to the private inspector registration fees in 12VAC5-490-50.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Virginia Radiation Protection Regulations: Fee Schedule, 12VAC5-490, remains critical to protecting the public from unnecessary radiation exposure caused by a wide spectrum of applications used in the healing arts, research, educational institutions, and industry. ORH operations are sustained almost entirely on revenues generated from the inspections and registrations of x-ray equipment and the licensure of radioactive materials. Without the ability to set the fee schedule for these services, VDH would not be able to provide adequate oversight of x-ray machines and radioactive materials in the Commonwealth of Virginia. Additionally, the Board is required to promulgate the fee schedule and in order to comply with such legislative mandate, no viable alternatives exist without the regulations set forth in 12VAC5-490.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Cameron Rose, 109 Governor St, RM 733, Richmond, VA 23219, Phone: 804-864-7090, Fax: 804-864-8155, Email: Cameron.Rose@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.