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Final Regulation
Agency Background Document

Agency name	Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-490-50
Regulation title(s)	Virginia Radiation Protection Regulations: Fee Schedule
Action title	Establish X-ray Device Private Inspector Fees.
Date this document prepared	07/27/2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Virginia Department of Health's Office of Radiological Health (ORH) proposes to amend the Virginia Radiation Protection Regulations Fee Schedule (12VAC5-490) in order to establish fees for the initial registration and subsequent annual renewal of individuals that inspect X-ray devices in the Commonwealth.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ORH - Office of Radiological Health
VDH – Virginia Department of Health

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Health approved the final amendments to the Virginia Radiation Protection-Fee Schedule (12VAC5-490) at its quarterly meeting on September 7, 2017.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

These regulations are authorized by the Code of Virginia § 32.1-229.1, Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors (effective July 1, 2016).

Section 32.1-229.1 authorizes the Board of Health to set annual registration fees for X-ray device Private Inspectors, not to exceed $150.00 for such registration. Upon approval of the application, the Private Inspector will be included on the Commonwealth's list of qualified X-ray machine inspector published pursuant to § 32.1-228.1.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Virginia Department of Health (VDH), ORH proposes to amend 12VAC5-490, Radiation Protection Fee Schedule, by establishing a new section 12VAC5-490-50, Private Inspector fees. Radiological Control Program regulations, which already require the registration of individuals that inspect X-ray producing devices in the Commonwealth, do not establish fees for their initial registration or annual renewal. Revenue recovery, as is the practice in other states using X-ray device Private Inspectors, will help offset administrative costs associated with document collection, review, approval, the issuance of certificates and the maintenance of an up-to-date Private Inspector directory. This regulatory amendment

is essential to protect health and safety by ensuring the safe operation of X-ray equipment through inspections by qualified X-ray device Private Inspectors who will be registered and certified by the Office of Radiological Health's X-ray Program. Fees are necessary to accommodate registration and certification in order to offset administrative costs that were once supported using General Funds.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The Virginia Department of Health's Office of Radiological Health (ORH) proposes to amend the Virginia Radiation Protection Regulations Fee Schedule (12VAC5-490) in order to establish fees for the registration of individuals that inspect X-ray devices in the Commonwealth. Radiological Control Program regulations currently require the registration of individuals that inspect X-ray producing devices in the Commonwealth. The regulations, though, do not establish fees for their initial registration or annual renewal. Registration fees for X-ray device Private Inspectors are charged in other states to help offset administrative costs associated with document collection, review, approval, the issuance of certificates and the maintenance of an up-to-date Private Inspector directory. These fees will help offset such administrative costs that were once supported using General Funds allocated to ORH but which have since been abolished.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Primary advantages and disadvantages to the public:
   The primary advantage to the public is to ensure the safe operation of X-ray equipment through inspections by qualified X-ray device Private Inspectors who will be registered and certified through the establishment of fees that will help offset administrative costs that were once supported using General Funds but which have since been abolished. Registering and certifying Private Inspectors of X-ray machines allows ORH to maintain an accurate database of trained, certified inspectors that are available to ensure the machines are functioning properly so as to minimize the risk of equipment malfunction and accidental overexposures.

   There are no disadvantages to the public in promulgating the proposed fee schedule.

2. Primary advantages and disadvantages to the agency and Commonwealth:
   Approving the proposed fee structure will allow the Commonwealth to recover more of the costs associated with carrying out the legislative mandate.

   There are no disadvantages to the agency and Commonwealth in promulgating the proposed fee schedule.

3. Other pertinent matters of interest to the regulated community:

Private inspectors of X-ray machines have an interest in ensuring that inspection fees by agency inspectors do not hurt their business by undercutting the private sector pricing, and Virginia Code § 32.1-229.2 requires the agency to establish inspection fees in such a manner so as to minimize competition with the private inspector while recovering costs.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements or no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that would be disproportionately affected by this action.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes would not have a direct impact on the institution of the family and family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes were made to the proposed amendments as published in the Virginia Register dated May 15, 2017 (Vol. 33, Issue 19).

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received during the public comment period (5/15/17 – 7/14/17) following the publication of the proposed stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Radiological Control Program regulations currently require the registration of individuals that inspect X-ray producing devices in the Commonwealth. The regulations, though, do not establish fees for their initial registration or annual renewal. Registration fees for X-ray device Private Inspectors are charged in other states to help offset administrative costs associated with document collection, review, approval; the issuance of certificates; and the maintenance of an up-to-date Private Inspector directory. A fee of $150 per year is proposed, which will help offset administrative costs that were once supported using General Funds allocated to ORH but which have since been abolished. The proposed new regulation follows:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
None.	12VAC5-490-50	None.	12VAC5-490-50. Private Inspector registration fees. A. Individuals included on the Commonwealth's list of qualified inspectors of x-ray machines pursuant to § 32.1-229.1 D 5 of the Code of Virginia as of November 1, 2016, shall pay annually a registration renewal fee of $150 to the Virginia Department of Health X-ray Program to remain on the list as a qualified inspector of x-ray machines pursuant to 12VAC5-481-340. B. Individuals requesting to be placed on the Commonwealth's list of qualified inspectors of x-ray machines pursuant to § 32.1-229.1 D 5 of the Code of Virginia shall: 1. Request approval by the Office of Radiological Health to become a qualified inspector of x-ray machines pursuant to 12VAC5-481-340; 2. Pay an initial registration fee of $150 to the Virginia Department of Health X-ray Program, once approved; and 3. Pursuant to subsection A of this section,

			pay annually a registration renewal fee of $150 to remain on the list as a qualified inspector of x-ray machines pursuant to 12VAC5-481-340. **Intent/Rationale/Impact**: This new regulation would establish annual registration and application change fees for individuals certified to inspect x-ray producing devices in the Commonwealth. Private X-ray device inspectors are already required to register with ORH, but ORH has not, in the past, been authorized to collect a fee to recover administrative costs. Administrative, personnel, travel and other expenses have increased since the fee schedule was last revised in 2009, and the use of general funds to support the X-ray program was eliminated in SFY16. Instituting these fees will help to sustain the X-ray program. The impact to Private Inspectors operating in the Commonwealth will be the registration and/or any applicable inspection category change fees, and any costs associated with preparing and submitting that fee to ORH.