

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 5-490 Virginia Radiation Protection Regulations: Fee Schedule
Virginia Department of Health
Town Hall Action/Stage: 4791/8054
November 8, 2017

Summary of the Proposed Amendments to Regulation

The Board of Health (Board) proposes to raise registration and inspection fees in the X-ray Program (XRP) as well as licensing fees in the Radioactive Materials Program (RMP).

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The Board proposes to raise the fees in XRP for device registrations and inspections and in RMP for licensing. The General Fund support for XRP and RMP were abolished effective July 1, 2016, which reduced funding for the programs by \$361,000 in total. Even with the General Fund support the programs were not generating enough fee revenue to cover their costs. In addition, new positions were created in the Office of Radiological Health for the RMP in 2015 to accommodate inspections and business functions because the U.S. Nuclear Regulatory Commission had expressed concerns about an inspection backlog in a preceding program assessment. Furthermore, health insurance premiums, information technology costs, employee compensation, equipment rental costs, etc. have increased and are anticipated to increase in the future. The Virginia Department of Health (VDH) projects a \$351,729 shortfall between

revenues and expenditures in XRP and a \$498,278 shortfall in RMP by fiscal year 2021. The proposed fee increases are intended to make both programs self-sufficient.

There are two types of fees in the XRP. One for registration and one for inspection. The amount of the fees and frequency of inspections depend on the facility type. Medical facilities, hospitals, and chiropractors are subject to a one-year inspection cycle. Dental, podiatry, and veterinary facilities are subject to a three-year inspection cycle. Current periodic registration fees are \$20 for baggage x-ray facilities, \$25 for cabinet/analytical x-ray facilities, and \$50 for all the of remaining types of facilities. The proposed registration fees are double the current registration fees (i.e. \$40, \$50, and \$100 respectively). Current inspection fees range from \$90 every three years to \$230 every year. The proposed fees range from \$100 every 3 years to \$250 every year. There are no fee increases in four categories of facility types. The increases in other categories range from 9% to 39% depending on the facility type.

VDH researched the amount of similar fees charged in Tennessee, Maryland, and North Carolina. Comparison with those states reveals that the proposed fees are either similar or in most cases below the fees charged in those three states.

There are 43 different types of licenses in RMP covering possession, use, processing, distribution, manufacturing, and repair of any devices or products that contain radioactive materials. The current license fees range from \$200 to \$100,000 depending upon the specific application. However, all but one of the fees are below \$12,000. The proposed increases are between 50% and 60% for three fee categories, between 70% and 74% for 38 fee categories, and at 80% for two fee categories.

VDH also compared the proposed RMP fees to those charged by the federal Nuclear Regulatory Commission, Pennsylvania, Tennessee, Kentucky, and North Carolina. The proposed license fees are much lower than what the federal Nuclear Regulatory Commission charges, and are also similar to the fees charged by the comparison states.

With the proposed fee increases, XRP and RMP will be able to maintain their operations providing a check on safety of radioactive equipment and materials. In addition, if RMP failed to hire additional staff to address the inspection backlog, the Nuclear Regulatory Commission would have revoked Virginia's authority to issue licenses and take over the licensing authority.

The fees charged by the Nuclear Regulatory Commission are considerably higher than the proposed RMP fees.

Financing of 100% of XRP and RMP expenses through user fees should improve allocative efficiency of economic resources. In general, if the benefits accrue broadly to the public, then the program should be financed by taxes paid by the public. In contrast, if the benefits accrue to a limited number of private individuals or organizations, then the program should be financed by charges paid by the private beneficiaries. Charging the marginal cost of a service ensures that just the right amount of that service will be produced and consumed. For example, charging less than the full cost may encourage some entities to obtain an unneeded X-ray machines. Similarly, charging more than the actual cost may unnecessarily discourage some entities from obtaining a needed X-ray equipment.

The same principle also applies to the distribution of program costs among various types or categories of registrants and licensees. VDH notes that the proposed fees for different categories are generally set based on time and effort it takes to regulate that specific category.

The proposed regulation will likely also indirectly affect private X-ray inspectors and facilities that hire those inspectors. Currently, only about 10% of the inspections are conducted by XRP staff. An increase in XRP fee schedule will likely result in some additional registrants seeking services of private inspectors which may lead to an increase in fees charged by them.

In summary, the main economic impact of the proposed regulation is to ensure that XRP and RMP have enough resources to support their operations and continue to protect the public from health and safety risks posed by radioactive equipment and materials.

Businesses and Entities Affected

In the XRP program, there are about 7,000 registrants with approximately 21,000 X-ray tubes. The types of registrants include but not limited to medical, industrial, and academic facilities. Program staff inspect about 1,000 facilities and 2,100 machines per year. The remaining facilities are inspected through private inspectors.

In the RMP program, there are about 400 specific licensees. The licensees include large nuclear power generation and shipyard facilities and smaller medical and engineering facilities.

The program staff conduct approximately 400 inspections and licensing actions annually. RMP also tracks over 2,900 general licensees which possess over 34,000 general licensed devices.

The proposed changes will also directly affect XRP and RMP by providing funding for their operations. Currently, there are a total of 20 full-time equivalents that serve those programs, either directly in supervisory or inspection positions, or in support functions (i.e., business, billing, and management).

Finally, there are 171 private inspectors and their customers may be indirectly affected as noted above.

Localities Particularly Affected

The proposed changes do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed fee increases will maintain the current level of full time positions at VDH for XRP and RMP.

Effects on the Use and Value of Private Property

The proposed fee increases are probably relatively small compared to asset values of the affected businesses. Thus, no significant impact on the use and value of private property is expected.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

The majority of registrants in the XRP (dental facilities, chiropractic facilities, podiatry offices, medical facilities/offices, veterinary facilities) are likely to be small businesses while hospitals, of which there are about 100, generally are not. The 62

registrants in RMP are likely small businesses. The costs and other effects on small businesses are the same as discussed above. The current fees for categories in RMP where most of the entities are small businesses (e.g. medical offices, portable gauge users, and industrial radiographers) are lower to provide small business relief. The proposed fees, while higher than the current fees, continue to provide relief to most of the small businesses.

Alternative Method that Minimizes Adverse Impact

There is no alternative source of funds that would finance XRP and RMP operations.

Adverse Impacts:

Businesses:

Most of the affected hospitals in the XRP and several licensees in the RMP are not small providers. The costs and other effects on them are the same as discussed above.

Localities:

Localities are exempt from X-ray registration fees. However, they must pay X-ray inspection fees and radioactive material license fees.

Other Entities:

The proposed amendments will not directly adversely affect other entities. However, the proposed regulation may indirectly adversely affect those registrants using private inspectors. The proposed XRP fee increases would likely enable private inspectors to increase the fees they charge, adversely affecting their customers.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and

Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.