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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-490
VAC Chapter title(s)	Virginia Radiation Protection Regulations: Fee Schedule
Date this document prepared	8/3/2022

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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

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 or 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 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.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

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 of Health 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.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

VDH received no public comments following the publication of the Notice of Periodic Review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulations meet the criteria set out in Executive Order 19 (2022) as they are necessary for the protection of the public from unnecessary radiation exposure through routine inspections and registrations of x-ray equipment and radioactive materials.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

VDH is recommending that 12VAC5-490 be amended to reflect increases in the cost of business operations required to perform inspections and ensure protection of the public from unnecessary radiation exposure. The fee schedule included in 12VAC5-490 was last amended February 7, 2019.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

VDH has considered the continued need for 12VAC5-490 and determined that the established fee schedule is still needed in order to sustain operations of ORH, which is almost entirely dependent on revenues from inspections, registrations, and licenses. No public comments were received via the Townhall website, e-mail, or mail. The fee schedule contained within 12VAC5-490 does not overlap, duplicate, or conflict with other federal or state laws or regulations. The fee schedule contained within 12VAC5-490 was last amended February 7, 2019. Since then, inflation and the cost of operations associated with inspections, registrations, and licensing of x-ray equipment and radioactive materials has increased. VDH will take into consideration the effect that a fee increase will have on small businesses, and will make every effort to amend the fee schedule in a manner that covers the costs needed for effective operations of ORH.
