

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 14-061)

Overview and Legal and Fiscal Impact

The regulations modify the way the Maryland Department of the Environment calculates annual Consumer Price Index adjustments for certain categories of radioactive material licenses. The regulations also decrease the base fee for portable lead paint analyzers.

The regulations present no legal issues of concern.

Special fund revenues may decrease by more than \$60,600 in fiscal 2015 and by more than \$100,000 on an annual basis beginning in fiscal 2016. Expenditures are not directly affected.

Regulations of COMAR Affected

Department of the Environment:

Radiation Management: State Radiation Control Fund:
COMAR 26.12.03.01, .02, .03, and .04

Legal Analysis

Background

The department's Radiological Health Program is mandated by Title 8 – "Radiation" of the Environment Article to control the uses of radiation and to protect public health and safety and the environment from inadvertent and unnecessary radiation exposure. This is accomplished through registration and certification of radiation (x-ray) machines, licensing of radioactive materials, inspections, and enforcement actions were required to ensure regulatory compliance.

License, registration, and certification fees relating to the use of ionizing radiation are deposited into the State Radiation Control Fund, which also consists of civil penalties and fines collected by the department for violations of the State's radiation control laws and regulations. The fund is used to support activities relating to identifying, monitoring, and controlling sources of radiation and for program development.

Summary of Regulations

Department regulations provide for the annual adjustment of radioactive material license "base fees" (the fees in place for calendar year 2011) to account for inflation, based on the Consumer Price Index. The action modifies the way this adjustment is calculated for certain

categories of licenses. For radiation machine fees other than dental fees, for general license fees, and for those radioactive material licensees with a base fee of \$1,000 or less, each annual fee adjustment to reflect a change in the Consumer Price Index will be rounded to the nearest higher one-dollar increment, rather than to the nearest higher hundred-dollar increment. However, for radioactive material licenses with a base fee greater than \$1,000 and sealed source device sheets, the annual fee adjustment will still be rounded to the nearest higher hundred-dollar increment. The action also decreases the base fee for portable lead pain analyzers from \$1,000 to \$750.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 8-301(b)(1)(iii), 8-301(c), 8-304(c), and 8-306 as authority for the regulations. In general, § 8-301 requires the department to develop licenses for (1) ionizing radiation sources and byproduct material; (2) special nuclear material; and (3) devices that use ionizing radiation sources, byproduct material, or special nuclear material. Subparagraph (b)(1)(iii) of this section authorizes the department to establish a fee schedule for the general licenses, specific licenses, and the registration of radiation machines. Subsection (c) of this section specifies the maximum fees the department may charge for dental radiation machines. Subsection 8-304(c) requires the department to adopt regulations, including fee schedules, relating to the certification and inspection of radiation machines. Section 8-306 establishes the State Radiation Control Fund. The department is authorized under subsection (d) to adopt regulations for the management and use of money in the fund.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Special fund revenues may decrease by more than \$60,600 in fiscal 2015 and by more than \$100,000 on an annual basis beginning in fiscal 2016. Expenditures are not directly affected.

Agency Estimate of Projected Fiscal Impact

The department advises that special fund license fee revenues decrease by \$35,356 in calendar 2015; the department did not provide an estimate on a fiscal year basis and did not project future year revenue decreases. The Department of Legislative Services disagrees with this assessment.

The department's estimate likely understates the revenue loss resulting from the regulations' changes for several reasons. First, the department calculates the calendar 2015 fee based on the fees currently charged to licensees, as opposed to the calendar 2011 base fee established in the regulations (which generally reflects the currently established fees). Second, the department assumes an inflation rate of 2.5%, which is significantly greater than currently projected rates of inflation for the Consumer Price Index – all-urban consumers.

The Department of Legislative Services advises that, because fees are adjusted annually by rounding fees to the nearest hundred dollars, even a slight over-estimation in the annual inflation rate may result in a significant change in license fee revenues received. For example, a license fee of \$1,600 (a common fee among radiological license categories) is not adjusted unless the inflation rate exceeds 3.2%; however, if the inflation rate in any year is 3.3%, the fee (which if it were not rounded would be \$1,652) increases by \$100 to \$1,700. Thus, slight differences in the inflation rate may cause significant changes in annual license fee revenues.

Based on data provided by the department, special fund revenues may decrease by more than \$60,600 in fiscal 2015 (due the January 1, 2015 effective date of the regulations) and by more than \$100,000 on an annual basis beginning in fiscal 2016 due to the fee reduction for Portable Lead Paint Analyzer licensees and due to the change in the manner in which certain radiological license fees are adjusted annually for inflation.

Impact on Budget

There is no impact on the State operating or capital budget. The fiscal 2015 projected opening balance for the department's State Radiation Control Fund is nearly \$1.4 million and the annual average opening balance for the fund is about \$1.5 million. Thus, the projected annual decrease in revenues under the regulations can likely be absorbed without additional budgetary actions, even if special fund fee revenues decrease by more than \$100,000 annually.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful impact on small businesses in the State. The Department of Legislative Services generally concurs. While unlikely, it is possible that the relatively minimal decrease in license fees results in a meaningful impact on at least one small business licensee, particularly for a business that holds multiple Portable Lead Paint Analyzer licenses and may save more than \$1,000 annually under the regulations.

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