

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 16-085)

Overview and Legal and Fiscal Impact

The regulations reduce the annual fees for a general radioactive material license, veterinary dental radiation machines, and portable lead paint analyzers, and establish a radiation machine fee exemption for temporary *pro bono* dental clinics.

The regulations present no legal issues of concern.

Special fund revenues for the State Radiation Control Fund decrease by approximately \$38,000 annually beginning in fiscal 2017 due to the decrease in specified radiation management fees. Special fund expenditures are not materially affected.

Regulations of COMAR Affected

Department of the Environment:

Radiation Management: State Radiation Control Fund: COMAR 26.12.03.02 -.04

Legal Analysis

Background

On September 15, 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State government. Governor Hogan announced a second round of fee reductions or eliminations on May 12, 2016. These regulations are part of the second round of reductions or eliminations. Additional information regarding Governor Hogan's fee reduction initiative may be found [here](#).

Summary of Regulations

The regulations:

- exempt a temporary dental clinic that holds a specified permit, provides all services on a *pro bono* basis, and operates fewer than 100 hours per year from having to pay fees for the dental radiation machines used at the clinic;

- reduce the annual general radioactive license fee from a base amount of \$100 to a base amount of \$50 and alter the consumer price index base calendar year used to calculate adjustments to that fee from 2011 to 2016;
- differentiate veterinary dental radiation machines from veterinary stationary radiation machines and establish the following lower fees for veterinary dental radiation machines: the past-due fee for unregistered machines is reduced from \$1,000 to \$80 and the annual fee for registered machines is reduced from \$200 to \$80; both fees are also exempted from being increased annually to reflect any increase in the consumer price index; and
- reduce the annual portable lead paint analyzer fee from a base amount of \$750 to a base amount of \$500 and alter the consumer price index base calendar year used to calculate adjustments to that fee from 2015 to 2016.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of the Environment cites §§ 8-301(b)(1)(iii), 8-301(c), 8-304(c), and 8-306 of the Environment Article as statutory authority for the regulations. Under § 8-301(b)(1)(iii), the Secretary of the Environment is authorized to adopt regulations that “establish a fee schedule for general licenses, specific licenses, and the registration of radiation machines or other sources of radiation.” Section 8-301(c)(1) authorizes the Secretary to adopt regulations that “establish a fee to offset the costs of monitoring and regulating sources of radiation within that dental facility.” Under § 8-304(c)(3), these fees must be “sufficient only to cover the costs of the Department of issuing the certificate and regulating the use of radiation.” Further, the regulations are consistent with the provisions of Chapter 472 of 2016 (§ 8-301(d)), which exempts specified temporary *pro bono* dental clinics from having to pay radiation machine fees beginning July 1, 2016. The remaining cited authority is not relevant to these regulations.

With the addition of Chapter 472 of 2016, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Notes and Special Corrections

The Department of Legislative Services contacted the department and recommended adding Chapter 472 of 2016 as statutory authority for the regulations.

Fiscal Analysis

Special fund revenues for the State Radiation Control Fund decrease by approximately \$38,000 annually beginning in fiscal 2017 due to the decrease in specified radiation management fees. Special fund expenditures are not materially affected.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations result in a minimal decrease in special fund revenues for the State Radiation Control Fund due to a reduction in the annual fees for general radioactive material licenses, veterinary dental radiation machines, and portable lead paint analyzers as well as an exemption from the fee for temporary *pro bono* dental clinics. The decrease in revenues, estimated at approximately \$38,000 annually, is shown by type of machine/facility in **Exhibit 1**. The department further advises that the revenue loss from the regulations represents a relatively minimal portion of the program’s overall annual revenues of approximately \$2.3 million. As such, the department anticipates that it can continue to operate the program without a reduction in services or the need for general funds.

Exhibit 1 Impact of Fee Reductions/Exemption

<u>Machine/Facility Type</u>	<u>Number of Machines/Facilities</u>	<u>Current Fee¹</u>	<u>Proposed Base Fee²</u>	<u>Revenue Change</u>
<i>Pro bono</i> dental clinics	7	\$80	\$0	(\$560)
General licenses	66	111	50	(4,026)
Veterinary dental	129	220	80	(18,060)
Past-due veterinary dental ³	-	1,092	80	-
Portable lead paint analyzers	60	754	500	(15,240)
Total				(\$37,886)

¹The current fees for general licenses, veterinary machines (including dental and stationary), past-due unregistered veterinary machines, and portable lead paint analyzers are adjusted for inflation; the current fee for *pro bono* dental clinics (as for other dental clinics) is not adjusted for inflation.

²Under the regulations, veterinary dental machine fees are no longer subject to a consumer price index adjustment. Thus, the annual revenue loss will be slightly greater in future years.

³The Maryland Department of the Environment advises that veterinary offices with radiation machines have no recent incidences of operating without registration. Thus, this estimate does not account for any revenue losses from past-due fees for unregistered veterinary dental offices despite the significant decrease in this fee.

Source: Maryland Department of the Environment, Department of Legislative Services

The Department of Legislative Services generally concurs, but notes that, in part, the regulations implement Senate Bill 1136 (Chapter 472) of 2016 by exempting specified temporary *pro bono* dental clinics from paying annual fees. The fiscal and policy note for that legislation estimated that it would result in a negligible decrease in special fund revenues due to the fee exemption. This is consistent with the more specific estimate (\$560 decrease) provided by the department regarding these regulations.

The Department of Legislative Services also notes that, because the fees for general licenses, veterinary machines, and portable lead paint analyzers are adjusted annually for inflation, the current fee charged is higher than the base amount of those fees listed in regulations. Also,

under the regulations, veterinary dental machines are established as a separate category of machines and, consistent with other dental machines, pay an \$80 fee that is not subject to an annual consumer price index adjustment. Similarly, the newly established past-due fee for unregistered veterinary dental machines is not subject to an adjustment. The regulations also adjust the base fee for general licenses and portable lead paint analyzers from calendar year 2011 to calendar year 2016.

Accordingly, the combination of reducing (or eliminating) the fees, eliminating the required annual adjustment for veterinary dental machines, and establishing a new base year for other fees from which to calculate the annual adjustment results in a slightly greater revenue loss each year – assuming the same number of facilities/machines each year. As illustrated in **Exhibit 2**, if the consumer price index is 1.7% annually, by 2021, the revenue loss will be \$276 for each portable lead paint analyzer as opposed to \$254 when the regulations initially take effect. Fee revenues for all affected facilities/machines in 2021 would be reduced by \$41,076 – almost \$4,200 more than the initial impact of \$37,886.

Exhibit 2
Difference in Annual Fees under Regulations, by Calendar Year

**Estimated Current Fees
as Adjusted by the Consumer Price Index**

<u>Machine/Facility Type</u>	<u>Current Fee</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<i>Pro bono</i> dental clinics*	\$80	\$80	\$80	\$80	\$80	\$80
General licenses	111	113	115	117	119	121
Veterinary dental	220	224	228	231	235	239
Portable lead paint analyzers	754	767	780	793	807	820

**Estimated Proposed Fees
as Adjusted by the Consumer Price Index**

<u>Machine/Facility Type</u>	<u>New Base Fee</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<i>Pro bono</i> dental clinics*	\$0	\$0	\$0	\$0	\$0	\$0
General licenses	50	51	52	53	53	54
Veterinary dental*	80	80	80	80	80	80
Portable lead paint analyzers	500	509	517	526	535	544

Difference Per Unit/Facility

<u>Machine/Facility Type</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<i>Pro bono</i> dental clinics	(\$80)	(\$80)	(\$80)	(\$80)	(\$80)	(\$80)
General licenses	(61)	(62)	(63)	(64)	(66)	(67)
Veterinary dental	(140)	(144)	(148)	(151)	(155)	(159)
Portable lead paint analyzers	(254)	(258)	(263)	(267)	(272)	(276)

*These fees are not adjusted annually for the consumer price index.

Notes: Amounts are rounded to the nearest dollar. This illustrative exhibit uses 1.7% as the average annual consumer price index calculation, reflecting the five-year average of the inflation rate in the United States from 2011 through 2015.

Source: Department of Legislative Services

Impact on Budget

Special fund revenues for the State Radiation Control Fund decrease by an estimated \$38,000 or more each year beginning in fiscal 2017. Even so, there is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department estimates that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs. Overall, the decrease in annual fees is not significant compared to the annual operating costs of the affected small businesses. The department reports that, in general, most of the affected facilities are subject to only one fee; thus, the fiscal 2017 savings likely ranges from \$61 to \$254 per facility as shown in Exhibit 2.

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