

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Environmental Protection

(2) Agency Number:

Identification Number: 7-498

IRRC Number:

(3) PA Code Cite: 25 Pa. Code Chapters 218 and 240

(4) Short Title: Radiological Health and Radon Certification Fees; and Pennsylvania Radon Mitigation System Tag

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

With one exception, which is identified in the response to (15), the proposed rulemaking would increase fees associated with the radioactive materials licensing and radon certification activities regulated by the Department's Radiation Protection Program by 50 percent. The proposed rulemaking would also add a requirement for a new Pennsylvania Radon Mitigation System Tag in order to help assure the quality of radon services.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The proposed amendments to Chapter 218 are authorized under the following:

- Sections 301, 302 and 401 of the Radiation Protection Act, 35 P.S. §§ 7110.301, 7110.302 and 7110.401.
- Section 1920-A of the Administrative Code, 71 P.S. Sec. § 510-20.

The proposed amendments to §240.303 are authorized under the following:

- Sections 301, 302 and 401 of the Radiation Protection Act, 35 P.S. §§ 7110.301, 7110.302 and 7110.401.
- Section 1920-A of the Administrative Code, 71 P.S. § 510-20.
- The Radon Certification Act, 63 P.S. §§ 2001—2014.

The proposed addition of §240.309 and the proposed amendments to §240.3 and Chapter 240, Appendix A, are authorized under the following:

- Sections 12 and 13 of the Radon Certification Act, 63 P.S. §§ 2012 and 2013.
- Section 302 of the Radiation Protection Act, 35 P.S. §§ 7110.302.
- Section 1920-A of the Administrative Code, 71 P.S. § 510-20.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the proposed regulation is not mandated by any federal or state law or court order, or federal regulation. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

In March 2008, then Governor Rendell signed an Agreement with the Chairman of the U.S. Nuclear Regulatory Commission (NRC) for the Commonwealth to become an Agreement State. This allows the Commonwealth to oversee and regulate licensure of radioactive materials for Pennsylvania entities. These duties are funded through the Chapter 218 license fees and include registration and inspection of x-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers and licensing and inspection of radioactive material users. As part of that Agreement, the Commonwealth committed to ensuring that its regulations are compatible with NRC regulations. The proposed amendments to the Chapter 218 fees for radioactive material licenses are necessary to assure adequate funding is available for the Commonwealth to carry out its duties under the Agreement State program. The professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized is an important component to the Chapter 218 fees. Examples of the professional hourly rate fee include the evaluation, inspection and licensing of high-energy accelerators and decommissioning activities at contaminated sites. If the Commonwealth was forced to cede its authority to regulate radioactive materials back to the NRC, they would impose higher fees on the regulated community.

The biennial Chapter 240 fees are used to ensure that radon testing, mitigation and laboratory work is done by individuals and firms qualified to perform those services. The biennial Chapter 240 fees are also used to perform outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination. At this time, however, the Chapter 240 fee revenue does not cover the Department's Radon Program costs. Without a fee increase, it will be difficult to provide effective quality assurance for the statewide radon program and the effectiveness of radon mitigation services. The proposed new Pennsylvania Radon Mitigation System Tag fee will help ensure quality of radon services in the state.

The Department would benefit from the proposed rulemaking by having the needed additional revenue to cover the costs of the programs mandated by the Radiation Protection Act and Radon Certification Act. The general public would benefit from the proposed rulemaking by the continued safety with the use of radioactive materials, and additional quality assurance that would be provided as well as

continued outreach and public service announcements regarding indoor radon that will be supported by the increased fees.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than the federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The same categories of fees apply to radioactive materials licensees whether they are based in Pennsylvania, some other Agreement State, or a state regulated by NRC. The NRC's fee category designations have been adopted by the Department and other states. Some additional common fee categories from the NRC's fee tables in 10 CFR Part 170 and 171 (relating to fees for federal facilities, special nuclear materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended; annual fees for reactor licenses and fuel cycle licenses and materials licenses, including holders of certificates of compliance, registrations, and quality assurance program approvals and government agencies licensed by the NRC) have not been added because the Department is not authorized to regulate such operations.

In terms of fee categories, there is no advantage or disadvantage associated with business location. For the type of entities that are regulated, the proposed costs are negligible compared to utilities and other common overhead costs of doing business. The fees should not lead to a reduction in availability of service providers. The fees are set to cover the Department's costs of implementing the programs as required by the Radiation Protection Act and are substantially lower than NRC's current fee schedule for non-Agreement States by about 50 percent. The professional hourly rate fee identified by the asterisk in Chapter 218, Appendix A, of the proposed rulemaking is increased from \$150 per hour to \$225 per hour—below the NRC's fiscal year 2007 hourly rate of \$265 per hour. Reduced Chapter 218 fees are available for small businesses. (See question 24).

Similarly, the proposed new Pennsylvania Radon Mitigation System Tag fee and the increase to the biennial Chapter 240 fees would not affect Pennsylvania's ability to compete with other states. Radon is a geographically-specific issue, and competition with other states is not a factor. Elevated indoor radon is a serious public health threat, and levels above the EPA's 4 picocuries per liter 'action level' have been detected in all 67 counties. Other states, such as Illinois, Iowa and New Jersey, implement similar radon mitigation tag fees as proposed with the new Pennsylvania Radon Mitigation System Tag.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other Pennsylvania regulations would be affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department discussed the need for regulatory revisions with its Radiation Protection Advisory Committee (RPAC) on June 12, 2014, and presented the proposed Annex A to RPAC on October 16, 2014. At the October 16 meeting, RPAC endorsed moving forward with the proposed rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All radioactive material licensees and radon service providers in the Commonwealth would be affected. There are approximately 850 specific and general radioactive material licensees, and approximately 720 certified radon service providers. There are 65 radioactive material licensees that qualify as small businesses under the definitions currently in use by the NRC and the Department (see question 24 for further explanation). Examples of radioactive materials licensees include hospitals (license category 7C “Human Use-Specific License) and possessors of nuclear density gauges (license category 3P “Other Byproduct Material”). The Department estimates that all certified radon service providers are likely to be small businesses. There would be increases in fees of approximately 50 percent for certified radon service providers and licensees with one exception. The exception is for license category 2A(2)(c) – Source Material – metal extraction, which is proposed to be reduced by 50 percent. There is currently no licensee in the Commonwealth of Pennsylvania in the Source Material category, and regulatory oversight required for this license activity is significantly less than anticipated at the time this fee was established. The increases are in line with inflation and increased personnel costs and the increases are not unexpected.

There would also be an additional charge of \$50 for each radon mitigation performed as a result of the proposed requirement for a Pennsylvania Radon Mitigation System Tag. There are roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year, and approximately 132 mitigators performing them who would be affected by the proposed \$50 fee. A typical mitigation system costs between \$500 and \$2,000.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

All radioactive material licensees and radon service providers in the Commonwealth would be affected. There are approximately 850 specific and general radioactive material licensees, and approximately 720 certified radon service providers. There are 65 radioactive material licensees that qualify as small businesses under the definitions currently in use by the NRC and the Department (see question 24 for further explanation).

There are roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year, and approximately 132 mitigators performing them who would be affected by the proposed \$50 fee.

See question (15) for additional information.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

See response for (15) for the financial, economic and social impacts of the proposed rulemaking. The proposed rulemaking would provide benefits to the Department's radioactive materials and radon programs funding and to the citizens of Pennsylvania.

The proposed increased to the Chapter 218 fees would allow the Department to continue to implement existing programs while assuring adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

The proposed increased biennial Chapter 240 fees ensure that the Department would be able to exercise effective quality assurance over statewide radon data and the effectiveness of radon mitigation services. The proposed increased biennial Chapter 240 fees and proposed Pennsylvania Radon Mitigation System Tag fee would also be used to ensure that individuals and firms performing radon testing and remedial work are qualified to perform those services, and would support the Department's efforts to perform outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

All radioactive material licensees and radon service providers in the Commonwealth would be affected. With the exception of one license category identified in the response to (15), there would be increases in fees of approximately 50 percent for existing licensees and certified radon service providers. There would also be an additional charge of \$50 per radon mitigation performed as a result of the proposed requirement for a Pennsylvania Radon Mitigation System Tag.

The increased fees would allow the Department to maintain existing programs at current levels of operation. This includes enabling the Department to continue to fund personnel, purchase upgrades to obsolete survey equipment, and make investments in new personnel training.

The increases are in line with inflation and not unexpected. For radioactive material licensees, Pennsylvania's increased Chapter 218 fee would still be below the amount that would have been charged by the NRC had Pennsylvania not become an Agreement State.

The benefits outweigh any cost and adverse effect because the proposed increased to the Chapter 218 fees would allow the Department to continue to implement existing programs while assuring adequate funding is available for the Commonwealth to carry out its duties under NRC's Agreement State program.

Also, the proposed increased biennial Chapter 240 fees ensure that the Department would be able exercise effective quality assurance over statewide radon data and the effectiveness of radon mitigation services. Likewise, the proposed Pennsylvania Radon Mitigation System Tag requirement and corresponding fee would help assure the quality of radon services. The proposed increased biennial Chapter 240 fees and proposed Pennsylvania Radon Mitigation System Tag fee would also be used to ensure that individuals and firms performing radon testing and remedial work are qualified to perform those services, and to perform

outreach and to make public service announcements that encourage homeowners to test for and mitigate radon contamination.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Costs to the regulated community associated with this proposed rulemaking are the proposed increase of the Chapter 218 and biennial Chapter 240 fees and the proposed Pennsylvania Radon Mitigation System Tag fee.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

The proposed Chapter 218 fees vary by type and complexity and were calculated to cover the Department's costs of implementing the programs as required by the Radiation Protection Act. The anticipated increase in cost to the regulated community is approximately 50 percent. Overall, the proposed rulemaking would increase Chapter 218 fees paid to the Department to approximately \$5,225,000 per year. The Department multiplied the number of entities that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The proposed increase in the biennial Chapter 240 fees for certification of radon testers, mitigators and laboratories is 50 percent. The increase in cost to the regulated community, as a whole, would be approximately \$150,000 every two years. The Department multiplied the number of entities that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate. Each primary radon testing device or additional employee certified to perform radon services would increase the application fee by \$150 which is 50 percent of the base fee for a firm and individual. The proposed Pennsylvania Radon Mitigation System Tag and corresponding \$50 fee would apply to the roughly 8,000 to 10,000 new radon mitigation system activations in Pennsylvania each year. An average of \$400,000 in annual revenue would be generated based on 8,000 installations per year. Overall, the proposed rulemaking would increase Chapter 240 fees paid to the Department by about \$525,500 per year.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Fees for local governments that use licensed radioactive material would increase by the amount specified in the proposed rulemaking. Approximately six local governments would experience radioactive material license fee increases. The total increase in fees paid to the Department by local governments is less than \$5,000 per year. The Department multiplied the number of local governments that would be subject to the increased fees by the dollar amounts of the increased fees to derive the overall estimate.

The proposed increased biennial Chapter 240 fees do not apply directly to local governments because no local government holds a radon services certificate. However, local governments seeking radon services may be affected if the increased fee is passed on to the local government as a consumer of the service.

The proposed rulemaking would expressly waive the Pennsylvania Radon Mitigation System Tag fee for local government employees who install radon mitigation systems pursuant to their official duties.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Fees for Commonwealth agencies that use licensed radioactive material would increase by the amount specified in the proposed rulemaking. Approximately four (4) Commonwealth agencies would experience radioactive material license fee increases. The total increase in fees paid to the Department by Commonwealth agencies is less than \$6,000 per year. There would be no net cost or savings to the Commonwealth since the monies received from state agencies as fees are deposited to the Department's Radiation Protection Fund and utilized by the Commonwealth.

The proposed increased biennial Chapter 240 fees do not apply directly to Commonwealth agencies, because the Commonwealth does not hold any radon services certificate. However, Commonwealth agencies seeking radon services may be affected if the increased fee is passed on to the agency as a consumer of the service.

There is no other compliance, legal, accounting, or consulting procedure costs or savings required by this proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There would be no additional reporting or other procedure required for the implementation of the proposed Chapter 218 fee amendments.

The proposed amendments to Chapter 240 would require the individual certified to mitigate radon to report to the Department the serial number of the proposed Pennsylvania Radon Mitigation System Tag affixed to a newly activated mitigation system. This would occur simultaneously with current reporting requirements under existing § 240.303.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Costs represent the difference between the current costs and the future costs (proposed rulemaking) assuming the proposed rulemaking takes effect in 2016.

	Current FY Year	FY +1 2016/2017	FY +2 2017/2018	FY +3 2018/2019	FY +4 2019/2020	FY +5 2020/2021
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	2,153,000	2,153,000	2,153,000	2,153,000	2,153,000
Local Government	0	0	0	0	0	0
State Government	0	25,500	25,500	25,500	25,500	25,500
Total Costs	0	2,178,500	2,178,500	2,178,500	2,178,500	2,178,500
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2012/2013	FY -2 2013/2014	FY -1 2014/2015	Current FY 2015/2016
Radiation Protection Fund	\$10,460,000	\$11,113,000	\$11,018,000	\$14,109,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.**
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

See response for (15).

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions were developed. Reduced Chapter 218 fees are already available for small businesses that would be impacted by the increased fees in the proposed rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department did not consider and reject any alternative regulatory provisions, as there are no effective regulatory alternatives.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) **The establishment of less stringent compliance or reporting requirements for small businesses;**
- b) **The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;**
- c) **The consolidation or simplification of compliance or reporting requirements for small businesses;**
- d) **The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and**
- e) **The exemption of small businesses from all or any part of the requirements contained in the regulation.**

Less stringent compliance and reporting requirements are not necessary because the compliance requirements in the proposed rulemaking are minimal. The reporting of the serial number of the proposed Pennsylvania Radon Mitigation System Tag by the individual certified to mitigate radon would occur simultaneously with current reporting requirements under existing § 240.303.

Less stringent schedules or deadlines for and the consolidation or simplification of compliance or reporting are not necessary because the compliance and reporting requirements in the proposed rulemaking are minimal.

The proposed rulemaking does not require design or operation standards.

Reduced Chapter 218 fees are already available for small businesses that would be affected by the increased fees in the proposed rulemaking.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is the basis for this proposed rulemaking. The Department prepared the “Three-Year Regulatory Fee and Program Cost Analysis Report” (Report) to summarize the Department’s fee collections and program costs by functional area for the past three fiscal years and the next three projected years. The functional areas for purposes of this proposed rulemaking are grouped into three categories: Radiation-producing machines (i.e., Accelerator, X-ray, and Vendors/Service Providers); Radioactive Materials and Decommissioning; and Radon. The conclusion of the Report is that Radioactive Materials (Chapter 218 fees) and Radon (Chapter 240 fees) require an increase to cover program costs. A copy of the Report is included with the rulemaking package.

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------------|
| A. The date by which the agency must receive public comments: | <u>Quarter 3, 2016</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Quarter 2, 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 2, 2017</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Quarter 2, 2017</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

It is anticipated that the proposed regulations will be published in the *Pennsylvania Bulletin* for a 60-day public comment period in May 2016. The final rulemaking will become effective upon publication in the *Pennsylvania Bulletin*, which is anticipated in the second quarter of 2017.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation will be reviewed in accordance with the sunset review schedule published by the department to determine whether the regulation effectively fulfills the goals for which it was intended.