

EXECUTIVE SUMMARY

Radiological Health Fees 25 Pa. Code Chapter 218

The Department of Environmental Protection (Department) recommends final-form amendments to the Department's regulations for radiological health fees under 25 Pa. Code Chapter 218. The final-form amendments increase fees for radiation-producing machine registrations, accelerator licenses, vendor/service provider registrations, and radioactive material licenses.

Purpose of the Final Rulemaking

This final-form rulemaking ensures the Department's Radiation Protection Program (RPP) is adequately funded to support the safe and effective use of licensed radioactive materials and radiation-producing machines to protect the health and safety of residents in Pennsylvania.

The Commonwealth's Radiation Protection Act (RPA), 35 P.S. §§ 7110.101—7110.703, requires the Environmental Quality Board (Board) to establish fees in amounts at least sufficient to cover the costs of the radiation protection programs mandated by the RPA. Following the Department's Three-Year Regulatory Fee and Program Cost Analysis Report analyzing the financials of three radiation protection program areas – including: Accelerator, Radiation-Producing Machines, and Vendors/Service Providers; Radioactive Materials and Decommissioning; and Radon – the Department found that the fund balance for the Accelerator, Radiation-Producing Machines and Vendors/Service Providers fee category will have a deficit in fiscal year (FY) 2023-24, and the fund balance for the Radioactive Materials and Decommissioning area will have a deficit in FY 2024-25.

Therefore, this final-form rulemaking increases fees for radioactive material licenses, X-ray facility and vendor registrations, accelerator licenses, and the professional hourly rate to ensure that adequate funding is available for the Commonwealth to carry out its duties under the RPA and the Agreement with the U.S. Nuclear Regulatory Commission (NRC). Radioactive material controls under the NRC's Agreement State program guard against the potential for unnecessary public radiation exposure from the use of radioactive material benefitting the health of all Pennsylvanians. These fee increases will prevent a reduction in the oversight of radiation safety-related activities in Pennsylvania and will prevent delays in the replacement of obsolete survey equipment, delays which would reduce the assurance that regulated radiological activities are being conducted safely.

Summary of the Final Rulemaking

The final-form rulemaking increases the Department's fees for the Accelerator, Radiation-Producing Machines, and Vendors/Service Providers program area by 30%, and increases fees for the Radioactive Materials and Decommissioning program area by 10%, except for Category 6A – Nuclear Laundry (radioactive material license). Also, the final-form rulemaking increases the full cost recovery professional hourly rate by 22%. The fee increases will ensure that the Department's RPP meets the RPA requirements to adequately fund the registration and inspection of radiation-producing machines and the licensing and inspection of radioactive materials through FY 2027-28.

The final-form rulemaking also changes the annual fee category for chiropractors so that they will pay the same amount as dentists, podiatrists, and veterinarians because chiropractors' equipment is comparable with the equipment used by dentists, podiatrists, and veterinarians.

Affected Parties

All Pennsylvania radiation-producing machine registrants, accelerator licensees, vendors, and radioactive material licensees will be required to comply with this final-form rulemaking. There are approximately 10,400 radiation-producing machine registrants, 145 accelerator licensees, 375 vendors, and 800 specific and general licensees issued for radioactive material users.

Outreach (Advisory Committee/Stakeholder Consultation)

The Department presented the draft final regulation to the Radiation Protection Advisory Committee (RPAC) on December 9, 2022 for discussion. At that meeting, RPAC endorsed moving forward with the final-form rulemaking.

Public Comments

The proposed rulemaking was published on August 27, 2022, opening a 30-day public comment period. The EQB received comments from two commentators during the public comment period and from the Independent Regulatory Review Commission (IRRC). The primary concern expressed by IRRC and a commentator was whether the nuclear laundry license fee should be increased. The commentator submitted a comparison of nuclear laundry fees they pay in other states for this license category to explain why they feel an increase is not reasonable for this category.

A nuclear laundry license is a complex license involving various additional requirements. There are environmental monitoring requirements, financial assurance requirements, and special training for RPP staff to review the licenses and perform the monitoring. In addition, there are infrastructure costs that must be maintained independent of the number of operational licenses.

The commentator submitted several other states' license fees as an example; however, those states' programs are supplemented by other funds. Pennsylvania's program is required by statute to be funded solely through its license, registration, and certification fees, and the Radiation Protection Fund balance is projected to go into the negative in FY 2023-2024. Therefore, the Department cannot afford a delay in promulgating this final-form rulemaking and decreasing the fee is not feasible.

However, the Department has determined that keeping this license category at the current rate for this three-year fee review cycle is not expected to be detrimental to RPP at this time, as there is currently only one nuclear laundry license in Pennsylvania. During the next three-year fee review cycle, the Department will compile more detailed information on this unique license category, including but not limited to, training, sampling, and staff hours, which will allow the Department to assess if an additional adjustment to the nuclear laundry license fee category is appropriate.

Recommendation

The Department recommends adoption of this final-form rulemaking.