



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-490 – Radiation Protection Regulations: Fee Schedule
Virginia Department of Health
October 3, 2007

Summary of the Proposed Amendments to Regulation

Section 32.1-229 of the Code of Virginia authorizes the Board of Health (Board) to establish fee schedules which shall not exceed comparable U.S. Nuclear Regulatory Commission (NRC) fees. The Board proposes to amend the existing Radiation Protection Regulation Fee Schedule to adopt a fee structure to support the radioactive materials licensing and inspection program for those materials the NRC intends to transfer to the Commonwealth by agreement. The proposed regulations will supersede the Radiation Protection Regulation Fee Schedule which became effective January 1, 1989.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Under current regulation, there are two programs for regulating nuclear materials: one for by-product, source, and special nuclear materials that is operated by the U.S. Nuclear Regulatory Commission (NRC) and one for naturally-occurring and accelerator-produced radioactive materials (NARM) that is operated by the Virginia Department of Health. In 2005, Congress approved the Energy Policy Act of 2005, which moved jurisdiction over the latter program to the NRC. The NRC, then, gave all states a waiver until 2009. In other words, under current regulation the NRC will operate both programs for regulating nuclear and radioactive materials beginning in 2009.

A state can take over full regulatory control of radioactive material by entering into an agreement with the NRC. The Governor of Virginia sent a letter of intent in December 2005 to

the NRC requesting such an agreement. (Currently, 34 states have become “Agreement States” and Pennsylvania, New Jersey, and Virginia have signed letters of intent to become Agreement States.) The NRC will not enter into an agreement until the state demonstrates that it is able to fiscally support the program. During the 1999 session of the General Assembly, legislation was passed that authorized implementation of a fee schedule to support a radioactive materials licensing and inspections program, and set up a special fund for the fees collected.

Under current regulation, the program for by-product, source, and special nuclear materials that is operated out of the NRC is funded by license fees set up by the NRC. (Congress requires the NRC to recover 90 percent of its expenses.) The NARM program was funded from the general fund, is currently funded out of a special fund within the Virginia Department of Health that also supports the effort to become an Agreement state (the funding source is still a general funding source, however), and if Virginia does not become an Agreement state, starting in 2009 the NARM program will be funded through fees paid to the NRC.

One benefit of the proposed amendment is that the NARM program will no longer be financed from the general fund (or a general funding source); however, starting in 2009 the NARM program will be funded through the NRC out of licensing fees, so this benefit is only a short-term benefit of the proposed amendment. In the short term, funding a program using a fee rather than using general funding is economically beneficial to the citizens of Virginia because it requires only those businesses that benefit from the use of radiation to pay the fees. In the longer-term, there is a benefit to NRC and NARM licensees in the form of lower fees. Because states can implement these programs within state more cheaply than the federal government¹, the cost of the program will be reduced with its move from federal to state control. This will allow the Board to lower the fees charged to licensees. The smallest fee reduction (8 percent) is for licenses for commercial facilities involving waste compaction, repackaging, storage, or transfer. The largest fee reduction (91 percent) is in the licenses of portable x-ray fluorescence analyzers, dewpointers, or gas chromatographs. The average reduction in the 36 license fees from the NRC fees to the proposed fees is a 58 percent reduction and the median reduction is 62 percent.² In other words, for most licensees, the fees are substantially reduced. In its proposed fees, the Board

¹ Source: Virginia Department of Health. State programs do not have to fund airplane flights, rental cars, or extensive lodging, and federal government workers are usually paid more than state workers.

² Source: Virginia Department of Health

includes some licenses that the NRC has never issued and licenses for activities that the NRC has not yet regulated (such as the NARM program). Although for these activities, we do not know that the license fees suggested in the proposed amendments are less than what federal fees would be, given the existing differences, it seems safe to assume that the fees in the proposed amendments are likely to be lower.

Another benefit of the proposed fee structure is that it allows the Commonwealth to enter into an agreement with the NRC to regulate radioactive materials. Once Virginia is granted Agreement state status by the NRC, the proposed fee structure will enable the program to be self-sufficient.

There is a short-term cost to NARM licensees in that they currently do not pay license fees. However, because Virginia must finish the process of becoming an Agreement state before these fees are implemented and NARM licensees will anyway have to pay fees starting in 2009, and because all Virginia residents—including NARM licensees—pay for the NARM program now, the proposed amendment is not likely to increase costs significantly, if at all, for NARM licensees. In addition, the Department estimates that the annual cost of the proposed amendment for a licensee includes the cost of generating a check to VDH and postage in response to a VDH invoice, which would probably be less than \$5.00. The cost of submitting an application will vary depending upon the proposed licensing activity. There is no reason to think, however, that licensees will have any more cost than that which they are currently paying to comply with NRC requirements.

In sum, the benefits clearly outweigh the costs for the proposed amendment.

Businesses and Entities Affected

Currently, there are approximately 350 NRC licensees that will become Virginia licensees after the agreement is approved. Currently, there are 228 NARM licensees, of which approximately 75 do *not* possess an NRC license. In sum, the proposed amendment will affect approximately 425 separate entities.

Localities Particularly Affected

The proposed amendments will affect localities with entities that engage in activities involving nuclear or radioactive materials. The proposed amendments do not disproportionately

affect particular localities, as the businesses and entities that deal with nuclear and regulatory materials are spread across the Commonwealth.

Projected Impact on Employment

The proposed amendments will enable Virginia to become an Agreement state which will allow Virginia to implement the radiation protection programs and therefore add a few jobs to the Virginia Department of Health (in place of federal employees who may reside out of state). The proposed amendments are not anticipated to impact employment in any other manner.

Effects on the Use and Value of Private Property

The proposed amendments will lower the license fees for the relevant entities and therefore increase the value of their businesses.

Small Businesses: Costs and Other Effects

Of the 350 NRC licensees that will become Virginia licensees after the agreement is approved, 25 are considered small entities by the NRC.³

Small Businesses: Alternative Method that Minimizes Adverse Impact

There is no apparent alternative method that minimizes adverse impact while still accomplishing the intended positive policy goals.

Real Estate Development Costs

The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the

³ All small businesses would qualify as “small entities”. For more information, see 10 CFR 171.16.

regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.