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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-481
VAC Chapter title(s)	Virginia Radiation Protection Regulations
Date this document prepared	8/3/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ORH – Office of Radiological Health
VDH – Virginia Department of Health

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

1. The promulgating agency is the State Board of Health.

- 2. State legal authority for retaining, amending, or repealing radiation protection regulations comes from the following sections of the Code of Virginia:
 - a. § 32.1-12 authorizes the Board to “make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of [Title 32.1.]”
 - b. § 32.1-228.1, which states the following:
 - “A. The Department of Health is hereby designated as the state radiation control agency. The Commissioner of Health may employ, compensate, and prescribe the duties of such individuals as may be necessary to discharge the responsibilities imposed by this article.”
 - c. § 32.1-229, which states the following:
 - “The Board shall:
 - 1. Establish a program of effective regulation of sources of radiation for the protection of the public health and safety, including a program of education and technical assistance relating to radon that is targeted to those areas of the Commonwealth known to have high radon levels. As a part of such program, a list of persons who are nationally certified to offer screening, testing, or mitigation for radon shall be made available to the public.
 - 2. Establish a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.
 - 3. Establish a program to permit maximum utilization of sources of radiation consistent with the public health and safety.
 - 4. Promulgate regulations providing for (i) general or specific licenses to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and of information with respect thereto, and (iii) regulation of by-product, source and special nuclear material.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The Board of Health is required by the Code of Virginia to establish a program of regulatory oversight related to radiation protection. As such, no viable alternatives for complying with the legislative mandate. The Virginia Radiation Protection Regulations, 12VAC5-481, remains critical to protecting the public from unnecessary radiation exposure caused by a wide spectrum of applications used in the healing arts, research, educational institutions, and industry.



Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

VDH received no public comments following the publication of the Notice of Periodic Review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulations meet the criteria set out in Executive Order 19 (2022) as they are necessary for the protection of the public from unnecessary radiation exposure through routine inspections and registrations of x-ray equipment and radioactive materials.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

VDH is recommending that 12VAC5-481 be repealed and replaced with a new regulatory chapter. After review, several significant needed changes to the regulatory requirements contained within 12VAC5-481 have been identified, including maintaining a regulatory program informed by the most up-to-date information and that is clearly written and understandable for members of the public. Repealing 12VAC5-481 and replacing it with a new chapter will be more efficient than amending it.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

VDH has considered the continued need for 12VAC5-481 and determined that the Radiation Protection Regulations are still needed to ensure protection of the public from unnecessary

radiation exposure. However, VDH has determined that 12VAC5-481 should be repealed and replaced. There are significant changes required for the regulatory requirements in the chapter as well as the need to ensure that the chapter adheres to the Form, Style, and Procedure Manual for Publication of Virginia Regulations. No public comments were received via the Townhall website, e-mail, or mail. The regulatory requirements contained within 12VAC5-481 do not overlap, duplicate, or conflict with other or state laws or regulations. Where applicable, the regulatory requirements included in 12VAC5-481 do include or reference federal requirements developed by the Nuclear Regulatory Commission (NRC). The regulations contained within 12VAC5-481 were last amended January 14, 2022 to add new language from NRC. Since then, ORH has convened a workgroup to review and make recommendations for x-ray regulations. The workgroup has made the assessment that significant changes are required to improve the x-ray regulatory requirements contained within 12VAC5-481. VDH will take into consideration the effect that changes to the regulations will have on small businesses, and will make every effort to amend the Radiation Protection Regulations in a manner that minimizes any significant impact to small businesses required to adhere to these regulations.
