

Australian Radiation Protection and Nuclear Safety Amendment Regulations 1999 (No. 1) 1999 No. 97

EXPLANATORY STATEMENT

STATUTORY RULE 1999 NO. 97

Issued by the Authority of the Minister for Health and Aged Care

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Amendment Regulations 1999 (No. 1)

Subsection 85(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) provides that the Governor-General may make regulations prescribing, among other things, matters required or permitted by the Act and matters necessary or convenient for carrying out or giving effect to the Act.

Paragraph 85(2)(f) provides that the regulations may prescribe fees in respect of matters under the Act or the regulations. Section 34 of the Act further provides that an application for a licence must be in a form approved by the CEO and be accompanied by such fee as is prescribed by the regulations.

The purpose of the amendments to the regulations is to:

- * insert a new division, and accompanying Schedules, in the Regulations, for the purposes of section 34 of the Act, which prescribe the licence application fees that must accompany an application for a source or facility licence under the Act (Items 2 and 6). The application fees have been developed in consultation with Commonwealth agencies who will be affected by the imposition of the fees;
- * make minor amendments to the existing regulations to:
 - > rectify a minor error associated with the referencing of a Code of Practice in subregulation 36(2)(c) (Item 1);.
 - > insert additional radionuclides in Part 2, Schedule 2 which describes exempt activity concentrations and exempt activities of various radionuclides (Items 3 -5); and
 - > amend the definitions of "sealed source" and "unsealed source" in the dictionary to improve understanding of the application of the provisions (Item 7).

Further details of the regulations are set out in the Attachment.

The regulations commenced on gazettal.

ATTACHMENT

DETAILS OF AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AMENDMENT REGULATIONS

Regulation 1 (Name of regulations)

This is a formal provision that specifies the title of the regulations as the *Australian Radiation Protection and Nuclear Safety Amendment Regulations 1999 (No. 1)*

Regulation 2 (Commencement)

This provision provides that the regulations commence on gazettal.

Regulation 3 (Amendment of *Australian Radiation Protection and Nuclear Safety Regulations 1999*)

This provision provides that Schedule 1 amends the *Australian Radiation Protection and Nuclear Safety Regulations 1999*.

SCHEDULE 1 AMENDMENTS

Item 1 substitutes paragraph 36(2)(c) with a new paragraph that correctly references the Code of Practice for the Safe Transport of Radioactive Substances. The amendment corrects the date of the code to 1990.

Item 2 inserts into the regulations a new Division, Division 2A, which describes the licence application fees that must accompany an application for a licence.

Regulation 40A (Purpose of Division 2A)

Subregulations 40A(1) and (2) provide a context for the Division by summarising subsections 30(1) and 31(1) of the Act which make it an offence for a controlled person to undertake conducts mentioned in subsection 30(1) or deal with controlled material or apparatus unless: (a) authorised to do so by a source or facility licence; or (b) the person, or dealing, is exempted by the regulations.

Subregulation 40A(3) also provides a context for the Division by setting out paragraph 34(b) of the Act which provides that an application for a licence must be accompanied by the prescribed fee.

Subregulations 40A(4) and (5) describe what the Division does. The Division sets out the fee that must accompany an application for a facility licence to undertake conducts in relation to a nuclear installation or a prescribed radiation facility. The Division also sets out the fee that must accompany an application for a source licence.

A note has been included in the regulation which directs the reader to section 13 of the Act that provides definitions of key terms used in the division including 'controlled apparatus', 'controlled facility', 'controlled material', 'controlled person', 'deal with' and 'nuclear installation'. The readers attention is also drawn to: regulation 4, which prescribes kinds of controlled apparatus that produce harmful non-ionizing radiation; regulation 6 which sets out types of prescribed radiation facilities; and the dictionary which defines relevant terms.

Regulation 40B (Facility Licence - nuclear installations)

This regulation prescribes the fee that is applicable to a facility licence for various types of conduct. The regulation does this by reference to Schedule 3A which sets out various types of conduct (in column 2 of the Schedule) and corresponding fees (column 3 of the Schedule).

Regulation 40C (Facility Licence - prescribed radiation facilities)

Subregulations 40C(1) and (2) describe the fee that applies to a facility licence to undertake certain conduct in relation to a prescribed radiation facility. The fee for each type of conduct in relation to a prescribed radiation facility is the fee mentioned in column 3 for the relevant item in Schedule 3B.

Subregulation 40C(3) provides that for an application to undertake more than 1 type of conduct in relation to a prescribed radiation facility, the application fee is the sum of the application fee for each type of conduct included in the application. For example, if one application is made to both construct and operate a particle accelerator that can produce neutrons then the applicable fee is \$2800, as per Schedule 3B (\$1400 to construct and \$1400 to operate).

A note has been included in the subregulation which draws attention to the term "conduct". In accordance with subsection 30(1) of the Act "conduct" is any of the following: preparing a site for the controlled facility; constructing the controlled facility; having possession or control of the controlled facility, operating the controlled facility; and decommissioning, disposing of, or abandoning the controlled facility.

Regulation 40D (Source licence - sealed sources of controlled materials)

This regulation provides that the application fee for a source licence to deal with a sealed source of controlled materials is the fee mentioned in column 3 of Schedule 3C. A "sealed source" is defined in the dictionary and various types of sealed source are set out in Schedule 3C.

Subregulation 40D(3) provides that the maximum fee payable for an application for dealing with more than 1 source under item 14 of Schedule 3C is \$1000. Item 14 of Schedule 3C relates to a source that is in storage and waiting disposal and has a maximum activity of less than or equal to 109 times the amount mentioned in column 4 of Part 2 of Schedule 2. A fee of \$30 is payable for each of these sources up to a maximum of \$1000.

Regulation 40E (Source licence - unsealed sources of controlled materials)

This regulation provides that the application fee for a source licence to deal with unsealed sources of controlled material in a certain way, is the fee mentioned in column 3 of Schedule 3D.

Regulation 40F (Source licence - controlled apparatus that produces ionizing radiation)

This regulation provides that the application fee for each controlled apparatus that produces ionizing radiation is the fee mentioned in column 3 of Schedule 3E.

Regulation 40G (Source licence - controlled apparatus that produces non-ionizing radiation)

This regulation provides that the application fee for a source licence to deal with controlled apparatus that produce non-ionizing radiation is the fee mentioned in column 3 of Schedule 3F. Schedule 3F sets out a number of different types of non-ionizing radiation apparatus (in column 2 of the Schedule) and corresponding fees (column 3 of the Schedule).

Regulation 40H (Maximum fee for a source licence)

This regulation 'caps' the total amount payable by any one Department or Commonwealth body in relation to source licence applications by providing that the maximum fee payable for source licence applications, in a calendar year, is \$600,000.

Item 3 amends Part 2, Schedule 2, by inserting Y-88 in the table of nuclides after item 86. Schedule 2 describes the exempt activity concentrations and exempt activities for various radionuclides.

Item 4 amends Part 2, Schedule 2, by inserting Pb-201 in the table of nuclides after item 235.

Item 5 amends Part 2, Schedule 2, by inserting Po-208 and Po-209 in the table of nuclides after item 246.

Item 6 inserts a number of new Schedules, after Schedule 3. The new Schedules describe the fees for various types of facilities and sources for which a source or facility licence is required.

Schedule 3A Nuclear installations

This Schedule sets out various types of conduct in relation to nuclear installations, as defined in section 13 of the Act, and the application fee that is payable for each type of conduct mentioned in the application.

Schedule 3B Prescribed radiation facilities

This Schedule sets out various types of prescribed radiation facility and the application fee that is payable for each type of conduct mentioned in the application in relation to each type of prescribed radiation facility.

Schedule 3C Sealed sources of controlled materials

This Schedule sets out the application fee that is payable for each type of sealed source of a controlled material for which a source licence is sought.

Schedule 3D Unsealed sources of controlled materials

This Schedule describes various types of dealings in relation to unsealed sources and sets out the application fee that must accompany an application for licence to undertake any of the dealings described.

Schedule 3E Controlled apparatus producing ionizing radiation

This Schedule sets out the application fee that is payable for each type of controlled apparatus producing ionizing radiation for which a source licence is sought.

Schedule 3F Controlled apparatus producing non-ionizing radiation

This Schedule sets out the application fee that is payable for each type of controlled apparatus producing non-ionizing radiation for which a source licence is sought.

Item 7 substitutes new definitions for "sealed source" and "unsealed source". The original definition of these terms mistakenly included references to terms that were not defined in the legislation. The new definitions make the definitions clearer and easier to understand in the context of the legislation.