

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.3.16 NMAC,**

No. EIB 23-75

**New Mexico Environment Department,
Environmental Protection Division,
Radiation Control Bureau,**

Petitioner.

**PETITION TO REPEAL AND REPLACE 20.3.16 NMAC OF THE
RADIATION PROTECTION REGULATIONS
AND REQUEST FOR HEARING**

The Environmental Protection Division (“Division”), Radiation Control Bureau (“Bureau”) of the New Mexico Environment Department (“Department”) hereby petitions the Environmental Improvement Board (“EIB”) for a hearing on the proposed repeal and replacement of regulations governing the Fees for Licensure of Radioactive Materials in Title 20, Chapter 3, Part 16, New Mexico Administrative Code (“NMAC”) (“License Fee regulations”). *See* 20.3.16 NMAC. As support for this Petition and Request for Hearing, a Statement of Reasons is attached hereto as Exhibit 1. The proposed regulations are attached hereto as Exhibit 2. The Bureau reserves the right to supplement this Petition and attach additional or amended exhibits. In addition, the Bureau states as follows:

1. On April 4, 1974, the State of New Mexico entered into an agreement with the U.S. Nuclear Regulatory Commission (“NRC”). Under the agreement with NRC, the State agreed to effectively operate a Radioactive Materials Program (“Program”).
2. The collection of fees is necessary to operate the Program, and the Department collects fees under the License Fee regulations published on or about May 19, 2002.

3. The May 19, 2002 fees have not kept pace with NRC's fee rules. According to the NRC webpage at <https://www.nrc.gov/about-nrc/regulatory/licensing/general-fee-questions.pdf>, NRC fees are adjusted annually. The NRC currently charges fees under a federal Fiscal Year (FY) 2023 fee rule. In contrast, the State's twenty-one-year-old fees have never been adjusted. The State's fees have not kept pace with the annual increases in Program costs and inflation and do not adequately support the Program.

4. To operate an effective Program, the Bureau proposes regulatory fee changes based on the NRC's federal FY 2021 fee rules.

5. Under the proposed regulations, the new fee structure would start on July 1, 2024.

6. Proposed changes to the State fee structure include: increasing license application and annual fees; providing for license amendment application fees and administrative compliance costs; collecting annual fees prospectively, instead of retrospectively under the 2002 rules; standardizing the annual fee due date to July 1; phasing in annual fees over 2 years (FY 25 and FY 26); and adjusting fees with Consumer Price Index increases starting in FY 2027 and continuing each year thereafter.

7. Qualified small entities would continue to receive a discount on annual fees.

8. The proposed changes to the State fee structure would help provide the budget needed for effective operation of the Program, without which the Program could revert to the NRC. Then the NRC would impose license fee increases in amounts far greater than the fees charged currently under the 2002 License Fee regulations.

9. Under the proposed changes to the State fee structure, all fees would continue to be deposited in the Radiation Protection Fund. *See* NMSA 1978, § 74-3-5 (2000) and NMSA 1978, § 74-3-5.1 (2000).

10. There are approximately 196 Radioactive Materials (“RAM”) licensees who would be affected by the proposed changes to the State fee structure.

11. Under 1.24.11.9(C) NMAC, Part 16 must be repealed and replaced instead of amended because the 2002 fee regulations do not meet current style and formatting requirements established by the State Records Center and Archives.

12. The Radiation Protection Act, NMSA 1978, § 74-3-5(A) (2000), provides that, with the advice and consent of the Radiation Technical Advisory Council (“RTAC”), the EIB shall “have the authority, after considering the facts and circumstances ... to promulgate rules ... prescribing license, registration and other related fees, all of which shall be deposited in the radiation protection fund.” *See generally*, Radiation Protection Act, Sections 74-3-1 to -16 (1953, as amended).

13. Pursuant to NMSA 1978, Section 74-3-5(A) (2000), the proposed regulations shall be provided to the Radiation Technical Advisory Council (“RTAC”) for its advice and consent on this rulemaking.

14. The EIB’s authority to promulgate rules includes repealing and replacing (or amending) the License Fee regulations. *See* NMSA 1978, §§ 74-1-5 (1997), 74-1-8(A)(5) (2020), 74-1-9 (1985), and 74-3-5(A)(2) (2000).

15. Under the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -17, the proposed regulations are in the public interest, technically practicable, necessary, and economically reasonable. *See* NMSA 1978, § 74-1-9 (1985).

16. For the reasons stated above, it is necessary and appropriate to repeal and replace the 2002 License Fee regulations to align with NRC fees and Program operation requirements.

17. Pursuant to NMSA 1978, Section 74-1-9(A) (1985) and 20.1.1.300(A) NMAC, any person may petition the EIB for an amendment of regulations within the jurisdiction of the EIB. The EIB shall determine whether to hold a hearing for the proposed regulations. *See* NMSA 1978, Section 74-1-9(A) (1985); *see also*, 20.1.1.300(C) NMAC.

18. For the Program to cover costs starting in FY 2025, the Bureau intends to begin implementing the new fee structure beginning May 1, 2024, with fee changes starting on July 1, 2024. Thus, at EIB's regularly scheduled December 15, 2023, public meeting, the Bureau requests that the EIB order a public hearing to consider the proposed amendments, appoint a hearing officer, and schedule a two-day public hearing to occur prior to March 12, 2024.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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STATEMENT OF REASONS

1. Pursuant to Section 74-3-15 NMSA 1978, the State of New Mexico (“State”) administers the Radiation Protection Program (“Program”) through an agreement between the United States Nuclear Regulatory Commission (“NRC”) and the State titled “Agreement Between the United States Atomic Energy Commission and the State of New Mexico for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended”, executed on April 3, 1974 (“Agreement”).

2. The Agreement provides for discontinuance of the regulatory authority of the NRC and acceptance of that authority by the Environmental Improvement Board (“EIB”) and Environmental Protection Division of the New Mexico Environment Department (“Department”). *See* NMSA 1978, § 74-3-15 (1977).

3. For the duration of the Agreement, the EIB shall have the authority to regulate the radioactive materials covered by the Agreement for the protection of the public health and safety and the environment from radiation hazards. *See Id.*

4. As an agreement state under 42 U.S.C. § 2021 and NMSA 1978, Section 74-3-15, the State must maintain a satisfactory and adequately staffed Program to keep its agreement status. To achieve this, the State is proposing Licensee Fee changes that would provide the much needed funding to adequately staff and equip the Program to protect public health and safety and the environment from radiation hazards. The proposed fees are necessary to retain the authority granted to the State by the NRC to maintain a satisfactory and adequate program.

5. The proposed annual fees are based on NRC’s Fiscal Year (FY) 2021 fees. *See*

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2021, 114 Fed. Reg. 32146, 32183 (June 26, 2021).

6. Further, failure to maintain a satisfactory and adequately staffed Program jeopardizes the Agreement between the State and the NRC and potentially endangers the authority of the State to regulate certain uses of radioactive materials within the State and to collect radioactive materials license fees.

7. The EIB has the authority to adopt the proposed regulations pursuant to Section 74-1-8(A)(5) NMSA 1978 (2020), Section 74-1-9 NMSA 1978 (1985), and Section 74-3-5(A) NMSA 1978 (2000).

8. Since the 2002 fee regulations do not meet current style and formatting requirements established by the State Records Center and Archives, they must be repealed and replaced with the proposed Fee License regulations (rather than amended) for adoption by the EIB. See 1.24.11.9(C) NMAC. The numbering of the replacement sections is sequential. Due to two repealed sections that were not replaced, the numbering of the old and new sections does not always track.

9. The proposed License Fee regulations would repeal and replace Title 20, Chapter 3, Part 16 of the New Mexico Administrative Code (“NMAC”):

- 20.3.16.1 NMAC (“Issuing Agency”);
- 20.3.16.2 NMAC (“Scope”);
- 20.3.16.3 NMAC (“Statutory Authority”);
- 20.3.16.4 NMAC (“Duration”);
- 20.3.16.5 NMAC (“Effective Date”);
- 20.3.16.6 NMAC (“Objective”);
- 20.3.16.7 NMAC (“Definitions”);
- 20.3.16.8 NMAC (“Interpretations”);
- 20.3.16.9 NMAC (“Exemptions”);
- 20.3.16.10 NMAC (“Licensing Fee Requirements and Indications”);
- 20.3.16.11 NMAC (“Annual Fee Requirements and Indications”);
- 20.3.16.12 NMAC (“Schedule of Fees”);

- 20.3.16.13 NMAC (“Small Entities”);
- 20.3.16.14 NMAC (“Proration”);
- 20.3.16.15 NMAC (“Payment”);
- 20.3.16.16 NMAC (“Enforcement”);
- 20.3.16.17 NMAC (“Collection and Administrative Costs”); and,
- 20.3.16.18 NMAC (“Periodic Review”).

10. The proposed 20.3.16.1 NMAC (“Issuing Agency”) identify the EIB as the issuing agency. This section is unchanged. *See* Exhibit 2 at p. 1.

11. The proposed 20.3.16.2 NMAC (“Scope”) identify the scope of Part 16. The proposed License Fee regulations include minor wording changes to the 2002 fee regulations. *See* Exhibit 2 at p. 1.

12. The proposed 20.3.16.3 NMAC (“Statutory Authority”) cite the statutes that provide authority for the regulations. This section is unchanged. *See* Exhibit 2 at p. 1.

13. The proposed 20.3.16.4 NMAC (“Duration”) indicates that the regulations would be permanent (until the next time the EIB amends the regulations). This section is unchanged. *See* Exhibit 2 at p. 1.

14. The proposed 20.3.16.5 NMAC (“Effective Date”) states that the effective date of the rule amendments would be May 1, 2024. (The prior effective date was May 19, 2002.) *See* Exhibit 2 at p. 1.

15. The proposed 20.3.16.6 NMAC (“Objective”) clarifies that the regulations are for establishment of fees and costs associated with applying for maintaining radioactive material licenses. *See* Exhibit 2 at p. 1.

16. The proposed 20.3.16.7 NMAC (“Definitions”) replaces all previous definitions in Part 16 to provide clarity to new and existing terms. *See* Exhibit 2 at p. 1.

17. The proposed 20.3.16.8 NMAC (“Interpretations”) states that only a written interpretation of the regulations by the Department’s General Counsel will be recognized as binding. This section is unchanged. *See* Exhibit 2 at p. 1.

18. The proposed 20.3.16.9 NMAC (“Consumer Price Index Adjustment”) adds a new section to the regulations and provides for an adjustment of fees beginning in FY 2027, based on the Consumer Price Index. The addition of this section will allow for fee increases to be tied to inflation. *See* Exhibit 2 at p. 1.

19. The proposed 20.3.16.10 NMAC (“Annual Fee Schedule, License Application Fees, Amendment Application Fees and Annual Fees”) replaces (“Licensing Fee Requirements and Indications”) and describes the types of fees to be charged, including fees for new licenses, renewals of licenses; applications to reinstate expired, terminated, or inactive licenses; license amendment applications; and annual fees. *See* Exhibit 2 at pp. 1-2.

20. The proposed 20.3.16.11 NMAC (“Categories of Materials Licenses, Application Fees and Annual Fees”) replaces “Schedule of Fees” to provide clarity regarding particular categories of radioactive materials and types of licensees and to establish the application and annual fees that will be charged in FY 25 and FY 26 and subject to an annual adjustment based on CPI increases starting in FY 27. *See* Exhibit 2 at pp. 3-6.

21. The proposed 20.3.16.12 NMAC (“Small Entities”) updates the parameters for qualification as a “small entity” to receive discounted annual fees. *See* Exhibit 2 at pp. 6-7.

22. The proposed amendments to 20.3.16.13 NMAC (“Proration”) provide for the July 1, 2024 payment of prorated annual fees owed retrospectively under the 2002 regulations and to bring all licenses to an annual fee due date of July 1 of each year for annual fees to be collected prospectively. *See* Exhibit 2 at pp. 7-8.

23. The proposed 20.3.16.14 NMAC (“Payment, Collection and Costs”) adds clarity to the prior section titled “Collection and Administrative Costs” that identified payment methods. The new section more fully identifies costs of non-compliance. *See* Exhibit 2 at p. 8.

24. The proposed 20.3.16.15 NMAC (“License Terminations”) describes the fees, costs and procedures for terminating a license. This section is new. *See* Exhibit 2 at p.8.

25. The proposed 20.3.16.16 NMAC (“Annual Review”) replaces the section titled “Periodic Review” and clarifies that an annual report shall be provided to the Radiation Technical Advisory Council (“RTAC”) chair by October 1 of each year. *See* Exhibit 2 at p. 8.

26. 20.3.16.17 NMAC and 20.3.16.18 NMAC are repealed without replacement since their content is absorbed into other sections, as described above.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 3 RADIATION PROTECTION
PART 16 FEES FOR LICENSURE OF RADIOACTIVE MATERIALS

20.3.16.1 ISSUING AGENCY: Environmental Improvement Board.
[20.3.16.1 NMAC - Rp, 20.3.16.1 NMAC XX/XX/2024]

20.3.16.2 SCOPE:
A. This Part applies to those entities or activities which require licensure in accordance with Chapter 3, Title 20 NMAC.
B. The requirements of this Part are in addition to, and not in substitution for, other applicable requirements of the regulations in Chapter 3, Title 20 NMAC.
C. This Part does not apply to those activities that the U.S. Nuclear Regulatory Commission (NRC) reserved exclusively for federal regulation.
[20.3.16.2 NMAC - Rp, 20.3.16.2 NMAC XX/XX/2024]

20.3.16.3 STATUTORY AUTHORITY: Section 74-1-8.A(5) and Section 74-3-5.A(2) NMSA 1978.
[20.3.16.3 NMAC - Rp, 20.3.16.3 NMAC XX/XX/2024]

20.3.16.4 DURATION: Permanent
[20.3.16.4 NMAC - Rp, 20.3.16.4 NMAC XX/XX/2024]

20.3.16.5 EFFECTIVE DATE: May 1, 2024.
[20.3.16.5 NMAC - Rp, 20.3.16.5 NMAC XX/XX/2024]

20.3.16.6 OBJECTIVE: To establish fees and costs associated with applying for and maintaining radioactive material licenses.
[20.3.16.6 NMAC - Rp, 20.3.16.6 NMAC XX/XX/2024]

20.3.16.7 DEFINITIONS:
A. “Amendment” means a request made by a licensee to the department to approve a change to its license. Examples of amendments include, but are not limited to, changes to users, changes in materials, and transfers of licenses.
B. “Application” means an application for a new license, a renewal of a license or an amendment.
C. “Byproduct material” means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.
D. “Department” means the New Mexico environment department and its duly authorized representatives.
E. “Fee” means an amount to be charged by the department in accordance with the provisions in this Part.
F. “Fiscal year” or “FY” means a year that begins on July 1 of each calendar year and ends on June 30 of the following calendar year. Fiscal years are identified by the year in which they end (e.g., fiscal year 2025 begins on July 1, 2024 and ends on June 30, 2025).
G. “Generator” means a person who produces, uses, stores, transfers, or disposes of radioactive materials in any licensable quantity.
H. “Government agency” means any state or federal executive department, commission, independent establishment, corporation, wholly or partly owned by any state or the United States of America which is an instrumentality of the state or United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in executive branches of government.
I. “License” or “Materials license” means a license, certificate, approval, registration, or other form of permission issued by the Department under the various parts of these regulations.
J. “Nonprofit educational institution” means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an

educational program for which it awards academic degrees, and whose educational programs are available to the public.

K. “NORM” means any naturally occurring radioactive material subject to the licensing requirements of these regulations.

L. “NRC” means the U.S. Nuclear Regulatory Commission; an officer, employee, or authorized representative of the commission.

M. “Operating license” means having a license issued pursuant to Part 3, Title 20 NMAC.

N. “Person means”:

(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, or Government agency other than the department; any state or any political subdivision of, or any political entity within, a state; any foreign government or nation or any political subdivision of any such foreign government or nation; or other entity; and

(2) any legal successor, representative, agent, or agency of the foregoing.

O. “Registration holder” as used in this part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC, or a holder of a registration for a sealed source or device manufactured in accordance with the unique specifications of, and for use by, a single applicant.

P. “Source material” means:

(1) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores which contain by weight one-twentieth of one percent or more of

(a) uranium,

(b) thorium, or

(c) any combination thereof.

(3) Source material does not include special nuclear material.

Q. “Special nuclear material” means:

(1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the special nuclear materials and excluding source material.

[20.3.16.7 NMAC - Rp, 20.3.16.7 NMAC XX/XX/2024]

20.3.16.8 INTERPRETATIONS: Except as specifically authorized by the department in writing, no interpretation of the regulations in this part by an officer or employee of the department, other than a written interpretation by the general counsel, will be recognized as binding on the department.

[20.3.16.8 NMAC - Rp, 20.3.16.8 NMAC XX/XX/2024]

20.3.16.9 CONSUMER PRICE INDEX ADJUSTMENT: Starting in Fiscal year 2027, then in each subsequent calendar year, all fees in this Part shall be increased pursuant to the provisions in this Part if there is an increase in the unadjusted consumer price index (CPI) for all urban consumers, United States city average for all items, or its successor index, as published by the U.S. Bureau of Labor Statistics or its successor agency. The increase shall be measured by the percentage increase of the consumer price index as of October of the immediately preceding year over the level of the consumer price index as of October of the next previous year and shall be rounded up to the nearest dollar. A fee increase shall take effect on July 1 of the year in which the fee schedule is adjusted. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in CPI as described in this paragraph.

[20.3.16.9 NMAC – Rp, 20.3.16.9 NMAC N, XX/XX/2024;]

20.3.16.10 ANNUAL FEE SCHEDULE, LICENSE APPLICATION FEES, AMENDMENT APPLICATION FEES, AND ANNUAL FEES:

A. The department shall develop and publish a current fee schedule each year by May 1 to take effect by July 1 of the same year. The fee schedule will list current license application fees, amendment application fees, annual fees, and termination request fees.

B. Each Location of Use. All fees in this Part apply to each location of use listed on the license. The licensee shall pay the cumulative amount owed for each location of use for each license held by the licensee.

C. License Applications.

(1) An application fee shall be charged for new licenses, renewals of licenses, and applications to reinstate expired, terminated, or inactive licenses. Each application for which a fee is prescribed must be accompanied by a remittance of the full amount of the fee prior to department review.

(2) Fees are charged regardless of whether the application is approved, denied, or withdrawn.

(3) Applications for licenses covering more than one fee category of special nuclear material or source material or byproduct material must be accompanied by the prescribed application fee for each applicable fee category.

(4) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for the fee category specified in paragraph (1) of Subsection B of 20.3.16.12 and in Subsection D of 20.3.16.12 NMAC.

(5) After the department approves an application for a new license, the applicant shall pay the full amount of annual fees due, regardless of the month of issuance of license, prior to commencing operations under the new license.

D. Amendment Applications. A licensee seeking an amendment to a license shall submit an amendment application for an amendment to an existing license submitted to the department. Each amendment application will be charged a fee of 25% of the amount of the license application fee that would be charged for the license in the fiscal year of the amendment submission.

E. Annual Fees.

(1) Beginning July 1, 2024, annual fees will be charged prospectively. For existing licensees, annual fees will be due on July 1 of each year for use of the license for the next twelve (12) months. For new licensees, the full amount of the annual fees will be due within 30 days of issuance of the license, regardless of the month of issuance, then the next due date for the annual fees will be July 1.

(2) If a single license authorizes more than one activity (e.g., human use and irradiator activities), then annual fees will be assessed for each fee category applicable to the license.

(3) If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person.

(4) Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses.

(5) Payment of the prescribed annual fee does not automatically renew the license for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Part 3, Title 20 NMAC as applicable and must be approved by the department.

[20.3.16.10 NMAC - Rp, 20.3.16.10 NMAC XX/XX/2024]

20.3.16.11 CATEGORIES OF MATERIALS LICENSES, APPLICATION FEES AND ANNUAL FEES:

A. The categories of materials licenses for which fees are due for each location of use are listed below in this section. For each category of materials license, the FY 25 and FY 26 application fee and FY 25 and FY 26 annual fee amounts are listed. Starting in FY 27, all license application fees and annual fees charged in FY 26 will be subject to the CPI adjustment described in this Part. Since the amendment application fees are calculated based on the license application fees, no additional CPI adjustment applies to amendment application fees.

B. Special nuclear material:

(1) Licenses for possession and use of special nuclear material of less than a critical mass, as defined in Code of Federal Regulations 10 CFR 70.4, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:

(a) License application fee: \$1,300 for FY 25 and \$1,300 for FY 26; and

(b) Annual fee: \$1200 for FY 25 and \$2,400 for FY 26.

(2) All other special nuclear material licenses, except licenses authorizing special nuclear material in the sealed or unsealed form in combination that would constitute a critical mass as defined in Code of Federal Regulations 10 CFR 70.4.

(a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and

(b) Annual fee: \$2,850 for FY 25 and \$5,700 for FY 26.

C. Source material:

(1) Licenses for possession and use of source material in recovery operations such as ion exchange facilities.

- (a) License application fee: \$87,000 for FY 25 and \$87,000 for FY 26; and
 - (b) Annual fee: \$87,000 for FY 25 and FY 26 \$87,000.
- (2) Licenses that authorize only the possession, use and/or installation of source material for shielding.
 - (a) License application fee: \$1,300 for FY 25 and \$1,300 for FY 26; and
 - (b) Annual fee: \$1,350 for FY 25 and \$2,700 for FY 26.
- (3) Licenses to distribute items containing source material to persons exempt from the licensing requirements of 20.3.3 NMAC.
 - (a) License application fee: \$6,200 for FY 25 and \$6,200 for FY 26; and
 - (b) Annual fee: -\$4,450 for FY 25 and \$8,900 for FY 26.
- (4) Licenses to possess, distribute, transfer, store, and dispose of source material to persons specifically licensed under 20.3.3 NMAC.
 - (a) License application fee: \$2,000 for FY 25 and \$2,000 for FY 26; and
 - (b) Annual fee: \$2,550 for FY25 and \$5,100 for FY26.
- (5) Licenses for possession and use of source material for processing or manufacturing products or materials containing source material for commercial distribution.
 - (a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and
 - (b) Annual fee: \$3,150 for FY 25 and \$6,300 for FY 26.
- (6) All other source material licenses
 - (a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and
 - (b) Annual fee: \$4,250 for FY 25 and \$8,500 for FY 26.
- D. Byproduct Material:
 - (1) Licenses of broad scope for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.
 - (a) License application fee: \$13,500 for FY 25 and \$13,500 for FY 26; and
 - (b) Annual fee: \$13,700 for FY 25 and \$27,400 for FY 26.
 - (2) Other licenses for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.
 - (a) License application fee: \$3,700 for FY 25 and \$3,700 for FY 26; and
 - (b) Annual fee: \$4,800 for FY 25 and \$9,600 for FY 26.
 - (3) Licenses authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material.
 - (a) License application fee: \$5,400 for FY 25 and \$5,400 for FY 26; and
 - (b) Annual fee: \$4,500 for FY 25 and \$9,000 for FY 26.
 - (4) Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).
 - (a) Licensing application fee: \$3,300 for FY 25 and \$3,300 for FY 26; and
 - (b) Annual fee: \$4,950 for FY 25 and \$9,900 for FY 26.
 - (5) Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.
 - (a) License application fee: \$6,700 for FY 25 and \$6,700 for FY 26; and
 - (b) Annual fee: \$4,450 for FY 25 and \$8,900 for FY 26.
 - (6) Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.
 - (a) License application fee: \$64,300 for FY 25 and \$64,300 for FY 26; and
 - (b) Annual fee: \$36,050 for FY 25 and \$72,100 for FY 26.
 - (7) Licenses to distribute items containing byproduct material that require device review or quantities of byproduct material to persons exempt from the licensing requirements of these regulations, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements.
 - (a) License application fee: \$6,900 for FY 25 and \$6,900 for FY 26; and
 - (b) Annual fee: \$4,350 for FY 25 and \$8,700 for FY 26.

(8) Licenses to distribute items containing byproduct material or quantities of byproduct material that require sealed source and/or device review to specifically licensed persons, except specific licenses authorizing redistribution of items that have been authorized for distribution to generally licensed persons.

(a) License application fee: \$2,100 for FY 25 and \$2,100 for FY 26; and

(b) Annual fee: \$1,800 for FY 25 and \$3,600 for FY 26.

(9) License issued to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements.

(a) License application fee: \$15,300 for FY 25 and \$15,300 for FY 26; and

(b) Annual fee: \$8,700 for FY 25 and \$17,400 for FY 26.

(10) Licenses issued to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons specifically licensed, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed.

(a) License application fee: \$1,200 for FY 25 and \$1,200 for FY 26; and

(b) Annual fee: \$1,350 for FY 25 and \$2,700 for FY 26.

(11) Licenses of broad scope for possession and use of byproduct material for research and development that do not authorize commercial distribution.

(a) License application fee: \$5,700 for FY 25 and \$5,700 for FY 26; and

(b) Annual fee: \$6,250 for FY 25 and \$12,500 for FY 26.

(12) Other licenses for possession and use of byproduct material for research and development that do not authorize commercial distribution.

(a) License application fee: \$8,600 for FY 25 and \$8,600 for FY 26; and

(b) Annual fee: \$6,700 for FY 25 and \$13,400 for FY 26

(13) Licenses that authorize services for other licensees:

(a) License application fee: \$9,200 for FY 25 and \$9,200 for FY 26; and

(b) Annual fee: \$7,600 for FY 25 and \$15,200 for FY 26.

(14) Licenses for the possession and use of byproduct material for industrial radiography operations; this category also includes the possession and use of source material for shielding when authorized on the same license:

(a) License application fee: \$9,200 for FY 25 and \$9,200 for FY 26; and

(b) Annual fee: \$14,550 for FY 25 and \$29,100 for FY 26.

(15) All other specific byproduct material licenses, including calibration and leak testing:

(a) License application fee: \$6,600 for FY 25 and \$6,600 for FY 26; and

(b) Annual fee: \$4,950 for FY 25 and \$9,900 for FY 26.

(16) Licenses for production of accelerator-produced radionuclides:

(a) License application fee: \$14,700 for FY 25 and \$14,700 for FY 26; and

(b) Annual fee: \$11,900 for FY 25 and \$23,800 for FY 26.

E. Waste disposal and processing:

(1) Class 1 Waste Licenses - Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons specifically licensed for the purpose of contingency storage or commercial land disposal by the licensee; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

(a) License application fee: \$5,000 for FY 25 and \$10,000 for FY 26; and

(b) Annual fee: \$10,000 for FY 25 and \$20,000 for FY 26.

(2) Class 2 Waste Licenses - Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

(a) License application fee: \$0 for FY 25 and \$0 for FY 26; and

(b) Annual fee: \$7,480 for FY 25 and \$7,480 for FY 26.

(3) Class 3 Waste Licenses - Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, NORM, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

- (a) License application fee: \$0 for FY 25 and \$0 for FY 26; and
 - (b) Annual fee: \$5,530 for FY 25 and \$5,530 for FY 26.
- F. Well logging:
 - (1) Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:
 - (a) License application fee: \$4,800 for FY 25 and \$4,800 for FY 26; and
 - (b) Annual fee: \$6,250 for FY 25 and \$12,500 for FY 26.
 - (2) Licenses for possession and use of byproduct material for field flooding tracer studies:
 - (a) License application fee: \$6,530 for FY 25 and \$6,530 for FY 26; and
 - (b) Annual fee: \$3,265 FY 25 and \$6,530 for FY 26.
- G. Nuclear laundries - Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material and storage and transfer of laundry from the license location:
 - (1) License application fee: \$22,900 for FY 25 and \$22,900 for FY 26; and
 - (2) Annual fee: \$14,050 for FY 25 and \$28,100 for FY 26.
- H. Medical licenses:
 - (1) Licenses for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units teletherapy devices; this category also includes the possession and use of source material for shielding when authorized on the same license:
 - (a) License application fee: \$11,500 for FY 25 and \$11,500 for FY 26; and
 - (b) Annual fee: \$13,550 for FY 25 and \$27,100 for FY 26.
 - (2) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:
 - (a) License application fee: \$9,000 for FY 25 and \$9,000 for FY 26; and
 - (b) Annual fee: \$18,500 for FY 25 and \$37,000 for FY 26.
 - (3) Other licenses for human use of byproduct material, source material, and/or special nuclear material except licenses for in-vitro analysis, and except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices; this category also includes the possession and use of source material for shielding when authorized on the same license:
 - (a) License application fee: \$10,900 for FY 25 and \$10,900 for FY 26; and
 - (b) Annual fee: \$8,400 for FY 25 and \$16,800 for FY 26.
- I. Civil defense - Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:
 - (1) License application fee: \$2,600 for FY 25 and \$2,600 for FY 26; and
 - (2) Annual fee: \$3,000 for FY 25 and \$6,000 for FY 26.
- J. Reciprocal Recognition of Licenses under 20.3.3.24 NMAC:
 - (1) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and
 - (2) Annual fee: \$0 for FY25 and \$0 for FY26.
- K. New categories. For generators of any category and any licensable quantity of radioactive material not listed above:
 - (1) License application fee: \$10,000 for FY 25 and \$10,000 for FY 26; and
 - (2) Annual Fee: \$10,000 for FY 25 and \$10,000 for FY 26.

[20.3.16.11 NMAC - Rp, 20.3.16.11 NMAC XX/XX/2024]

20.3.16.12 SMALL ENTITIES AND ANNUAL FEES:

- A. A licensee may qualify as a small entity pursuant to the provisions of this section and receive a refund of a portion of annual fees paid following the submission of certification and documentation with the annual fee payment. The submission of certification and documentation of being a small entity after the due date of the annual fee payment will not allow the licensee to qualify as a small entity until the following year in which the next annual fee payment is due. To qualify as a small entity, an entity must provide appropriate documentation that it meets the size standards and gross income standards described in 20.3.16.13.
- B. Small entity criteria.
 - (1) A small business that is a for-profit entity that provides services or products and is:
 - (a) not engaged in manufacturing and earned average gross receipts of \$8 million or less over its last 3 completed fiscal years; or

- (b) a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months; or
 - (2) A small governmental jurisdiction that is a government of a city, county, town, township, or village with a population (including educational institutional populations) of fewer than 49,999 individuals; or
 - (3) A small educational institution that:
 - (a) has more than fifty percent of its operating budget funded by state or local governments; or
 - (b) has zero percent to fifty percent of its operating budget funded by state or local governmental funds and has 500 or fewer employees.
- C. For a small entity that meets the small entity criteria listed above in Paragraph A of this section the following are the maximum annual fees, for each location of use and for each licensed category:
- (1) Small businesses not engaged in manufacturing and small not-for-profit organizations (Average gross receipts for the last three completed years for all business locations):
 - (a) Gross annual receipts of \$485,000 to \$7 million, the annual fee is \$ 4,900 for each location.
 - (b) Gross annual receipts of less than less than \$485,000, the annual fee is \$1,000 for each location.
 - (2) Manufacturing entities that have an average of 500 or fewer employees working in all of licensee's locations:
 - (a) 35 to 500 employees, the annual fee is \$4,900 for each location.
 - (b) Less than 35 employees, the annual fee is \$1000 for each location.
 - (3) Small governmental jurisdictions.
 - (a) Population of 20,000 to 49,999, the annual fee is \$ 4,900 for each location.
 - (b) Population of less than 20,000, the annual fee is \$1000 for each location.
 - (4) Educational institutions that are not state or publicly supported with 500 employees or less.
 - (a) With 35 to 500 employees, the annual fee is \$4,900 for each location.
 - (b) With less than 35 employees, the annual fee is \$1000 for each location.

D. For the purposes of this section, the department shall use the small business administration definition of receipts in the Code of Federal Regulations, 13 CFR 121.104(a)(1)(2), or its successor regulation. A licensee who is a subsidiary of a large entity does not qualify as a small entity for the purposes of this section.

E. Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the department to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them.

F. A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the department. The licensee must file the required certification on department Form RPP526 for each license under which it is billed. The department will include a copy of Form RPP526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed Form RPP526 with the reduced annual fee payment.

G. For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

H. Small entities are required to pay the appropriate small entity fee for each fee category applicable to their license(s).

I. If a person files a false certification with respect to qualifying as a small entity, the department may refuse to process any application submitted by or on behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person. The filing of a false certification to qualifying as a small entity under this section may also result in punitive action pursuant to applicable New Mexico state statutes.

[20.3.16.12 NMAC - Rp, 20.3.16.12 NMAC XX/XX/2024;]

20.3.16.13 PRORATION:

A. The purpose of proration under 20.3.16.14 NMAC is to bring all licensees to an annual fee due date of July 1 of each year, beginning July 1, 2024. For licenses issued prior to July 1, 2024, the annual fees shall be prorated by multiplying the number of complete and partial months between the anniversary date of the license issuance and July 1, 2024 by the calculated monthly amount of the annual fees due. The resulting calculation of

prorated annual fees will be rounded up to the nearest dollar and be due, along with the FY 25 annual fee, on July 1, 2024.

B. After July 1, 2024, there will be no proration, and:

(1) new licensees must pay the full amount of annual fees, regardless of the month of license issuance;

(2) existing licensees must pay the full amount of annual fees on July 1 of each year, regardless of the anniversary date of license issuance; and

(3) licensees who terminate their licenses will not receive a refund of annual fees paid.

[[20.3.16.13 NMAC - Rp, 20.3.16.13 NMAC XX/XX/2024]

20.3.16.14 PAYMENT, COLLECTION AND COSTS:

A. Payments of fees and costs shall be in the form of an online payment or a check or money order made payable to the Radiation Protection Fund at the address shown on the application, license, registration, or the invoice issued by the department or online payments service providers authorized by the department to collect payments.

B. In the event that fees and costs are not paid within thirty (30) days of the applicable due date, all outstanding fee balances become due and payable, along with a ten percent (10%) penalty cost and the costs of collection, to be charged each month until all fees and costs are paid. The penalty and collection costs shall be calculated from the original due date of the outstanding fee balances.

C. Non-compliance with Chapter 3, Title 20 NMAC, the Radiation Protection Act or license requirements, regardless of whether the generator has a current license or generator activities have ceased, requires a generator to cease and desist generator activities and subjects the generator to administrative compliance costs for enforcement of Chapter 3, Title 20 NMAC, civil penalties of up to \$15,000 per day and other remedies available under law and Chapter 3, Title 20 NMAC.

[20.3.16.14 NMAC - Rp, 20.3.16.14 NMAC XX/XX/2024]

20.3.16.15 LICENSE TERMINATIONS:

A. For each license termination, the licensee shall inform the department of the intention to terminate the license and shall follow the termination procedures in Chapter 3, Title 20 NMAC and any other requirements set by the department.

B. Upon the department's determination that all conditions for termination have been met, the department shall issue an invoice for a termination fee in an amount equal to the application fee that would be charged for the license in the fiscal year of the termination request. The department shall issue a license termination within 30 days of receipt of total payment of owed fees and costs.

D. Until the department issues the license termination, annual fees and all other outstanding fees and costs under this Part are the continued obligation of the licensee, regardless of whether the license has expired or the licensed activities have ceased.

[20.3.16.15 NMAC - Rp, 20.3.16.15 NMAC XX/XX/2024]

20.3.16.16 ANNUAL REVIEW: By October 1 of each year, the department shall perform a review of the fees and costs required by this part and shall provide a report of the review to the chair of the New Mexico radiation technical advisory council (RTAC).

[20.3.16.16 NMAC - Rp, 20.3.16.16 NMAC XX/XX/2024]

20.3.16.17 COLLECTION AND ADMINISTRATIVE COSTS: [Reserved]

[20.3.16.17 NMAC - Repealed, XX/XX/2024]

20.3.16.18 PERIODIC REVIEW: [Reserved]

[20.3.16.18 NMAC - Repealed, XX/XX/2024]