
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,” signed on April 3, 1974 and effective on May 1, 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*

114 Fed. Reg. 32146, 32183 “Revision of Fee Schedules, Fee Recovery for Fiscal Year 2021” (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”) identifies the EIB as the issuing agency. This section is unchanged. *See* Exhibit B at p. 1.

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

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

13. The proposed 20.3.16.4 NMAC (“Duration”) indicates the regulations would be permanent (until the next EIB-approved amendments to these regulations). This section is unchanged. *See* Exhibit B 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 B 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 B 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 B at pp. 1-2.

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 B at p. 2.

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 B at p. 2.

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 B at pp. 2-3.

20. The proposed 20.3.16.11 NMAC (“Categories of Materials Licenses, Application Fees and Annual Fees”) replaces 20.3.16.12, “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 B at pp. 3-6.

21. The proposed 20.3.16.12 NMAC (“Small Entities and Annual Fees”) updates the parameters for qualification as a “small entity” to receive discounted annual fees. *See* Exhibit B 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 B at pp. 7-8.

23. The proposed 20.3.16.14 NMAC (“Payment, Collection and Costs”) adds clarity to the prior section 20.3.16.17 NMAC, “Collection and Administrative Costs,” that identified payment methods. The new section more fully identifies costs of non-compliance. *See* Exhibit B 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 B at p.8.

25. The proposed 20.3.16.16 NMAC (“Annual Review”) replaces the section 20.3.16.18 NMAC, “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 B 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. *See* Exhibit B at p. 8, “[Reserved].”