

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 – N, 5/19/2002]

20.3.16.2 SCOPE:
A. This Part applies to those entities or activities which require licensure in accordance with Parts 3, 13, and 14 of these regulations.
B. The requirements of this Part are in addition to, and not in substitution for, other applicable requirements of these regulations.
C. This Part does not apply to those activities subject to regulation by the U.S. Nuclear Regulatory Commission (NRC).
[20.3.16.2 NMAC – N, 5/19/2002]

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 – N, 5/19/2002]

20.3.16.4 DURATION: Permanent
[20.3.16.4 NMAC – N, 5/19/2002]

20.3.16.5 EFFECTIVE DATE: May 19, 2002
[20.3.16.5 NMAC – N, 5/19/2002]

20.3.16.6 OBJECTIVE: To establish fees for licensure of radioactive material licenses, and to provide for methods of payment for such fees.
[20.3.16.6 NMAC – N, 5/19/2002]

20.3.16.7 DEFINITIONS:
A. “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.
B. “Department” means the New Mexico Environment Department and its duly authorized representatives.
C. “Fiscal year” 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 2002 begins in 2001 and ends in 2002).
D. “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.
E. “Materials License” means a license, certificate, approval, registration or other form of permission issued by the Department under the various parts of these regulations.
F. “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.
G. “NORM” means any naturally occurring radioactive material subject to the licensing requirements of these regulations.
H. “NRC” means the United States Nuclear Regulatory Commission; an officer, employee, or authorized representative of the Commission.
I. “Operating license” means having a license issued pursuant to Parts 3, 13, or 14 of these regulations.
J. “Overhead and General and Administrative costs” means:

- (1) The State benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;
- (2) Travel costs;
- (3) Direct overhead, e.g., supervision and support staff that directly support the Department safety mission areas (administrative support costs, e.g., rental of space, equipment, telecommunications and supplies); and
- (4) Indirect costs that would include, but not be limited to, Department central policy direction, legal and executive management services for the Department and special and independent reviews, investigations, and enforcement and appraisal of Department programs and operations.

K. "Person means":

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, 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 government or nation; or other entity; and

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

L. "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.

M. "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 (0.05%) or more of

(a) Uranium,

(b) Thorium, or

(c) Any combination thereof.

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

N. "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 foregoing, but does not include source material.

[20.3.16.7 NMAC – N, 5/19/2002]

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 – N, 5/19/2002]

20.3.16.9 EXEMPTIONS:

A. Licensing fees and annual fees are not required for a license applied for by, or issued to, a nonprofit educational institution for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(1) Human use;

(2) Remunerated services to other persons;

(3) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or

(4) Activities performed under a Government contract.

B. The Department may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this Part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the Department within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

C. The Department may grant a materials licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of Department costs. The following factors must be fulfilled as determined by the Department for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; or

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Department policy decisions; or

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of Department costs.

[20.3.16.9 NMAC – N, 5/19/2002]

20.3.16.10 LICENSING FEE REQUIREMENTS AND INDICATIONS:

A. Fees for Department review for the following licensing applications are subject to the licensing application fees indicated in the fee schedule:

(1) applications for new materials licenses;

(2) applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs;

(3) and applications for amendments to materials licenses.

B. Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee.

C. The Department will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee.

D. The application fee(s) is charged whether the Department approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

E. Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Department.

F. The Department intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for Department review, until the review is completed. Each bill will identify the applications submitted for review and the costs related to each.

G. The Department intends to bill each applicant or licensee for costs related to project staff time on a quarterly basis. Each bill will identify the costs related to project staff time.

H. Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

I. 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 A of 20.3.16.12 NMAC.

[20.3.16.10 NMAC – N, 5/19/2002]

20.3.16.11 ANNUAL FEE REQUIREMENTS AND INDICATIONS:

A. Each person subject to the requirements of this Part shall pay an annual fee for each license the person holds at any time during the first six months of the State fiscal year (July 1 through January 1). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period July 1 through January 1 of the fiscal year as provided in 20.3.16.14 NMAC. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If the person holds more than one license, the total annual fee assessed will be the cumulative total of the annual fees applicable to the licenses held.

B. The annual fee is comprised of a base annual fee and an additional charge (surcharge). The activities comprising the surcharge are shown below in Subsection C of 20.3.16.11 NMAC. The activities comprising the base annual fee is the sum of the Department budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities.

C. The activities comprising the surcharge are:

- (1) LLW disposal generic activities;
 - (2) Activities not directly attributable to an existing Department licensee or classes of licensees; e.g., support for the Agreement State program; site decommissioning management plan (SDMP) activities; and
 - (3) Activities not currently assessed licensing and inspection fees based on Department policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for State or Federal agencies and activities related to decommissioning and reclamation.
- [20.3.16.11 NMAC – N, 5/19/2002]

20.3.16.12 SCHEDULE OF FEES: The following indicates the categories of materials licenses and associated fees. Reference paragraphs (1) and (2) of Subsection L of 20.3.16.12 NMAC.

- A. Special Nuclear Material
 - (1) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.
 - Licensing applications – \$0
 - Annual fee – \$1,200
 - (2) All other special nuclear material licenses.
 - Licensing applications – \$0
 - Annual fee – \$2,240
- B. Source Material
 - (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.
 - (a) Class I facilities. Reference paragraph (3) of Subsection L of 20.3.16.12 NMAC.
 - Licensing applications – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.
 - Annual fee – \$87,000
 - (b) Class II facilities. Reference paragraph (3) of Subsection L of 20.3.16.12 NMAC.
 - Licensing applications – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.
 - Annual fee – \$73,000
 - (c) Other facilities. Reference paragraph (3) of Subsection L of 20.3.16.12 NMAC.
 - Licensing applications – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.
 - Annual fee – \$20,300
 - (2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in paragraphs (1) and (3) of Subsection B of 20.3.16.12 NMAC.
 - Licensing applications – \$0
 - Annual fee – \$53,800
 - (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in paragraph (1) of Subsection B of 20.3.16.12 NMAC.
 - Licensing applications – \$0
 - Annual fee – \$8,490
 - (4) Licenses that authorize only the possession, use and/or installation of source material for shielding.
 - Licensing applications – \$0
 - Annual fee – \$500
 - (5) All other source material licenses
 - Licensing applications – \$0
 - Annual fee – \$7,765
- C. 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.
Licensing applications – \$0
Annual fee – \$17,300
- (2) Other licenses for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.
Licensing applications – \$0
Annual fee – \$4,140
- (3) Licenses authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under Subsection A of 20.3.16.9 NMAC of this part, which instead are covered by the fee required for paragraph (4) of Subsection C of 20.3.16.12 NMAC.
Licensing applications – \$0
Annual fee – \$10,270
- (4) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under Subsection A of 20.3.16.9 NMAC. This category also includes the possession and use of source material for shielding when included on the same license.
Licensing applications – \$0
Annual fee – \$2,455
- (5) 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).
Licensing applications – \$0
Annual fee – \$2,260
- (6) Licenses for possession and use of less 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.
Licensing applications – \$0
Annual fee – \$3,820
- (7) Licenses for possession and use of 10,000 curies or more 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.
Licensing applications – \$0
Annual fee – \$9,695
- (8) Licenses to distribute items containing byproduct material 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.
Licensing applications – \$0
Annual fee – \$3,055
- (9) Licenses to distribute items containing byproduct material or quantities of byproduct material to generally licensed persons, except specific licenses authorizing redistribution of items that have been authorized for distribution to generally licensed persons.
Licensing applications – \$0
Annual fee – \$1,200
- (10) Licenses of broad scope for possession and use of byproduct material for research and development that do not authorize commercial distribution.
Licensing applications – \$0
Annual fee – \$7,350
- (11) Other licenses for possession and use of byproduct material for research and development that do not authorize commercial distribution
Licensing applications – \$0
Annual fee – \$3,230

(12) Licenses that authorize services for other licensees; except licenses that authorize only calibration and/or leak testing services which are subject to the fees specified in paragraph (14) of Subsection C of 20.3.16.12 NMAC, and licenses that authorize waste disposal services are subject to the fees specified in paragraphs (1), (2), and (3) of Subsection D of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$3,420

(13) Licenses for 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.

Licensing applications – \$0

Annual fee – \$9,630

(14) All other specific byproduct material licenses, except those in Subsections D through J of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$1,700

D. 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 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.

Licensing applications – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – N/A. Reference paragraph (5) of Subsection L of 20.3.16.12 NMAC.

(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.

Licensing applications – \$0

Annual fee – \$7,480

(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.

Licensing applications – \$0

Annual fee – \$5,530

E. 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.

Licensing applications – \$0

Annual fee – \$6,530

(2) Licenses for possession and use of byproduct material for field flooding tracer studies.

Licensing applications – \$0

Annual fee – \$6,530

F. Nuclear Laundries. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.

Licensing applications – \$0

Annual fee – \$12,410

G. Medical Licenses

(1) Licenses for human use of 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.

Licensing applications – \$0

Annual fee – \$10,075

(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. This category also

includes the possession and use of source material for shielding when authorized on the same license. Reference paragraph (9) of Subsection L of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$13,560

(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. Reference paragraph (9) of Subsection L of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$3,815

H. Civil Defense. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.

Licensing applications – \$0

Annual fee – \$1,000

I. Reciprocity

Applications for Recognition – \$1,200

Annual fee – N/A. Reference paragraph (8) of Subsection L of 20.3.16.12 NMAC.

J. Special Projects

(1) Special Reviews – N/A. Reference paragraph (6) of Subsection L of 20.3.16.12 NMAC.

(2) Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities.

Department support and activities – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – \$0. Reference paragraph (7) of Subsection L of 20.3.16.12 NMAC.

K. Professional Staff-hour Rate. Fees for licenses, amendments, renewals, special projects, other required reviews, approvals, and inspections will be calculated using the following applicable professional staff-hour rate.

Professional Staff-hour Rate – \$125 per hour

L. FEE SCHEDULE REFERENCES. The following indications pertain specifically to references contained in the fee schedule, and are to be taken only in context with said references.

(1) Annual fees will be assessed based on whether a licensee held a valid license with the Department authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to July 1, 2000, and permanently ceased licensed activities entirely by June 30, 2000. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of 20.3.16.14 NMAC. 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. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(2) Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 3, 13, and 14 of these regulations as applicable

(3) A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

(4) Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in Subsection K of 20.3.16.12.14 NMAC in effect at the time the service is provided, and the appropriate contractual support services expended.

(5) There are no existing Department licenses in these fee categories. Once Department issues a license for these categories, the Department will consider establishing an annual fee for that type of license.

(6) Special reviews, such as topical reports, are not assessed fees because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

(7) Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

(8) No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

(9) Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses subject to the requirements of paragraphs (2) and (3) of Subsection G of 20.3.16.12 NMAC.

[20.3.16.12 NMAC – N, 5/19/2002]

20.3.16.13 SMALL ENTITIES. A licensee who is required to pay an annual fee under this Part may qualify as a small entity. If a licensee qualifies as a small entity and provides the Department with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

A. The following are the maximum annual fees per licensed category for qualifying small entities:

(1) Small businesses not engaged in manufacturing and small not-for-profit organizations.

(a) Gross annual receipts of \$350,000 to \$5 million, the fee is \$1,500;

(b) Gross annual receipts of less than \$350,000, the fee is \$500.

(2) Manufacturing entities that have an average of 500 employees or less.

(a) 35 to 500 employees, the fee is \$1,500;

(b) Less than 35 employees, the fee is \$500.

(3) Small Governmental Jurisdictions.

(a) Population of 20,000 to 50,000, the fee is \$1,500.

(b) Population of less than 20,000, the fee is \$500.

(4) Educational Institutions that are not State or Publicly Supported with 500 employees or less.

(a) With 35 to 500 employees, the fee is \$1,500.

(b) With less than 35 employees, the fee is \$500.

B. Small Entity Size Standards. A licensee qualifies as a small entity if it meets the following size standards:

(1) A small business is a for-profit concern and is a --

(a) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(b) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(2) A small governmental jurisdiction is a government of a city, county, town, township, or village with a population (including educational institutions) of less than 50,000.

(3) A small educational institution is an educational institution or school district that is --

(a) Supported by a qualifying small governmental jurisdiction; or

(b) Not supported by state or public funds and has 500 or fewer employees.

C. For the purposes of this section, the Department shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

D. 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.

E. 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.

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

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

[20.3.16.13 NMAC – N, 5/19/2002]

20.3.16.14 PRORATION. Annual fees will be prorated for Department licensees as follows:

A. New licenses and terminations. The annual fee for a materials license that is subject to fees under this Part and issued on or after July 1 of the FY is prorated on the basis of when the Department issues the new license. New licenses issued during the period July 1 through December 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after January 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request has been received on or after July 1 of a FY on the basis of when the application for termination is received by the Department provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination are filed during the period July 1 through December 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination are filed on or after January 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the Department, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

B. Downgraded licenses.

(1) The annual fee for a materials license that is subject to fees under this Part and downgraded on or after July 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the Department provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the Department within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(2) Annual fees for licenses for which applications to downgrade are filed during the period July 1 through December 31 of the FY will be prorated as follows:

(a) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(b) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(3) Licenses for which applications to downgrade are filed on or after January 1 of the FY are assessed the full fee for that FY.

[20.3.16.14 NMAC – N, 5/19/2002]

20.3.16.15 PAYMENT

A. Fee payments shall be in the form of check or money order made payable to the Radiation Protection Fund at the address shown on the application, license, registration, or fee due notice.

B. Annual fees in the amount of \$100,000 or more must be paid in quarterly installments of 25 percent as billed by the Department. The quarters begin on July 1, October 1, January 1, and April 1 of each fiscal year. The Department will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee in the immediately previous fiscal year was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year would be \$100,000 (subject to quarterly billing), would be issued a bill less any payments received for the current fiscal year based on the anniversary date billing process.

C. Annual fees that are less than \$100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the Department. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but before the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

D. Annual fees of less than \$100,000 must be paid as billed by the Department. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by paragraphs (1) and (2) of Subsection A of

20.3.16.12 NMAC, paragraphs (1) through (5) of Subsection B of 20.3.16.12 NMAC, and paragraphs (1) through (14) of Subsection C of 20.3.16.12 NMAC.

E. Payment is due on the invoice date.
[20.3.16.15 NMAC – N, 5/19/2002]

20.3.16.16 ENFORCEMENT. If any person required to pay the annual fee fails to pay when the fee is due, or 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 qualify as a small entity under section 20.3.16.13 of this Part may also result in punitive action pursuant to applicable New Mexico state statutes.
[20.3.16.16 NMAC – N, 5/19/2002]

20.3.16.17 COLLECTION AND ADMINISTRATIVE COSTS. In the event a fees are not made by the appropriate due date, all the full fee becomes due and payable, with penalties and administrative costs of collection calculated from the date the payment was due.
[20.3.16.17 NMAC – N, 5/19/2002]

20.3.16.18 PERIODIC REVIEW. Beginning in calendar year 2004, the Department shall perform annual reviews of the fees required by this part, and shall provide a report of each review to the New Mexico Radiation Technical Advisory Council (RTAC).
[20.3.16.18 NMAC – N, 5/19/2002]

History of 20.3.16 NMAC: [RESERVED]