

ARTICLE 3 Radiation Control

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74-3-1. Short title.

[Chapter 74, Article 3](#) NMSA 1978 may be cited as the “Radiation Protection Act”.

74-3-2. Radiation technical advisory council; creation and organization.

- A. There is established a “radiation technical advisory council” consisting of seven members. The members shall be appointed by the governor, after consultation with the director of the agency for five-year staggered terms. The governor shall fill any vacancy occurring on the council. The replacement appointee shall serve the remainder of the original member's unexpired term.
- B. The members of the radiation technical advisory council shall be individuals with scientific training in one or more of the following fields: diagnostic radiology, radiation therapy, nuclear medicine, radiation or health physics or related sciences with specialization in radiation.
- C. Notwithstanding the provisions of Subsections A and B of this section, the radiation technical advisory council includes four additional members who shall sit as full council members on matters to which the Medical Radiation Health and Safety Act [[61-14E-1](#) to [61-14E-12](#) NMSA 1978] applies, including but not limited to regulations necessary to effectuate the provisions of that act. The additional members shall be four radiologic technologists appointed by the governor whose initial appointments shall be made in such manner that two members shall be appointed for terms of three years and two members who shall be appointed for terms of five years. Thereafter, the additional members shall be appointed by the governor for staggered terms of five years each. The radiologic technologist members of the council shall be

appointed from lists submitted to the governor by any generally recognized organization of radiologic technologists in this state. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

74-3-3. Council duties; per diem.

It is the duty of the council to advise the agency and the board on technical matters relating to radiation. Members of the council shall receive per diem and mileage as provided in the Per Diem and Mileage Act [[10-8-1](#) to [10-8-8](#) NMSA 1978], and shall receive no other compensation, perquisite or allowance. Money expended for these purposes shall be paid from agency funds.

74-3-4. Definitions.

As used in the Radiation Protection Act [[74-3-1](#) NMSA 1978]:

- A. “board” means the environmental improvement board;
- B. “agency” or “division” means the environmental protection division of the department of environment;
- C. “council” means the radiation technical advisory council;
- D. “adiation” includes particulate and electromagnetic radiation and ultrasound, but does not include audible sound;
- E. “radioactive material” includes any materials or sources, regardless of chemical or physical state, that emit radiation;
- F. “radiation equipment” means any device that is capable of producing radiation;
- G. “agreement state” means any state with which the nuclear regulatory commission has entered into an agreement under Section 274(b) of the federal Atomic Energy Act of 1954, as amended;
- H. “person” means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or its legal representatives, agents or assigns;
- I. “continued care fund” means the radiation protection continued care fund;
- J. “director” means the director of the division;
- K. “nuclear regulatory commission” means the United States nuclear regulatory commission; and
- L. “secretary” means the secretary of environment.

74-3-5. Radiation protection consultant; radiation regulations; inspection.

- A. The board shall be the radiation protection consultant for all agencies and institutions of the state and shall, with the advice and consent of the council, have the authority, after considering the facts and circumstances and following the procedures set forth in [Section 74-1-9](#) NMSA 1978, to promulgate rules:
 - (1) concerning the health and environmental aspects of the use, management, storage and disposal of radioactive material and the operation of ionizing and non-ionizing radiation emitting equipment;
 - (2) prescribing license, registration and other related fees, all of which shall be ;
 - (3) requiring the posting of a bond running only to the state for licensed activities, which bond shall be adequate to insure, in the event of abandonment,

default or other performance inabilities of the licensee, compliance with the requirements of the rules or license conditions, including actions of the licensee required during or after the cessation of operations, which bond shall be released upon demonstration by the licensee that the conditions of the license have been satisfied; and

(4) establishing continued care fund deposit requirements and other continued care requirements as provided in [Section 74-3-6](#) NMSA 1978.

B. Upon adoption, rules shall be furnished to interested parties upon request.

C. In order to carry out the purposes of the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978], the director or his authorized representatives may, as a condition of license or registration, enter at all reasonable times in or upon any private or public property where the director has reasonable cause to believe there is radioactive material or radiation equipment.

74-3-5.1. Radiation protection fund created.

The "radiation protection fund" is created in the state treasury. Radiation license, registration and other related fees shall be deposited in the fund. All earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the department of environment to carry out provisions of the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978]. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or his designee. Any unexpended or unencumbered balance in the radiation protection fund at the end of any fiscal year shall not revert to the general fund.

74-3-6. Continued care fund regulations; requirements; exemptions; modification.

A. In the adoption of regulations governing continued care fund requirements, the board shall consider the desirability of prorated payments by the licensee in relation to the expected life of the licensed operation.

B. Licensees whose licensed activities consist only of uses of radioactive material which do not create a situation requiring continued care of radioactive materials after the expiration of the license, including but not limited to X-ray generating devices, laboratories, medical facilities, pharmacies, industrial radiography, well logging and gauges shall not be required to make deposits to the continued care fund.

C. Until the nuclear regulatory commission adopts regulations governing continued care activities, continued care fund deposits required from a uranium mill license holder shall be ten cents (\$0.10) per pound of U 3 O 8 in uranium concentrate (yellow cake) produced from such mill, unless the board determines that a lesser amount is appropriate and the requirement of a mill license holder to make deposits to the continued care fund will terminate for each mill after the cumulative continued care fund deposit for that mill reaches one million dollars (\$1,000,000).

D. After the nuclear regulatory commission adopts regulations governing continued care activities:

(1) the board may alter the amount or character of a licensee's obligation by regulation if such regulations are no more stringent than the regulations of the nuclear regulatory commission governing continued care activities;

- (2) the board may adopt continued care requirements more stringent than those of the nuclear regulatory commission upon the finding that such regulations are necessitated by unique or special circumstances in New Mexico; and
- (3) deposits by a licensee to the continued care fund shall be considered in adopting regulations altering the amount or character of a licensee's continued care obligation.

74-3-7. Continued care fund created; appropriation; approval; regulation.

- A. The "radiation protection continued care fund" is created in the state treasury. Cash balances in the fund shall be invested by the state treasurer as other state funds under his jurisdiction are invested.
- B. Money in the continued care fund is appropriated to the agency for use in remedying and preventing situations which may be harmful to the health, safety, welfare or property of the people and which involve abandoned wastes or inoperative facilities which are or were operated by depositors to the continued care fund.
- C. Emergency expenditures up to the amount of one hundred thousand dollars (\$100,000) for any single emergency incident may be made from the continued care fund by the director subject to approval of the chairman of the board. Expenditures involving more than one hundred thousand dollars (\$100,000) shall be made only after prior approval of the state board of finance.
- D. Subject to the provisions of this section, the board shall adopt regulations governing the administration of the continued care fund.

74-3-8. Registration of radiation equipment.

- A. It is unlawful for any person to possess, use, store, dispose of, manufacture, repair, alter or inspect radiation equipment specified by regulation of the board unless he registers with the agency.
- B. The agency shall issue registration certificates in accordance with procedures prescribed by regulation of the board. Registration applications shall be made on forms provided by the agency. The registration statement shall be limited to information which the board determines to be necessary for the protection of the health of the people of the state.
- C. The requirement of registration shall not be interpreted to imply approval by the agency of the manner in which the activities requiring registration are carried out.

74-3-9. Licensing of radioactive material; appeal.

- A. It is unlawful for a person to possess, use, store, dispose of, manufacture, process, repair or alter any radioactive material unless he holds:
 - (1) a license issued by the nuclear regulatory commission and notification by the licensee to the agency of license identification;
 - (2) a license issued by an agreement state and notification by the licensee to the agency of license identification; or
 - (3) a license issued by the agency.
- B. The agency shall issue licenses, collect license, registration and other related fees and deposit those fees in the radiation protection fund and shall approve requests for reciprocity in accordance with procedures prescribed by rule of the board. License

applications shall be made on forms provided by the agency. The agency shall not issue a license unless the applicant has demonstrated the capability of complying with all applicable rules of the board.

C. The board may, by rule, establish radiation license, registration and other related fees and exempt from the requirements of licensure specific quantities of any radioactive material determined by the board not to constitute a health or environmental hazard.

D. The holding of a license issued by the agency, the nuclear regulatory commission or an agreement state does not relieve the licensee from the responsibility of complying with all applicable rules of the board.

E. A person who is or may be affected by licensing action of the agency may appeal to the district court pursuant to the provisions of [Section 39-3-1.1](#) NMSA 1978.

74-3-10. Exemptions.

A. Nothing contained in the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978] shall be construed as authorizing the agency or the board to limit the kind and amount of radiation that may be applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed physician.

B. The Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978] shall not apply to the transportation of any radioactive material in conformity with regulations of the department of transportation or other agency of the federal government having jurisdiction, or to any material or equipment owned by the United States and being used, stored or transported by or for the United States or any department, agency or instrumentality thereof, except to the extent required or permitted by the authority in control of such materials or equipment.

C. The Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978] shall not apply to the mining, extraction, processing, storage or transportation of radioactive ores or uranium concentrates that are regulated by the United States bureau of mines or any other federal or state agency having authority unless the authority is ceded by such agency to the board.

74-3-10.1. Fee exemption.

All medical, dental and veterinary x-ray equipment is exempt from fees imposed pursuant to the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978].

74-3-11. Repealed. 74-3-11.1. Enforcement; compliance orders; civil penalties.

A. When, on the basis of any information, the secretary determines that a person has violated or is violating a requirement or prohibition set forth in the Radiation Protection Act [[74-3-1](#) NMSA 1978], a regulation promulgated pursuant to that act or a condition of a license or registration issued pursuant to that act, the secretary may:

- (1) issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period, or assessing a civil penalty for a past or current violation, or both. The secretary may commence an action in the appropriate district court to enforce an order; or

- (2) commence a civil action in district court for appropriate relief, including injunctive relief.
- B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of a license or registration, or portion thereof, issued by the secretary. A penalty assessed in the order shall not exceed fifteen thousand dollars (\$15,000) per day for each violation in the order. If a person named in an order fails to comply with the order, the secretary may assess a civil penalty in an amount not to exceed fifteen thousand dollars (\$15,000) per day for each violation of the order.
- C. In determining the amount of a penalty to be assessed pursuant to this section, the secretary shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and any other relevant factors.
- D. An order issued pursuant to the provisions of Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward a recommendation based on the proceedings to the secretary. The secretary shall make a final decision.
- E. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents. The secretary may also adopt rules for discovery procedures.
- F. Penalties collected pursuant to an administrative order issued pursuant to this section shall be deposited in the state general fund.

74-3-11.2. Administrative actions; appeals.

- A. A person who is adversely affected by a final administrative action of the secretary may appeal to the court of appeals for further relief within thirty days after the action. All appeals shall be on the administrative record developed by the secretary.
- B. Upon appeal, the court of appeals shall set aside the action only if it is found to be:
 - (1) arbitrary, capricious or an abuse of discretion;
 - (2) not supported by substantial evidence in the record; or
 - (3) otherwise not in accordance with law.
- C. A stay of enforcement of the action being appealed may be granted after hearing and upon good cause shown:
 - (1) by the secretary; or
 - (2) by the court of appeals if the secretary denies a stay or fails to act upon an application for a stay within sixty days after receipt.

74-3-12. Repealed. 74-3-12.1. Criminal penalties.

- A. A person who knowingly commits a violation of the Radiation Protection Act [[74-3-1](#) NMSA 1978] or a regulation promulgated pursuant to that act is guilty of a misdemeanor and upon conviction shall be sentenced to a term of imprisonment not

to exceed three hundred sixty-four days or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both.

B. A person who knowingly makes a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained pursuant to the Radiation Protection Act [[74-3-1](#) NMSA 1978] or any regulation promulgated pursuant to that act is guilty of a petty misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed six months or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both.

74-3-13. Emergencies.

In the event of an emergency, the director may order the impounding of sources of radiation in the possession of any person who is not equipped to comply with or fails to comply with the provisions of the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978] or any rule or regulation promulgated thereunder.

74-3-13.1. Emergency powers of the secretary.

A. Notwithstanding any other provision of the Radiation Protection Act [[74-3-1](#) NMSA 1978], if the secretary determines that a person is violating a condition of a license or registration issued by the agency, or administered by the agency pursuant to an agreement with the nuclear regulatory commission, or any regulation promulgated pursuant to the Radiation Protection Act, and determines that the violation may present an imminent and substantial endangerment to human health or safety, the secretary may bring suit to immediately restrain the person from the violation or take such other action as may be necessary or both. The secretary may also take other action, including issuing orders as may be necessary to protect human health and safety. The order shall be effective immediately; however, the person named in the order may request an administrative hearing before the secretary within ten days after the order is served. If a timely request for a hearing is made, the secretary shall hold the hearing within thirty days. The secretary may commence an action in the appropriate district court to enforce an order.

B. A person who willfully violates an order of the secretary pursuant to Subsection A of this section may be fined not more than fifteen thousand dollars (\$15,000) per day for each violation of the order.

74-3-14. Fluoroscopic or X-ray machines for shoe fitting; hand-held fluoroscopes; operation or maintenance prohibited.

A. No shoe-fitting device or shoe-fitting machine which uses fluoroscopic, X-ray or radiation principles shall be operated or maintained within the state.

B. No hand-held fluoroscope shall be operated or maintained within the state.

74-3-15. Agreement status authorized.

The board and the agency, through the governor, may enter into an agreement with the nuclear regulatory commission, as provided in the Atomic Energy Act of 1954, as amended, providing for discontinuance of the regulatory authority of the nuclear regulatory commission and acceptance of that authority by the board and agency. For the duration of such an agreement, the board shall have 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.

74-3-16. Discrimination.

No person or employer shall discharge or in any manner discriminate against any employee except for good cause shown because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978] or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by that act or any rule, regulation or order adopted thereunder.