



NEW MEXICO ENVIRONMENT DEPARTMENT

Construction Programs Bureau

Public Involvement Plan (PIP)
for the State of New Mexico
Clean Water State Revolving
Loan Fund Rule Changes to
20.7.6 and 20.7.7 NMAC

December 2019 Approval Page

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12/13/19
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Date

I. Public Involvement Plan (PIP) Overview

The New Mexico Environment Department (Department), Construction Programs Bureau (CPB) developed this Public Involvement Plan (PIP) for the State of New Mexico Clean Water State Revolving Loan Fund (CWSRF) proposed rule changes to 20.7.6 and 20.7.7 NMAC. The changes to the New Mexico Administrative Code and associated New Mexico Environment Department (NMED) Public hearing require public input.

The Bureau encourages the public to learn about and get involved in regulatory decision-making opportunities for the CWSRF regulatory changes. The purpose of this PIP is to provide information and identify resources needed by the Bureau to successfully incorporate community participation activities into the decision-making process for the CWSRF regulatory changes.

The regulation changes allow for public participation 30 days prior to the public hearing through public notice published in English and Spanish. The Bureau will meet the public participation requirements for the regulation changes by following this PIP, which includes all applicable policy, regulatory and statutory public participation requirements.

In developing this PIP, state-wide community participation needs were assessed to ensure appropriate promotion of public outreach by identifying whether there is a combination of environmental and demographic factors (i.e., low income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) that may impact public participation.¹ This assessment identifies community outreach needs and provides for public access opportunities above and beyond statutorily mandated requirements, and underscores the provision of adequate public access to information about the proposed changes.

The State requires a 30-day notice of the proposed changes to the regulations and of the NMED hearing which is required to be published in a state-wide newspaper and in the New Mexico Register. The notice is a state-wide document pertinent to a relatively large community of Spanish speakers, and the Bureau will provide pertinent information in both English and Spanish in public meeting notices and public comment notices, as necessary. During public comment periods, hardcopies of relevant documents may be reviewed at the information repositories listed in "Public Participation and Outreach Activities" - Section V.H (p.8) below.

More detailed information about planned Bureau outreach is available in this PIP. This PIP is a "living" document that may be amended after considering public comments and feedback. The Bureau Chief provides final approval of the PIP and amendments.

¹ See IV. Location and Demographics - Demographic Summary on page 5.

II. Contacts

Bureau contacts for questions regarding the State of New Mexico regulation change, the public review and approval process, the Bureau's website, or this PIP, are listed below:

Rhonda Holderman,
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1190 St. Francis Dr. Santa Fe, NM 87505
(505) 827-0416
Fax: (505) 476-8656
Rhonda.holderman@state.nm.us

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Bureau Chief
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Judi.kahl@state.nm.us

A. Non-English Language Speaker Assistance and Accommodations

Non-English speakers may call the Bureau contact listed below and request language assistance services, such as an interpreter, so they can learn more about the State of New Mexico CWSRF rule change.

Saroj Baxter
Administrative Section Manager
Construction Programs Bureau
1190 St. Francis Dr.
Santa Fe, NM 87505
(505) 476-3036
Fax: (505) 476-8656
saroj.baxter@state.nm.us

B. Department Websites

New Mexico Environment Department - <http://www.env.nm.gov/>

Construction Programs Bureau - <http://www.env.nm.gov/construction-programs/>

C. Bureau website for news and announcements

The Bureau and Department will post the proposed changes and the announcement for the public comment period in English and Spanish on their website.

<https://www.env.nm.gov/construction-programs/latest-information-2/>

<https://www.env.nm.gov/public-notices/>

III. Regulatory Framework

The Wastewater Facility Construction Loan Act ("Act") (NMSA 1978, §§ 74-6A-1 to -15 (1986)) creates the Wastewater Facility Construction Loan Fund, also referred to as the Clean Water State Revolving Loan Fund ("CWSRF"). The purpose of the CWSRF is to provide low-cost financing for wastewater and storm water projects that protect surface and ground water, including projects that control nonpoint source water pollution. The CWSRF is funded through a mixture of federal and state dollars pursuant to a capitalization grant agreement. 33 U.S.C. § 1382. The CWSRF is administered by the Construction Programs Bureau ("Bureau") of the New Mexico Environment Department ("Department").

During the 2017 New Mexico legislative Session, House Bill 415 ("HB 415") added state agencies to the list of entities eligible to apply for CWSRF funding. See Chapter 114, 53rd legislature, 1st session, laws of New Mexico (2017). Specifically, HB 415 amended NMSA 1978, Section 74-6A-8(A) to allow state agencies, in addition to local authorities, to receive financial assistance. *Id.* While there are other requirements to be met in determining state agency eligibility for a CWSRF loan, including compliance with Article 9, Section 8 of the New Mexico Constitution, this amendment allowed state agencies to apply for CWSRF funding in certain circumstances. The Governor signed HB 415 on April 6, 2017.

Additionally, during the 2018 New Mexico legislative Session House, Bill 66 ("HB 66") proposed amendments to the Act expanded the scope and eligibility of borrowers and projects for the CWSRF beyond the addition of state agencies in 2017. See Chapter 19, 53rd Legislature, 2nd Session, laws of New Mexico (2018). Most importantly, HB 66:

- 1) Amended the definition of an eligible project in NMSA 1978, Section 74-6A-3(H) to specify that eligible projects and activities are those allowed pursuant to Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code;
- 2) Amended the definition of a qualified borrower in NMSA 1978, Section 74-6A-3(Q) to include any creditworthy borrower with an identified and verifiable repayment source eligible to receive funding pursuant to the Clean Water Act;
- 3) Restructured and revised the definitions in NMSA 1978, Section 74-6A-3 to alphabetical order and for consistency with the amendments to eligible projects and qualified borrowers;
- 4) Amended language throughout the Act to accommodate the expanded scope of eligible projects and borrowers as well as accounting for the related practical considerations in administering the CWSRF; and
- 5) Amended NMSA 1978, Section 74-6A-8(E) to change the financial criteria for a zero-percent interest rate loan from an average user cost of at least \$15 per month or higher to an average user cost greater than one and eighty-two hundredths percent of the local authority's per capita income and from a median household income of less than three-fourths of the statewide nonmetropolitan median household income to a per capita income of less than three fourths of the statewide per capita income. *Id.*

On June 10, 2014, President Obama signed the Water Resources Reform and Development Act of 2014 ("WRRDA"). WRRDA, H.R. 3080, 113th Cong. (2014). The United States Environmental Protection Agency ("EPA") issued guidance on September 18, 2014, and again on January 6, 2015, to aid states

in administering CWSRF funds. Generally, the EPA's guidance expands the entities eligible for CWSRF funding as well as the types of potential eligible projects. HB 66 aligns the statutory grant of authority to the Commission for the CWSRF with the EPA's expanded interpretation of WRRDA. Through this more expansive grant of authority, the Bureau may be able to better use existing balances within the CWSRF for infrastructure development within the state. Governor Martinez signed HB 66 on February 28, 2018.

On April 2, 2018, the Bureau petitioned the Commission to amend 20.7.5 NMAC to align the controlling regulations with the amended grant of authority from the Legislature. The Commission held a hearing on the proposed changes on August 14, 2018 and issued an Order and Statement of Reasons adopting the proposed amendments on August 17, 2018. Among other reasons, the Commission adopted the proposed revisions to 20.7.5 NMAC because they expanded the list of potential eligible applicants for CWSRF funding as well as potential projects, thus allowing for greater drawdown of currently available funds and fulfillment of the purposes of the Act.

The Bureau's proposed amendments to 20.7.6 and 20.7.7 NMAC will enable the Bureau to expand the list of potential eligible applicants for CWSRF as well as potential projects. This will allow for greater drawdown of currently available funds and fulfillment of the purposes of the Act. The amendments would bring the Rules into compliance with recent changes to the Wastewater Facility Construction Loan Act (NMSA 1978, Sections 74-6A-1 to -15) in 2017 and 2018.

Primarily, these amendments would add state agencies to the list of qualified borrowers; expand the definition of qualified borrowers to reflect changes contained in the Water Resources Reform and Development Act of 2014, WRRDA, H.R. 3080, 113th Cong. (2014), and U.S. Environmental Protection Agency Guidance; reflect changes to the financial criteria for zero percent loans found in NMSA 1978, Section 74-6A-8(E); bring NMED's procedures in line with the New Mexico Water Quality Control Commission's revisions to 20.7.5 NMAC in 2018; and revise and update the procedures for clarity. Ultimately, these changes will allow for greater drawdown of existing funds in the Clean Water State Revolving Loan Fund.

NMED proposes that the NMED Secretary adopt the amendments pursuant to his authority under NMSA 1978, Sections 9-7A-6(D), 74-6-1 to 17, and 74-6A-1 to 15. Please note that formatting and minor technical changes in the Rules, other than those proposed by NMED, may be proposed at the hearing. Additionally, the Secretary may make other changes as necessary in response to public comments and evidence presented at the hearing.

IV. Location and Demographics

The proposed changes to the regulations will be a statewide document, and thus will affect the entire state. The Bureau funds projects throughout the State and so the changes will affect all citizens equally.

Demographic Summary

Using U.S. Census Quick Facts for the state of New Mexico for 2018, New Mexico has an estimated population of 2,095,428; 49.1 percent identify as Hispanic or Latino (which may be of mixed race) and 10.9 percent identify exclusively as American Indian. The percent of persons that communicate in a language other than English (non-English) at home is 35, compared to 21.3 percent for the United States. The per capita income for New Mexico is \$25,257 as compared to

the national per capita income of \$31,177, with 19.7 percent of New Mexico's population living in poverty. These results indicate that for the state of New Mexico, the percentage of Spanish-speaking communication is considerable (i.e., substantially greater than the state or national percentage) and there are demographic factors (i.e., low income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, et c.) that may impact public participation.

Therefore, the Bureau will provide information in Spanish and in English for public comment notices, public meeting notices, and other announcements (radio broadcasts, brochures, signs, postcards, etc.), and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations. For example, as much as possible, mass communication methods will be used, as many residents in New Mexico may not have regular access to the internet, private e-mail accounts or postal service, and may rely on publicly posted notices and radio broadcasts. Informational flyers may be posted at post offices, community centers and public libraries, at the Bureau's discretion after consideration of public interest and input. Community centers and public libraries may serve as access areas for the Bureau to leave hard copies of important documents and information about how to comment on the proposed changes. Specific repository addresses that may be used depending on the need, are provided in this PIP on page 7.

V. Public Participation & Outreach Activities

The public may ask questions about the proposed regulatory changes at any time. Interested community members do not need to wait for a formal public comment period to contact the Bureau. However, the Bureau emphasizes that to be included in the administrative record, comments solicited by public notices about the proposed regulation changes must be submitted during the noticed comment periods, and in accordance with the public notice.

Specific outreach activities related to the draft regulation changes include:

- Developing a public notice announcing the proposed changes to be published in the Albuquerque Journal in both English and Spanish.
- Posting this notice to the CPB website,
- Emailing this public notice to CPB's extensive email list through the GovDelivery e-mail delivery service (over 3000 email addresses), and
- Publishing the notice in the New Mexico Register at least 30 days prior to the NMED hearing on the proposed changes in both English and Spanish.

Copies of the draft proposed regulation changes and any supporting documents may be obtained via download from the NMED Public Notices website at <https://www.env.nm.gov/public-notices/> or by contacting the CWSRF team at NMENV-cpbinfo@state.nm.us, or (505) 827-2806 or the New Mexico Environment Department, CPB, P.O. Box 5469, Santa Fe, New Mexico, 87502.

The website, <https://www.env.nm.gov/public-notices/> is the most direct way to learn more about and be involved in the decision - making process for the State of New Mexico Construction Programs Bureau CWSRF proposed regulation changes. Additionally, the public may request to review documents at the Bureau or one of the information repositories listed below.

Based on the demographics report discussed in the PIP, basic information about public involvement opportunities will be in both English and Spanish. This information will include how to request materials in Spanish or to speak with Bureau staff through an interpreter. Further details about public participation for this activity are outlined below.

A. Postal Mailing or E-Mailing of Notices to Persons on the Construction Programs Bureau's Email List

The Bureau maintains an extensive email list (over 3000 email addresses) that includes individuals interested in funding opportunities. This list is a combination of all previously interested persons who requested the Bureau provide them with information about funding in New Mexico. The Bureau regularly maintains contact information which is updated or supplemented, if additional information is found. Interested persons providing both an address and email may receive physical mail and an email. Additional individuals, organizations, and other interested parties are added to the email list as requested.

B. Email Updates

The Bureau's email list is regularly updated.

C. Public Meeting Notices, Public Comment Notices, and Other Notices

Based on the Bureau's evaluation of the community, public notices will be translated into Spanish. In addition, the Bureau may post notices on the Department's Public Notices Page at: <https://www.env.nm.gov/public-notices/>.

D. Informational Pamphlets

The Bureau may develop informational pamphlets for CWSRF program that briefly describe the program eligibilities and project requirements along with the appropriate Bureau contacts. To the extent such informational pamphlets are produced, the Bureau may determine whether they will be available in languages other than English, online (e.g., Bureau website) and in print (hardcopy) at the information repositories listed in this PIP. They may also be distributed via email to interested organizations and individuals, including those who sign up for email notices through the website.

E. Public Comment Period

The public may comment on the proposed changes to the regulations at any point prior to the official close of record.

F. Other Outreach

Other means of outreach such as flyers announcing public comment periods may be posted in locations throughout the community (e.g., local businesses, schools, libraries) and on the Department's website, at the Bureau's discretion after consideration of public interest and input.

G. Information Repositories

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S- 2102 Santa

Fe, NM, 87505. The notice of the proposed amendments is also available online at <https://www.env.nm.gov/public-notices/>.

Post offices, community centers and public libraries, at the Bureau's discretion after consideration of public interest and input, may serve as access areas for the Bureau to leave hard copies of important documents and information about how to comment on the proposed changes. The following is a list of locations where hard copies of relevant documents will be available to the community:

None identified at this time.

H. Proceedings, Outcomes and Responses to Comments

The New Mexico Environment Department ("NMED") will hold a public hearing beginning at 9:00 a.m. on Friday, January 17, 2020, and continuing thereafter as necessary in the Senator Fabian Chavez, Jr. Board Room at the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit NMED's notice website: <https://www.env.nm.gov/public-notices/> prior to the hearing. The purpose of the hearing is to consider amendments to Wastewater Facility Construction Loan Policies and Guidelines, 20.7.6 NMAC and repeal and replacement of Review Procedures for Wastewater Construction Loans, 20.7.7 NMAC ("Rules").

Public comments can be submitted at any point prior to the record closing after the NMED Hearing. The hearing will be conducted in accordance with the NMED Rulemaking Procedures (20.1.9 NMAC); the Water Quality Act, Section 74-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Those wishing to present technical testimony must file a written notice of intent to do so with NMED on or before 5:00 p.m. on Thursday, January 2, 2020. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoptions of rules.

Notice of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on January 2, 2020, and should reference the name of the regulation, the date of the hearing, and docket number CPB 19-49 (R). Notices of intent to present technical testimony shall be submitted to:

Cody Barnes, Hearing Office Administrator
New Mexico Environment Department
Harold Runnels Building
PO Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Mr. Cody Barnes, Hearing Office Administrator, at the above address, and should reference docket number NMED 19-49(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Cody Barnes, Hearing Office Administrator, by Thursday, January 2, 2020, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2430 or email cody.barnes@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The NMED Secretary may make a decision on the proposed regulatory change at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

ATTACHMENT- CENSUS DATA

QuickFacts

New Mexico; United States

QuickFacts provides statistics for all states and counties, and for cities and towns with a *population of 5,000 or more*.

Table

ALL TOPICS	New Mexico	United States
Population estimates, July 1, 2018, (V2018)	2,095,428	327,167,434
 PEOPLE		
Population		
Population estimates, July 1, 2018, (V2018)	2,095,428	327,167,434
Population estimates base, April 1, 2010, (V2018)	2,059,180	308,758,105
Population, percent change - April 1, 2010 (estimates base) to July 1, 2018, (V2018)	1.8%	6.0%
Population, Census, April 1, 2010	2,059,179	308,745,538
Age and Sex		
Persons under 5 years, percent	▲ 5.9%	▲ 6.1%
Persons under 18 years, percent	▲ 23.0%	▲ 22.4%
Persons 65 years and over, percent	▲ 17.5%	▲ 16.0%
Female persons, percent	▲ 50.5%	▲ 50.8%
Race and Hispanic Origin		
White alone, percent	▲ 82.0%	▲ 76.5%
Black or African American alone, percent (a)	▲ 2.6%	▲ 13.4%
American Indian and Alaska Native alone, percent (a)	▲ 10.9%	▲ 1.3%
Asian alone, percent (a)	▲ 1.8%	▲ 5.9%
Native Hawaiian and Other Pacific Islander alone, percent (a)	▲ 0.2%	▲ 0.2%
Two or More Races, percent	▲ 2.6%	▲ 2.7%
Hispanic or Latino, percent (b)	▲ 49.1%	▲ 18.3%
White alone, not Hispanic or Latino, percent	▲ 37.1%	▲ 60.4%
Population Characteristics		
Veterans, 2013-2017	150,650	18,939,219
Foreign born persons, percent, 2013-2017	9.7%	13.4%
Housing		
Housing units, July 1, 2018, (V2018)	943,208	138,537,078
Owner-occupied housing unit rate, 2013-2017	67.9%	63.8%
Median value of owner-occupied housing units, 2013-2017	\$163,900	\$193,500
Median selected monthly owner costs -with a mortgage, 2013-2017	\$1,244	\$1,515
Median selected monthly owner costs -without a mortgage, 2013-2017	\$340	\$474
Median gross rent, 2013-2017	\$809	\$982
Building permits, 2018	4,813 ¹	1,328,827
Families & Living Arrangements		
Households, 2013-2017	770,435	118,825,921
Persons per household, 2013-2017	2.65	2.63
Living in same house 1 year ago, percent of persons age 1 year+, 2013-2017	86.2%	85.4%
Language other than English spoken at home, percent of persons age 5 years+, 2013-2017	35.0%	21.3%
Computer and Internet Use		
Households with a computer, percent, 2013-2017	81.7%	87.2%
Households with a broadband Internet subscription, percent, 2013-2017	69.9%	78.1%
Education		
High school graduate or higher, percent of persons age 25 years+, 2013-2017	85.0%	87.3%
Bachelor's degree or higher, percent of persons age 25 years+, 2013-2017	26.9%	30.9%
Health		
With a disability, under age 65 years, percent, 2013-2017	10.4%	8.7%
Persons without health insurance, under age 65 years, percent	▲ 10.7%	▲ 10.2%

Economy		
In civilian labor force, total, percent of population age 16 years+, 2013-2017	58.0%	63.0%
In civilian labor force, female, percent of population age 16 years+, 2013-2017	54.1%	58.2%
Total accommodation and food services sales, 2012 (\$1,000) (c)	4,349,672	708,138,598
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	11,236,630	2,040,441,203
Total manufacturers shipments, 2012 (\$1,000) (c)	29,102,352	5,696,729,832
Total merchant wholesaler sales, 2012 (\$1,000) (c)	10,720,363	5,208,023,478
Total retail sales, 2012 (\$1,000) (c)	25,179,274	4,219,821,871
Total retail sales per capita, 2012 (c)	\$12,073	\$13,443
Transportation		
Mean travel time to work (minutes), workers age 16 years+, 2013-2017	21.8	26.4
Income & Poverty		
Median household income (in 2017 dollars), 2013-2017	\$46,718	\$57,652
Per capita income in past 12 months (in 2017 dollars), 2013-2017	\$25,257	\$31,177
Persons in poverty, percent	▲ 19.7%	▲ 12.3%
BUSINESSES		
Businesses		
Total employer establishments, 2016	43,771 ¹	7,757,807
Total employment, 2016	628,723 ¹	126,752,238
Total annual payroll, 2016 (\$1,000)	25,029,224 ¹	6,435,142,055
Total employment, percent change, 2015-2016	0.4% ¹	2.1%
Total nonemployer establishments, 2017	124,091	25,701,671
All firms, 2012	151,363	27,626,360
Men-owned firms, 2012	71,132	14,844,597
Women-owned firms, 2012	59,044	9,878,397
Minority-owned firms, 2012	60,622	7,952,386
Nonminority-owned firms, 2012	83,857	18,987,918
Veteran-owned firms, 2012	14,096	2,521,882
Nonveteran-owned firms, 2012	128,693	24,070,685
GEOGRAPHY		
Geography		
Population per square mile, 2010	17.0	87.4
Land area in square miles, 2010	121,298.15	3,531,905.43
FIPS Code	35	00

About datasets used in this table

Value Notes

- 1. Includes data not distributed by county.

▲ Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Q left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2018) refers to the final year of the series (2010 thru 2018). *Different vintage years of estimates are not comparable.*

Fact Notes

- (a) Includes persons reporting only one race
- (b) Hispanics may be of any race, so also are included in applicable race categories
- (c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

Value Flags

- Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the interval of an open ended distribution.
- D Suppressed to avoid disclosure of confidential information
- F Fewer than 25 firms
- FN Footnote on this item in place of data
- NA Not available
- S Suppressed; does not meet publication standards
- X Not applicable
- Z Value greater than zero but less than half unit of measure shown

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

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