

NEW MEXICO ENVIRONMENT DEPARTMENT



Office of the Secretary

POLICY AND PROCEDURE 07-11

- SUBJECT:** Limited English Proficiency (“LEP”) Accessibility and Outreach Policy.
- PURPOSE:** To provide guidance and direction for the New Mexico Environment Department (“NMED” or the “Department”) regarding providing meaningful access for persons and populations in New Mexico who are or who may be identified as being LEP to ensure that adequate public participation opportunities are being offered.
- POLICY:** NMED shall provide LEP persons and populations meaningful access to NMED’s actions and proceedings.
- REVISIONS:** First Revision to 2-6-18 Policy.
- APPLICABILITY:** All NMED programs and employees, including NMED grant and subgrant recipients, contractors, subcontractors and agents, shall comply with this policy.
- REFERENCES:** 40 C.F.R. Parts 5 and 7; Title VI of the Civil Rights Act of 1964; Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>; Assisting People with Limited English Proficiency, <https://www.epa.gov/ocr/assisting-people-limited-english-proficiency>.
- PROCEDURES:**
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APPROVAL: DocuSigned by:
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James C. Kenney
Cabinet Secretary

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1.0 SCOPE

1.1 In accordance with 40 C.F.R. Parts 5 and 7, NMED prohibits unlawful discriminatory practices regarding its decisions that directly relate to or impact its programs. NMED does not condone, tolerate, practice or engage in unlawful discrimination against any external party or parties, nor does it condone retaliation against or intimidation of those alleging discrimination by NMED employees.

1.2 NMED shall include in its consideration and decisions regarding public notice, vital documents, community outreach, and community involvement, the degree to which it may need to modify its communications and public notice practices so that LEP persons and populations will have substantially equal opportunities to learn about and participate in NMED's exchange and interaction with the public.

1.3 New Mexico is a diverse state, and therefore, language needs may vary from region to region. According to the American Community Survey (ACS) New Mexico's population estimate for 2018 was 2,095,428. Approximately 19.7% of the population lives in poverty. For 35.0% of New Mexico's population, a language other than English is spoken at home. State-wide, 48.8% of the population is Hispanic or Latino, 37.5% are non-Hispanic white, 10.9% are American Indian and Alaskan Native, and 2.5% are African American, and 1.7% are Asian American.

2.0 DEFINITIONS

2.1 **Individualized Assessment** means the four-factor evaluation, and the plan for LEP services to be provided, for a particular activity, proceeding, or service, as documented in writing in accordance with Section 3 of this policy.

2.2 **Limited-English Proficient ("LEP") Individual** means an individual who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

2.3 **Linguistically Isolated Household** means a household in which no one 14 and over speaks English only, or no one 14 and over speaks English "very well", as found in the U.S. Census Bureau American Communities Survey.

2.4 **Vital Document** means paper or electronic material that is critical for access to the Agency's programs, activities, and services, or contains information about procedures or processes required by law. Classification of a document as "vital" depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP individual if the information in question is not provided

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accurately or in a timely manner. "Vital Documents" may include fact sheets, permits, permit summaries, hydrological and geological reports or report summaries (including reports provided by third parties), departmental warnings or advisories, public notices, and handouts created for public meetings.

3.0 DETERMINATION OF THE EXTENT OF OBLIGATION TO PROVIDE LEP SERVICES

3.1 An Individualized Assessment should be done for each event, activity or proceeding requiring public participation (e.g., a permitting proceeding) by the specific NMED Bureau employees or contractors tasked with implementing NMED Policy 07-13 ("Public Participation") in order to determine the extent to which LEP services are necessary. Individualized Assessments must be completed regardless of whether a Public Involvement Plan (PIP) is required or not. The Individualized Assessments shall evaluate and balance the following four factors: 1) the number or proportion of LEP persons estimated to be served or encountered in the community of concern; 2) the frequency with which LEP individuals might come in contact with the program; 3) the nature and importance of the activity or service provided by the subject material of the program; and 4) the resources available to NMED and the associated costs. All assessment activities shall be documented in writing.

Using the results of the four-factor evaluation, a plan for LEP services to be provided for a particular activity, proceeding, or service will be created. Plans will include, but will not be limited to, outreach efforts, interpretation services to be provided, and translation of vital documents and public notices.

3.2 Factor 1: The Number and Proportion of LEP Individuals Eligible to be Served or Likely to be Encountered in the Community of Concern.

A. In order to assess the number and proportion of LEP individuals in a particular community of concern, employees shall use the data accumulated in the preliminary screening results in the Public Involvement Plan (PIP) created under Public Participation Policy 07-13 for the NMED activity, issue, facility, or event in question. If no PIP plan is required, or is impractical,¹ for the NMED activity, issue, facility, or event in question, statistical language data shall be accumulated in the manner specified in NMED Public Participation Policy 07-13, Section 3.

B. Employees shall also assess historical participation regarding the issue, facility, or event in question to evaluate whether there was participation by LEP

¹ In such instances where a PIP for an activity is not required by statute, rule or regulation, or is impractical, the four factor LEP assessment should be completed, and documented in writing, to determine the extent to which LEP services are necessary for the activity.

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individuals in the past. A lack of past participation shall not be the exclusive basis for not assessing LEP services.

3.3 Factor 2: The Frequency with Which LEP Individuals Come in Contact with the Program.

A. Employees shall assess how frequently the program under which the issue or event is occurring, or the facility is regulated, comes into contact with LEP individuals. The assessment should include programmatic contact generally, and specifically in relation to the matter for which an LEP evaluation is occurring. A lack of past contact shall not be the exclusive basis for not assessing LEP services.

B. Employees shall assign an identifier of “frequent,” “occasional,” or “not frequent” based on situational context combined with professional judgment, and provide a narrative supporting the classification.

3.4 Factor 3: The Nature and Importance of the Activity or Service Provided by the Program.

A. The specific activity, proceeding or service that is necessitating the LEP evaluation should be assessed for both the nature and importance of the activity, proceeding or service.

B. The nature of an activity, proceeding or service and the basic features or characteristics of the activity, proceeding or service. A descriptive paragraph should be provided.

C. The importance of the activity, proceeding or service should be evaluated in relation to the importance to the Department, the importance to the state as a whole, and the importance to the impacted community, with an identifier of “moderately important,” “important,” or “very important.”.

3.5 Factor 4: The Resources Available to NMED and the Associated Costs.

A. NMED shall request sufficient funding for all LEP services anticipated for the coming fiscal year. Requesting sufficient funding for LEP services shall be done on a programmatic basis. Employees shall assess the NMED program’s or Bureau’s level of resources available in the applicable fiscal year(s) and the costs associated with executing the steps necessary to provide services to LEP individuals in relation to the issues, facilities, or events in question. Evaluating available resources should also take into consideration whether resources may be available from another NMED Bureau or Division, or other state, local, or federal entities. Bureau financial staff should assist with the assessment.

B. When evaluating the cost of services, employees should evaluate cost saving measures such as the incorporation of technology, or resources available either

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within the Department or within another executive agency that can be provided at low or no cost.

3.6 All Individualized Assessments results must be reviewed and approved by the Bureau Chief of the NMED Bureau or Program executing the evaluation. An electronic copy of the final approved evaluation shall be provided to NMED's Non-Discrimination Coordinator.

4.0 IDENTIFYING LEP INDIVIDUALS WHO REQUIRE LANGUAGE ASSISTANCE

4.1 In addition to providing general public notice and outreach to LEP individuals, every effort should be made to identify specific participants who may need LEP language services. It is suggested that NMED employees bring an "I Speak" card (see prototype attached) to every public meeting or hearing so that LEP individuals can inform NMED what language services are needed. Additionally, if correspondence in a language other than English is sent to the Department regarding a specific activity, proceeding or service, NMED employees should determine what language the information has been transmitted in, and include the language in the related LEP Individualized Assessment. It is also recommended that the municipality or county in which the community is located be contacted to determine if either has any specific information or recommendations for specific LEP services. Finally, public notices should contain information regarding how a member of the public can request interpretation and translation services for the specified activity.

4.2 If the main phone line of any NMED office uses a menu system, all menu items must be provided to the caller in both English and Spanish. NMED Field or District Offices may also need to include menu items in other languages as needed by their local communities.

5.0 LANGUAGE ASSISTANCE MEASURES

5.1 Interpretation.

A. Interpretation services will be acquired from a certified interpreter using the proper procedures mandated by the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1 to -199 and correlated regulations, 1.4.1 NMAC. If interpretive services are needed on short notice, for example if an LEP individual approaches NMED employees during a meeting or gathering in which there is not a certified interpreter, an employee who is fluent in the particular language may be utilized. It is important that interpreters are comfortable translating scientific and technical terminology, so that LEP individuals receive the most accurate interpretation possible.

B. Upon an assessment of need, as found in Section 3.0 of this Policy,

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interpretation services shall be acquired for all public meetings and hearings associated with a particular activity, proceeding, or service. Such interpretation services should be adequate for the expected participating audience. It is important that interpreters are comfortable translating scientific and technical terminology, so that LEP individuals receive the most accurate interpretation possible.

C. All NMED Bureaus or other organizational units must have written procedures in place for addressing phone calls and in-person inquiries received from LEP individuals. This is especially necessary when an NMED Bureau contact is provided in a public notice, and the public notice has been issued in both English and other relevant languages. NMED Bureaus may arrange for on-call telephone interpretation services, or if there are budgetary constraints, an NMED Bureau may utilize a Department employee who is fluent in a particular language. The written procedures must specifically list employees who may be used to field phone calls or in-person interactions from LEP individuals. The written procedures must be specific enough so that they may be easily followed as they are being utilized. The written procedures must be reviewed and approved by each NMED Bureau's Bureau Chief and Division Director, or in the case of other organizational units, the highest supervisory level. A copy of the signed and approved procedures shall be provided to the NMED Non Discrimination Coordinator and the NMED Translation Manager.

D. Bureaus should ensure that they capture adequate budget for interpretation services during their annual budget planning processes.

5.2 Translation.

A. Translation services for the translation of public notices and other vital documents will be acquired either from NMED's Translation Manager or from a certified translator using the proper procedures mandated by the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1 to -199 and its correlated regulations, 1.4.1 NMAC.

B. Google Translate or other similar programs shall not be used to translate NMED vital documents, or documents produced by a regulated entity that were mandated by NMED that may also be classified as vital.

C. When or if e-mails are received by NMED from LEP individuals, if time allows translation services will be used in responding to the e-mail. If the e-mail is time sensitive and must be responded to immediately, an NMED Bureau employee who is fluent in the written form of the particular language in question may be used. Alternatively, if the individual has provided a phone number, interpretation services pursuant to Section 5.1 of this policy can be used to contact the person. If interpretation services are used to respond to an e-mail in lieu of translation services, please make a note of the date and time the communication occurred, and who interpreted on behalf of NMED.

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D. Bureaus should ensure that they capture an adequate budget for translation services during their annual budget planning processes.

6.0 PROVIDING NOTICE TO LEP PERSONS

6.1 As appropriate based upon the LEP services evaluation contained in Section 3.0 of this Policy, public notice should, at a minimum, be provided to LEP individuals in the same manner in which it is required by statute or regulation for non-LEP individuals. However, it is possible that the normal means of notice contemplated by NMED's controlling statutes are not sufficient in every circumstance to reach the desired population. Extra outreach may be needed and may include, but is not limited to, publication in alternate newspapers with a proven high LEP readership, public announcement on radio stations with high LEP listenership, posting of public notice in appropriate locations, and in-person notice announcements. If needed, such expanded public notice shall be included in any PIP formulated pursuant to NMED policy 07-13, and in the LEP plan found within the Individualized Assessments.

7.0 TRAINING

7.1 All NMED employees shall be required to attend training on this policy. Such training shall occur no later than 120 days after the first signing of this policy. Subsequent trainings will occur at regular intervals, as determined by the NMED's Non-Discrimination Coordinator, including:

- A. When substantive changes are made to the policy;
- B. When new employees begin employment with NMED; and
- C. At three-year intervals for all NMED employees.

Such training shall be provided by the Non-Discrimination Coordinator and the Office of General Counsel.

8.0 ANNUAL ASSESSMENT AND MONITORING AND UPDATING THE LEP ACCESSIBILITY AND OUTREACH POLICY

8.1 By the conclusion of every calendar year, NMED, at a Department and Bureau level, will evaluate and assess the need for LEP services and accessibility, and the manner in which such services were provided during that year. NMED and its Bureaus will use the evaluations and assessments to create Department and Bureau LEP plans and goals for the upcoming calendar year.

8.2 On an annual basis, the NMED Non-Discrimination Coordinator will review the LEP Accessibility and Outreach Policy, which shall include contacting the Bureaus to determine if they have any suggested edits based upon experiences from the past year. The Non-Discrimination Coordinator, with assistance from the Office of General Counsel, will make any necessary updates to the LEP Policy, and provide to the Secretary of

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Environment or designee for signature. Any revised issuance of this policy shall be disseminated globally to Department employees and made available to the public on the Department website on the date the Secretary or designee signs the revised policy.

9.0 DISCIPLINE

9.1 Any employee who fails to comply with the terms and provisions of this policy may face disciplinary consequences up to and including dismissal in accordance with NMED Policy 02-71, Disciplinary Action.

