



New Mexico Environment Department Radiation Control Bureau

Public Involvement Plan (PIP)

Project: Amendments to 20.3.16 NMAC to propose fee increases for the Radiation Control Program to support New Mexico's obligations under a signed agreement with the U.S. Nuclear Regulatory Commission and to protect the environment and public health and safety.

Planning Timeframe: November 2023 – December 2023

Project Planner: Michael Ortiz

Approval:

Santiago M. Rodriguez Digitally signed by Santiago M. Rodriguez
Date: 2023.12.04 16:39:52 -07'00'

Santiago Rodriguez, Bureau Chief
Radiation Control Bureau

Date

New Mexico Environment Department

Element 1 – Public Involvement Plan (PIP) Overview

The New Mexico Environment Department (NMED or Department), Radiation Control Bureau (Bureau) developed this Public Involvement Plan (PIP) to increase transparency regarding the decision-making and rulemaking process involved in amending 20.3.16 New Mexico Administrative Code (NMAC).(Title 20 Environmental Protection, Chapter 3 Radiation Protection, Part 16 “Fees for Licensure of Radioactive Materials”)

Compliance is one of the Department's core values guiding the positive application of our mission. Addressing violations posing the greatest risk to public health and the environment in a fair, just manner safeguards a level playing field for all regulated businesses. Enforcement of violations and holding those responsible who violate the laws, rules, registrations, and licenses we oversee is the expectation and rights of the communities we serve. An expectation we are dutybound to uphold. The Bureau believes the proposed fee increases will provide the budget needed to effectively operate the program in the best interests of the public. It would provide the Bureau with the necessary resources to hire new employees and purchase new equipment for the health and safety of the public. New Mexico is compelled to meet the requirements to protect the public health and safety with regards to radioactive material within the state agreed upon between the State of New Mexico and the U.S. Nuclear Regulatory Commission (NRC) in the April 3, 1974, Agreement signed by then Governor Bruce King.

The purpose of this PIP is to plan for providing public participation opportunities and information that needed for New Mexicans to participate in the rulemaking.

This PIP integrates information about the potentially affected communities and identifies resources needed by the Bureau to incorporate community participation activities into the decision-making process for rulemaking. The PIP identifies the Department staff and resources needed to accomplish these activities.

Rulemaking may require public participation throughout different stages. The Bureau will meet the public participation requirements for the rulemaking by following this PIP, which includes applicable policy, regulatory and statutory public participation requirements.

In developing this PIP, community participation needs were assessed to ensure the 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. Hence, this assessment identifies community outreach opportunities for participation and provides for those opportunities.

As much as possible, public participation and informational activities related to the rulemaking will be held within the timelines outlined in the table below. This timeline is tentative and subject to change; activities subject to statutory or regulatory deadlines are noted.

In the timeline for this rulemaking, public comments will be received from December 15, 2023, until the conclusion of the hearing (date to be determined), and there will be at least a 7-day advanced notice for the public meeting and the public hearing, including posting the meeting and hearing information on the Department’s website.

During the public comment periods, documents may be reviewed at the repositories listed. Details about planned Bureau outreach are provided in this PIP.

This PIP is a “living” document that may be amended after considering public comments and Feedback and for updates. The Bureau Chief provides final approval of the PIP and amendments.

Activity	Dates
Submit Petition for rulemaking, and request for hearing, to EIB	November 9, 2023,
Post proposed rules and PIP at https://www.env.nm.gov/rcb/public-notice-of-radioactive-materials-licensing-actions-and-rulemakings/ .	November 2023
Public Meeting – presentation of proposed rules by NMED staff to public – ONLINE FORMAT	December 13, 2023
Same Public Meeting as on December 13, 2023, but this meeting will be IN PERSON	December 14, 2023
EIB meeting regarding Petition for rulemaking and request for hearing	December 15, 2023
Public comment period and provision of Smart Comment link for public comment submissions: https://nmed.commentinput.com/?id=48EQNGeVC	December 15, 2023, until the conclusion of the EIB hearing
Radiation Technical Advisory Council (RTAC) meeting to discuss proposed rules	December 19, 2023
EIB issues an Order of Hearing Determination and Appointment of Hearing Officer	Soon after December 15, 2023, EIB meeting
Publish notice of public hearing in the “Legal Notices” section of the Albuquerque Journal (English and Spanish)	60 or more days before the EIB hearing
Publish notice of public hearing in NM Register (English and Spanish)	30 or more days before the EIB hearing
Notice of Intent to provide Technical Testimony (with Technical Testimony and Exhibits attached) Due	20 or more days before the EIB hearing
EIB hearing	TBD
Submit rules for filing with State Records Center and Archives	Upon receipt of the final Order from EIB
Effective date of EIB-adopted rules	upon Publication in NM Register

Element 2 – Bureau Contact Information

The Bureau contact for questions regarding this rulemaking, the public meetings, the Department’s website, or this PIP is:

Michael Ortiz
Radiation Control Bureau, NMED
1100 St. Francis Dr., Suite 2022
Santa Fe, New Mexico 87505
(505) 690-0060
michael.ortiz1@env.nm.gov

Non-English Language Speaker Assistance and Accommodations

The Bureau will include information about how persons may request non-English speaker language assistance and accommodations for persons with disabilities (i.e., deaf and/or non-English language interpreters) in public notices for meetings or hearings related to this rulemaking. Public notices will direct public requests for assistance to the Bureau contact, who will notify the Non-Discrimination Coordinator. Arrangements will be made by the Bureau for document translation, interpretation, or disability services related to the rulemaking as necessary. Following this process ensures the Bureau is directly informed about the request and allows the Department to track requests for disability assistance. The following numbers will be provided in public notices so that hearing-impaired callers can contact the Bureau and ask questions about the activity or proceeding: Toll-free numbers are available for TDD or TTY users to access the New Mexico Relay network (for deaf or hearing-impaired callers), 1-800-659-1779; TTY users: 1-800-659-8331.

Department Websites

Each notice will include links to at least one of the following websites:

The Department’s home page(<https://www.env.nm.gov>)
The Department’s Events Calendar (<https://www.env.nm.gov/events-calendar/>)
The Radiation Control Bureau’s home page (<https://www.env.nm.gov/rcb/>)
The Radiation Control Bureau’s public notice webpage:
(<https://www.env.nm.gov/rcb/public-notices-of-radioactive-materials-licensing-actions-and-rulemakings/>)

For quick access to Department websites, see:



Department's website is here:

<https://www.env.nm.gov/>



The Department's Events Calendar webpage:

<https://www.env.nm.gov/events-calendar/>

Element 3 - Regulatory Background for Public Participation

The Department is responsible for environmental management and consumer protection programs. Regarding radiation control, the Department maintains, develops, and enforces rules and standards as provided in the Radiation Protection Act. See Section 74-1-7(A)(5) NMSA 1978 (2000). In addition, the Environmental Improvement Board ("EIB") is responsible for environmental management and consumer protection. Regarding radiation control, the EIB promulgates rules and standards for radiation control. See Section 74-1-8(A)(5) NMSA 1978 (2020).

The Bureau may propose regulations to the EIB for promulgation. Within 60 days of the submission of the proposed regulations, the EIB will determine whether to hold a hearing on the proposed regulations, however, no regulation will be adopted until after a public hearing by the EIB. See Section 74-1-9(A) and (B) NMSA 1978 (1985); see also, 20.1.1.300(A) NMAC (2006).

EIB will issue notice of public hearing on the proposed rulemaking at least 60 days prior to the hearing date. The notice of public hearing will state: (1) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule; (2) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule; (3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained; (4) the statutes, regulations and procedural rules governing the conduct of the hearing; (5) the manner in which persons may present their views or evidence to the board, including the time, place, and information on participating in the public hearing; (6) the location where persons may secure copies of the full text of the proposed regulatory change; (7) an internet link providing free access to the full text of the proposed rule; and, (8) if applicable, that the board may make a decision on the proposed regulatory change at

the conclusion of the hearing. See 20.1.1.301(B) NMAC (2006); see also, Section 14-4-5.2(A) NMSA 1978 (2017); and see, Section 74-1-9(D) NMSA 1978 (1985).

Any member of the public may submit written comments on the proposed rulemaking during the public comment period which will run for 30 days after publication in the New Mexico Register. See Section 14-4-5.3(A) NMSA 1978 (2017). Any member of the public may also testify at the public hearing or submit written statements for the record, in lieu of providing oral testimony. See 20.1.1.304 NMAC (2018).

Element 4 - Location and Demographics of the Community and Stakeholder Groups

To provide for adequate public participation opportunities and meaningful involvement of persons in this rulemaking, the affected communities must first be identified, informed about proposed environmental actions affecting the community, and invited to share their comments and concerns. The EJSCREEN tool developed by the U.S. Environmental Protection Agency (EPA) helps identify communities that are low-income and minority populations that may benefit from a variety of approaches for notification and outreach communication. This information is used to help plan for the community’s involvement in the public process for environmental activities or actions.

Demographic indicators were obtained from EPA EJSCREEN, an environmental justice screening and mapping tool, available online at <https://www.epa.gov/ejscreen>. This rulemaking impacts the entire, non-tribal government portion of the state, which includes a community of 9% Spanish-speakers whose English-speaking ability is “less than very well”¹. The Bureau will provide pertinent information in both English and Spanish in public meeting notices, public comment notices, and other announcements.

EJSCREEN Results for the State of New Mexico

Total population	2,092,454
Total number of households	780,249
Percentage People of Color Population	63%
Percentage Hispanic Population	49%
Percentage of the population by race	Population reporting one race: White: 75% Black: 2% American Indian: 10% Asian: 2% Pacific Islander: 0% Some Other Race: 9%

Total number of persons greater than the age of five who speak English “less than very well”	171,528
Percentage of persons greater than the age of five who speak English “less than very well”	9%
Total number of linguistically isolated households	40,831
Percentage of linguistically isolated households (Total number of linguistically isolated households ÷ total number of households X 100)	5.2%
Languages by percentage in linguistically isolated households	Spanish: 83% Other Indo-European languages: 2% Asian-Pacific Island languages: 4% Other languages: 11%
Percent linguistically isolated population, New Mexico*	5.4%
Per capita income	\$27,230
Per capita income, USA**	\$29,979

* U.S. Census Bureau. 2011-2015 American Community Survey 5-Year Estimates, Table S1602. Limited English-Speaking Households. https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_5YR/S1602/0400000US35 (date of access: 7/26/2018)

** U.S. Census Bureau. 2015 American Community Survey 1-Year Estimates, Table S0201. Selected Population Profile in the United States. https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/S0201/0100000US (date of access: 7/26/2018)

¹ US Environment Protection Agency EJScreen ACS Summary Report for New Mexico, August 3, 2022.

Element 5 - Public Participation and Outreach Activities

The rule revisions to 20.3.16 NMAC are applicable statewide, thus this PIP addresses public engagement and outreach, rule development, and hearing participation for the entire state. Based on the LEP report discussed herein, the Department will seek to provide basic information about public involvement opportunities in both English and Spanish. This information will include how to request materials in Spanish or another language, or to speak with Department staff through an interpreter.

The Bureau solicits interested parties’ names and contact information with all public notices. The Bureau maintains those names when provided by interested parties on a Mailing List and provides those individuals with information about regulatory activities. Individuals, organizations, and other interested parties are added to the mailing list as requested. All public notices will contain a statement directing interested individuals to reach out to the contact Bureau Contact list herein, to be added to the mailing list.

The Bureau will conduct the following participation and outreach activities during this rulemaking process:

- For online viewing – Publication of this PIP and the notice of public hearing on proposed rulemaking on the Bureau’s website
- For in-person viewing – Placement of this PIP at the Bureau’s offices in Santa Fe and Albuquerque
- Mailing and/or emailing the notice of public hearing on proposed rulemaking to interested parties on the Bureau’s Mailing List
- For statewide circulation – Publication of the notice of public hearing on proposed rulemaking in the Legal Notices section of the Albuquerque Journal

The Bureau will contact land grants about this rulemaking through the New Mexico Land Grant Council at:

NM Land Grant Council
 1829 Sigma Chi Rd SE
 Albuquerque NM 87106
 nm.landgrantcouncil@unm.edu

The Bureau will contact pueblos and tribes via the email addresses listed below:

- Pueblo of Acoma: fmartinez@poamail.org
- Pueblo of Cochiti: Jayson.romero@cochiti.org
- Pueblo of Isleta: Joseph.Lujan@isletapueblo.com
- Pueblo of Jemez: Clarice.Madalena@jemezpueblo.org
- Pueblo of Laguna: gjojola@lagunapueblo-nsn.gov
- Pueblo of Nambe: srydeen@nambepueblo.org
- Pueblo of Ohkay Owingeh: larry.phillips@ohkay.org
- Pueblo of Picuris: environment@picurispueblo.org
- Pueblo of Pojoaque: aduran@pojoaque.org
- Pueblo of San Felipe: pstout@sfpueblo.com
- Pueblo of San Ildefonso: rmartinez@sanipueblo.org
- Pueblo of Sandia: gkaufman@sandiapueblo.nsn.us
- Pueblo of Santa Ana: alan.hatch@santaana-nsn.gov
- Pueblo of Santa Clara: dinoc@santaclarapueblo.org
- Pueblo of Santo Domingo: woodrow.crumbo@kewa-nsn.us
- Pueblo of Taos: mvigil@taospueblo.com
- Pueblo of Tesuque: sagem@pueblooftesuque.org
- Pueblo of Zia: ybenton@ziapueblo.org
- Pueblo of Zuni: tammy.parker@ashiwi.org
- Pueblo of Ysleta Del Sur (Tigua): ecruz@ydsp-nsn.gov
- Navajo Nation: s.etsity@navajo-nsn.gov
- Jicarilla Apache Nation: cltecube@yahoo.com
- Mescalero Apache Tribe: thora@mescalerodmp.org
- Fort Sill Apache Tribe: jennifer.heminokeky@fortsillapache-nsn.gov
- Southern Ute Tribe: dpowers@southernutensn.gov
- Ute Mountain Tribe: jarchuleta@utemountain.org

- TO'HAIILEE Navajo Chapter: tohajiilee@navajochapters.org
- Eight Northern Indian Pueblos Council: boyd.nystedt@enipc.org

The Bureau will submit the notice of public hearing to be published on the State's Sunshine Portal at: statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic. The Bureau has provided to the New Mexico Small Business Regulatory Advisory Commission of the Economic Development Department the notice of rulemaking.

Site Repositories

Copies of this PIP, any notice of public hearing on the proposed rulemaking, and the proposed rulemaking will be available for viewing at the Santa Fe and Albuquerque offices of the Radiation Control Bureau:

Radiation Control Bureau
Joseph Montoya Building
1100 St. Francis Drive, Suite 2022
Santa Fe New Mexico 87505

Radiation Control Bureau
8801 Horizon Blvd
Albuquerque, New Mexico 87113

Hybrid Public Meetings and Hearings

Most public meetings and hearings will be conducted in a hybrid format, as follows: virtually via WebEx and in person at a physical location, with details to be posted on the Department's Events Calendar (www.env.nm.gov/events-calendar/).

PIP Contingency Plan

During a public health emergency or other unforeseen events outside the control of the Department, the Department will make every effort to ensure the public remains involved in and informed of the decision-making and rulemaking processes. The purpose of this PIP Contingency Plan is to address circumstances when public spaces are closed because of potential human exposure risks. The Department will attempt to identify and utilize alternate methods of document delivery to the public and public viewing when conventional methods and locations are unavailable. When it is unsafe to use the physical PIP and document repositories, the Department will consider utilizing electronic delivery methods deemed appropriate for the rulemaking. While operating under the PIP Contingency Plan, instead of placing a copy of the PIP for this rulemaking in a public location, the Department will make the PIP available to the community by sending the PIP by email or First-Class mail to any community member requesting a copy. An individual may request a copy of the PIP utilizing the Bureau's contact information listed herein. Please specify how you would like the document delivered when making such a

request. If you request a copy of a PIP, you will receive a revised PIP should the PIP be updated in the future. During the times of potential human exposure risks and the resultant implementation of this PIP Contingency Plan, public meetings and hearings will only be held when or through means by which the Department can ensure the public's health and safety and this PIP can be fully followed.

Attachments

- LEP Assessment
- A copy of the EJSCREEN ACS Summary Report and a map.

Limited-English Proficiency (LEP) Analysis and Plan For the Radiation Technical Advisory Council meeting to review rule revisions of 20.3.16 NMAC

New Mexico Environment Department
Radiation Control Bureau

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

See Public Involvement Plan (PIP), Table of EJSCREEN Results for the Affected Community.

Conclusions:

1. The number of LEP individuals (persons over the age of 5 who speak English “less than very well” in the affected community) is 171,528.
2. The percentage of LEP individuals in the affected community is 9%.
3. The percentage of linguistically isolated households is 5.2%, slightly less than the statewide average.
4. Spanish is the predominant non-English language spoken by LEP persons.
5. Historical participation: Rule revision of 20.3 NMAC to align with NRC regulations is a common practice for RCB. No one has yet requested placement on a specific mailing list.

Factor 2: Frequency with which LEP Individuals Might Come in Contact with the Program

The department will also establish a website and email informational bulletins periodically. This outreach precedes a formal Department rulemaking process before the Environmental Improvement Board, where the public will have the opportunity to comment. The Department is planning to prepare draft rules by the early fall of 2023 and go before the Board in the late fall or early winter of 2023. LEP individuals might come in contact with the outreach material and may choose to comment before the Board. Considering that 5.2% of the Spanish-speaking population is considered linguistically isolated and that 27% of New Mexicans speak Spanish at home, an identifier of “**occasional**” is assigned to this factor. A summary of historical participation in activities for this rulemaking is under Factor 1.

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

The RCB deems the Radiation Technical Advisory Council (“RTAC”) and EIB petition for hearing meetings reviewing the rulemaking activity of amending 20.3.16 NMAC “important” to the Department, the impacted community, and the State of New Mexico. The RTAC and EIB petition for hearing meetings reviewing rulemaking activity will help the Bureau and New Mexico to change its rules to align with the NRC Fiscal Year 2021 fees. It is essential to the Department because the requirements must be met to protect public health and safety and provide a means to enforce those requirements. The RTAC meeting approval will be presented to the EIB at the hearing that will be scheduled within 60 days of the EIB petition for hearing. These rulemaking activities are vital to the impacted community, the Bureau believes that the proposed rule revisions will provide for the health and safety of the public, and meet the requirements agreed upon between the State of New Mexico and the U.S. Nuclear Regulatory Commission (NRC) in an April 4, 1974 Agreement <https://www.nrc.gov/cdn/nmss/pdf/nmagreements.pdf> that Governor Bruce King signed.

Conclusion:

The RCB considers the RTAC and EIB petition for hearing meetings reviewing the rulemaking activity of amending 20.3.16 NMAC "important" to the Department, the state as a whole, and the impacted community.

Factor 4: Resources Available to NMED for LEP Services and Associated Costs

For outreach to LEP communities associated with this rulemaking, the Department employs an in-house Spanish translator/interpreter and utilizes a phone interpretation service to assist during direct communication between LEP individuals and the Department staff in many other languages. Incorporated into the Bureau's budget are the costs of newspaper publication of public Notices in Spanish and interpretive services for a public meeting or hearing to the extent possible. Fees collected from the licensees by the schedule in 20.3.16 NMAC are limited and may be sufficient to cover these costs.

Conclusion:

The Bureau may accommodate the costs of the LEP services identified in this plan but is limited to one outreach per year, reviewing budgetary implications if additional services are requested.

LEP Plan for the Radiation Technical Advisory Council meeting reviewing rule revisions of 20.3.16 NMAC.

Policy Overview

This LEP Four Factor Analysis has been prepared in accordance with the NMED Policy 07-11, *Limited-English Proficiency Accessibility and Outreach Policy*, and NMED Policy 07-13, *Public Participation*.

Determination

Based on a balanced evaluation of the four factors described above, the assessment indicates that language assistance (interpretation and translation services) or outreach are needed for this activity. The public notice will be translated into Spanish and outreach materials will include information on how LEP persons or persons with disabilities can obtain assistance. If information or data are acquired that indicate additional translation or interpretation services are needed, the Department will implement expanded outreach activities described in the associated public involvement plan (PIP). The Department has determined that there are adequate resources available to provide LEP services if requested or determined necessary.

Final Actions

- All public notices will be published in both English and Spanish.
- Outreach materials will include information on how LEP persons or persons with disabilities can obtain assistance associated with this activity.
- The Department will provide a Spanish interpreter for all public engagement meetings if requested.
- If LEP individuals contact the Department, the Department will provide language assistance or will contract translation services, as needed.
- If individuals with accessibility needs contact the Department, the Department's Non-Discrimination Coordinator will work to address the request.
- If LEP individuals provide written comments during the rulemaking public comment period for inclusion in the public record, the Department will translate their response and include both English and the preferred language versions in the Response to Comments and the individual who commented.

Conclusion:

The RCB considers the RTAC and EIB petition for hearing meetings reviewing the rulemaking activity of amending 20.3.16 NMAC "important" to the Department, the state as a whole, and the impacted community.

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