

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 3 RADIATION PROTECTION
PART 10 NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTIONS

20.3.10.1 ISSUING AGENCY: Environmental Improvement Board.
[20.3.10.1 NMAC - Rp, 20 NMAC 3.1.1.100, 6/30/2011]

20.3.10.2 SCOPE: This part establishes requirements for notices, instructions and reports by licensees, registrants and regulated entities to individuals engaged in department-licensed and regulated activities. This includes options available to such individuals in connection with department inspections of licensees or registrants, in order to ascertain compliance with the provisions of the act, rules, orders and licenses issued thereunder. The provisions in this part apply to all persons who receive, possess, use or transfer sources of radiation licensed by or registered with the department pursuant to 20.3.10 NMAC.
[20.3.10.2 NMAC - Rp, 20 NMAC 3.1.10.1000, 6/30/2011]

20.3.10.3 STATUTORY AUTHORITY: Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.
[20.3.10.3 NMAC - Rp, 20 NMAC 3.1.1.102, 6/30/2011]

20.3.10.4 DURATION: Permanent.
[20.3.10.4 NMAC - Rp, 20 NMAC 3.1.1.103, 6/30/2011]

20.3.10.5 EFFECTIVE DATE: June 30, 2011, unless a later date is cited at the end of a section.
[20.3.10.5 NMAC - Rp, 20 NMAC 3.1.1.104, 6/30/2011]

20.3.10.6 OBJECTIVE:
A. To ensure the proper instruction of workers in regards to radiological working conditions, and to ensure that adequate notice and reporting is provided to workers regarding radiological working conditions.
B. To provide for the safe possession and use of radioactive materials and radiation machines in keeping with the ALARA principle.
C. To ensure that worker rights are protected during department inspection of regulated entities.
[20.3.10.6 NMAC - Rp, 20 NMAC 3.1.1.105, 6/30/2011]

20.3.10.7 DEFINITIONS:
A. "Regulated activities" means any activity carried on which is under the jurisdiction of the department under the act.
B. "Regulated entities" means any individual, person, organization or corporation that is subject to the regulatory jurisdiction of the department, including but not limited to an applicant for or a holder of a standard design approval or a standard design certification.
C. "Worker" means any individual engaged in activities licensed or regulated by the department and controlled by a licensee or regulated entity, but does not include the licensee or regulated entity.
[20.3.10.7 NMAC- N, 6/30/2011]

20.3.10.8 - 20.3.10.1000 [RESERVED]

20.3.10.1001 POSTING OF NOTICES TO WORKERS:
A. Each licensee or registrant shall post current copies of the following documents:
(1) the regulations in this part and in 20.3.4 NMAC;
(2) the license, certificate of registration, license conditions or documents incorporated into a license by reference and amendments thereto;
(3) the operating procedures applicable to activities under the license or registration; and
(4) any notice of violation involving radiological working conditions, proposed imposition of civil penalty or order issued pursuant to 20.1.5 NMAC, and any response from the licensee or registrant.
B. If posting of a document specified in Subsection A of this section is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.
C. Each licensee or registrant, or each applicant for a specific license, shall promptly post the latest version of department form *notice to employees*.

D. Documents, notices or forms posted pursuant to this section shall appear in a sufficient number of places to permit individuals engaged in department-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

E. Documents posted pursuant to Paragraph (4) of Subsection A of this section shall be posted within 2 working days after receipt of the documents from the department; the licensee's or registrant's response, if any, shall be posted within 2 working days after dispatch by the licensee or registrant. Such documents shall remain posted for a minimum of 5 working days or until action correcting the violation has been completed, whichever is later.

[20.3.10.1001 NMAC - Rp, 20 NMAC 3.1.10.1001, 6/30/2011]

20.3.10.1002 INSTRUCTIONS TO WORKERS:

A. All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 100 millirems (1 millisievert) shall be:

- (1) kept informed of the storage, transfer, or use of radiation or radioactive material or both;
- (2) instructed in the health protection problems associated with exposure to radiation or radioactive material or both, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;
- (3) instructed in, and required to observe, to the extent within the worker's control, the applicable provisions of department rules and licenses for the protection of personnel from exposure to radiation or radioactive material or both;
- (4) instructed of their responsibility to report promptly to the licensee or registrant any condition which may lead to or cause a violation of the act, department rules and licenses; or unnecessary exposure to radiation or radioactive material or both;
- (5) instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material or both; and
- (6) advised as to the radiation exposure reports which workers may request pursuant to 20.3.10.1003 NMAC.

B. In determining those individuals subject to the requirements of Subsection A of this section, licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material or both, which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions must be commensurate with potential radiological health protection problems present in the work place.

[20.3.10.1002 NMAC - Rp, 20 NMAC 3.1.10.1002, 6/30/2011]

20.3.10.1003 NOTIFICATIONS AND REPORTS TO INDIVIDUALS:

A. Radiation exposure data for an individual and the results of any measurements, analyses and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained pursuant to department rules, orders or license conditions, as shown in records maintained by the licensee or registrant pursuant to department rules. Each notification and report shall:

- (1) be in writing;
- (2) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual and the individual's identification number, preferably social security number;
- (3) include the individual's exposure information; and
- (4) contain the following statement: "This report is furnished to you under the provisions of 20.3.10 NMAC. You should preserve this report for further reference."

B. Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee under the provisions of 20.3.4.446 NMAC. The licensee or registrant shall provide an annual report to each individual monitored under 20.3.4.417 NMAC of the dose received in that monitoring year if:

- (1) the individual's occupational dose exceeds 1 millisievert (100 millirems) TEDE or 1 millisievert (100 millirems) to any individual organ or tissue; or
- (2) the individual requests his or her annual dose report.

C. At the request of a worker formerly engaged in department-licensed or regulated activities controlled by the licensee or registrant, each licensee or registrant shall furnish to the worker a written report of the worker's exposure to radiation or radioactive material or both as shown in records maintained by the licensee

pursuant to 20.3.4.446 NMAC for each year the worker was required to be monitored under the provisions of 20.3.4.417 NMAC. The report must be furnished within 30 days from the time the request is made, or within 30 days after the exposure of the individual has been determined by the licensee or registrant, whichever is later. This report must cover the period of time that the worker's activities involved exposure to radiation from sources of radiation licensed or regulated by the department and must include the dates and locations of licensed or department-regulated activities in which the worker participated during this period.

D. When a licensee or registrant is required pursuant to 20.3.4.452 NMAC, 20.3.4.453 NMAC or 20.3.4.454 NMAC to report to the department any exposure of an individual to radiation or radioactive material or both; the licensee or the registrant shall also provide the individual a written report on his or her exposure data included in the report to the department. The report must be transmitted no later than the transmittal to the department.

E. At the request of a worker who is terminating employment with the licensee or registrant that involved exposure to radiation or radioactive materials or both, during the current calendar quarter or the current year, each licensee or registrant shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate. [20.3.10.1003 NMAC - Rp, 20 NMAC 3.1.10.1003, 6/30/2011]

20.3.10.1004 PRESENCE OF REPRESENTATIVES OF LICENSEE OR REGISTRANT AND WORKERS DURING INSPECTION:

A. Each licensee, applicant for a license or registrant shall afford to the department at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises and records pursuant to this chapter.

B. During an inspection, department inspectors may consult privately with workers as specified in 20.3.10.1005 NMAC. The licensee, registrant or their representative may accompany department inspectors during other phases of an inspection.

C. If, at the time of inspection, an individual has been authorized by the workers to represent them during department inspections, the licensee or registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

D. Each worker's representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in 20.3.10.1002 NMAC.

E. Different representatives of licensees or registrants, and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one worker's representative at a time may accompany the inspectors.

F. With the approval of the licensee or registrant, and the workers' representative, and individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant, or to the workers' representative, shall be afforded the opportunity to accompany department inspectors during the inspection of physical working conditions.

G. Notwithstanding the other provisions of this section, department inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing information classified by an agency of the United States government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regards to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter the area. [20.3.10.1004 NMAC - Rp, 20 NMAC 3.1.10.1004, 6/30/2011]

20.3.10.1005 CONSULTATION WITH WORKERS DURING INSPECTIONS:

A. Department inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of the department rules and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

B. During the course of an inspection, any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violation of the act, the rules in this chapter or license condition, or any unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements of 20.3.10.1006 NMAC.

C. The provision of Subsection B of this section shall not be interpreted as authorization to disregard instructions pursuant to 20.3.10.1002 NMAC.
[20.3.10.1005 NMAC - Rp, 20 NMAC 3.1.10.1005, 6/30/2011]

20.3.10.1006 REQUESTS BY WORKERS FOR INSPECTION:

A. Any worker or representative of workers who believes that a violation of the act, the rules in this chapter, or license conditions exists or has occurred in work under a licensee or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the department. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or a representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or on any record published, released or made available by the department, except for good cause shown.

B. If, upon receipt of such notice, the department determines that the complaint meets the requirements set forth in Subsection A of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the department shall cause an inspection to be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

C. No licensee, registrant, contractor or subcontractor of a licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceedings under the provisions of this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of such worker or others of any option afforded by this part.

[20.3.10.1006 NMAC - Rp, 20 NMAC 3.1.10.1006, 6/30/2011]

20.3.10.1007 INSPECTIONS NOT WARRANTED: INFORMAL REVIEW:

A. If the department determines with respect to a complaint under 20.3.10.1006 NMAC, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the department shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the secretary who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the secretary who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the secretary may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the secretary shall affirm, modify or reverse the determination of the department and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

B. If the department determines that an inspection is not warranted because the requirements of Subsection A of 20.3.10.1006 NMAC have not been met, the complainant shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Subsection A of 20.3.10.1006 NMAC.

[20.3.10.1007 NMAC - Rp, 20 NMAC 3.1.10.1007, 6/30/2011]

20.3.10.1008 - 20.3.10.1099 [RESERVED]

HISTORY OF 20.3.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed as follows:

EIB 73-2, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 7/9/73;

EIB 73-2, Amendment 1, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 4/17/78;

EIB RPR-1, Radiation Protection Regulations filed on 4/21/80; EIB RPR-1, Amendment 1, Radiation Protection Regulations filed on 10/13/81;

EIB RPR-1, Amendment 2, Radiation Protection Regulations filed on 12/15/82; and

EIB RPR-1, Radiation Protection Regulations filed on 3/10/89.

History of Repealed Material: 20 NMAC 3.1.Subpart 10, Notices, Instructions and Reports to Workers: Inspections, filed 6/17/1999 is repealed effective 6/30/2011 and replaced by 20.3.10 NMAC, Notices, Instructions and Reports to Workers: Inspections, effective 6/30/2011.

Other History: EIB RPR 1, Radiation Protection Regulations, filed 3/10/89 renumbered and reformatted to 20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 4/3/95.
20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 6/17/99 internally renumbered and reformatted replaces 20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 4/3/95.
20 NMAC 3.1.Subpart 10, Notices, Instructions and Reports to Workers: Inspections, filed 6/17/1999 is repealed effective 6/30/2011 and replaced by 20.3.10 NMAC, Notices, Instructions and Reports to Workers: Inspections, effective 6/30/2011.