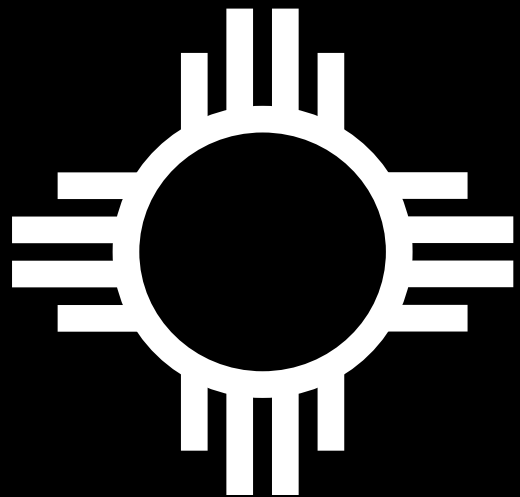


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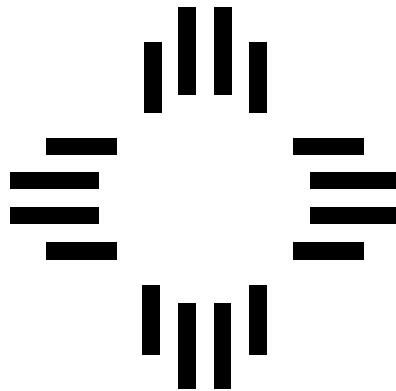
Volume XVI  
Issue Number 4  
February 28, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 4**

**February 28, 2005**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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# New Mexico Register

Volume XVI, Number 4

February 28, 2005

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Accountancy Board, Public</b>	
Notice of Proposed Rulemaking . . . . .	135
<b>Albuquerque / Bernalillo County Air Quality Control Board</b>	
Albuquerque-Bernalillo County Air Quality Control Board Notice of Hearing and Regular Meeting . . . . .	135
<b>Children, Youth and Families Department</b>	
Family Services Division	
Notice of Public Hearing . . . . .	136
<b>Finance and Administration, Department of</b>	
Local Government Division	
Notice of Hearing of Rule 2.79.1 NMAC, the Individual Development Accounts . . . . .	136
<b>Human Services Department</b>	
Medical Assistance Division	
Notice of Public Hearing . . . . .	141

### Adopted Rules

#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

#### *A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

#### Children, Youth and Families Department

Family Services Division			
8.16.3 NMAC	N	Requirements Governing the Child Care Facility Loan Act . . . . .	143
7.20.12 NMAC	Rn & A	Licensing Requirements for Child and Adolescent Mental Health Facilities . . . . .	145

#### Dental Health Care, Board of

16.5.15 NMAC	R	Dentists Anesthesia Administration . . . . .	150
16.5.9 NMAC	N	Non-Dentist Owners . . . . .	150
16.5.15 NMAC	N	Dentists Anesthesia Administration . . . . .	151
16.5.1 NMAC	A	Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions . . . . .	155
16.5.5 NMAC	A	Dentists, Fees . . . . .	156
16.5.12 NMAC	A	Dentists, Retirement, Inactive and Reinstatement . . . . .	156
16.5.18 NMAC	A	Dental Hygienists Fees . . . . .	157
16.5.20 NMAC	A	Dental Hygienists, Licensure by Credentials . . . . .	158
16.5.25 NMAC	A	Dental Hygienists, Retirement, Inactive and Reinstatement . . . . .	158
16.5.33 NMAC	A	Dental Assistants, Requirements for Certification . . . . .	159

#### Environmental Improvement Board

7 NMAC 18.1	R	Public Swimming Pools and Public Baths . . . . .	160
7.18.2 NMAC	N	Swimming Pools: Public Swimming Pools, Spas, and Baths - General Provisions . . . . .	160
7.18.3 NMAC	N	Swimming Pools: Public Swimming Pools, Spas, and Baths - Design and Construction . . . . .	166
7.18.4 NMAC	N	Swimming Pools: Public Swimming Pools, Spas, and Baths - Maintenance and Operation Requirements . . . . .	183
7.18.5 NMAC	N	Swimming Pools: Public Swimming Pools, Spas, and Baths - Fees . . . . .	188

#### Gaming Control Board

15.1.5 NMAC	A	Application for Licensure under the Gaming Control Act . . . . .	190
15.1.6 NMAC	A	Premises Licensed under the Gaming Control Act . . . . .	196
15.1.8 NMAC	A	Accounting Requirements under the Gaming Control Act . . . . .	197
15.1.9 NMAC	A	Internal Control Minimum Standards for Gaming Devices under the Gaming Control Act . . . . .	200

15.1.10 NMAC	A	Conduct of Gaming Activity under the Gaming Control Act . . . . .	202
15.1.14 NMAC	A	Enforcement Proceedings under the Gaming Control Act . . . . .	209
15.1.16 NMAC	A	Transportation, Receipt, and Placement of Gaming Devices . . . . .	210
15.1.18 NMAC	A	Compulsive Gambling Assistance Plan Standards . . . . .	211
<b>Optometry, Board of Examiners in</b>			
16.16.5 NMAC	A	Examination for Optometric Licensure . . . . .	212
16.16.13 NMAC	A	Continuing Education . . . . .	213
16.16.19 NMAC	A	Contact Lenses . . . . .	213
<b>Public Employee Labor Relations Board</b>			
11.21.4 NMAC	R	Impasse Resolution . . . . .	214
11.21.1 NMAC	A	Labor Unions/Labor Relations: General Provisions . . . . .	214
11.21.2 NMAC	A	Representation Proceedings . . . . .	215
11.21.3 NMAC	A	Prohibited Practices Proceedings . . . . .	217
11.21.5 NMAC	A	Approval of Local Boards . . . . .	218
11.21.6 NMAC	A	Concurrent Pending Related Cases . . . . .	219
<b>Public Safety, Department of</b>			
Training and Recruiting Division - Law Enforcement Academy			
10.29.6 NMAC	A	Certification by Waiver . . . . .	219

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The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

#### PUBLIC ACCOUNTANCY BOARD NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing on Wednesday, March 30, 2005. The hearing will be held at 9:30 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Suite D, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules. The hearing will be followed by a regular Board meeting in the same location.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements
16.60.4 NMAC	Firm Permit, Peer Review Requirements, and Business Name Prohibitions

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at [www.rld.state.nm.us/b&c/accountancy](http://www.rld.state.nm.us/b&c/accountancy). Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Monday, March 28, 2005; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Wednesday, March 23, 2005.

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On April 13, 2005, at 5:15 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to amend 20.11.3 NMAC, Transportation Conformity (Part 3), and to incorporate the complete and amended

20.11.3 NMAC into the New Mexico State Implementation Plan for air quality (SIP), as described below.

The purpose of the Part 3 combined hearing is to receive testimony on proposed changes to 20.11.3 NMAC, Transportation Conformity, and also to receive testimony on placing the amended Part 3 into the SIP. The proposed regulatory changes to Part 3 are made in response to EPA's publication of a final, amended federal transportation conformity rule on July 1, 2004. The local changes include incorporation of federal language regarding:

The criteria and procedures for transportation conformity under the new 8-hour ozone standard and the PM<sub>2.5</sub> standard.

The conformity impacts of revoking the 1-hour ozone standard one year after the effective date of the 8-hour ozone nonattainment designations and when conformity will or will not apply in areas with an early action compact (EAC).

The references to "emissions reductions tests", which have been changed to references to "interim emissions tests", the establishment of 2002 as the baseline year for interim emissions tests and the use of a "build no greater than no build" test in certain areas.

An explanation of regional conformity tests in PM<sub>2.5</sub> areas and various types of 8-hour ozone areas.

Consideration of directly emitted PM<sub>2.5</sub> from motor vehicles and PM<sub>2.5</sub> precursors in regional emissions analyses.

Re-entrained road dust and construction-related fugitive dust in PM<sub>2.5</sub> regional emissions analyses and compliance with PM<sub>2.5</sub> SIP control measures.

The March 2, 1999 ruling by the US Court of Appeals which affected five aspects of the rule, including approval of federal projects during a conformity lapse, the use of motor vehicle emission budgets in conformity determinations, regionally-significant non-federal projects, the timing of conformity consequences following an EPA disapproval and the use of safety margins in areas with SIPs submitted prior to November 24, 1993.

The provision of a one year grace period for newly designated nonattainment areas and the requirement that conformity be determined within 18 months of EPA's finding that a motor vehicle emissions budget is adequate.

The streamlining of the frequency of conformity determinations.

The addition of definitions for "1-hour ozone NAAQS", "8-hour ozone NAAQS", "donut areas", "isolated rural nonattainment and maintenance areas" and "limited maintenance plan".

An amended definition of "control strategy implementation plan revision" and "milestone".

Allowing a conformity determination for a transportation plan or a transportation improvement program (TIP) to be based on the latest planning assumptions at the time the conformity analysis begins.

Miscellaneous revisions to improve and streamline the existing regulation.

Local changes to the regulation also include incorporation of local language regarding:

An amended local interagency consultation process which includes emission models for PM<sub>2.5</sub> in the evaluation of substitute transportation control measures (TCMs).

Expanded details and clarifications pertaining to the interagency consultation process for examining air quality as it relates to transportation plans.

Miscellaneous local amendments, including updating of acronyms and language

improvements.

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider adopting the proposed amendments to 20.11.3 NMAC, Transportation Conformity, and incorporating the complete and amended regulation into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday April 6, 2005 to: Attn: April Hearing Record, Ms. Catalina Lehner, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on April 6, 2005. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written comments may also be submitted electronically to [clehner@cabq.gov](mailto:clehner@cabq.gov) and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Catalina Lehner electronically at [clehner@cabq.gov](mailto:clehner@cabq.gov) or by phone at (505) 768-2638.

**NOTICE FOR PERSON WITH DISABILITIES:** If you have a disability and/or require special assistance please call (505)

768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT  
FAMILY SERVICES DIVISION**

**NEW MEXICO CHILDREN, YOUTH  
AND FAMILIES DEPARTMENT**

**NOTICE OF PUBLIC HEARING**

The New Mexico Children, Youth and Families Department, Family Services, Child Care Licensing Authority will hold a formal public hearing on Wednesday, March 30, 2005 from 1 p.m. to 3 p.m., in the conference room at the Family Services Offices at 1920 5th Street; Santa Fe, New Mexico, to receive public comments regarding the removal of certification requirements for home based services from 7.20.11 NMAC, Certification Requirements for Child and Adolescent Mental Health Services.

The proposed amendment may be reviewed, or a copy obtained during the regular business hours of Family Services; 1920 5th Street; Santa Fe, New Mexico 87505. Please address inquiries to the attention of Kurt Johnson.

Interested persons may testify at the hearing or submit written comments at the above address no later than 3:00 p.m. March 30, 2005. Written comments will be given the same consideration as oral testimony given at the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Family Services at 505-476-0465. Family Services requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

**Notice of Hearing of Rule 2.79.1 NMAC,  
the Individual Development Accounts**

New Mexico Department of Finance and Administration

The Department of Finance and Administration (DFA) hereby gives notice that DFA will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501, on April 4, 2005 at 10:00 a.m. concerning the promulgation of a rule governing all individual development accounts and account administrators, pursuant to the Individual Development Account Act, Section 58-30-5 NMSA 1978 and Section 9-6-5 E. NMSA 1978.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on March 31, 2005, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed rules are available from Ms. Juleann A. Martinez, Room 202, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4973 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

**TITLE 2 PUBLIC FINANCE  
CHAPTER 79 INDIVIDUAL  
DEVELOPMENT ACCOUNTS  
PART 1 GENERAL PROVISIONS**

**2.79.1.1 ISSUING AGENCY:**  
New Mexico Department of Finance and Administration, Local Government Division.  
[2.79.1.1 NMAC - N, 04/29/2005]

**2.79.1.2 SCOPE:** All individual development account program administrators funded pursuant to the Act, state agencies and other stakeholders affected by the rule. The scope of these rules includes, but is not limited to:

**A.** policies concerning the eligible uses for and establishment of individual development accounts;

**B.** selection criteria and requirements for participating individual development account program administrators; and

**C.** eligibility criteria for individual account owners.  
[2.79.1.2 NMAC - N, 04/29/2005]

**2.79.1.3 STATUTORY AUTHORITY:** The individual development account act, Section 58-30-5, NMSA 1978 and Section 9-6-5 Subsection E, NMSA 1978.  
[2.79.1.3 NMAC - N, 04/29/2005]



**2.79.1.4 DURATION:** Permanent.  
[2.79.1.4 NMAC - N, 04/29/2005]

**2.79.1.5 EFFECTIVE DATE:** 04/29/2005 unless a different date is cited at the end of a section.  
[2.79.1.5 NMAC - N, 04/29/2005]

**2.79.1.6 OBJECTIVE:** The individual development account act (Sections 58-30-1 through 58-30-12 NMSA 1978; being Laws 2003, Chapter 362) established a structure to provide oversight to individual development account programs in New Mexico funded through the Act. These rules are designed to:

**A.** identify and promote quality individual development account initiatives throughout the State while encouraging innovation and diversity;

**B.** ensure accountability of account owners, account programs, program administrators as well as other stakeholders; and

**C.** provide standards of eligibility and program administration for individual development account programs in New Mexico.

[2.79.1.6 NMAC - N, 04/29/2005]

**2.79.1.7 DEFINITIONS:**

**A. "Account owner"** means the person in whose name an individual development account is originally established.

**B. "Act"** means the individual development account act, Sections 58-30-1 through 58-30-12 NMSA 1978.

**C. "Allowable use"** means monies expended from an individual development account for the account owner or the account owner's spouse or dependents for a use listed below:

(1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the principal residence of the account owner;

(4) capitalization or costs to start or expand a business including equipment, tangible personal property, operational and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business;

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner, and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed to a beneficiary if not in conflict with the New Mexico Uniform Probate Code Sections 45-1-101 through 45-1-404, NMSA 1978. If the beneficiary is eligible to maintain the account, according to the provisions of the Act and these rules, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

**D. "Authorized financial institution"** means a financial institution authorized by the division to hold and manage individual development accounts and reserve accounts.

**E. "Business"** means a sole proprietorship, business venture or corporate structure in which the account owner will be an owner of greater than 50 percent.

**F. "Director"** means the director of the division.

**G. "Division"** means the local government division of the New Mexico department of finance and administration.

**H. "Earned income"** means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services.

**I. "Education"** means a job training or related educational program approved by the program administrator and the division.

**J. "Eligible individual"** means a person who meets the criteria for opening an individual development account.

**K. "Emergency withdrawal"** means a withdrawal by an account owner that:

(1) is a withdrawal of only those funds, or a portion of those funds, deposited by the account owner in the individual development account of the account owner;

(2) is permitted by a program administrator on a case-by-case basis; and

(3) is made due to a personal crisis, including but not limited to illness, eviction, potential foreclosure, job loss or urgent family reasons and approved in writing by a program administrator.

**L. "Financial institution"** means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the

federal deposit insurance corporation or the national credit union administration.

**M. "Financial literacy"** means a basic understanding of budgets and savings accounts, credit and interest and how to use financial services including, but not limited to having a savings plan to reach the account owner's savings goal for an individual development account.

**N. "First principal residence"** means a principal residence to be acquired or constructed by an account owner who has no ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence.

**O. "Individual development account"** means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the Act.

**P. "Individual development account program"** means a program established by a program administrator approved by the division to establish and administer individual development accounts and reserve accounts for eligible individuals and to provide financial training required by the division for account owners.

**Q. "Major home improvement or repair"** means a home improvement to a residential location that has been occupied continuously by the account owner for at least 12 months and is the principal residence of the account owner who is named as the mortgage holder. The home improvement must be one that increases the value of the residence or that will sustain the value of the home as approved by the program administrator. These improvements include, but are not limited to structural alterations and reconstruction, changes for improved functions and modernizations, elimination of health and safety hazards, and energy conservation improvements.

**R. "Matching funds"** means money deposited in a reserve account at a ratio of not less than one dollar (\$1.00) of program administrator funds to one dollar (\$1.00) of account owner deposits to match the withdrawals for allowable uses from an individual development account.

**S. "Non-profit organization"** means an instrumentality of the state or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. X 501(c)(3)) and exempt from taxation pursuant to Section 501(a) of that code.

**T. "Post-secondary or vocational education"** means a post-secondary university, community college, vocational-technical school, institution or specialized degree-granting college or

school legally authorized to grant degrees or certificates.

**U. “Program administrator”** means only 501(c)(3) nonprofit organizations, tribes and instrumentalities of the state that are determined by the director to be eligible to offer an individual development account program.

**V. “Reserve account”** means an account established pursuant to the Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner.

**W. “Savings plan”** means a plan developed with an account owner and a program administrator defining savings goals and program requirements, including the allowable use of both the individual development account and the matching funds. The approved plan shall serve as the contract between the account owner and the program administrator.

**X. “Tribe”** means an Indian nation, tribe or pueblo located in whole or in part within New Mexico. [2.79.1.7 NMAC - N, 04/29/2005]

#### **2.79.1.8 RESPONSIBILITIES OF THE DIVISION:**

**A.** Annually, based on the availability of state funds including administrative costs of program administrators, the division shall solicit requests for proposals from non-profit organizations or tribes interested in establishing or further developing an individual development account program.

**B.** The director shall determine if the entity is eligible to be a program administrator under the Act and these rules. Individual development account programs and program administrators are subject to review and approval by the director.

**C.** Prior to receiving funds pursuant to the Act, an individual development account program and program administrator shall be approved by the director.

**D.** The director shall monitor all individual development account programs and program administrators subject to the Act and these rules to ensure that account owners' accounts and the reserve fund accounts are being operated according to federal law, the provisions of the Act and these rules.

**E.** Each November, the division shall provide a report of the activities under the Act to the governor and to an appropriate interim committee of the legislature.

**F.** The division shall provide staff support and administrative services for the individual development account advisory committee in accordance with the

Act.

[2.79.1.8 NMAC - N, 04/29/2005]

#### **2.79.1.9 RESPONSIBILITIES OF THE ADVISORY COMMITTEE:**

Pursuant to the Act and these rules, the advisory committee shall provide oversight of the administration of individual development account programs operated by program administrators and subject to the Act and these rules, suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

**A.** The advisory committee shall meet at least two times in a calendar year to review the implementation of the Act and these rules.

**B.** The advisory committee members are appointed by the governor and consist of the lieutenant governor and eight members to represent the state geographically. The director or his designee serves as an ex-officio member of the advisory committee.

[2.79.1.9 NMAC - N, 04/29/2005]

#### **2.79.1.10 PARTICIPATION CRITERIA FOR PROGRAM ADMINISTRATORS:**

**A.** In order to receive state funds and be approved by the director, a program administrator shall demonstrate, to the satisfaction of the division, that it meets the criteria below.

**(1)** It shall qualify as a tax-exempt, not-for-profit organization under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1986, a tribe or an instrumentality of the state.

**(2)** It shall establish a reserve account with an authorized financial institution sufficient to meet the matching fund commitments made to all account owners participating in the program and shall report at least quarterly to each account owner the amount of money available in the reserve account to match the account owner's withdrawal for an allowable use following completion of all program requirements.

**(3)** It shall offer a comprehensive financial literacy program and other necessary training pertinent to the allowable uses agreed to by the account owner either with its own staff or through a plan of action utilizing qualified providers.

**(4)** It shall develop partnerships with financial institutions, develop account owner matching funds and manage the operations of an individual development account that is established by the program administrator with fiduciary care.

**(5)** It shall have access to facilities that are reasonably accessible to account owners and comply with state and federal building laws.

**(6)** It shall have human and

material resources sufficient to implement an individual development account program and shall have a successful history of providing service to low-income persons and of success in raising funds for that purpose. If it is a new organization, it shall have staff and board members who have had such experience in other organizations.

**(7)** It shall present a workable plan for development, implementation, fiduciary care and management of an individual development account program. The plan shall include endorsement from at least one cooperating local financial institution. The plan shall indicate the length of time, in months and years, of the operation of the program by the organization, taking into account the resources that are or will be available.

**(8)** It shall provide a description of its contingency plan in the event the program administrator is no longer able to operate the program. Such contingency plan shall include, but not be limited to:

**(a)** a requirement of immediate notice to all account owners and the division; and

**(b)** all actions the program administrator shall take to ensure the orderly closing of the program.

**(9)** It shall not possess any other deficit that may raise doubt as to its ability to administer an individual development account program, including but not limited to, conviction of a crime by any officer of the program administrator.

**(10)** It shall enter into a contract with the division delineating its responsibilities in a form prescribed by the division.

**B.** The division may conduct site reviews of any individual development account program administrator at any time for compliance with applicable regulations and contracts. The program administrator shall provide the division with full access to any program records upon request. [2.79.1.10 NMAC - N, 04/29/2005]

#### **2.79.1.11 ACCOUNT OWNER AGREEMENT:**

The program administrator operating an approved individual development account program shall be required to enter into an account owner agreement containing the following minimum requirements with an eligible individual:

**A.** a provision that the program administrator and account owner shall establish, in a timely manner, an individual development account in an authorized financial institution;

**B.** a deposit plan specifying the amount, form and schedule of deposits to be made by the account owner;

**C.** the rate at which the account owner's deposits will be matched;

**D.** the allowable use for which the account is maintained;

**E.** a provision that the program administrator shall provide financial literacy and asset-specific training approved by the division;

**F.** a provision that the account owner shall attend the financial literacy and asset-specific training;

**G.** an explanation of the withdrawal policies, including:

(1) the policies governing withdrawal of savings upon completion of the program,

(2) early withdrawal due to an account owner's decision to leave the program,

(3) termination of account due to non-compliance by the account owner, and

(4) emergency withdrawals including the provision that if an account owner withdraws money from his individual development account for a use other than an allowable use, he forfeits a proportionate amount from the reserve account unless an amount equal to the withdrawn money is deposited into his individual development account within the twelve months following the withdrawal;

**H.** a provision that the account owner may request an emergency withdrawal;

**I.** a provision allowing for the development of a contingency plan in the event the account owner exceeds or fails to meet the savings goals outlined in the savings agreement;

**J.** a provision that the program administrator shall implement the contingency plan on record with the division in the event the organization is no longer able to operate the program [Paragraph (8) of Subsection B of 2.79.1.10 NMAC];

**K.** a provision that any agreement for the investment of assets shall be at the direction of the account owner after consultation with the program administrator;

**L.** a provision that the program administrator shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution, or other entity, other than the authorized financial institution in which the individual development account savings account is held;

**M.** a provision designating one or more beneficiaries of the funds, plus accrued interest, deposited by the account owner in the individual development account in the event of the account owner's death;

**N.** a verification that the eligible individual maintains no other individual development account; and

**O.** a provision that the

agreement may be modified only with the written concurrence of the program administrator and the account owner.

[2.79.1.11 NMAC - N, 04/29/2005]

**2.79.1.12 FINANCIAL INSTITUTIONS:** A program administrator operating an approved state individual development account program shall be required to enter into a written governing instrument with an authorized financial institution. The written governing agreement shall provide for:

**A.** the establishment of individual development accounts in the form of trust or custodial accounts for the benefit of the account owners, which meet the requirements of Section 404(5) of the Assets for Independence Act, as amended, and into which accounts the account owners shall make deposits;

**B.** an assurance that the financial institution shall pay at least a market rate of interest on the individual development accounts;

**C.** an assurance that the financial institution shall not charge fees on the account;

**D.** an assurance that if an account owner appears on ChexSystems, the financial institution will open the account as long as it does not violate the internal administrative rules of the financial institution. Refusal to open an account based upon this may occur only in extreme circumstances such as the account owner having a previous conviction of fraud or other crime;

**E.** an assurance that the financial institution shall provide monthly savings statements to both the account owner and the program administrator; and

**F.** an assurance that the financial institution shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution or other entity.

[2.79.1.12 NMAC - N, 04/29/2005]

**2.79.1.13 INDIVIDUAL DEVELOPMENT ACCOUNT SAVINGS ACCOUNTS:**

**A.** A program administrator shall apply criteria for minimum and maximum levels of deposit and minimum number of months that may go by without a deposit into the account. These criteria may be determined based upon the circumstances of the population to be served.

**B.** A program administrator approved by the director shall maintain a separate trust or custodial account for each account owner in an authorized financial institution. The trust account shall be an interest-bearing savings instrument not less favorable to the depositor than the rates and

fees of prevailing market rate accounts of each participating financial institution, applicable to like deposits by financial institutions in this State, bearing rates and fees at least as favorable to the depositor as the best terms available to other customers with similar accounts at each participating financial institution.

**C.** To the extent that available funding, including funding from both public and non-public sources may allow, the match rate shall be at least one dollar (\$1.00) for each one dollar (\$1.00) deposited by the account owner into his individual development account.

**D.** An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account and fulfillment of all other requirements of the Act and these rules.

**E.** An account owner shall complete a financial education program and all requirements made by the program administrator prior to the withdrawal of money from the account.

**F.** No withdrawal of funds from any individual development savings account may be permitted by a financial institution without signatures of both the account owner and an authorized representative of the program administrator. The financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses. Prior to consenting to any withdrawal of funds, a representative of the program administrator shall discuss with the account owner the consequences of the intended withdrawal of funds. The program administrator may not unreasonably withhold its consent to the withdrawal.

**G.** The account owner may, upon the approval of the program administrator, withdraw moneys from the account owner's individual development account in the form of a joint check or transfer of funds made payable to the account owner and the payee of the approved withdrawal for any of the following allowable uses:

(1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the principal residence of the account owner;

(4) capitalization or costs to start or expand a business including equipment, tangible personal property, opera-

tional and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business; and

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

**H.** In the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased if not in conflict with the New Mexico Uniform Probate Code, Sections 45-1-101 through 45-1-404 NMSA 1978. If the spouse, dependent or beneficiary is eligible to maintain the account, according to the provisions of Section 58-30-4, NMSA 1978 and 2.79.1.14 NMAC, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

**I.** In the event that an account owner withdraws any money from an individual development account for a purpose other than an allowable use, there shall be a proportional reduction in the amount of money held by the program administrator in the reserve account maintained for that account owner. However, if within twelve months following the withdrawal of funds the account owner deposits an amount equal to the withdrawn money, the proportional amount held by the program administrator shall be maintained.

**J.** More than one eligible individual per household may hold an individual development account.

**K.** At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's individual development account and deposited in another individual development account established for an eligible individual who is the account owner's spouse or dependent.

[2.79.1.13 NMAC - N, 04/29/2005]

#### **2.79.1.14 ELIGIBLE ACCOUNT OWNERS:**

**A.** To participate as an account owner in an individual development account program approved by the director an individual, at the time of application, shall be a member of a household located in New Mexico whose adjusted gross income is not in excess of 200 percent of the federal poverty guidelines and shall:

- (1) have earned income;
- (2) be eighteen years of age or

older; and

(3) be a citizen or legal resident of the United States.

**B.** A child in foster care is an eligible individual if he:

(1) is sixteen years of age or older;

(2) has earned income that is no more than 200 percent of the federal poverty guidelines when the child's income is evaluated separately from the income of his foster household;

(3) is a citizen or legal resident of the United States; and

(4) is a resident of New Mexico.

[2.79.1.14 NMAC - N, 04/29/2005]

#### **2.79.1.15 REPORTING REQUIREMENTS OF PROGRAM ADMINISTRATORS:**

A program administrator whose individual development account program is approved by the director shall report to the division no later than November 1st of each year. The report shall not identify individual account owners and shall include, but not be limited to:

**A.** the number of individual development accounts established, by savings objective, and their status;

**B.** verification that deposits are being made by the account owners pursuant to the approved savings plans;

**C.** the balance and sources of funding in the program administrator's local reserve fund;

**D.** the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the program administrator;

**E.** the amounts withdrawn from individual development accounts for either allowable uses or for uses other than allowable uses;

**F.** the projected balance of savings to be deposited by account owners, by quarter, in order to complete their savings goal;

**G.** levels of participation in financial literacy education courses differentiating between individual development account participants and the general public; and

**H.** other information requested by the director to monitor the costs and outcomes of the individual development account program.

[2.79.1.15 NMAC - N, 04/29/2005]

#### **2.79.1.16 TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS APPROVED UNDER THE ACT:**

**A.** An individual development account program shall be terminated if:

(1) the division determines that the individual development account program or program administrator is not operating pursuant to the provisions of the individual development account act or these rules;

(2) the provider of the program no longer retains its status as a program administrator;

(3) the program administrator ceases to provide an individual development account program; or

(4) the division provides written notice to the program administrator.

**B.** If a program is terminated the division shall seek to transfer management of the terminated program to another qualified entity awarded a contract under previous RFP processes.

**C.** If the division is unable to identify and approve a program administrator to assume the authority to continue to operate a terminated individual development account program, money held in the terminated program administrator's reserve fund shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program.

**D.** If a program with active individual development accounts is terminated, the division shall assume the responsibilities of the program administrator until such time as a new program administrator is assigned to manage the individual development accounts of the account holders of a terminated program.

[2.79.1.16 NMAC - N, 04/29/2005]

#### **2.79.1.17 NON-DISCRIMINATION:**

**A.** No eligible individual, as defined by the Act and these rules, shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any activity or program funded in whole or in part with division funds on the grounds of the race, religion, color, national origin, sex, sexual preference, age, or handicap of any person.

**B.** If an individual believes that he has been unfairly denied access to an approved state individual development account program or otherwise treated inequitably as an account owner, the individual may file a complaint with the division no later than thirty days after the alleged injury. The division shall investigate the complaint and shall attempt to informally resolve it. Where applicable, the division may refer the individual to the appropriate state or federal agency for potential relief.

[2.79.1.17 NMAC - N, 04/29/2005]

**HISTORY OF 2.79.1 NMAC:** [Reserved].

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT**  
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m. on March 29, 2005, at the State Personnel building, small conference room, Room 239 (2600 Cerrillos Road), Santa Fe, New Mexico. The subject of the hearing will be SSI Methodology.

Pursuant to the Social Security Protection Act of 2004, signed into law March 2, 2004, certain changes to our Supplemental Security Income (SSI) Methodology section are necessary. Specifically, income exclusions that apply to infrequent and irregular income increased and the exclusionary period for SSI and SSA retroactive payments counted as a resource increased.

Interested persons may submit written comments no later than 5:00 p.m., March 29, 2005, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/register.html](http://www.state.nm.us/hsd/register.html) or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

#### TITLE 8            SOCIAL SERVICES CHAPTER 16      CHILD            CARE LICENSING PART 3            REQUIREMENTS GOVERNING THE CHILD CARE FACILITY LOAN ACT

**8.16.3.1            ISSUING AGENCY:**  
Children, Youth and Families Department  
(CYFD).  
[8.16.3.1 NMAC - N, 02/28/2005]

**8.16.3.2            SCOPE:** The Child  
Care Facility Loan Act fund program regu-  
lations shall apply to the use of funds by eli-  
gible applicants available pursuant to the  
Child Care Facility Loan Act, Section 24-  
24-1, et seq., NMSA 1978.  
[8.16.3.2 NMAC - N, 02/28/2005]

**8.16.3.3            S T A T U T O R Y  
AUTHORITY:** The regulations set forth  
herein, have been promulgated by the secre-  
tary of the New Mexico children, youth and  
families department, by authority of the  
Children, Youth and Families Department  
Act, Section 9-2A-7 NMSA 1978, and the  
Child Care Facility Loan Act, Section 24-  
24-1 et seq NMSA 1978.  
[8.16.3.3 NMAC - N, 02/28/2005]

**8.16.3.4            D U R A T I O N :**  
Permanent.  
[8.16.3.4 NMAC - N, 02/28/2005]

**8.16.3.5            EFFECTIVE DATE:**  
February 28, 2005 unless a later date is  
cited at the end of a section.  
[8.16.3.5 NMAC - N, 02/28/2005]

**8.16.3.6            OBJECTIVE:** The  
objective of 8.16.3 NMAC is to establish  
standards and procedures for administering  
loans under the Child Care Facility Loan  
Act. The Child Care Facility Loan Act  
directs the children, youth and families  
department and the New Mexico finance  
authority to jointly develop and administer  
loan and programs established pursuant to  
the provisions of the act. The child care  
facility loan program provides long-term,  
low-interest funding through a revolving  
loan fund, for purposes of physical  
improvement, repair, and safety of child  
care facilities that are licensed by the  
department.  
[8.16.3.6 NMAC - N, 02/28/2005]

#### 8.16.3.7            DEFINITIONS:

A. "Act" means the Child  
Care Facilities Loan Act (Sections 24-24-1  
to 24-24-4 NMSA 1978).

B. "Agreement" means the  
document or documents signed by the board  
and the eligible applicant which specify the  
terms and conditions of obtaining a loan  
under the program.

C. "Applicant" means a  
provider which has filed a request for a loan  
with the department and the authority.

D. "Application" means a  
written document filed with the department  
and the authority by an applicant for the  
purpose of obtaining a loan; an application  
may include a form prescribed by the  
department and the authority, written  
responses to requests for information by the  
department and the authority, or other for-  
mat as determined by the department and  
the authority.

E. "Authority" means the  
New Mexico finance authority.

F. "Authorized represen-  
tative" means one or more individuals  
authorized by the governing body of an  
applicant to act on behalf of the applicant in  
connection with its application. An author-  
ized representative may act on behalf of the  
applicant to the extent provided by law.

G. "Board" means the  
New Mexico finance authority board.

H. "Department" means  
the New Mexico children, youth and fami-  
lies department.

I. "Eligible applicant"  
means a provider:

(1) that has been licensed for  
three or more years;

(2) that has not received a loan in  
the last five years, unless the loan has been  
repaid;

(3) who has completed repayment  
of a previous loan from the fund; and

(4) is not a head start grantee.

J. "Facility" means a  
child care facility operated by a provider,  
including both family home-based and cen-  
ter-based programs, licensed by the depart-  
ment to provide care to infants, toddlers,  
and children.

K. "Finance committee"  
means a six-member body, three members  
appointed by the executive director of the  
authority from the authority staff and three  
members appointed by the secretary of the  
department.

L. "Fund" means the child  
care facility revolving loan fund held by the  
authority pursuant to the act.

M. "Loan" means a loan  
from the fund at the lowest legally permis-  
sible interest rate for the longest amount of

time in order to allow the provider the max-  
imum opportunity to maintain the business  
while repaying the loan.

N. "Project" means health  
and safety improvements to a facility,  
including space expansion, in order to  
maintain an adequate and appropriate envi-  
ronment for a provider's clients.

O. "Provider" means a  
person licensed by the department to pro-  
vide child care to infants, toddlers and chil-  
dren pursuant to 8.16.2 NMAC.

[8.16.3.7 NMAC - N, 02/28/2005]

#### 8.16.3.8            PROJECT FINANC- ING:

A. Eligible items. The fol-  
lowing items shall be eligible for purposes  
of funding through a loan from the fund:

(1) kitchen upgrades to meet  
environment department standards;

(2) air conditioning and heating  
upgrades or installation to meet licensing  
standards;

(3) renovations for natural light-  
ing to meet licensing standards;

(4) renovations of floor surfaces  
to meet licensing standards;

(5) renovations of roofs and  
canales to meet licensing standards;

(6) plumbing upgrades, including  
additional toilets and sinks, to meet licens-  
ing standards and/or to increase capacity to  
serve more children, especially infants and  
toddlers;

(7) electrical upgrades to meet  
licensing standards;

(8) bike paths for playgrounds to  
meet licensing standards;

(9) installation of renovation of  
egress windows to meet licensing stan-  
dards;

(10) playground equipment;

(11) replacement of inoperable  
drinking fountains;

(12) replacement of broken doors  
or windows;

(13) security systems, smoke  
alarms and fire alarms;

(14) accommodations to serve  
children with special needs;

(15) compliance with the  
American with Disabilities Act; and

(16) interior reconstruction to  
expand capacity to meet licensing stan-  
dards.

B. Ineligible items. The  
following will be ineligible items for pur-  
poses of funding through the loan:

(1) day-to-day operating costs  
such as salaries, rent, and food purchases;

(2) working capital to cover  
shortfalls or delays in payments to families,  
government agencies, or other funding

sources;

- (3) training expenses;
- (4) purchase of televisions, video-cassette recorders, DVD players, or related equipment;
- (5) vehicle or transportation expenses; and
- (6) repayment of loans or reimbursement of previously incurred expenses. [8.16.3.8 NMAC - N, 02/28/2005]

### 8.16.3.9 LOAN APPLICATION PROCEDURES:

A. Contingent upon a sufficient balance in the fund, the department and the authority will award loans on a semi-annual basis, on or about March 1 and October 1 of each year. At the beginning of any application cycle, the department will publish notice that applications are being accepted for financing of projects.

(1) Applications for awards to be made on or about March 1 must be received no later than January 1 of each year.

(2) Applications for awards to be made on or about October 1 must be received no later than August 1st of each year.

B. The department and the authority will provide forms and/or guidelines for application for a loan. Applications must be submitted on a form provided by the department. Application forms may be obtained from the department. The application shall be signed by the authorized representative and submitted to the department. Only applications that are complete will be considered for a loan. The application shall include the following:

- (1) eligibility of applicant as a provider;
- (2) detailed description of the circumstances which justify the need for the project, including:
  - (a) description of how the project will benefit the health and safety of provider's clients; and
  - (b) number of state subsidized and low-income family clients and total number of clients of the provider;
- (3) detailed description of the project to be financed; information on each project must include:
  - (a) description of the scope of work of the project;
  - (b) the estimated cost of the project;
  - (c) the target date for the initiation of the project and the estimated time to completion;
  - (d) the estimated useful life of the project and selected components, as detailed on the application form;
  - (e) proof of applicable licenses and certifications for the provider and the facility; and
  - (f) other data as requested by the

department or the authority;

(4) if applicant is an entity, a copy of the applicant's formation and governance documents (e.g., articles of incorporation and bylaws);

(5) a letter certifying that the project was duly authorized and approved by the applicant's governing body;

(6) identification of the source funds to complete the project if the loan requested is not sufficient to cover the full cost of the project;

(7) identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life;

(8) the applicant's financial reports for the most recent three years and/or federal and state tax returns;

(9) written assurance that the project is allowed by the owner of the facility, if the owner is not the applicant;

(10) the requested loan payback period;

(11) information on the current and proposed services of the applicant to state-subsidized clients and low-income families;

(12) additional information as requested by the department or board. [8.16.3.9 NMAC - N, 02/28/2005]

### 8.16.3.10 EVALUATION OF APPLICANT AND PROJECT:

The department and authority will complete an evaluation of the applicant and proposed project. Such evaluation will include, to the extent applicable, an evaluation of project feasibility, administrative capacity, and financial position.

A. An eligible applicant:

- (1) may be a private, for-profit or not-for-profit provider;
- (2) may be a family home that is a licensed facility;
- (3) may be a provider moving to a new facility;
- (4) must comply with all applicable federal, state, and local laws and regulations; and
- (5) must meet other requirements as determined by the department.

B. Need. Priority for loans from the fund shall be given to eligible applicants with facilities that:

- (1) serve a proportionately high number of state-subsidized clients and low-income families;
- (2) intend to use the funds to increase their capacity;
- (3) are non-profit organizations;
- (4) intend to use the funds to serve children with special needs;
- (5) intend to use the funds to reach levels 3, 4, and 5 of the department's stars program;
- (6) intend to use the funds to

increase their capacity to provide care during non-traditional hours;

(7) other factors considered in priorities for the use of the fund include loan structure (percentage of equity contribution), programmatic need, loan size requested, and the length of time as a provider.

C. The department shall conduct a review of the application for eligibility, completeness and programmatic priority.

D. The department will refer the applications to the finance committee. The finance committee will consider the project and may confer with outside parties as necessary to obtain more information on the financial feasibility, project feasibility, and readiness to proceed. The finance committee will make a written recommendation to the board. Such recommendation will include approval or disapproval of specific capital projects and the estimated costs thereof. The finance committee may also, at its discretion, recommend interest rates, loan periods, and loan amounts.

E. Once a recommendation has been made on the application by the finance committee, the board will act on the application no later than the next regular board meeting at which such item may be properly considered, or sixty (60) days after finance committee action, whichever comes first. The board may approve all or part of the application as recommended by the finance committee. Board approval may specify, at the board's discretion, terms and conditions of the loan as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

F. The board will notify the applicant of the approval or disapproval of its application by telephone and will mail written notification by mail within seven (7) working days of board action.

G. All communications regarding an applicant's original application shall be directed to the department.

H. Project feasibility. The finance committee will analyze each project to determine whether the project is feasible. A loan by the authority does not constitute a warranty or other guarantee as to the feasibility of the project.

[8.16.3.10 NMAC - N, 02/28/2005]

### 8.16.3.11 FINANCING APPROVAL REQUIREMENTS:

Based on the evaluation factors set forth in Section 8.16.3.10 NMAC, the board may award a loan to the applicant provided the following requirements are satisfied.

A. In determining the qualification for a loan, the board may consider the ability of the eligible applicant to



secure financing from other sources and the costs of the loan.

B. In approving a loan application, the board will review the applicant's ability to repay the loan and any associated loan documents and legal documents. The board will establish a base interest rate for loans.

C. In approving a loan application, the board will find that the useful life of the project will meet or exceed the final maturity of loans made or bonds purchased or issued by the board and must meet standards for reasonable costs set by the board.

D. Any contract or sub-contract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

E. In order to receive a loan greater than \$20,000.00, the applicant shall require any contractor of a project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions.

F. In addition to the foregoing, the eligible applicant shall satisfy any other requirements as may be determined by the authority.

G. An applicant shall not be given a loan if the applicant received a loan from the fund in the immediately preceding five years.

H. An applicant shall not be given a loan if the applicant has not completed repayment of a previous loan from the fund.

I. No more than twenty percent of the fund may be loaned to a single provider in a single loan.  
[8.16.3.11 NMAC - N, 02/28/2005]

#### **8.16.3.12 RECONSIDERATION:**

A. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible applicant under these regulations. Notice must be given to the department in writing within ten (10) working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary will promptly review each timely request for reconsideration and will recommend action to be taken to the board. The decision of the department secretary as to eligibility is final.

B. An applicant may request reconsideration of a decision by the

board denying funding to an applicant by notifying the authority in writing within forty-five (45) days of the date on which notice of an adverse decision is given by the authority to an applicant. Notice is deemed to be given on the fifth business day following the date on which written notice is mailed to the applicant by the authority by United States mail. A request for reconsideration not timely or properly made will be barred. The authority's executive director will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the board, action to be taken by the board. The board will review and take action on the request for reconsideration and will notify the applicant of the board's decision, in writing, within five (5) working days of the board's decision. The decision of the board is final.

[8.16.3.12 NMAC - N, 02/28/2005]

#### **8.16.3.13 LOAN DOCUMENTS:**

A. The authority and the eligible applicant will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan from the authority. The agreement will include the terms of repayment and sanctions available to the authority in the event of a default. The authority will diligently monitor terms of the agreement and enforce all terms and conditions thereof, including prompt notice and collection. The department will monitor the performance of an eligible applicant under department licensure requirements. The authority will take actions as necessary to ensure loan repayment and the integrity of the fund.

B. The interest on any loan extended shall be determined by the board based on the cost of funds and ability of the eligible applicant to pay. The interest rate shall not change during the term of the loan unless refinanced.

C. The agreement will contain provisions which require loan recipients to comply with all applicable federal, state, and local laws and regulations.

D. In the event of default by the loan recipient, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. If an eligible applicant that has received a loan ceases to maintain its provider status or ceases to provide child care to infants, toddlers and children, the state shall have the following remedies at its option:

(1) accelerate the loan and require immediate repayment of all amounts due, including all accrued and unpaid interest;

(2) any remedies available at law or in equity.

[8.16.3.13 NMAC - N, 02/28/2005]

#### **8.16.3.14 ADMINISTRATION OF THE CHILD CARE FACILITY REVOLVING LOAN:**

A. The fund shall be administered by the authority as a separate account in the state treasury, but may consist of such sub-accounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

C. The authority shall adopt a uniform accounting system for the fund and related accounts and sub-accounts established by the authority, based on generally accepted accounting principles.

[8.16.3.14 NMAC - N, 02/28/2005]

**HISTORY OF 8.16.3 NMAC:**  
[RESERVED]

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### **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION**

This is an amendment to 7.20.12 NMAC, sections 2, 3, 5, 6, 7, 8, 10, 11, 21 and 84, effective February 28, 2005. This rule was also reformatted and renumbered from 7 NMAC 20.12 to comply with current NMAC requirements.

**7.20.12.2 SCOPE:** All residential treatment services [~~and day treatment services~~] that provide children and adolescent mental health services as specified in these regulations.

A. These regulations apply to the following:

(1) public or private, profit or nonprofit residential [~~and day treatment~~] facilities providing services as outlined by these regulations;

(2) any facility providing services as outlined by these regulations which by state or federal law or regulation must be licensed by the state of New Mexico.

B. These regulations do not apply to the following:

(1) offices and treatment room of licensed private practitioners;

(2) agencies providing treatment foster care services which are licensed by the protective services division of the department;

(3) room and board facilities in public or private schools accredited or supervised by the New Mexico state department of education and inspected for fire and safety by the New Mexico state fire marshals office;

(4) children/adolescent crisis shelters which provide short term emergency 24-hour-a-day, living accommodations to children, which are licensed by the child care bureau of the department;

(5) any facility licensed as a community home or a multi-service agency.

[1/1/99; 7.20.12.2 NMAC - Rn & A, 7 NMAC 20.12.2, 02/28/05]

### 7.20.12.3 STATUTORY

**AUTHORITY:** Sections 24-1-3, 24-1-5 and ~~[9-7-6]~~ 9-2A-7(D) NMSA 1978

[1/1/99; 7.20.12.3 NMAC - Rn & A, 7 NMAC 20.12.3, 02/28/05]

### 7.20.12.5 EFFECTIVE DATE:

January 1, 1999 unless a later date is cited at the end of a section.

[1/1/99; 7.20.12.5 NMAC - Rn & A, 7 NMAC 20.12.5, 02/28/05]

### 7.20.12.6 OBJECTIVE:

A. Establish minimum standards for licensing of health facilities that provide residential ~~[and day treatment]~~ mental health services in order to promote the health, safety and welfare of children and adolescents in need of such services.

B. Provide for monitoring of facility compliance with these regulations through surveys to identify any factors that could affect the health, safety, and welfare of the clients or the staff.

C. Assure that the agency/facility establishes and follows written policies and procedures which specify how this is met.

D. To assure that adequate supervision must be provided at all times. Failure to provide a child or adolescent with the care, supervision and services outlined in these regulations is a violation of these regulations which could result in suspension, revocation or denial of licensure.

[1/1/99; 7.20.12.6 NMAC - Rn & A, 7 NMAC 20.12.6, 02/28/05]

### 7.20.12.7 DEFINITIONS: For

the purpose of these regulations the following apply.

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or negligently that causes or is likely to cause harm to a client, including:

(1) physical contact that harms or is likely to harm a client of a facility;

(2) inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a client;

(3) inappropriate use of restraint,

medication, or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a client;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a client;

(6) an unlawful act, a threat, or menacing conduct directed toward a client that results and might reasonably be expected to result in fear or emotional or mental distress to a client;

(7) abuse or neglect as defined in NMSA 32A-4-2 (1997), or as amended.

B. "Action plan" means a written document submitted by the provider(s) to the licensing and certification authority (LCA) for approval which states those actions that the facility will be implementing, with specific time frames and responsible parties for each, to correct the deficiencies identified in the previous on-site visit or review of documents.

C. "Administrator" means the person in charge of the day-to-day operation of a facility. The administrator, director, or operator may be the licensee or an authorized representative of the licensee. The administrator may also be referred to as the director or operator.

D. "Agency staff personnel" means current and prospective operators, staff, employees or volunteers of the agency.

E. "Ambulatory" means the ability of the child to walk without assistance.

F. "Applicant" means the individual who, or organization which, applies for a license.

G. "Bed" means the total assembly on which a child sleeps, including frame, springs, mattress, mattress cover/pad, sheets, pillow, blankets and bedspread.

H. "Capacity" means the maximum number of children who can be accommodated in rooms designated specifically for them in a facility pursuant to these regulations.

I. "Child/adolescent" means (for the purpose of these regulations), a person under the chronological age of 18 years. Those persons who, while a resident or client of a residential treatment services facility ~~[or day treatment services facility]~~ licensed pursuant to these regulations, reach the age of 18 for the purposes of these regulations be considered a child until they complete their course of treatment in the facility.

J. "Cleared staff member" means an individual who has received a state and federal criminal background clearance (meaning a negative criminal record check) as documented by the department

clearance letter.

K. "Client" means any person who receives treatment from a residential ~~[or day treatment services]~~ agency.

L. "Corporal punishment" means touching a child's body with the intent of inducing pain and includes, but not limited to, shaking, spanking, hitting, hair pulling, ear pulling or forced exercise and is considered an abusive act.

M. "Criminal records check" means the process of fingerprinting on state and FBI approved cards and submission of the fingerprint cards for the purpose of obtaining the state and federal conviction records of an individual. The use of the services of an agency contracted by the department of public safety (DPS) who can access the DPS database in order to obtain state criminal background checks for those applicants who have resided in the state of New Mexico for five years or more may be utilized as a means of obtaining state criminal records checks prior to employment. Federal finger printing is still required. The use of an alternate method to obtain state criminal background checks do not replace the federal fingerprinting requirement.

N. "Cruelty (mental or physical) and indifference to the welfare of children" means a failure to provide a child with the care, supervision, and services to which the child is entitled. Examples of physical and mental cruelty include physical device/chemical restraints, striking, slapping or hitting, withholding food or bathroom privileges as punishment, swearing at or threatening a child, and indifference to the basic needs, including physical and psychosocial, of the child and including any abuse as defined in NMSA 1978 32-A-4-2.

O. ~~["Day treatment services" means a coordinated and intensive set of structured individualized therapeutic services provided for children, adolescents and their families who are living in the community.]~~ [RESERVED]

P. "Deficiency" means a violation of or failure to comply with a provision(s) of these regulations.

Q. "Department" means the New Mexico children, youth and families department.

R. "Direct physical supervision" as it relates to criminal records checks means in the line of vision and/or live video observation by cleared agency staff member of non-cleared agency staff members who have direct contact with children.

S. "Direct service staff" means supervisors, therapists, child care workers, coordinators or other employees who work directly with children in their daily living activities in a facility.

T. "Directed action plan"

means an action plan that the LCA writes and specifies that the facility must enforce within a specific time frame noted because of the serious nature of the deficiency.

U. "Discipline" means training that enables a child to develop self control and orderly conduct in relationship to peers and adults.

V. "Emergency sanction" means an immediate measure that is imposed on a facility for a violation(s) of applicable licensing laws and regulations, other than license revocation, suspension, denial of renewal of license or loss of certification, when a health and safety violation warrants prompt action.

W. "Emergency service" means unanticipated admission to a hospital or other psychiatric facility; or the provision of emergency services including, but not limited to, treatment for broken bones, cuts requiring sutures, poisoning, contagious diseases requiring quarantine, burns requiring specialized medical treatment, medication under-dose or overdose requiring treatment; or incidents between residents, or between residents and staff resulting in physical or psychological harm or which could result in physical or psychological harm; or other conditions requiring emergency medical services (EMS) specialized treatment at an urgent care center or an emergency room.

X. "Emergency suspension" means an immediate and temporary canceling of a license pending an appeal hearing and/or correction of deficiencies. During a period of suspension, the medicaid provider agreement is not in effect.

Y. "Employment history" means a written summary for the most recent three-year period of all periods of employment with names, addresses and telephone numbers of the employers and the individuals immediate supervisor; and all periods of nonemployment, stating the reason for leaving employment and explanation of periods of nonemployment, with documented verifying references.

Z. "Exploitation" means the act or process, performed intentionally, knowingly, or recklessly, of using a clients property for another persons profit, advantage or benefit without legal entitlement to do so.

AA. "Facility" means a building(s) in which residential [~~or day treatment~~] mental health services are provided to the public and which is licensed pursuant to these regulations [~~or a classroom or other school building in which day treatment services are provided~~].

BB. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a

facility licensed pursuant to these regulations.

CC. "Informal resolution conference" means an informal process between the department and facility to resolve any filed or potential appeal arising from the imposition of a sanction(s). The informal conference is an opportunity for the facility to present new evidence or arguments regarding the deficiencies cited by, or corrective action proposed by the department, in order to avoid a hearing. The informal conference does not postpone any deadlines for an appeal unless agreed to by the parties.

DD. "License" means the document issued by the LCA pursuant to these regulations granting the legal right to operate for a specified period of time.

EE. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the facility and in whose name a license for a facility has been issued and who is legally responsible for compliance with these regulations.

FF. "Licensing and certification authority" (LCA) means the childrens behavioral health services bureau, licensing and certification unit of the department.

GG. "Maintenance" means keeping the building(s) in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.

HH. "Mobile non-ambulatory" means unable to walk without assistance but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, etc.

II. "Moral turpitude" means conduct contrary to justice, honesty, modesty or good morals including such acts as domestic abuse, drunk driving or other similar convictions.

JJ. "Neglect" means subject to the client's right to refuse treatment and subject to the caregivers right to exercise sound medical discretion. The following apply:

(1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a client; or

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a client; or

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good service or medication necessary to maintain the health or safety of a client; or

(4) any abuse as defined in NMSA 1978 32-A-4-2.

KK. "Non-mobile" means unable to move without assistance from place to place.

LL. "Partial compliance" means that a facility has moderate and few deficiencies and that these do not threaten the health and safety of clients or staff, so that it is able to receive a temporary license with the implementation of certain corrective action(s) within a prescribed time period.

MM. "Physical harm" means harm of a type that causes physical injury resulting in physical trauma to a client (visible injury that requires treatment in excess of primary first aid); loss or functional loss of a bodily member or organ or of a major life activity for a prolonged period of time; or loss of consciousness for any amount of time.

NN. "Policy" means a statement of principle that guides and determines present and future decisions and actions.

OO. "Premises" means all parts of buildings, grounds, vehicles and equipment of a facility.

PP. "Procedure" means the action(s) that will be taken to implement a policy.

QQ. "Programmatic services" means services provided to children to meet special needs above and beyond living accommodations, meals, care, and routine supervision.

RR. "Psychological harm" means harm that causes mental or emotional trauma or that causes behavioral change or physical symptoms that require psychological or psychiatric care.

SS. "Punishment" means a penalty imposed on a child for wrongdoing.

TT. "Residential treatment facility" means a facility that provides 24-hour therapeutic care to children and adolescents and is licensed for no more than 16 children/adolescents. This includes residential treatment centers, group homes, residential substance abuse facilities and other similar facilities.

UU. "Residential treatment" means 24-hour structured therapeutic group living for children and/or adolescents with severe behavioral, neurobiological, or emotional problems when documented history and clinical opinion establish that the needs of the child cannot be met in a less restrictive environment. Children admitted to residential treatment services are either in need of either active psychotherapeutic intervention or require a 24-hour therapeutic group living setting to meet their developmental, social and emotional needs.

VV. "Reduction in licensed capacity" means the reduction of licensed capacity of a residential [~~or day treatment~~] facility until deficiencies noted by the LCA are corrected.

WW. "Restraint" means a mechanical device used to involuntarily

physically restrict a clients freedom of movement, performance of physical activity, or have normal access to his or her body. It is limited to those situations with adequate, appropriate clinical justification and requires policies and procedures with clear criteria. Exception: This standard does not apply to therapeutic holding or comforting of children or to a timeout when the individual to whom it is applied is physically prevented from leaving a room for 15 minutes or less and when its use is consistent with behavior-management protocol.

XX. "Restricted admissions or provision of services" means the restriction of an agency from providing designated services and/or from accepting any new clients until specified deficiencies noted by the LCA are corrected.

YY. "Revocation" means the act of making a license null and void through its cancellation.

ZZ. "Seclusion" means the involuntary confinement of a client alone in a room where the individual is physically prevented from leaving and is limited to those situations with adequate, appropriate clinical justification, requiring policies and procedures with clear criteria.

AAA. "Seclusion room" means a room designed and utilized to isolate and contain a child who poses an imminent threat of physical harm to self or others or serious disruption to the environment.

BBB. "Self-administration of medications" means assistance and supervision of the child in the self-administration of a drug, provided that the medication is in the original container, with a proper label and directions. A staff member may hold the container for the child, assist with opening of the container, and assist the child in self-administering the medication.

CCC. "Serious incident" means an environmental hazard, arrest or detention, or situation that requires emergency services. Environmental hazards include unsafe conditions which create an immediate threat to life or safety, including, but not limited, to fire or contagious diseases requiring quarantine.

DDD. "Staff member" means any person other than the owner, operator or director of a facility who has contact with children in care and includes volunteers, full-time and part-time employees.

EEE. "Stay of sanction" means the department's receipt of the facility's notice of appeal will operate as a stay of suspension, revocation, or sanction. In case of an emergency suspension or emergency sanction neither the immediate five-day hearing nor the facility's request for a later hearing will stay the department's action.

FFF. "Substantial compliance" means that a facility that is found to

be without deficiencies, or with minor and few non-health and safety deficiencies, and is able to receive annual licensure.

GGG. "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

HHH. "Supervision" means the monitoring of the children's whereabouts and activities by the facility staff in order to ensure health, safety, and welfare.

III. "Survey" means an entry, by the LCA, into a facility licensed, or required to be licensed, pursuant to these regulations, for examination of the premises and records, and interviewing of staff and children.

JJJ. "Suspension" means a temporary cancellation of a license pending an appeal hearing and/or correction of deficiencies. During a period of suspension, the medicaid provider agreement is not in effect.

KKK. "Treatment plan" means a plan, based on data gathered during the assessment, that identifies the treatment needs of the client being served, lists the strategies to meet those needs, documents measurable treatment goals and objectives, outlines the criteria and time frame for terminating specified interventions, and, when reviewed, documents the clients progress in meeting the specified goals and objectives.

LLL. "U/L approved" means approved for safety by the national underwriters laboratory.

MMM. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

NNN. "Variance" means an act taken, at the sole discretion of the LCA, to refrain from pressing or enforcing compliance with a portion(s) of these regulations for an unspecified period of time for facilities which were in existence at the time these regulations were promulgated, new facilities in existing construction, or for new services when the granting of a variance will not create a danger to the health and welfare of children and staff of a facility.

OOO. "Waive/waiver" means to refrain from pressing or enforcing compliance with a portion(s) of these regulations for a limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

[1/1/99; 7.20.12.7 NMAC - Rn & A, 7 NMAC 20.12.7, 02/28/05]

**7.20.12.8 RELATED REGULATIONS, LAWS AND CODES:** These regulations supplement the following regulations, laws, codes and any future amendments to such regulations or superseding regulations.

A. New Mexico health department regulations governing the Control of Disease and Conditions of Public Health Significance [~~effective December 20, 1979~~] 7.4.3 NMAC, effective August 15, 2003.

B. [~~New Mexico health department regulations HED 78 5 1, Governing Promulgation of Regulations, effective May 19, 1978.~~] [RESERVED]

C. [~~New Mexico health department regulations 7 NMAC 4.4, Governing Control of Communicable Disease in Health Facility Personnel, effective December 20, 1979.~~] [RESERVED]

D. New Mexico health department regulations 7 NMAC 1.3, [~~Governing Public Access to Information in the Departments Records, effective November 21, 1978~~] , Health Records, effective October 31, 1996.

E. New Mexico health department 7 NMAC 26.6 [~~Program Standards for Developmental Disabilities Community Agencies, effective August 9, 1983~~] Requirements for Developmental Disabilities Community Programs, effective January 15, 1997.

F. New Mexico health department [~~7 NMAC 32.4 Program Standards for Community Mental Health Agencies, effective September 2, 1983~~] 7 NMAC 20.2, Comprehensive Behavioral Health Standards, effective January 1, 2000.

G. New Mexico health department [~~7 NMAC 32.4 Program Standards for Alcohol/Drug Abuse for Behavioral Health Services Agencies, effective August 8, 1983~~] 7 NMAC 20.2, Comprehensive Behavioral Health Standards, effective January 1, 2000.

H. New Mexico health department regulations 7 NMAC 1.7 [~~Governing Licensing Fees for Health Facilities, effective November 20, 1985~~] Health Facility Licensure Fees and Procedures, effective October 31, 1996.

I. New Mexico health department regulations 7 NMAC 1.2 [~~Governing Health Facilities Licensing and Certification Adjudicatory Hearing Procedures, effective August 1, 1986~~] Adjudicatory Hearings, effective February 1, 1996.

J. New Mexico health department regulations [~~HED 85 6 (HSD) Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, effective August 30, 1985~~] 8.8.3 NMAC, Governing Background Records Checks and Employment History Verification, effective October 30, 2003.

K. New Mexico health department [~~7 NMAC 6.1 Food Service Regulations, effective November 14, 1985~~] 7.6.2 NMAC, Food Service and Food

Processing, effective August 12, 2000.

L. New Mexico drug laws and board of pharmacy regulations, [~~effective May 22, 1985~~] 16.19.1 NMAC through 16.19.29 NMAC.

M. The latest edition adopted by the New Mexico state fire board of the National Fire Protection Association Life Safety Code Handbook 101, June 9, 1997.

N. The latest edition of the building code adopted by the New Mexico construction industries division of the Uniform Building Code enacted by the international conference of building officials.

O. New Mexico health department regulations [~~Governing Immunizations Required for School Attendance (also referred to as Compulsory Immunization Regulations) 7 NMAC 5.2, effective December 27, 1971, as amended~~] 7.5.2 NMAC, Immunization Requirement, effective September 1, 2000.

P. Health facility licensure fees and procedures, [~~children, youth and families department~~] department of health, 7 NMAC 1.7, effective October 31, 1996.

Q. [~~Child and Adolescent Mental Health Certification Standards, children, youth and families department Title 7, Chapter 20, Part 11~~] 7.20.11 NMAC, Certification Requirements for Child and Adolescent Mental Health Services, effective March 29, 2002.

R. Health facility sanctions and civil monetary penalties 7 NMAC 1.8, effective October 31, 1996.

S. [~~Adjudicatory Hearings, Regulation Number HED-86-9 (HSD)~~] 7 NMAC 1.2, Adjudicatory Hearings, effective February 1, 1996.

T. New Mexico Childrens Code NMSA 32A-1-1 et. seq. [~~1997~~] (2004). [1/1/99; 7.20.12.8 NMAC - Rn & A, 7 NMAC 20.12.8, 02/28/05]

#### 7.20.12.10 ~~LICENSING CATEGORIES:~~

~~A. Residential treatment facility: Any facility which provides 24-hour therapeutic care to children and adolescents and is licensed for no more than 16 beds. These include residential treatment centers, group homes, residential substance abuse facilities and other similar facilities.~~

~~B. Day treatment facility: Any facility which provides day treatment services, as defined by these regulations and certified by the department. Day treatment services provided in a school setting do not require licensure.~~ [RESERVED]

[1/1/99; 7.20.12.10 NMAC - Rn, 7 NMAC 20.12.10, 2/28/05; Repealed, 02/28/05]

#### 7.20.12.11 INITIAL LICEN-

**SURE PROCEDURES:** To apply for a license for a facility pursuant to these regulations the following procedures must be followed by the applicant.

A. These regulations must be used as a reference for design of a new building, renovation or addition to an existing building. The applicant of the proposed facility must advise the LCA of its intent to open a facility pursuant to these regulations.

B. Floor and site plans: All applications for initial licensure must be accompanied by a set of floor plans for the facility.

(1) Floor and site plans are of professional quality, on substantial paper of at least 18" x 24", and are drawn to an accurate scale of 1/4" to 1'.

(2) Floor plans include:

(a) proposed use of each room, e.g., staff's bedroom, staff's toilet, children's bedrooms (include number of children intended to sleep in each room), living room, kitchen, laundry, etc.;

(b) interior dimensions of all rooms;

(c) one building or wall section showing exterior and interior wall construction; section includes floor, wall, ceiling, and the finishes, e.g., carpet, tile, gypsum board with paint, wood paneling;

(d) door types, swing, and sizes of all doors, e.g., solid core, hollow core, 3'0" x 6'8" x 1 3/4" thick;

(e) air conditioning, if applicable;

(f) all sinks, tubs, showers and toilets;

(g) windows including size, type, sill height, and openable area;

(h) any level changes within the building, e.g., sunken living room, ramps, steps;

(i) a site/plot plan must be provided to indicate [~~determine~~] surrounding conditions including all steps, ramps, parking, walks and any permanent structures;

(j) indicate if the building is new construction, remodeled or alteration addition; if remodeled or an addition, the plans indicate existing and new construction plans.

C. Floor and site plans are reviewed by the LCA for compliance with current building and fire codes, and comments will be sent to the applicant specifying any needed changes or requests for any additional information.

D. Licensure phase: Prior to completion of construction, renovation or addition to an existing building the applicant must submit to the LCA the following.

(1) The application form, which is obtained from LCA, completed by typing or printing all the information requested, and dated, signed and notarized by the applicant.

(2) Fees: All applications for

licensure are accompanied by the required fee.

(a) Current fee schedules are available from the LCA.

(b) Fee payments must be in the form of a certified check, money order, personal, or business check is made payable to the state of New Mexico.

(c) Fee payments are non-refundable.

(3) Zoning and building approval:

(a) The agency provides an initial application accompanied with the written approval from the appropriate authority, such as city, county, or municipality.

(b) The agency provides an initial application accompanied with original written building approval (certificate of occupancy), from the appropriate authority, city, county, or municipality.

(4) Fire authority approval: All initial applications are accompanied with written approval from the fire authority having jurisdiction.

(5) New Mexico environment department approval:

(a) For private water supply, if applicable.

(b) For private waste or sewage disposal, if applicable.

(6) Copy of appropriate drug permit: Issued by the state board of pharmacy, if applicable.

E. Initial survey: Upon receipt of a properly completed application including all supporting documentation as outlined above, an initial survey of the proposed facility must be scheduled by the LCA.

F. Issuance of license: Upon completion of the initial survey and determination that the facility is in substantial or partial compliance with these regulations, the LCA may issue a license.

[1/1/99; 7.20.12.11 NMAC - Rn & A, 7 NMAC 20.12.11, 02/28/05]

#### 7.20.12.21 CURRENTLY LICENSED FACILITIES:

A. Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements, may, at the discretion of the LCA, continue to be licensed as a residential [~~or day treatment~~] facility.

B. Variances may be granted for those building requirements the facility cannot meet, provided:

(1) the variances granted will not create a hazard to the health, safety and welfare of the clients and staff or otherwise deny access to any disabled person who is otherwise qualified to receive services from the facility; and

(2) the building requirements for

which variances are granted cannot be corrected without an unreasonable expense to the facility; and

(3) variances are not in conflict with existing building and fire codes; and

(4) variances granted are recorded and made a permanent part of the facility file; and

(5) variances granted continue to be in effect as long as the facility continues to provide services pursuant to these regulations and meet the criteria of Subsection A of 7.20.12.21 NMAC above; these variances are not transferred to a different facility or transferred/assigned upon the sale of the facility.

[1/1/99; 7.20.12.21 NMAC - Rn & A, 7 NMAC 20.12.21, 02/28/05]

~~7.20.12.84 APPROVAL SIGNATURE:~~

~~Department Secretary or Designee  
December 14, 1998~~

~~Date  
Deborah Hartz, Secretary Children, Youth  
and Families Department]~~

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

16.5.15 NMAC, Dentists, Anesthesia Administration (filed May 15, 2002) is hereby repealed effective March 17, 2005.

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)  
PART 9 NON-DENTIST OWNERS**

**16.5.9.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care. [16.5.9.1 NMAC - N, 03-06-05]

**16.5.9.2 SCOPE:** The provisions of 16.5.9 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who wishes to own a practice and is not a dentist or collaborative practice dental hygienist licensed in New Mexico. [16.5.9.2 NMAC - N, 03-06-05]

**16.5.9.3 STATUTORY AUTHORITY:** NMSA 1978 Section 61-5A-1 through Section 61-5A-30 (1996 Repl. Pamp.). [16.5.9.3 NMAC - N, 03-06-05]

**16.5.9.4 DURATION:** Permanent. [16.5.9.4 NMAC - N, 03-06-05]

**16.5.9.5 EFFECTIVE DATE:** March 6, 2005, unless a later date is cited at the end of a section. [16.5.9.5 NMAC - N, 03-06-05]

**16.5.9.6 OBJECTIVE:** To set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16, and to all persons and entities affected or regulated by Chapter 5 of Title 16. [16.5.9.6 NMAC - N, 03-06-05]

**16.5.9.7 DEFINITIONS:** "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services. Under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

- A. government agencies providing dental services within affiliated facilities;
  - B. government agencies engaged in providing public health measures to prevent dental disease;
  - C. spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;
  - D. accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;
  - E. dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
  - F. federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
  - G. nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and
  - H. hospitals licensed by the department of health.
- [16.5.9.7 NMAC - N, 03-06-05]

**16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER:** To employ and contract for dental services, a non-dentist owner must apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board. Unless licensed as a dentist or non-dentist owner an individual or corpo-

rate entity shall not:

- A. employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or
- B. enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico; or
- C. the non-dentist owner licensee must follow the provisions of 16.5.16 NMAC. Failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as outlined in the Dental Health Care Act 16.5.15.1 through 16.5.16.11 NMSA. [16.5.9.8 NMAC - N, 03-06-05]

**16.5.9.9 RESPONSIBILITY OF DENTISTS AND DENTAL HYGIENISTS EMPLOYED BY A NON-DENTIST OWNER:** Dentists and dental hygienists employed by a non-dentist owner must report such employment in their initial and renewal applications, including the name, address and phone number of the non-dentist owner or corporation, and the name of their immediate manager or supervisor. [16.5.9.9 NMAC - N, 03-06-05]

**16.5.9.10 DOCUMENTATION REQUIREMENTS:** Each applicant for a non-dentist owner license must submit a completed application obtained from the board office with the required fees and the following documentation:

- A. Completed application signed and notarized with a passport quality photo taken within 6 months of application. Applications are valid for one (1) year from the date of receipt;
- B. The board requires a level II PBIS report. The application for this service will be included application materials. The applicant will apply and pay fees directly to PBIS to initiate this service. If the applicant has or has had a professional license in dentistry or another related health care profession the PBIS report with do a search of those appropriate databases for past disciplinary action as well as a criminal background check. Verification of a professional license, active or inactive, in each state that license is or has been held must be sent directly to the board office from the other state boards. Verification must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.
- C. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the Act, The Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or

if it is determined that the applicant poses a threat to the welfare of the public.

[16.5.9.10 NMAC - N, 03-06-05]

**16.5.9.11 LICENSURE PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Initial license: Non-dentist owner licenses are issued for a period not to exceed three years. The licensee will renew the license on a triennial bases.

B. Posting: The license and subsequent renewal certificates must be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

C. License: This license is non-transferable.

D. Renewal: After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees must be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensees responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration.

E. Late renewals: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, must be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics must cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

[16.5.9.11 NMAC - N, 03-06-05]

**History of 16.5.9 NMAC:** [RESERVED]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 15 DENTISTS, ANESTHESIA ADMINISTRATION

**16.5.15.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care. [16.5.15.1 NMAC - Rp, 16.5.15.1 NMAC, 3-17-05]

**16.5.15.2 SCOPE:** The provisions of Part 15 of Chapter 5 apply to all dentists who hold or who are applying for certification to administer anesthesia or analgesia.

[16.5.15.2 NMAC - Rp, 16.5.15.2 NMAC, 3-17-05]

**16.5.15.3 STATUTORY AUTHORITY:** Part 15 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, NMSA 1978, 61-5A-22 (1996 Repl. Pamp.).

[16.5.15.3 NMAC - Rp, 16.5.15.3 NMAC, 3-17-05]

**16.5.15.4 DURATION:** Permanent.

[16.5.15.4 NMAC - Rp, 16.5.15.4 NMAC, 3-17-05]

**16.5.15.5 EFFECTIVE DATE:** March 17, 2005, unless a later date is cited at the end of a section.

[16.5.15.5 NMAC - Rp, 16.5.15.5 NMAC, 3-17-05]

**16.5.15.6 OBJECTIVE:**

A. To establish guidelines and procedures for the regulation of dentists who administer nitrous oxide inhalation analgesia, conscious sedation, deep sedation, or general anesthesia in an office located in New Mexico.

B. These guidelines are not meant to regulate the existing precedent where New Mexico licensed dentists may have hospital privileges to provide anesthesia/sedation to dental patients in the operating room or emergency room based on their training, education and policy of the hospital.

[16.5.15.6 NMAC - Rp, 16.5.15.6 NMAC, 3-17-05]

**16.5.15.7 DEFINITIONS:**

A. "Conscious sedation" means a minimally depressed level of consciousness that retains the patients ability to

independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation.

B. "Deep sedation" means a induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof.

C. "General anesthesia" means a induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

D. "Monitor" means to watch or check on.

E. "Nitrous oxide inhalation analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

F. "Prescribed administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization.

G. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation of general anesthesia.

H. "Anxiolysis" the dementation or elimination or reduction of anxiety.

I. "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa. (ie oral, rectal, sublingual)

[16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 3-17-05]

**16.5.15.8 REQUIREMENT TO BE REGISTERED OR CERTIFIED:**

Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the board. Dentists who administer conscious sedation, deep sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit. [16.5.15.8 NMAC - Rp, 16.5.15.8 NMAC, 3-17-05]

**16.5.15.9 ANESTHESIA COMMITTEE:**

A. Appointment: All members of the anesthesia committee serve at the pleasure of the board. The board chair will appoint members to serve on the anesthesia committee for 5 year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental association, any local dental society, or the anesthesia committee.

B. Terms: Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

C. Reimbursement: The anesthesia committee examiners shall be paid one hundred dollars, in addition to mileage and per diem for exams outside of the community where they practice dentistry, upon the completion of each office anesthesia examination and evaluation.

D. Committee composition: The anesthesia committee shall consist of licensed dentists, including at least 1 board certified oral and maxillofacial surgeon, 1 general dentist, 1 dentist board member, 1 dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

E. Duties: Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; Inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the

board in the investigation of complaints concerning the administration of anesthesia or analgesia.

[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 3-17-05]

**16.5.15.10 ADMINISTRATION OF NITROUS OXIDE OR ENTERAL ANXIOLYSIS ANALGESIA:****A. NITROUS OXIDE:**

(1) Registration required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon initial application or upon request, and contain information to verify the dentist, facility, and staff meet the requirements specified in Paragraph (2) of Subsection A of 16.5.15.10 NMAC. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

(2) Requirements for registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(a) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training;

(b) have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(c) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(d) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist;

(e) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate; and

(f) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

**B. ENTERAL ANXIOLYSIS:**

(1) Each licensed dentist who holds a nonrestricted DEA license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:

(a) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;

(b) enteral shall be administered

only in the office setting and patient shall be monitored;

(c) have adequate equipment to monitor patients vital signs;

(d) each dentist and auxiliary personnel who monitors shall have current basic life certification;

(e) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(f) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;

(g) permit holder shall verify the patient has other means of transportation to be released from the office;

(h) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist and does not produce oral conscious sedation and does not require the dentist to hold a conscious sedation I permit.

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3-17-05]

**16.5.15.11 ADMINISTRATION OF CONSCIOUS AND DEEP SEDATION:**

The following three categories of anesthesia shall not be administered in a dental facility unless the licensed dentist has obtained a permit from the board. The conscious sedation II and deep sedation/general anesthesia permits are issued to the dentist for a specific practice location, unless the anesthesia provider holds an anesthesia permit at large. Administration without a permit is grounds for disciplinary action against the licensee.

A. Conscious sedation I permit allows a licensed dentist to use only oral or rectal medications or combined inhalation-enteral conscious sedation to obtain conscious sedation on an outpatient basis for dental patients.

B. Conscious sedation II permit allows a licensed dentist to use par-enteral injection to obtain conscious sedation on an outpatient basis for dental patients.

C. Deep sedation/general anesthesia permit allows a licensed dentist to use deep sedation or general anesthesia on an outpatient basis for dental patients.

D. Permit levels: The level of permits in order of increasing complexity are conscious sedation I, conscious sedation II, and deep sedation/general anesthesia. When a permit is issued for one level, all levels of lesser complexity are considered within the scope of that permit.

[16.5.15.11 NMAC - Rp, 16.5.15.11



NMAC, 3-17-05]

**16.5.15.12 PERMIT REQUIREMENTS:**

**A. Conscious sedation I:**

(1) To administer enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) the dentist must satisfy one of the following criteria:

(a) must have completed training to the level of competency in enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) consistent with the that prescribed in part I and part III of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation ) consistent with that prescribed in part II of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(c) current permit holders would be grand-fathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation, staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies.

(3) The dentist and auxiliary clinical personnel have current basic life support certification.

(4) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed.

(5) The following rules shall apply to the administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) in the dental office.

(a) Administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care

of all anesthetists used.

(b) A dentist administering enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) must document current successful completion of a basic life support (BLS) course.

(c) A dental facility shall be registered with the board as a conscious sedation I facility.

(d) The operating dentist must ensure that the anesthesia permit holder/provider provides for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of enteral and/or combined conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

**B. Conscious sedation II:**

(1) To administer parenteral conscious sedation the dentist must satisfy one of the following criteria:

(a) completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirements described in part III of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. general practice residency), which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee.

(7) The following requirements

shall apply to the administration of parenteral conscious sedation in the dental office.

(a) Administration of parenteral conscious sedation by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering parenteral conscious sedation must document current successful completion of:

(i) a basic life support (BLS) course;

(ii) advanced cardiac life support (ACLS) or an appropriate equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the board as a conscious sedation II facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

**C. Deep sedation/general anesthesia:**

(1) To administer deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(a) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in part II of the current ADA guidelines for teaching and comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. oral and maxillofacial surgery), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a prop-

erly equipped facility for the administration of deep sedation or general anesthesia in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee.

(7) The following rules shall apply to the administration of deep sedation/general anesthesia in the dental office.

(a) Administration of deep sedation/general anesthesia by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering deep sedation/general anesthesia must document current, successful completion of an advanced cardiac life support (ACLS) course, or an equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, physician or CRNA anesthetists shall be registered with the board as a deep sedation/general anesthesia facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of deep sedation and general anesthesia, including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. Advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate phar-

macologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

D. Anesthesia permit at large: This permit allows the holder to provide anesthesia services to patients in dental offices on an out-patient basis. The holder of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or anesthesia in the dental office.

(1) To hold an "anesthesia permit at large" a dentist must meet the requirements of Subsection C of 16.5.12 NMAC deep sedation/general anesthesia.

(2) The holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public.

(3) The holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia.

(4) The permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in Subsection C of 16.5.12 NMAC, Deep Sedation/General Anesthesia.

[16.5.15.12 NMAC - Rp, 16.5.15.12 NMAC, 3-17-05]

#### 16.5.15.13 REPORTING ADVERSE INCIDENTS:

Each licensed dentist must submit a written report to the board within a period of thirty days of any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia. The report is required regardless of the need for hospitalization after the incident and shall include the following:

A. description of the dental procedure;

B. description of the pre-operative physical condition of the patient;

C. list of drugs and dosage administered and route of administration;

D. description in detail of techniques utilized in administering the drugs utilized;

E. the names of auxiliary personnel in attendance; and

F. description of the adverse occurrence to include the following: detailed description of symptoms, of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patient's condition on termination of treatment; and, copies of

the patient record, medical history and operative report.

[16.5.15.13 NMAC - Rp, 16.5.15.13 NMAC, 3-17-05]

#### 16.5.15.14 FAILURE TO REPORT:

Failure to comply with the reporting requirements of 16.5.15.13 NMAC of this part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the board may take any actions enumerated in 16.5.16 NMAC, as well as revoke the anesthesia permit.

[16.5.15.14 NMAC - Rp, 16.5.15.14 NMAC, 3-17-05]

#### 16.5.15.15 PERMIT APPLICATION PROCEDURE:

A. Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, is forwarded to the anesthesia committee for evaluation.

B. Temporary permits: The anesthesia committee evaluates the application and identifies any additional information required. If the application appears to be in order, the anesthesia committee may recommend the board issue a temporary permit. Temporary permits allow time to complete processing of the application, administer the examination and inspect the facility.

(1) The temporary permit shall not be valid for more than 12 months.

(2) The permit application fee includes the cost of the temporary permit and the initial permit.

(3) A temporary permit shall be revoked by the board on the following grounds:

(a) the applicant fails the anesthesia committee's examination;

(b) the applicant is found to be practicing outside the recognized standard of care in regard to administration of anesthesia;

(c) or the applicant fails to cooperate with the timely scheduling of the examination and facility inspection.

C. Examination/evaluation: The anesthesia committee will schedule the examination and facility inspection, when required, with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeons office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

D. Final approval: After final evaluation of the application and examination results, the anesthesia committee recommends final action on the applica-

tion to the board. The board makes the final determination on approval of the permit. If an application is denied for failure to meet the requirements of 16.5.15.10 NMAC of this part, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.15 NMAC - Rp, 16.5.15.15 NMAC, 3-17-05]

#### **16.5.15.16 PERMIT EXPIRATION AND RENEWAL:**

A. Expiration: Anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued.

B. Renewal: Renewal applications will be sent to each dentist prior to the expiration date of the anesthesia permit. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will schedule a re-examination for holders of conscious sedation II and general anesthesia permits.

C. New facility evaluation: A dentist who holds a conscious sedation II or general anesthesia permit and who relocates his practice requires a new permit based on re-examination. The permit fee will be charged and the new permit will be issued in accordance with Subsection B or C of 16.5.15.12 NMAC.

D. Re-examination/evaluation: The board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

E. Permit Expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

[16.5.15.16 NMAC - Rp, 16.5.15.16 NMAC, 3-17-05]

#### **HISTORY OF 16.5.15 NMAC:**

Pre NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Article XIV, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General

Anesthesia, filed 09-04-86; BOD Rule 13, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 02-09-89; BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95.

**History of Repealed Material:** 85-1, Repealer, filed 10-29-85.

BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95, **repealed** effective 05-31-2002.

#### **Other History:**

BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07-31-95; **renumbered, reformatted and replaced** by 16 NMAC 5.15, Dentists, Analgesia Administration, filed 09-17-96; 16 NMAC 5.15, Dentists, Analgesia Administration, filed 09-17-96, **replaced** by 16.5.15 NMAC, Dentists, Analgesia Administration, effective 05-31-2002.

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## **NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**This is an amendment to 16.5.1 NMAC, Sections 7, 12, 17 and 19, effective 03-06-05.**

#### **16.5.1.7 DEFINITIONS:**

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

C. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

D. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

E. "Jurisprudence exam" means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

F. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

G. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

H. "Supervising dentist" means a dentist that maintains the records of

a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

K. "CRDTS" means the central regional dental testing service, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicants competence to practice in New Mexico.

L. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

M. PBIS is the professional background information services, which compiles background information regarding an applicant from multiple sources.

N. Non-dentist owner is an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05]

#### **16.5.1.12 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. Upon notification of the defendant, the notice of contemplated action, or the pre notice of contemplated action settlement agreed upon prior to the issuance of an notice of contemplated action and the information contained in the complaint file becomes a public record and subject to disclosure. With the exemption of voluntarily admission to a monitored treatment program shall not be public record. (Refer to 61-5A-25, NMSA 1978.)

[4-17-92...5-31-95; 16.5.1.12 NMAC - Rn, 16 NMAC 5.1.12, 12-14-00; A, 03-06-05]

#### **16.5.1.17 BOARD OF DENTAL HEALTH CARE:**

A. Officers: The board shall elect a chairman, vice-chairman, and secretary-treasurer at the first regularly

scheduled meeting in each calendar year.

B. Committee Members: ~~[One]~~Two dentist ~~[member]~~ members and ~~[one]~~two public ~~[member]~~ members from the board shall be elected to serve as members of the dental hygienists committee at the first regularly scheduled meeting in each calendar year. [3-14-73...5-31-95; 16.5.1.17 NMAC - Rn, 16 NMAC 5.1.17, 12-14-00; A, 03-06-05]

**16.5.1.19 BOARD AND COMMITTEE MEETINGS:** The board and committee shall meet at least four times a year, regular meetings shall not be more than 120 days apart, and only two of those meetings may be public rules hearings.

[16.5.1.19 NMAC - N, 03-06-05]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.5 NMAC, Section 8 effective 03-06-05.

### 16.5.5.8 FEES:

A. All fees are non-refundable.

B. Application for licensure by examination fee is \$500, which includes the licensing period.

C. Application for licensure by credential fee is \$750, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.

E. Triennial renewal fee for all dental licensees is \$450.

F. ~~[Repealed]~~ Triennial renewal fee for inactive license is \$90.

G. Temporary license fees:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$200;

(3) twelve month license, application fee of \$100, license fee of \$300.

H. Anesthesia permit fees:

(1) Nitrous oxide permit fee is \$25;

(2) Conscious sedation I permit fee is \$25;

(3) Conscious sedation II permit fee is \$300;

(4) Deep sedation and general anesthesia permit fee is \$300.

I. Late fee for renewal applications received but not complete, or not received or postmarked by June 30 is \$100.

J. Reinstatement fee is \$400.

K. Application for licensure for inactive status is \$50.

~~[K-]~~ L. Administrative and duplication fees.

(1) Duplicate license fee is \$25;

(2) Multiple copies of the statute or rules are \$10 each;

(3) Copy fees are \$0.50 per page, with a minimum charge of \$5.00;

(5) List of current dental licensees is \$250. An annual list of current licensees is available to the professional association upon request at no cost; and

(6) Mailing labels of current dental licensees is \$300.

~~[L-]~~ M. Impaired fee: In addition to the license renewal fee, each dentist subject to renewal will be assessed an amount not to exceed \$40 per triennial renewal period.

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02, A, 03-06-05]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.12 NMAC, Sections 6, 8, 9, 10, and 11 effective 03-06-05. The name to Part 12 has also been amended.

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 12 DENTISTS, RETIREMENT, INACTIVE AND REINSTATEMENT

**16.5.12.6 OBJECTIVE:** To establish the requirements and procedures to place an active dental license in retirement status, inactive status or to reinstate the license to active status.

[9-30-96; 16.5.12.6 NMAC - Rn, 16 NMAC 5.12.6, 12-14-00, A, 03-06-05]

**16.5.12.8 RETIREMENT:** A license to practice dentistry may be placed in retirement status one time through the following procedures:

A. The request for retirement status must be made in writing to the board office prior to the expiration of the current license. Dentists with an active practice located in New Mexico must include the following information:

(1) the actual date of retirement;

(2) proof of written notification of approaching retirement to all patients currently under active treatment;

(3) the location where all active dental treatment records will be maintained

for a minimum of two years. Active treatment records are records of patients treated in the two years previous to the date of retirement. The notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records;

B. All dentists requesting retirement status may include a list of any continuing education courses taken since the last license renewal, including documentation required in 16.5.10 NMAC; and

C. Board staff shall acknowledge receipt of the request for retirement status and at the next meeting of the board the request for retirement will be placed on the agenda. Upon board approval of retirement status the licensee will be exempt from payment of the triennial renewal fees during the period of retirement.

D. The board may deny a request for retirement status if there are any current or pending complaints or disciplinary actions against the licensee.

E. A licensee desiring to go from active to inactive must sign a waiver and stipulation provided by the board foregoing the three year retirement.

[3-14-73...5-31-95, 9-30-96; 16.5.12.8 NMAC - Rn, 16 NMAC 5.12.8, 12-14-00, A, 03-06-05]

**16.5.12.9 INACTIVE:** A license to practice dentistry may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. Dentists with an active practice located in New Mexico must include the following information:

(1) the actual date of inactivation request;

(2) proof of written notification of approaching inactive status to all patients currently under active treatment;

(3) the location where all active dental treatment records will be maintained for a minimum of two years; active treatment records are records of patients treated in the two years previous to the date of inactive status; the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

B. All dentists requesting inactive status may include a list of any continuing education courses taken since the last license renewal, including documentation required in 16.5.10 NMAC inactive status and at the next meeting of the board the request for inactivation will be placed on the agenda.

C. The board may deny a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.  
[3-14-73...5-31-95, 12-15-97; 16.5.12.9 NMAC - Rn & A, 16 NMAC 5.12.9, 12-14-00; N, 03-06-05]

~~[16.5.12.9]~~ **16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS:** A licensee whose license has been placed in retirement status may request reinstatement of the retired license within ~~[five]~~ three years of the date of retirement as indicated in section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, ~~[a completed application]~~ and proof of the following continuing education courses:

(1) Twenty ~~[five]~~ hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement. At least twenty ~~[five]~~ of these hours must be in the twelve months previous to the request.

(2) proof of current CPR certification;

(3) proof of infection control course within the past twelve months; and

(4) sixty hours of continuing education required for the last triennial renewal cycle of active licensure. These hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) Drug enforcement administration (DEA), and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the

applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is requested after ~~[5]~~ three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05]

#### **16.5.12.11 REINSTATEMENT**

**FROM INACTIVE STATUS:** A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in Section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current CPR certification;

(3) proof of infection control course within the past twelve months;

(4) proof of medical emergency course during the past twelve months; and

(5) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licen-

sure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation and if the licensee does not apply for retirement status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico or six years if the licensee signs affidavit foregoing three years for retirement as defined in Subsection E of 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05]

## **NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**This is an amendment to 16.5.18 NMAC, Section 8 effective 03-06-05.**

### **16.5.18.8 FEES:**

A. All fees are non-refundable.

B. Application fee for licensure by examination is \$250, which includes the initial licensing period.

C. Application fee for licensure by credentials is \$300, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial renewal fees.

(1) Triennial renewal fee is \$225.

(2) Triennial renewal fee for inactive license is \$50.00.

~~(3)~~ (3) Late fee for renewal applications received but not complete, or not received or post-marked by June 30 is \$100.

~~(4)~~ (4) Impaired fee: In addition to the license renewal fee, each dental

hygienist subject to renewal may be assessed a fee not to exceed \$30 per triennial renewal period.

F. Fees for collaborative practice.

(1) Application for certification for collaborative practice fee is \$150.

(2) Renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal. The initial fee will be prorated at \$20 per full year of certification.

G. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for certification in local anesthesia fee.

(1) By examination - \$40.

(2) By credentials - \$100 for application and credential review.

I. Reinstatement fee is \$200.

J. Application for licensure for inactive status is \$50.00.

~~J.~~ K. Administrative fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copies cost \$0.50 per page, with a minimum charge of \$5.00;

(4) list of current dental hygiene licensees is \$180; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental hygiene licensees is \$230.

[3-14-73, 4-11-81, 3-7-88, 3-28-91, 5-31-95, 12-15-97, 8-16-99; 16.5.18.8 NMAC - Rn & A, 16 NMAC 5.18.8, 06-14-01; A, 9-30-02; A, 12-30-02; A, 03-06-05]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**This is an amendment to 16.5.20 NMAC, Section 8 effective 03-06-05.**

**16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE:**

Each ~~applicant~~ applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

B. completed fifteen hours of continuing education during the past year; these hours must meet the qualifica-

tions as defined in 16.5.1.15 NMAC;

C. passed the dental hygiene national board examination as defined in Section 61-5A-13.A., NMSA 1978;

D. passed the jurisprudence exam with a score of at least 75 percent;

E. holds a valid license obtained through a clinical examination in another state or territory of the United States;

F. the committee requires a level III background status report from PBIS; application for this service will be included with other application materials; the applicant will apply and pay fees directly to PBIS to initiate this service;

G. ~~[Repealed]~~ all licenses held by the applicant must have been in good standing for two years prior to application;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules. [3-28-91 . . . 5-31-95, 9-30-96, 8-16-99; 16.5.20.8 NMAC - Rn, & A, 16 NMAC 5.20.8, 06-14-01; A, 03-06-05]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**This is an amendment to 16.5.25 NMAC, Sections 6, 8, 9, 10, and 11 effective 03-06-05. The name to Part 25 has also been amended.**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)  
PART 25 DENTAL HYGIENISTS, RETIREMENT, INACTIVE AND REINSTATEMENT**

**16.5.25.6 OBJECTIVE:** To establish the requirements and procedures to place an active dental hygiene license in retirement status, inactive status or to reinstate the license to active status. [9-30-96; 16.5.25.6 NMAC - Rn, 16 NMAC 5.25.6, 12-14-00; A, 03-06-05]

**16.5.25.8 RETIREMENT:** A license to practice dental hygiene may be placed in retirement status one time through the following procedures.

A. The request for retirement status must be made in writing to the board office prior to the expiration of the current license. The written request must include the following information:

(1) the actual date of retirement; and

(2) a list of any continuing education courses taken since the last active and/or inactive license renewal, including documentation required in Section 16.5.1.15 NMAC.

B. Board staff shall acknowledge receipt of the request for retirement status and at the next meeting of the committee the request for retirement will be placed on the agenda. Upon committee recommendation, and board approval of retirement status the licensee will be exempt from payment of the triennial renewal fees during the period of retirement.

C. The committee may recommend denial of a request for retirement status if there are any current or pending complaints or disciplinary actions against the licensee.

D. A licensee desiring to go from active to inactive must sign a waiver and stipulation provided by the board foregoing the three year retirement. [3-14-73...3-16-94, 5-31-95, 9-30-96; 16.5.25.8 NMAC - Rn, 16 NMAC 5.25.8, 12-14-00; A, 03-06-05]

**16.5.25.9 INACTIVE:** A license to practice dental hygiene may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. The written request must include the following information:

(1) the actual date of inactivation request; and

(2) a list of any continuing education courses taken since the last license renewal, including documentation required in Section 16.5.1.15 NMAC.

B. Board staff shall acknowledge receipt of application for inactive status and at the next meeting of the committee the request for inactivation will be placed on the agenda.

C. The committee may recommend denial of a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.

[3-14-73, 3-11-89, 5-31-95, 9-30-96, 1-1-99; 16.5.25.9 NMAC - Rn & A, 16 NMAC 5.25.9, 12-14-00; A, 12-30-02; N, 03-06-05]

~~16.5.25.9~~ **16.5.25.10 REINSTATEMENT FROM RETIREMENT STATUS:** A licensee whose license has been placed in retirement status may request reinstatement of the retired license within

~~five~~ three years of the date of retirement as indicated in Section 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses.

(1) There will be ~~15~~ 10 CE hours/year of retirement, up to ~~45~~ 30 hours, required for reinstatement.

(2) The requirements of the infection control hours and the CPR hours taken in the past twelve months may be included toward these required hours:

~~(2)~~(a) proof of infection control course within the past twelve months; and

~~(3)~~(b) proof of current CPR certification.

~~(4)~~(c) 45 hours of continuing education required for the last triennial renewal cycle of active licensure. These hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period~~;~~ and.

~~(5)~~(3) Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification must be sent directly to the board office from the other state boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from retirement status, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of a retired license is requested ~~after 5~~ within three years of retirement and if the licensee does not apply for inactive status, application for a new license must be made by

examination or credentials in order to practice dental hygiene in New Mexico.

[16.5.25.10 NMAC - Rn, 03-06-05 & A, 03-06-05]

**16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS:** A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in Section 16.5.25 8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the CPR hours, and medical emergency course taken in the past twelve months may be included toward these required hours;

(2) proof of infection control course within the past twelve months; and

(3) proof of current CPR certification;

(4) proof of medical emergency course during the past twelve months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(6) verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application

is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within 9 years of inactive status, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired.

[16.5.25.11 NMAC - N, 03-06-05]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC, Sections 8 and 9 effective 03-06-05.

### 16.5.33.8 REQUIREMENTS:

A. A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico board of dental health care (NMBODHC).

B. A licensee shall not allow dental assistants to perform coronal polishing, topical fluoride application, or application of pit and fissure sealants under general supervision without certification by the NMBODHC.

C. Dental assistants who perform oral radiography under any level of supervision are required to be certified by the NMBODHC. Dental assistants who perform coronal polishing, application of topical fluoride or application of pit and fissure sealants under general supervision are required to be certified by the NMBODHC except those enrolled in a recognized dental assisting program and complying with the following:

(1) have completed the didactic portion of the radiography curriculum;

(2) are exposing radiograph with supervision of a licensee or an assistant certified in radiography; and

(3) if exposing x-rays on a human must have a written prescription from a dentist.

D. Expanded function certification offered by the NMBODHC is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the NMBODHC.

[9-7-84...9-30-96; 16.5.33.8 NMAC - Rn, 16 NMAC 5.33.8, 12-14-00; A, 3-29-02; A,

9-30-02; A, 12-30-02; A, 03-06-05]

### 16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:

#### A. Education Requirements:

(1) study by independent preparation or in a training course on radiation health and safety; and

(2) have assisted with and/or observed five (5) cases of full mouth intra oral radiographic series or five (5) extra oral radiographs if applying for a limited certificate.

#### B. Examination Requirements:

(1) Pass the NMBODHC or DANB written examination on radiation health and safety. Evidence of successful completion shall be posted in the dental office or dental assisting school and will serve as a training permit for ~~[+2]~~ six months from the date of examination.

(2) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the NMBODHC.

(3) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.

(4) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs, or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the NMBODHC office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(5) Pass the take home jurisprudence examination.

#### C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[9-7-84, 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.9 NMAC - Rn & A, 16 NMAC 5.33.9, 12-14-00; 16.3.33.9 NMAC - A, 2-28-02; A, 12-30-02; A, 03-06-05]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995), then recompiled on October 31, 2001 as 7.18.2 NMAC, is hereby repealed, effective March 30, 2005.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 7 HEALTH CHAPTER 18 SWIMMING POOLS PART 2 PUBLIC SWIMMING POOLS, SPAS AND BATHS: GENERAL PROVISIONS

#### 7.18.2.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[7.18.2.1 NMAC - Rp, 7 NMAC 18.1.I.100, 03/30/05]

#### 7.18.2.2 SCOPE: Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.

[7.18.2.2 NMAC - Rp, 7 NMAC 18.1.I.101, 03/30/05]

#### 7.18.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.2.3 NMAC - Rp, 7 NMAC 18.1.I.102, 03/30/05]

#### 7.18.2.4 DURATION: Permanent.

[7.18.2.4 NMAC - Rp, 7 NMAC 18.1.I.103, 03/30/05]

#### 7.18.2.5 EFFECTIVE DATE: 03/30/05, unless a later date is cited at the end of a section.

[7.18.2.5 NMAC - Rp, 7 NMAC 18.1.I.104, 03/30/05]

#### 7.18.2.6 OBJECTIVE: To protect public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.2.6 NMAC - Rp, 7 NMAC 18.1.I.105, 03/30/05]

#### 7.18.2.7 DEFINITIONS: As used in the public swimming pool rules, unless otherwise required by context, the following definitions apply.

##### A. Abbreviations.

(1) "ANSI" means American national standards institute.

(2) "ASHRAE" means American society of heating, refrigeration, and air conditioning engineers, inc.

(3) "CO" means certified operator.

(4) "CPSC" means consumer product safety commission (U.S.).

(5) "CT" means the concentration (C) of chlorine in ppm multiplied by time (T) in minutes.

(6) "DE" means diatomaceous earth.

(7) "DPD" means diethyl-p-phenylene diamine.

(8) "fps" means feet per second.

(9) "gpm" means gallons per minute.

(10) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.

(11) "NSF" means national sanitation foundation. The NSF standards referenced in the public swimming pool rules can be found at: [www.nsf.org](http://www.nsf.org).

(12) "ppm" means parts per million. See notation under mg/l for use.

(13) "TDH" means total dynamic head.

B. "Adjacent" means adjoining, contiguous, or both.

C. "Approved water supply" means water from a source, supply or system approved by the department that is properly located, protected, and operated. Water shall be easily accessible, adequate, and of safe and sanitary quality.

D. "Approved" means accepted in writing by the department.

E. "Architect" means any individual currently registered and in good standing under the "New Mexico Architectural Act".

F. "Athletic club" means a facility constructed to provide athletic or physical conditioning for its members, guests, or patrons. It includes, but is not limited to, racquetball clubs, health spas, fitness facilities, aerobics instruction facilities, etc.

G. "Attendant" is a person certified by the American red cross or an equivalent organization in first aid and CPR and otherwise trained to deal with safety hazards related to the particular attraction at which they are employed.

H. "Barrier", see enclosure.

I. "Bather" means any person using a public pool and adjoining deck area for the purpose of water sports, recreation, therapy or related activities.

J. "Bather load" means the number of persons in the pool or spa at



any given moment or during any stated period of time.

**K.** "Bathroom" means a structure containing dressing rooms, showers or toilet facilities for use with an adjacent public pool.

**L.** "Bathing attraction", see special-use pools.

**M.** "Booster pump system" means a system whereby one or more hydrotherapy jets are activated by the use of a pump, which is completely independent of the filtration and heating system of a spa. Also, a device used to provide hydraulic support for certain types of equipment such as cleaning systems, gas chlorinators and solar systems.

**N.** "Builder" means a person licensed in the state of New Mexico by the construction industries division, who, undertakes, or offers to undertake, or submits a bid, to construct, alter, repair, or improve any public pool, spa pool or bathhouse and the appurtenances thereto.

**O.** "Contaminant" means any physical, chemical, or biological substance present in the public pool water that may adversely affect the health or safety of the bather or the quality of the water.

**P.** "Certified operator" means a person who has complied with all applicable requirements for certification as a pool operator as specified in this regulation.

**Q.** "Circulation system" means an arrangement of mechanical equipment or components connected by piping to and from a public pool in a closed circuit. The function of a circulation system is to direct water from the public pool causing it to flow through the various system components for purposes of clarifying, heating, purifying and returning the water back to the original body of water.

**R.** "Circulation equipment" means the mechanical components that are a part of a public pool's circulation system. Circulation equipment may include, but is not limited to, categories of pumps, hair and lint strainers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices. The components have separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining pool, spa or bath water in a clear, sanitary, and desirable condition for use.

**S.** "Combined chlorine (CC)" means that portion of the total residual chlorine that is combined with ammonia or nitrogen compounds and will not react chemically with undesirable or pathogenic organisms.

**T.** "Cross connection" means an unprotected connection between the piping carrying potable water and the

piping or fixtures that carry other water or other substances.

**U.** "Deck" means the four foot area around the pool beginning at the pool coping.

**V.** "Deck level diving board" means a diving structure or device rising no more than 18 inches above design water level.

**W.** "Department" means the New Mexico environment department.

**X.** "Department representative" means the secretary of the environment department or his/her designees.

**Y.** "Design water level" is defined in one of the following ways:

(1) "skimmer system" means the design water level shall be at the midpoint of the normal operating range of the skimmer;

(2) "overflow system" means the design waterline shall be the top of the overflow rim of the gutter system.

**Z.** "Enclosure" means a wall, building, fence or any combination of these that control access to the pool proper. This barrier shall be of such construction as to provide protection for the safety of the public and to control access to the pool.

**AA.** "Engineer" means any individual currently registered and in good standing under the "New Mexico Engineering and Surveying Act".

**BB.** "Fill and draw public bath" means a public bath that shall be completely drained, cleaned, and disinfected prior to each use.

**CC.** "Flow-through public bath" means a public bath where there is circulation of water through the bath from some natural or developed source, and where the out flowing water is discharged to waste.

**DD.** "Flume" means an inclined channel for conveying water.

**EE.** "Free available chlorine (FAC)" means that portion of the total residual chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and will react chemically with undesirable or pathogenic organisms.

**FF.** "General-use pool" means any public pool other than a limited-use or special-use public pool. This includes, but is not limited to, general admission pools, recreation parks, colleges and universities, organizational camps, clubs or athletic clubs, recreation districts, city, municipal, county and state pools and pools operated by other political subdivisions.

**GG.** "Guest protection zone" means a defined and prescribed area of a public pool that a lifeguard is responsible for monitoring.

**HH.** "10/20 guest protection standard" means a nationally recognized

professional lifeguard system which enables and requires a lifeguard to consistently and completely scan his/her assigned guest protection zone within 10 seconds and, should the guest need assistance, reach the guest to begin managing an incident within 20 seconds.

**II.** "Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

**JJ.** "Horseplay" means any unsafe activity endangers the pool users or by-standers.

**KK.** "Impervious" means a material that does not allow another substance to pass through or penetrate.

**LL.** "Instructor" means a currently certified American red cross water safety instructor, or a person having equivalent certification as determined by the department.

**MM.** "Lifeguard" means a person certified as a lifeguard by the American red cross or by the national pool and waterpark association or an equivalent organization.

**NN.** "Lifesaving equipment" means emergency equipment and barrier protection.

**OO.** "Limited-use pool" means any public pool, located at, and operated in conjunction with a facility having six or more living or guest units, including:

(1) travelers accommodations, including hotels, motels, inns, bed and breakfast facilities;

(2) apartments, condominiums, mobile home parks;

(3) schools, boarding schools, group homes;

(4) businesses that employ ten or more people and own a swimming pool or spa that is for the exclusive use of employees and their guests; or

(5) home owners associations, if the pool is for the exclusive use of the association members and their guests only and no memberships are sold to outside persons.

**PP.** "New construction" means the activity of building or installing a public pool, and its component parts, where no such structure has previously existed or where previously existing pool or spa structures have been removed.

**QQ.** "Operating water level range" means the operating water level defined in one of the following ways according to the type of pool construction:

(1) "skimmer system" means one inch above to one inch below the midpoint of the operating range of the skimmer throat, or manufacturer's maximum stated operating range;

(2) "overflow gutter system" means the manufacturer's maximum stated

operating range above the design water level.

**RR.** "Operator", see certified operator.

**SS.** "Person" means:

(1) any person, individual, any public or private firm, partnership, corporation, company, society, association, and every managing body, officer, agent or employee thereof; or

(2) the state, local government, or any agency, institution or political subdivision thereof, including any governing or managing body.

**TT.** "Plummet" means a line perpendicular to water surface and extending vertically to a point located at the front end of the diving board and at the centerline directly in front of the diving board.

**UU.** "Pool slide" means a slide at a public pool, which has a length less than twenty feet, not including the platform, and a height of less than 12 feet.

**VV.** "Private pool" means:

(1) any pool or spa owned by no more than four individuals, either jointly, individually or through association, incorporation or otherwise, for the exclusive use of the occupants thereof and their personal guests; or

(2) a swimming pool owned by a business employing fewer than ten persons if the pool is for the exclusive use of employees and their guests.

**WW.** "Public bath" means any manmade structure and its appurtenances intended for public use, other than a plumbing fixture, containing an artificial body of water that is intended to be used individually or collectively for bathing or recreation, regardless of whether a fee is charged for its use. Public baths shall only be the fill-and-draw or flow-through type.

**XX.** "Public spa pool" means any manmade structure and its appurtenances containing an artificial body of water that is intended to be used individually or collectively by persons for bathing, relaxation, or therapeutic use and which is not a fill-and-draw or a flow-through public bath, regardless of whether a fee is charged for its use. It may include, but not be limited to, hydrotherapy jet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof, excluding fill-and-draw and flow-through public baths. Terminology for a spa includes, but is not limited to: therapeutic pool, rehabilitation pool, hydrotherapy pool, and whirlpool, hot spa or hot tub. Spas may be general use or limited use.

**YY.** "Public pool" means any manmade structure and its appurtenances containing water that is expressly designated or used with the knowledge or consent of the owner or operator for swimming, water recreation, or bathing for the

use of any segment of the public. This term does not include residential housing or lodging facilities having five or less living units. The term "public pool" includes all general-use, limited-use and special-use public pools or public spa pools, public wading pools, spray pads, bathing attractions and public baths. Plumbing fixtures associated with a specific lodging room or fill-and-draw hydrotherapy tubs used by and exclusively for sport team member training and injury rehabilitation are excluded. The term "public pool" includes, but is not limited to, public pools owned or operated by:

(1) travelers' accommodations including hotels, motels, inns, bed, breakfast, hostels and recreational vehicle parks;

(2) residential housing or lodging facilities having six or more living units;

(3) apartments or apartment complexes, condominiums and mobile home parks;

(4) recreation parks;

(5) colleges or universities;

(6) schools and group homes;

(7) organizational camps;

(8) clubs and athletic clubs;

(9) associations;

(10) business establishments for their patrons or employees;

(11) private persons with pools that are open to the public;

(12) recreation districts; or

(13) cities, municipalities, counties, the state of New Mexico or other political subdivisions.

**ZZ.** "Public wading pool" means an artificial structure, and its appurtenances containing water two feet deep or less which is expressly designated or which is used with the knowledge or consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

**AAA.** "Recirculation interval" means the time required to circulate the entire volume of the pool water through the circulation system. Also see "turnover rate".

**BBB.** "Remodel" means but is not limited to altering the design, modifying plumbing, or creating structural changes to pool, spa, bath, spray pad, deck or bathhouse.

**CCC.** "Renovation" means the activity of restoring all or part of a pool, spa, bath, or spray pad structure and its component parts back into good condition, including the rebuilding or replacing of worn and broken parts or components.

**DDD.** "Repair" means maintenance or replacement of equipment that meets current ordinance requirements with comparable size and equipment type.

**EEE.** "Secretary" means the

secretary of the New Mexico environment department.

**FFF.** "Service animal" means a guide dog, signal dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, or providing minimal protection or rescue work, such as pulling a wheelchair or fetching dropped items.

**GGG.** "Spa", see public spa pool.

**HHH.** "Special-use pool" means a public pool that is designed specifically as a bathing attraction or for sporting or recreational purposes and may include, but is not limited to, special features such as:

(1) wave pools;

(2) diving pools;

(3) splash pools;

(4) zero depth pools;

(5) waterpark slides;

(6) vortex pools;

(7) interactive play attractions;

(8) watercourse rides;

(9) activity pools;

(10) temporary use pools;

(11) portable pools; or

(12) public promotion pools.

**III.** "Spray pad" means a constructed area for use by bathers in which water is sprayed, but is not allowed to pond.

**JJJ.** "Swimming pool", see public pool.

**KKK.** "Supplemental disinfectant" means a department approved disinfectant that is intended to augment water quality in a public pool or spa and provide disinfection.

**LLL.** "Test kit" means a testing device approved by the secretary, capable of measuring all water quality parameters required in this section.

**MMM.** "Total available bromine (TAB)" means the sum of both the free available and combined bromine.

**NNN.** "Total available chlorine (TAC)" means the sum of both the free available and combined chlorine.

**OOO.** "Tripping hazard" means any abrupt rise, spalling walks, sunken or raised walkways, or other condition that could cause tripping.

**PPP.** "Turnover rate" means the rate of flow, in gallons per minute, required to circulate the entire volume of the pool water through a circulation system.

**QQQ.** "Turnover time" means the time required to circulate the entire volume of the pool water through a circulation system. Also see recirculation interval.

**RRR.** "Valve" means any device in a pipe that will partially or totally obstruct the flow of water, such as a ball,

gate or globe valve; or permit flow in one direction only, such as a check or foot valve.

**SSS.** "Variance" means written permission from the department for operation of a public pool, spa, bath, or wading pool using alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in this rule.

**TTT.** "Walking surface" means any surface used as a direct access surface for a pool, as well as the area leading to and from the pool to locker, restroom or change room facilities.

**UUU.** "Waterpark slide" means a slide at a public pool, which has a length of at least twenty feet, not including the platform, and a height of greater than 12 feet.

**VVV.** "Water surface" means that portion of the pool surface where swimming is allowed.

[7.18.2.7 NMAC - Rp, 7 NMAC 18.1.I.106, 03/30/05]

**7.18.2.8 ADOPTION BY REFERENCE:** Outside standards, listings, and publications referenced in this rule are part of this rule.

[7.18.2.8 NMAC - N, 03/30/05]

**7.18.2.9 ENFORCEMENT AUTHORITY:**

**A.** Private pools shall not be subject to the provisions of this regulation or 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction or 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation Requirements or 7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees.

**B.** Department representatives shall be responsible for the enforcement of this rule.

[7.18.2.9 NMAC - Rp, 7 NMAC 18.1.I.108, 03/30/05]

**7.18.2.10 CONSTRUCTION PERMITS:**

**A.** No person shall construct, renovate, or remodel a public pool or bathhouse or alter any such structures without first:

(1) submitting a construction permit application that shall include plans, specifications, supporting material, and other information required by the department;

(2) receiving a construction permit; and

(3) paying all applicable fees.

**B.** No person shall deviate from the approved plans and specifications during the construction, renovation, or remodeling of public pool facilities described in this rule without first receiving

prior written approval from the department.

**C.** Construction permits will be issued only to the owner or authorized agent of the owner.

**D.** A construction permit may be issued only when the facility owner or agent has provided sufficient information for the department to determine that the public pool will:

(1) operate continuously in a clean and sanitary manner;

(2) not constitute a menace to public health and safety; and

(3) provide health and safety protection equal to or greater than that required by the public swimming pool rules.

**E.** Plans and specifications for a proposed public pool that demonstrate a new technology or alternative mode of operation not contemplated in these rules shall apply for a variance.

**F.** The department shall either issue a construction permit, issue a construction permit with conditions, or deny the construction permit. The department may revoke a construction permit under 7.18.2.19 NMAC or suspend a construction permit if the department determines that the provisions of the public swimming pool rules are not met.

**G.** The department shall notify the applicant in writing that the application is complete or incomplete within 30 days of receipt of the application.

**H.** Once the department determines that the application is complete, it shall have 30 days to issue the permit, issue the permit with conditions, or deny the permit. All permit denials shall be in writing stating the reason the permit was denied. The applicant for a permit that has been denied may request an administrative hearing. The request for a hearing shall be made in writing to the department within 15 calendar days after notice of the department's decision has been received by the applicant. Hearings on permit denials shall be held in accordance with 7.18.2.22 NMAC.

[7.18.2.10 NMAC - Rp, 7 NMAC 18.1.I.108 & 109, 03/30/05]

**7.18.2.11 PLANS AND SPECIFICATIONS:**

**A.** Clear and legible plans and specifications shall be prepared, stamped, and signed by a professional engineer or architect registered in the state of New Mexico.

**B.** Plans for each public pool shall be submitted in duplicate, drawn to scale and shall include:

(1) one plan view;

(2) one longitudinal section;

(3) one transverse section through the main drain;

(4) one overall site plan showing the pool in relation to other facilities in the

area with true north indicated;

(5) a detailed view of the equipment layout and the associated room or location;

(6) location of all above and below ground utilities;

(7) one piping schematic showing piping, pipe size, inlets, main drains, skimmers, gutter outlets, vacuum fittings, and all other appurtenances connected to the pool piping system;

(8) one cross section of the step treads and risers;

(9) means of disposing of backwash and wastewater;

(10) specifications of all required components;

(11) deck drains, if required;

(12) location of wastewater receptacle;

(13) emergency phone location;

(14) emergency pump shut-off switch location;

(15) location of any lifeline or lane anchors;

(16) location, layout, and specifications of the pool enclosure, including windows, HVAC (heating, ventilation, and air conditioning system), gates and doors; and

(17) other information the department may require.

**C.** Plan notes denoting "work by others" or an equivalent phrase shall not be acceptable as a substitute for scale drawings, details and specifications.

**D.** Plans shall include the following information in tabulated form:

(1) legal address of the facility;

(2) location of the facility if different from legal address;

(3) owner's name, address, and telephone number;

(4) architect or engineer's name, address, and telephone number;

(5) surface area of pool;

(6) pool volume, recirculation interval, turnover rate, filter rate/unit area, type of filter and total system head loss;

(7) manufacturer, make and model numbers of the pump, filter, and automatic chemical feed apparatus, filter head loss (clean and dirty), pump curve showing design flow rate and total dynamic head, hydraulic engineering calculations that are acceptable to the department;

(8) source of water used at the pool; and

(9) other information the department may require.

**E.** Plans shall include the location of emergency telephones, which may be either within the public pool enclosure or at an adjacent support facility, that are accessible at all times the pool is open. When an emergency telephone is located within an adjacent support facility, the

owner shall indicate on the plans how the telephones can be accessed during operating hours and how the public will be notified of the emergency telephone location.

**F.** Nothing in the swimming pool rules shall prevent the department from requiring the correction of errors in plans and specifications after those plans have been approved or the specifications accepted. The department may also halt construction operations conducted pursuant to approved plans and specifications when such construction is in violation of this or any other law or regulation. The department may also revoke any approvals that are issued in error.

**G.** Public pool structures that exist prior to the swimming pool rules' promulgation and that do not meet the rules' provisions shall be allowed until such time as the public pool is remodeled or renovated.

[7.18.2.11 NMAC - Rp, 7 NMAC 18.1.I.108, 03/30/05]

#### **7.18.2.12 OPERATING PERMITS:**

**A.** No person shall operate a public pool, spa, or bath without an operating permit from the department. Each public pool at a facility or site shall be permitted separately.

**B.** Operating permits shall be issued annually after completion of a department inspection that demonstrates compliance with the public swimming pool rules.

**C.** No person shall operate a public pool without first:

(1) securing an approved final construction inspection from the department if plans are required;

(2) making application for a permit to operate such pool;

(3) securing a permit from the department; and

(4) paying all applicable fees.

**D.** The permit shall remain the property of the department and may be removed by the department representative when a permit is suspended or revoked.

**E.** The department shall grant permission to operate a seasonal public pool only upon completion of a satisfactory pre-opening inspection.

**F.** The department shall grant permission for continuous year-round operation of a public pool only upon completion of a satisfactory inspection prior to renewal of an annual operating permit.

**G.** The designated certified operator of a seasonal or year round public pool shall be present for the seasonal pre-opening or permit renewal inspection.

**H.** The certified operator shall request an inspection to receive an annual operating permit prior to the opening

date of operation of any public pool.

**I.** Operating permits are non-transferable between facilities or persons.

[7.18.2.12 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.13 CERTIFIED OPERATOR REQUIREMENTS:**

**A.** All public pools, spas, and baths shall have a certified operator on staff or by contract who is available on a daily basis. Pools, spas, and baths will have two years from the effective date of this rule to come into compliance with the certified operator requirements.

**B.** Operators of public pools shall be thoroughly knowledgeable of public pool operation best practices, laws, and rules, and shall be certified through a department approved training course in swimming pool sanitation and safety.

**C.** The department may grant certification following presentation and confirmation of certification from other approved organizations.

**D.** Certifications shall expire three years following date of issue or on the expiration date for certifications issued by other approved certifying organizations.

[7.18.2.13 NMAC - Rp, 7 NMAC 18.1.IV.401, 03/30/05]

#### **7.18.2.14 INSPECTION FREQUENCY:**

The department shall inspect each public pool at least annually and shall make as many re-inspections as necessary for enforcement of the public swimming pool rules.

[7.18.2.14 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.15 SERVICE OF NOTICE:**

**A.** Notice shall be deemed to be properly served when the original or a true copy of the inspection report form or other written notice has been delivered personally to the permit holder, the permit holder's agent, or a certified operator; or when such notice has been sent by registered or certified mail to the last known address of the permit holder or certified operator on file with the department.

**B.** A copy of such notice shall be filed in the department's records.

[7.18.2.15 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.16 TEMPORARY SUSPENSION OF PERMITS:**

**A.** The department may suspend a permit at any time when it determines that there is a violation that may affect public health or safety.

**B.** Whenever a permit

holder or operator has failed to comply with any of the requirements of this rule, the permit holder or operator shall be notified in writing.

**C.** The notice shall:

(1) identify and reference the conditions that violate the swimming pool rules;

(2) specify the time period within which such condition shall be brought into compliance, if any;

(3) state that failure to comply with any notice issued pursuant to the swimming pool rules may result in immediate permit suspension; and

(4) advise that the permit shall be suspended at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

**D.** Immediate suspension: Notwithstanding other provisions of this regulation, whenever a department representative finds a condition in a public pool's operation that constitutes an immediate hazard to public health, welfare, or safety, the department representative may, without prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition. The department's notice shall state that the permit is immediately suspended and all swimming or bathing of any kind is to be immediately discontinued.

**E.** All persons receiving a permit suspension notice shall immediately comply with the notice's terms.

**F.** For immediate suspensions, suspensions upheld after a hearing, and where no request for a hearing has been received, the department shall post a sign stating that the pool is closed.

**G.** The department may also require a written compliance plan.

[7.18.2.16 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.17 TEMPORARY SUSPENSION OF OPERATOR CERTIFICATION:**

**A.** The department may suspend a certified operator's certification if:

(1) a pool he or she is operating has had its operating permit suspended or revoked; or

(2) the department determines that the operator has committed a violation that may affect public health or safety.

**B.** A department representative shall notify the certified operator in writing stating the reason the certification is subject to suspension and advising that the certification shall be suspended at the end of five working days following service of such notice, unless a request for a hearing is

delivered to the department by the certified operator within the five-day period.

[7.18.2.17 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.18 REINSTATEMENT OF SUSPENDED PERMITS AND CERTIFICATIONS:**

**A.** Any person whose permit has been suspended may make application for reinstatement of the permit in writing to the department. Within five working days following receipt of such a request, a department representative shall inspect the pool or premises or both. If the applicant is in compliance with the requirements of the swimming pool rules and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

**B.** Any person whose operator's certification has been suspended may make application in writing for reinstatement of their certification. Within five working days following receipt of such a request, the department shall ascertain the status of compliance with the requirements set forth in any administrative action or hearings. If the applicant is in compliance with the requirements of the public swimming pool rules, an administrative action or hearing, and other applicable laws, regulations and ordinances, the certification shall be reinstated.

**C.** The department may require a swimming pool operator or employee to attend additional training courses in pool sanitation and safety.

[7.18.2.18 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.19 REVOCATION OF PERMIT:**

**A.** A permit may be revoked when:

(1) it appears that a violation may affect public health or safety;

(2) any conditions of a permit are violated;

(3) there are willful or repeated violations of any of the requirements in the public swimming pool rules;

(4) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

(5) the owner or the owner's agent interferes with the department's performance of its duties.

**B.** Prior to such revocation, the department shall provide an opportunity for a hearing. A department representative shall notify the permit holder in writing stating the reason the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within

the five-day period.

**C.** Owners and operators of public pools who fail to comply with the provisions of a suspension notice or open their facility to the public without an approved permit will be subject to the penalties described in 7.18.2.56 NMAC.

[7.18.2.19 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.20 REVOCATION OF POOL OPERATOR CERTIFICATION:**

**A.** A pool operator certification may be revoked when:

(1) there are willful or repeated violations of any requirements in the public swimming pool rules;

(2) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

(3) the certified operator interferes with the department in the performance of its duties.

**B.** Prior to such revocation:

(1) the department shall provide an opportunity for a hearing; the hearing officer shall be appointed by the secretary of the environment department;

(2) a department representative shall notify the certified operator in writing stating the reason the certification is subject to revocation and advising that the certification shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the certified operator within the five-day period.

[7.18.2.20 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.21 OTHER REMEDIES: [RESERVED]**

#### **7.18.2.22 HEARINGS:**

**A.** Hearings provided for in the public swimming pool rules shall be held within 15 working days of a petitioner's delivery of a hearing request to the department.

**B.** Hearings provided for in this regulation shall be conducted in accordance with 20.1.5 NMAC.

[7.18.2.22 NMAC - Rp, 7 NMAC 18.1.I.110, 03/30/05]

#### **7.18.2.23 VARIANCE:**

**A.** The department may grant a variance from the public swimming pool rules' requirements through written permission from the department for operation of a public pool using alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in the public swimming pool rules.

**B.** Specific variance

requests shall be made by the owner or the owner's designated agent. Designated agents shall provide written documentation signed by the owner that they are representing the owner regarding the specific variance application. All variance applications shall be signed by the owner.

**C.** It is the applicant's responsibility to provide all necessary information to support the request for a variance.

**D.** Any person applying for a variance from any provision of the public swimming pool rules shall do so by filing a written application with the department. Applications shall:

(1) be made on forms obtained from the department;

(2) state the applicant's name and mailing address;

(3) state the date of the application;

(4) state the provision or provisions of this regulation for which the variance is sought;

(5) state in detail the extent to which the applicant wishes to vary from the provision or provisions;

(6) state the period of time for which the variance is sought;

(7) state why the applicant believes the variance is justified;

(8) be accompanied by any relevant documents or material which the applicant believes would support the application for a variance; and

(9) contain other relevant information the department may request.

**E.** Within twenty days following receipt of a completed variance application, the department shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the department shall be by written order, a copy of which shall be sent to the applicant. The order shall:

(1) state the applicant's name and address;

(2) state the date the order is made;

(3) describe the location of the public pool or public bath; and

(4) state the department's decision and its reasons.

**F.** If a variance is granted, the order will state the effective period of time and any conditions that apply.

**G.** All variances shall be reviewed annually; if variance conditions have not been met, a permit shall not be issued.

**H.** Petitioners who are dissatisfied with the department's decision may request a hearing from the department secretary.

(1) The request shall be made in writing to the department secretary within 15 calendar days after notice of the depart-

ment's decision has been received by the petitioner.

(2) Unless a request has been received within the 15 calendar day period, the department's decision shall be final.

(3) If a request has been received within the 15 calendar day period, the department secretary or his/her designated representative shall hold a hearing within 15 days after the receipt of the request.

**I.** The department shall notify the petitioner by certified mail of the date, time and place of the hearing.

**J.** In the hearing, the burden of proof shall be upon the petitioner.  
[7.18.2.23 NMAC - Rp, 7 NMAC 18.1.I.110, 03/30/05]

#### **7.18.2.24 VOIDING OF VARIANCES:**

**A.** An approved variance shall be void one year after the date of approval if the permitted activities granted thereby have not been utilized. If the department voids a variance for any reason, the department will serve written notice on the permit holder.

**B.** The department may void a variance if subsequent events show that the variance has created or may create conditions hazardous to the public health, safety, or welfare.

**C.** An approved variance shall be void if it is utilized in a way that violates the terms of the variance. Voiding a variance is in addition to, and not instead of, other remedies available to the department at any time for violation of the public swimming pool rules.

**D.** Any person who has been granted a variance shall sign a department approved indemnification and release of liability statement form.

[7.18.2.24 NMAC - Rp, 7 NMAC 18.1.I.110, 03/30/05]

#### **7.18.2.25 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public pool is located;

(2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;

(3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;

(4) inspect any premises or equip-

ment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.2.25 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

#### **7.18.2.26 to 7.18.2.50 [RESERVED]**

**7.18.2.51 CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

[7.18.2.51 NMAC - N, 03/30/05]

**7.18.2.52 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[7.18.2.52 NMAC - Rp, 7 NMAC 18.1.V.500, 03/30/05]

#### **7.18.2.53 REFERENCES IN OTHER REGULATIONS:**

Any reference to the public swimming pool regulations or to any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.2.53 NMAC - Rp, 7 NMAC 18.1.V.501, 03/30/05]

#### **7.18.2.54 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.2.54 NMAC - Rp, 7 NMAC 18.1.V.502, 03/30/05]

#### **7.18.2.55 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.2.55 NMAC - Rp, 7 NMAC 18.1.V.503, 03/30/05]

**7.18.2.56 PENALTY:** Any person who violates any provision of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.2.56 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

**7.18.2.57 LIMITATION OF DEFENSE:** The existence of a valid permit for the installation, modification or operation of a pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.2.57 NMAC - N, 03/30/05]

#### **HISTORY OF 7.18.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives: HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72. EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74. EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

**History of Repealed Material:** 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) repealed 03/30/05.

#### **Other History:**

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995.

Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, effective 03/30/05.

## **NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

### **TITLE 7 HEALTH CHAPTER 18 SWIMMING POOLS PART 3 PUBLIC SWIMMING POOLS, SPAS AND BATHS: DESIGN AND CONSTRUCTION**

**7.18.3.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[7.18.3.1 NMAC - Rp, 7 NMAC 18.1.I.100, 03/30/05]

**7.18.3.2 SCOPE:** Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.  
[7.18.3.2 NMAC - Rp, 7 NMAC 18.1.I.101, 03/30/05]

**7.18.3.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 74-

1-1 through 74-1-16.

[7.18.3.3 NMAC - Rp, 7 NMAC 18.1.I.102, 03/30/05]

**7.18.3.4 DURATION:** Permanent.

[7.18.3.4 NMAC - Rp, 7 NMAC 18.1.I.103, 03/30/05]

**7.18.3.5 EFFECTIVE DATE:** 03/30/05, unless a later date is cited at the end of a section.

[7.18.3.5 NMAC - Rp, 7 NMAC 18.1.I.104, 03/30/05]

**7.18.3.6 OBJECTIVE:** To protect the public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.3.6 NMAC - Rp, 7 NMAC 18.1.I.105, 03/30/05]

**7.18.3.7 DEFINITIONS:** Unless otherwise defined in the public swimming pool rules, the words and phrases used in this rule have the same meanings as in Section 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions.

[7.18.3.7 NMAC - N, 03/30/05]

**7.18.3.8 ADOPTION BY REFERENCE:** Outside standards, listings and publications referenced in this regulation are incorporated as part of this regulation.

[7.18.3.8 NMAC - N, 03/30/05]

**7.18.3.9 ENFORCEMENT AUTHORITY:**

- A. Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.
- B. Department representative shall be responsible for the enforcement of this regulation.

[7.18.3.9 NMAC - Rp, 7 NMAC 18.1.I.108, 03/30/05]

**7.18.3.10 GENERAL AND STRUCTURAL DESIGN:**

- A. Public pools and all appurtenances shall be constructed of materials that:
  - (1) are nontoxic to humans and the environment;
  - (2) are impervious and durable;
  - (3) will withstand design stresses, and
  - (4) will provide a watertight structure with a smooth and easily cleanable surface without cracks or joints, excluding structural joints.
- B. The department may require structural information from an engineer of appropriate competency.
- C. The structural design and materials used for public pools shall be in accordance with the rules, regulations and generally accepted industry engineering practices and methods prevailing at the time of original construction.
- D. Public pools with wooden interior surfaces are prohibited.
- E. Equipment for a public pool such as, but not limited to pumps, filters, skimmers and chemical feeders shall be NSF/ANSI 50-2004 certified. Pool equipment shall bear the mark of an ANSI-accredited, independent, third party conformity assessment organization such as the NSF, underwriters laboratories, inc. (UL), edison testing laboratories (ETL) or other similar organizations.
- F. The use of earth as an interior finish in a public pool is prohibited. Clean sand or similar material, if used in a beach pool environment shall only be used over an impervious surface. The material shall be appropriate for pool use, and controlled to not adversely affect the proper filtration, treatment system, maintenance, safety, sanitation, water clarity and operation of the pool. If sand or similar material is used, positive up flow circulation through the material shall be provided as necessary to assure that sanitary conditions are maintained at all times.
- G. The colors, patterns, or finishes of a public pool shall not obscure the existence or presence of objects or surfaces within the pool. All new pool interior finishes shall be white or lightly colored except for:
  - (1) decorative wall tiles and depth markings when such tiles are installed at the top of the pool wall;
  - (2) racing lane markings (painted or tiled, maximum twelve inches wide);
  - (3) turn targets;
  - (4) safety markers; and,
  - (5) other decorative items as approved by the department.
- H. A hydrostatic relief valve or a more extensive hydrostatic relief system shall be installed if necessary to prevent ground water pressure from displacing or otherwise damaging a pool or spa.
- I. The surfaces within a pool, intended to provide footing for users, shall have a slip-resistant surface to reduce the chance of a fall.
  - (1) The roughness or irregularity of such surfaces shall not cause injury to the feet during normal use.
  - (2) Decorative floor tiles shall not create a safety hazard.
- J. Roofs or canopies over pools shall be constructed so that water run-off or other forms of pollution do not drain or fall into the pool.
- K. All plumbing shall be sized, installed and maintained according to applicable state regulations and local plumbing codes. Pool owners and operators shall provide the department with written evidence of compliance with all plumbing codes from a plumbing inspector.
- L. All electrical wiring, equipment and installation, including the grounding of pool components shall conform to all applicable state regulations and local electrical codes. Pool owners and operators shall provide the department with written evidence of compliance with all electrical codes from an electrical inspector.
- M. Any public pool that is designed or used for more than one use as defined by the public swimming pool regulations,

7.18.2 through 7.18.5 NMAC, shall adhere to the most restrictive requirements in the public swimming pool rules.

[7.18.3.10 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.3.11 DIMENSIONS:**

**A.** Public pools shall have no sharp edges or protrusions where walls meet at an acute angle. Public pools shall be shaped to provide for complete water recirculation and mixing.

**B.** There shall be no interior walls, ledges or curbs within the perimeter walls of a public pool.

**C.** The inside wall surface of a pool shall be vertical, except where coved construction is used between the sidewalls and the bottom of the pool.

(1) In coved construction, the radius of curvature in an area less than five feet deep shall not exceed six inches at a depth of three feet six inches and shall not exceed two feet at a depth of five feet or greater.

(2) There shall be a uniform transition in the cove throughout all depths of the pool.

**D.** The slope of the bottom of any part of the pool shall not be more than one foot of fall for every twelve horizontal feet where the water depth is no more than five feet and the slope shall be constant throughout. Floor slopes in the transition area between the deep and shallow portions of the pool shall not exceed one foot of fall in three horizontal feet.

[7.18.3.11 NMAC - Rp, 7 NMAC 18.1.II.201, 03/30/05]

**7.18.3.12 MARKINGS AND LIFELINES:**

**A.** A lifeline shall be provided two feet into the shallow portion of the pool from the break in grade between the deep and shallow portions of the pool. A lifeline is not required where there is a uniform slope.

(1) The lifeline shall be securely fastened to wall anchors. Wall anchors shall be of corrosion-resistant materials and shall be recessed or have no projections which constitute safety hazards when the lifeline is removed.

(2) The lifeline shall be marked with visible floats at no greater than two foot intervals.

(3) The line shall be of sufficient size and strength to offer a good handhold and to support loads normally imposed by bathers;

(4) The lifeline shall remain in place except when pool use is restricted to lap swimming by competent swimmers or to supervised swimming instruction.

**B.** The break in grade of the pool bottom shall be marked with a four inch minimum width of floor tile or painted stripe of a color contrasting with the bottom, for the entire width of the pool. Where there is a uniform slope, a stripe is not required.

**C.** The depth of water (in feet) shall be plainly and conspicuously marked above or at water level on the vertical pool wall except for splash-out (deck level overflow) pools and on the top of the coping or edge of the walk within eighteen inches of the water edge. Depth markers shall be placed on each side and on each end of a pool.

(1) Depth markers shall be placed at the maximum and minimum depth points and at one foot depth increments in between the minimum and maximum depth points.

(2) Depth markings shall be spaced at no more than fifteen foot intervals.

(3) Pools shall have depth markings at slope breaks.

(4) Depth markings shall be at least four inches in height and of a color contrasting with the background.

**D.** Public spa pools with a uniform maximum depth shall have the maximum water depth indicated.

(1) Public spa pools providing perimeter seating shall have contrasting permanent marking no less than two inches wide on the top surface along the front leading edge of the bench.

(2) Public spa pools shall have depth markers spaced at no more than ten foot intervals, but in no case fewer than two depth markers per spa, regardless of the spa size or shape.

**E.** Non-slip markers, with the words "No Diving" shall be placed between the depth markers on the walkway where the water depth is less than five feet at a public pool other than a spa pool or a wading pool. "No Diving" symbols that are not less than four inches high shall be placed on the walkway together with "No Diving" markers. Other locations for symbols and markers may be approved by the department.

[7.18.3.12 NMAC - Rp, 7 NMAC 18.1.II.201 & 202, 03/30/05]

**7.18.3.13 LIGHTING:**

**A.** Sufficient lighting shall be provided to ensure visibility of the pool bottom at all times. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

**B.** All pools shall have underwater lighting of not less than 0.5 watts incandescent per square foot of pool area. Area lighting shall be provided a total capacity of not less than fifteen footcandles for the deck areas and directed to minimize glare on the surface of the pool. The area lighting shall have a total capacity of not less than fifteen foot candles.

**C.** For pools built prior to the effective date of this regulation where underwater lighting is not employed, the pool and deck area shall have a lighting capacity of no less than thirty foot candles.

[7.18.3.13 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.3.14 INDOOR POOL VENTILATION:**

**A.** Ventilation shall be provided for indoor public pools to minimize condensation and odors.

**B.** A minimum of four air changes per hour shall be maintained within the indoor public pool area.

**C.** The public pool area shall be ventilated to the outside without returning air to the central heating system, or air shall be recirculated through a dehumidifying system. If water is separated from the air for re-use in the pool, it shall be returned via the circulation/filtration system prior to entering the pool.

**D.** The building ventilation system shall prevent air in the bathroom from drifting or flowing into other areas.

**E.** The mixture of interior recirculated air and outside air shall prevent excessive dampness and humidity in the pool area.

[7.18.3.14 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]



**7.18.3.15 LADDERS, RECESSED STEPS, STAIRWAYS AND RAMPS:**

- A.** All public pools, except for spray pads or wading pools, shall have a ladder, set of recessed steps or stairs located at fifty foot intervals around the pool perimeter.
- B.** There shall be at least one set of stairs at the shallow end of the pool, except in zero depth pools, wading pools, or spas less than twenty-four inches deep.
- C.** Pools greater than thirty feet in width shall provide recessed steps, ladders or stairs on both sides of the deep area. There shall be at least one stairway at the shallow end of the pool. Ladders may be provided in lieu of stairs in pools where depth is five feet or greater.
- D.** Ladder treads, recessed step surfaces and stairs shall have slip-resistant surfaces.
- (1) Ladders and recessed steps shall have two handrails. The outside diameter of the ladder rail shall be between one inch and two inches.
- (2) Stairs shall have at least one handrail accessible from all points on the stairs.
- (3) There shall be a clearance of not more than five inches or less than three inches between the ladder and the pool wall below the water line.
- E.** If recessed steps are provided, they shall be easy to clean and shall drain into the pool to prevent the accumulation of dirt. Recessed steps shall have a minimum tread of five inches and a minimum width of fourteen inches.
- F.** Ladders, recessed steps and stairways shall be located to not interfere with racing lanes.
- G.** Stair treads shall have a minimum unobstructed horizontal tread depth of ten inches and a minimum unobstructed surface area of two hundred forty square inches.
- H.** Riser heights on steps shall be between seven and twelve inches and shall be uniform throughout except for the bottom riser when used as a bench or seat.
- I.** Except for spa pools, steps for entering or leaving the pool shall be a minimum of four feet wide, unless corner or circular steps are used. If corner or circular steps are used, the maximum radius of the bottom steps shall be forty-two inches, but no projection shall create a safety hazard.
- J.** The outer two inches edge of the stair tread shall be constructed of a material that contrasts with the color of the stairs and is clearly visible to bathers.
- K.** A side handrail extending up and above and returning to the horizontal surface of the pool deck, curb or coping shall be provided at each side of each ladder or set of recessed steps.
- L.** The leading edge of the handrail shall be no more than eighteen inches, plus or minus three inches, horizontally from the vertical plane of the bottom riser, where applicable.
- M.** Ramp entry into the pool shall meet the following requirements.
- (1) Handrails shall extend over the deck edge and extend to the bottom of the ramp for entering and leaving the pool.
- (2) Ramp edges protruding into the pool shall be of a contrasting color.
- (3) Pool access shall comply with the requirements of Title 42, Sections 12101 *et. seq.* of the United States Code, the Americans with Disabilities Act.

[7.18.3.15 NMAC - 7 NMAC 18.1.II.201-204, 03/30/05]

**7.18.3.16 SPECIAL DESIGN FEATURES:**

- A.** If waterfalls or rockery are installed at a public pool, the following requirements shall apply.
- (1) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is twelve inches or less above the water level of the pool:
- (a) waterfalls may spill directly into the pool from the side wall;
- (b) rockery shall come no closer than four feet from the edge of the pool, at pools that are not required to have lifeguards; or
- (c) rockery is allowed up to the pool edge as long as the rockery feature does not cover more than five percent of the pool deck perimeter at pools that are required to have lifeguards.
- (2) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is greater than 12 inches and less than thirty inches above the water level of the pool:
- (a) waterfalls and rockery shall not be closer than eight feet from the edge of the pool at pools that are not required to have lifeguards; or
- (b) waterfalls and rockery are allowed up to the pool edge as long as the waterfall or rockery does not cover more than five percent of the pool deck perimeter at pools that are required to have lifeguards.
- (3) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is greater than 30 inches above the water level of the pool:
- (a) waterfalls and rockery shall come no closer than fifteen feet from the edge of the pool at pools that are not required to have lifeguards; or
- (b) waterfalls and rockery are allowed up to the pool edge as long as the waterfall or rockery does not occupy more than five percent of the pool deck perimeter at pools that are required to have lifeguards.
- B.** Plantings may come no closer than four feet from the edge of the pool.
- C.** Where waterfalls are provided in deep areas of pools, a minimum four foot wide walkway areas is to be maintained around the waterfalls.
- D.** Waterfalls that commingle with the pool water shall conform with water quality and treatment requirements established for the pool. The department may require additional disinfection capability to address anticipated increased demand for and aerosolization of the disinfectant.
- E.** Flows shall not create turbulence that may create a safety hazard or reduce visibility in the pool.

[7.18.3.16 NMAC - N, 03/30/05]

**7.18.3.17 DIVING AREAS:**

**A.** In a public pool where diving and swimming are allowed, the area of the pool where diving is permitted shall be:

- (1) separated from the main swimming area by a lifeline in rectangular pools; and
- (2) in the case of a T, L or Z shaped pool, in a recessed area forming one of the legs of the T, L or Z, which is separated from the main swimming area by a lifeline.

**B.** Public pools used for diving shall comply with the following water depths and lateral and vertical clearances.

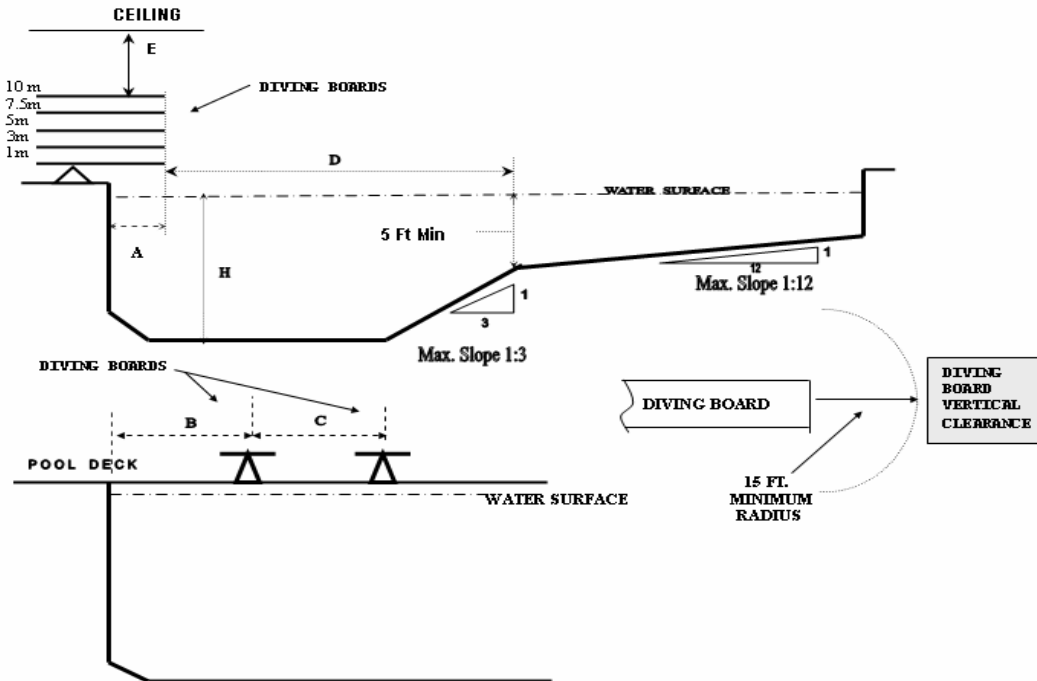
(1) Diving areas shall have the minimum dimensions and clearances as specified in Section 7.18.3.18 and Section 7.18.3.19 NMAC of this rule.

(2) The area of vertical clearance, as specified in Dimension E, Section 7.18.3.18 NMAC of this rule, shall be a cylinder with a minimum radius of fifteen feet. The center point of the cylinder shall be located on the edge of the diving end of the diving board, at a point one half of the width of the diving board as specified in Section 7.18.3.18 NMAC of this rule.

(3) If a pool is not in compliance with the requirements of this rule, the diving facility or equipment shall be removed or be brought into compliance with this rule.

[7.18.3.17 NMAC - 7 NMAC 18.1.II.201-204, 03/30/05]

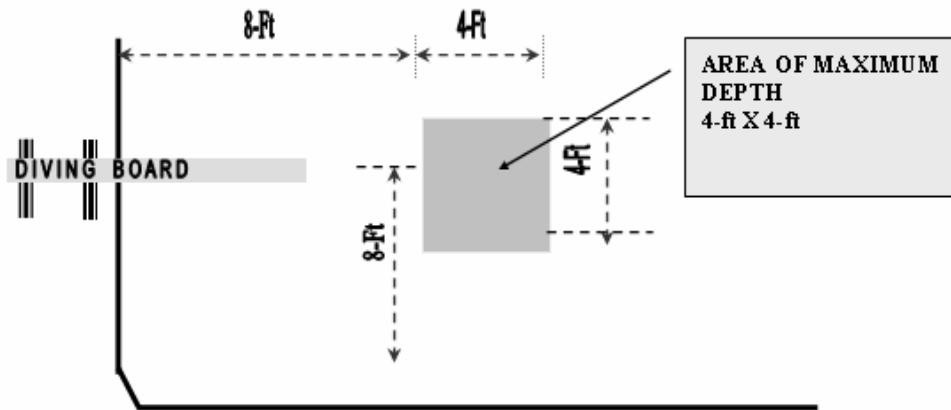
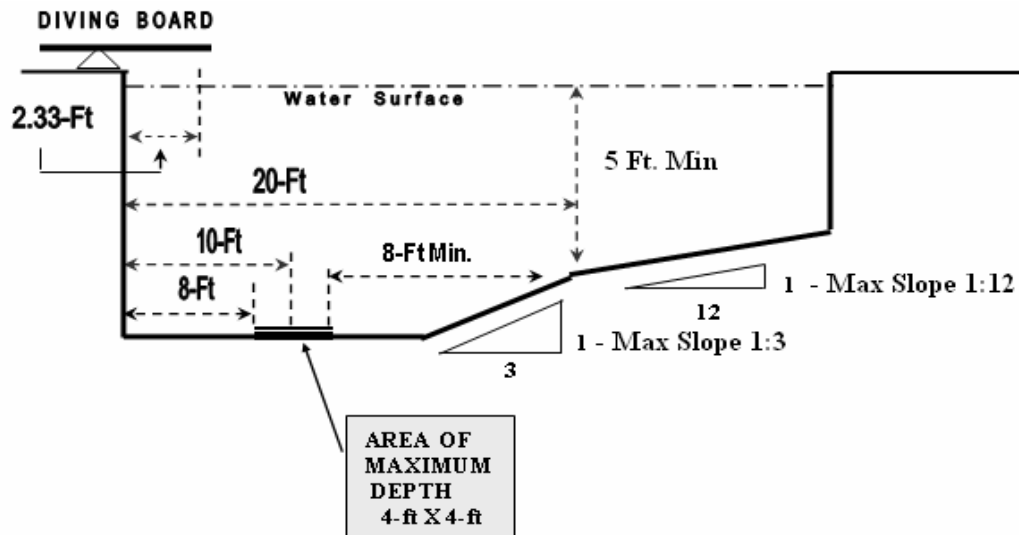
**7.18.3.18 DIVING BOARD AND PLATFORM DIMENSIONS AND REQUIREMENTS:**



Diving Board or Platform	A	B	C	D	E	H
One (1) meter board	6	10	10	29	16	12
One (1) meter platform	4	7.5	10	26	10	11
Three (3) meter board	6	12	10	34	16	13
Three (3) meter platform	4	9.5	10	31	10	11
Five (5) meter platform	5	14	10	34	10	13
Seven and one half (7.5) meter platform	5	15	10	36	10	15
Ten (10) meter platform	6	17	12	45	10	17

[7.18.3.18 NMAC - Rp, 7 NMAC 18.II.204, 03/30/05]

7.18.3.19 DECK LEVEL DIVING BOARD DIMENSIONS AND REQUIREMENTS:



[7.18.3.19 NMAC - Rp, 7 NMAC 18.II.204, 03/30/05]

7.18.3.20 DIVING EQUIPMENT:

- A. Diving boards, towers and platforms in excess of three meters in height shall comply with the dimensional design requirements of the U.S. diving, national federation of state high school associations (NFSHSA) or equivalent standards.
- B. Supports for diving equipment, such as platforms, stairs and ladders shall be designed to carry anticipated loads. Stairs and ladders shall be of corrosion-resistant material and easily cleanable with slip-resistant tread.
- C. Diving boards and diving platforms shall be protected with forty-two inch high guardrails and one intermediate rail, both extending at least to the water edge when one meter or more above the water.
- D. Diving equipment shall be designed for swimming pool use and shall be installed in accordance with the manufacturer's recommendations.
- E. Pool owners and operators shall obtain diving equipment installation instructions and specifications for each unit from the manufacturer and provide it to the department upon request.
- F. A label shall be permanently affixed to the diving equipment and shall include:
  - (1) manufacturer's name and address;
  - (2) board equipment length;
  - (3) identification regarding diving or jump board;
  - (4) fulcrum setting specifications (if applicable);
  - (5) reference to the current year of the applicable standards; and,
  - (6) reference to the applicable articles in the applicable standards.
- G. Diving equipment shall have slip-resistant tread surfaces.
- H. Diving equipment shall be permanently anchored to the pool deck.

[7.18.3.20 NMAC - Rp, 7 NMAC 18.1.II.201-204, 03/30/05]

7.18.3.21 POOL SLIDES:

- A. Pool slides shall comply with the requirements of the U.S. consumer product safety commission safety standards for swimming pool slides as published in the Code of Federal Regulations Vol. 16, Part 1207.

- B.** Pool slides shall:
  - (1) be constructed of sturdy and corrosion-resistant material;
  - (2) be securely fastened to the pool deck;
  - (3) have a ladder equipped with slip-resistant treads and rigidly attached handrails;
  - (4) have runways which are smooth, of one piece, and free of cutting, pinching, puncturing or abrasion hazards; and
  - (5) have a sliding surface with side rails on both sides that are no less than two inches in height.
- C.** Pool slide runways shall be water lubricated when in use.
- D.** Pool slides higher than twelve feet above the deck are prohibited.
- E.** Water depths shall be measured at a point four and one half feet beyond the end of the slide and are based on slide height.

The required water depths are as follows:

- (1) a slide that is greater than three feet high to seven and one half feet high shall have a minimum water depth of four feet;
- (2) a slide that is greater than seven and one half feet high to eight feet high shall have a minimum water depth of five feet;
- (3) a slide that is greater than eight feet high to eleven feet high shall have a minimum water depth of five than one-half feet;
- (4) a slide that is greater than eleven feet high to twelve feet high shall have a minimum water depth of six feet.

**F.** Pool slides shall be equipped with the warning signs found in Section 7.18.4.26 NMAC, Required Signs.

**G.** Portable toddler slides, three feet or less, shall have entry into water depths that are recommended by the manufacturer and approved by the department. Water depths for slide entry are determined by but not limited to platform height, length of slide, and bather weight.

[7.18.3.21 NMAC - N, 03/30/05]

### **7.18.3.22 WATERSLIDES:**

**A.** A waterslide shall consist of one or more flumes, splash pools or slide runouts, a pump reservoir and facilities for the sanitization, filtration and chemical treatment of the water.

**B.** The structural design of a water slide and the materials used in its construction shall conform with generally accepted structural engineering practices, and shall provide a sound, durable structure that will safely sustain all applicable loads and pressures. Pool owners and operators shall provide the department, upon request, supporting information and calculations from a New Mexico registered engineer or by a licensed engineer employed by the designer or manufacturer of the water slide and its structure.

**C.** Any components or accessories of a water slide that, under normal conditions of use, come into contact with bathers shall be assembled, arranged and finished so that their external surfaces and edges do not present an injury or hazard to the skin of users under casual contact.

**D.** Waterslide surfaces shall be inert, nontoxic, smooth and easily cleaned.

**E.** All curves and turns in a flume shall be:

(1) designed so that the contact of users with the walls of the flume does not present a hazard;

(2) constructed so that the forces on the bathers keep them safely inside the flume under all foreseeable circumstances of operation; and

(3) be designed and constructed so that the speed of the bathers does not reach a point at which a safe equilibrium of dynamic forces cannot be maintained on any curve or turn in the flume.

**F.** The construction, dimensions and methods of mechanical attachment of a flume shall provide a smooth and continuous surface through the entire length of the flume. Any misalignment of joints in a sectional flume shall not exceed one-sixteenth inch and the upstream side of the joint on the rider's path shall be higher than the downstream side of the joint.

**G.** The walls of all flumes shall be designed so that the continuous and combined action of hydrostatic, dynamic and static loads, as well as normal environmental deterioration do not damage the flume bed to the extent of creating a structural failure that presents a hazard of injury to users or that requires unreasonable repairs that may weaken the structural integrity of the flume. Water slides shall be maintained in good operating condition.

**H.** Runout waterslide exits shall be designed to ensure that bathers enter the slide runout at a safe speed and angle of entry, and shall be designed with adequate length, water depth and slope to bring the user to a safe stop.

(1) Flume or slide exits shall be at least six feet apart.

(2) Waterslide runouts, if used, shall have an exit opening or step, unless one or both of the walls of the run out are not more than sixteen inches in height from the inside or eighteen inches from the outside.

**I.** The flume exit of a water slide into a splash pool shall be designed with a slide exit system that provides for safe entry into the splash pool or slide run out. Present practices for safe entry include a water backup, a deceleration distance and body attitude control. Other methods are acceptable as long as safe exit velocities and proper body attitudes are assured under normal use.

**J.** The distance between the sidewall of the pool and that portion of the flume exit nearest the wall shall not be less than five feet at the point of exit or a greater distance as specified by the manufacturer.

**K.** The flume and any adjacent parallel flume, exiting to a common pool, shall not be less than six feet apart at the point of exit, as specified in Section 7.18.3.23 NMAC, or a greater distance if specified by the manufacturer.

**L.** The centerline of a flume and the centerline of any adjacent, but non-parallel, flume exiting into a common pool shall not intersect for a distance of twenty five feet from the exit of each of the flumes, as specified in Section 7.18.3.23 NMAC, Waterslide and Flume Exit Requirements, in this rule.

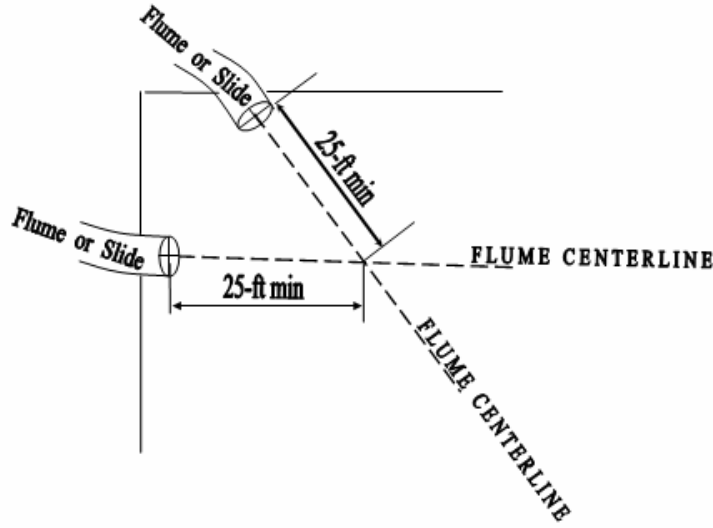
**M.** Except as otherwise provided in this subsection, the water depth in a splash pool at the end of the flume exit shall be a minimum of three and one half feet from the normal operating water level to the pool bottom. This depth shall be maintained for a distance of not less than twenty feet from the point of the first obstruction, or not less than thirty feet if the point of exit is even with the normal operating water level. The department may waive these requirements if a special exit system or velocity reduction technique is used that ensures a safe exit from the flume and safe entry to the splash pool.

**N.** If steps are provided instead of exit ladders, a handrail shall be provided at the steps opposite the point of exit from each flume. Handrails or ladder rails shall not be located in a direct line from the point of exit of the flume or slide.

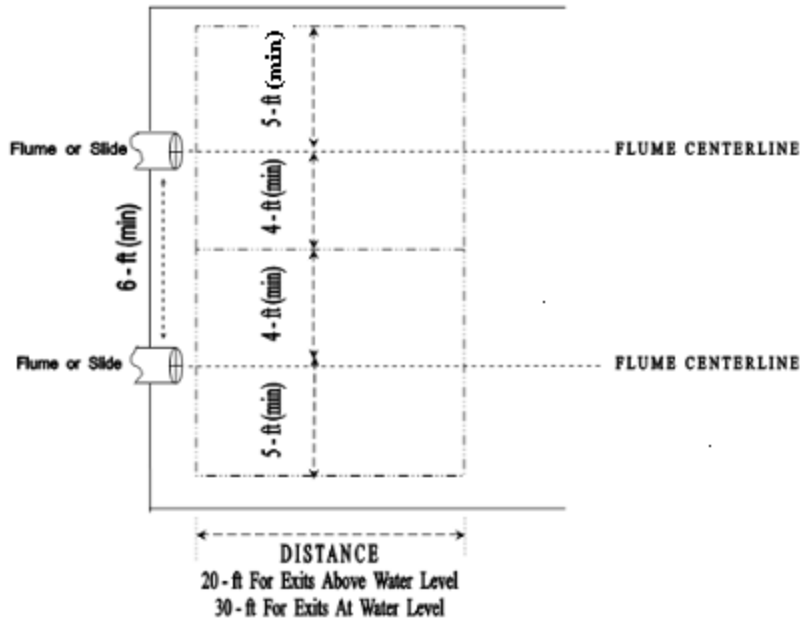
- O. A deck shall be provided along the exit side of the splash pool and along the other two sides of the pool.
  - P. A concrete walkway, steps, stairway or ramp shall be provided between the splash pool and the top of the flume. The means of access shall:
    - (1) not retain standing water;
    - (2) not be less than three feet wide;
    - (3) have handrails;
    - (4) have a slip-resistant surface; and
    - (5) be separated from the waterslide structure by an effective physical separation or located to prevent users from contacting the waterslide structure.
- [7.18.3.22 NMAC - N, 03/30/05]

**7.18.3.23 WATERSLIDE AND FLUME EXIT REQUIREMENTS:**

- A. Intersecting slides or flumes:



- B. Parallel slides or flumes:



[7.18.3.23 NMAC - N, 03/30/05]

**7.18.3.24 PUMP RESERVOIRS AND CONTROL OF WATER:**

- A. Splash pool shall maintain a constant water depth.
- B. The interior of pump reservoirs shall be watertight.
- C. Pump reservoirs shall be accessible only to authorized persons.
- D. Intakes to the slide pumps shall be designed to allow cleaning without danger of trapping the operator.

**E.** A surge-free automatic water makeup system with a manual override shall be provided and operated so that the normal operating water level of the splash pool is maintained at all times. An approved backflow prevention device shall be provided on makeup water system.

**F.** The velocity of water at the weir or inlet grate shall not exceed one and one half feet per second.  
[7.18.3.24 NMAC - N, 03/30/05]

**7.18.3.25 SPRAY PADS AND INTERACTIVE FOUNTAINS:**

**A.** The spray pad shall be equipped, at its lowest point, with an unvalved drain of sufficient capacity and designed to prevent the accumulation of water.

**B.** If the spray pad uses recirculated water, then filtration and disinfectant feed systems shall be provided as required by this regulation.

(1) The time to completely circulate and filter the entire volume of water in the system shall be no greater than thirty minutes.

(2) A sanitizing residual shall be maintained as specified in Section 7.18.4.11 NMAC, Pool Water Quality.

**C.** Spray pads that use recirculated water shall be protected by an effective and sturdy enclosure not less than three feet high.

**D.** Non-recirculating spray pads are exempt from the requirements for bathhouses and toilet facilities.  
[7.18.3.25 NMAC - N, 03/30/05]

**7.18.3.26 ACTIVITY POOLS:**

**A.** Water play structures used in activity pools shall be designed and maintained so that their surfaces are smooth, nontoxic and easily cleanable.

**B.** The devices shall not pose a safety or health hazard to users and shall not interfere with circulation or sanitization of the water.

**C.** Activity pools shall meet all the appropriate construction, operation and maintenance requirements of a public pool.  
[7.18.3.26 NMAC - N, 03/30/05]

**7.18.3.27 WAVE POOLS:**

**A.** The generation of waves more than three feet in height in a wave pool, regardless of pool depth, shall not continue for more than fifteen minutes at a time.

**B.** The wave pool shall not be used if the main drain is not clearly visible from the deck with the wave generating equipment turned off.

**C.** Bathers shall gain access to the wave pool at the shallow or beach end only.

(1) The side deck areas of the pool shall be enclosed by a fence or other comparable barrier accessible to authorized personnel only.

(2) A sign shall be posted indicating that this area is not open to the public.

**D.** Properly sized U.S Coast Guard approved life jackets shall be provided free for use by bathers who request them.

**E.** Each pool attendant and lifeguard station shall have a clearly labeled and readily accessible emergency shut-off switch for the control of the wave action system.

**F.** An audible warning system shall be provided to alert bathers at the beginning of wave generation.

**G.** Recessed steps and handrails shall be provided at one or more locations along the wall of the wave pool.

(1) The recessed steps and handrails shall extend down the wall so they will be accessible during wave generation at the lowest water level.

(2) The distance between the handrail and the wall shall not be more than five inches or less than three inches.

[7.18.3.27 NMAC - N, 03/30/05]

**7.18.3.28 WATERCOURSE RIDES:**

**A.** Handrails, steps, stairs and booster inlets for watercourse rides shall not protrude into the watercourse.

**B.** The watercourse shall be no less than eight feet wide or more than three and one half feet deep.

**C.** A department approved method of exit shall be provided not less than every two hundred feet along the watercourse.

**D.** A deck shall be provided along at least one side of the watercourse.

**E.** The design velocity of the water in a watercourse ride shall not exceed two miles per hour.

[7.18.3.28 NMAC - N, 03/30/05]

**7.18.3.29 WADING POOLS:**

**A.** A wading pool shall have:

(1) a maximum water depth of twenty four inches;

(2) a slope which does not exceed one foot in 12 feet;

(3) a slip-resistant finish;

(4) a maximum turnover time as specified in Subsection B of Section 7.18.3.37 NMAC, Recirculation System, in this rule;

(5) a separate recirculation system; and

(6) at least two inlets.

**B.** Adequate sanitary facilities shall be available in the vicinity of the wading pool, as required in Section 7.18.3.49 NMAC, Bathroom and Toilet Facilities, in this rule.

[7.18.3.29 NMAC - N, 03/30/05]

**7.18.3.30 PUBLIC BATHS:**

- A. Public baths shall only be of the fill-and-draw or flow-through type.
- B. Public baths shall meet all of the requirements for construction, operation, and maintenance of the public bath as specified in this rule, 7.18.2 NMAC, and 7.18.4 NMAC, except:

(1) A fill-and-draw public bath shall be exclusively for one use at a time, after which the bath shall be completely drained, cleaned, and disinfected prior to the next use.

(2) Flow-through public baths will be exempt from the requirements for recirculation, filtration and disinfection if the flow rate of water through the bath from natural or developed sources completely replaces the entire bath water volume every thirty minutes or less. [7.18.3.30 NMAC - N, 03/30/05]

**7.18.3.31 ELEVATED LIFEGUARD CHAIRS:**

- A. Each public pool where lifeguards are required shall have at least one elevated lifeguard chair.
  - B. There shall be one lifeguard chair for each lifeguard required with the exception of the lifeguard located at waterslide exits and wading pools.
  - C. Where more than one lifeguard chair or elevated lifeguard platform is required, there shall be a chair or platform located on each side of the pool. When there is a diving tank connected to a pool (ZLT) where the pool has more than two thousand five hundred square feet, *red cross* and American recreational association requirements shall be met.
  - D. Lifeguard chairs shall be located to provide a clear, unobstructed view of the bottom of the pool within a field of view no greater than ninety degrees on either side of a line of sight extending straight out from the platform or lifeguard chair.
  - E. Portable lifeguard chairs or elevated lifeguard platforms shall be acceptable providing they are structurally sound and tilt or tip proof.
  - F. Lifeguard chairs to at least six feet in height from the deck surface to the chair seat shall be located in the diving area and where the water depth is five feet or greater. Height is specified due to angle refraction of the water.
  - G. A pool that has a diving board shall have at least one elevated lifeguard chair located to provide a clear unobstructed view of the pool bottom in the diving area. The seat of the lifeguard chair in the diving area shall be located at an elevation of at least six feet above the pool deck.
  - H. Elevated lifeguard platforms located in the shallow area where the water is less than five feet in depth shall be at least thirty-four inches in height from the deck surface to the platform surface. The department may approve other configurations if visibility problems occur.
- [7.18.3.31 NMAC - N, 03/30/05]

**7.18.3.32 EMERGENCY TELEPHONE:** An emergency telephone shall be located in any of the following areas:

- A. within the public pool enclosure;
  - B. in a location adjacent to the public pool enclosure that is accessible at all times; or
  - C. in another location approved, in writing, by the department.
- [7.18.3.32 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.3.33 PUBLIC POOL ENCLOSURE:**

- A. Public pools shall be protected by an effective, sturdy enclosure or barrier. Such enclosures or barriers shall be a:
  - (1) fence;
  - (2) wall; or
  - (3) building without private entrances to the pool area.
- B. The enclosure or barrier shall not provide an easily climbable framework.
- C. Public pool enclosures or barriers, including windows, gates and doors, shall be constructed in such a manner so as to discourage access to the pool by unsupervised children or animals.
- D. The top of the enclosure or barrier shall be not less than six feet above grade as measured from the exterior side of the enclosure or barrier at a point three feet perpendicular from the base at any given point along the enclosure. A clear span six feet in radius as measured from the top of the fence is required, as specified in Subsection C, Enclosure Clearance Requirements, of Section 7.18.3.34 NMAC.
- E. The bottom horizontal rail or bar of the enclosure or barrier shall be no more than four inches above the grade when the grade is a solid surface, such as a concrete deck or two inches when the grade is any other surface, as specified in Subsection A, Enclosure Detail, Section 7.18.3.34 NMAC, Pool Enclosure Dimensions and Requirements, in this rule.
- F. The separation between vertical sections and bars shall be no wider than four inches.
- G. There shall be forty five inch minimum separation between the bottom horizontal members or rails and any other horizontal member or rail of the mid section of the pool enclosure.
- H. A barrier shall not have decorative portions that provide handholds or footholds. All exterior projections or recessions shall be forty-five inches from the bottom of the fence, as specified in Subsection A, Enclosure Detail, of Section 7.18.3.34 NMAC.
- I. Chain link enclosures or barrier's mesh size shall not exceed one and one fourth inches square, unless slats, fastened at the top and bottom of the fence, are used to reduce mesh openings to not allow the passage of a one and three-quarters inch-diameter sphere. Chain link fencing shall not be less than eleven gage, as specified in Subsection B, 7.18.3.34 NMAC.
- J. Gates and doors in public pool enclosures or barriers shall be self-closing and shall be equipped with a latching device lockable from the exterior side of the enclosure or barrier.
  - (1) The operating controls for the self-latching device shall be located at least forty-two inches above the exterior ground surface or pool deck. Latches that remain continuously locked and can only be opened by the use of a key or other access control system shall be of a height that allows the barrier, fence and latch to be in compliance with accessibility standards, and applicable regulations.
  - (2) An eighteen inch radius of solid material around the latching device or a similar barrier with openings no greater than one-half inch shall be provided.

(3) Where a kick plate is required to meet accessibility standards, such gate or door shall have a solid facing at least forty-two inches from the bottom of the gate.

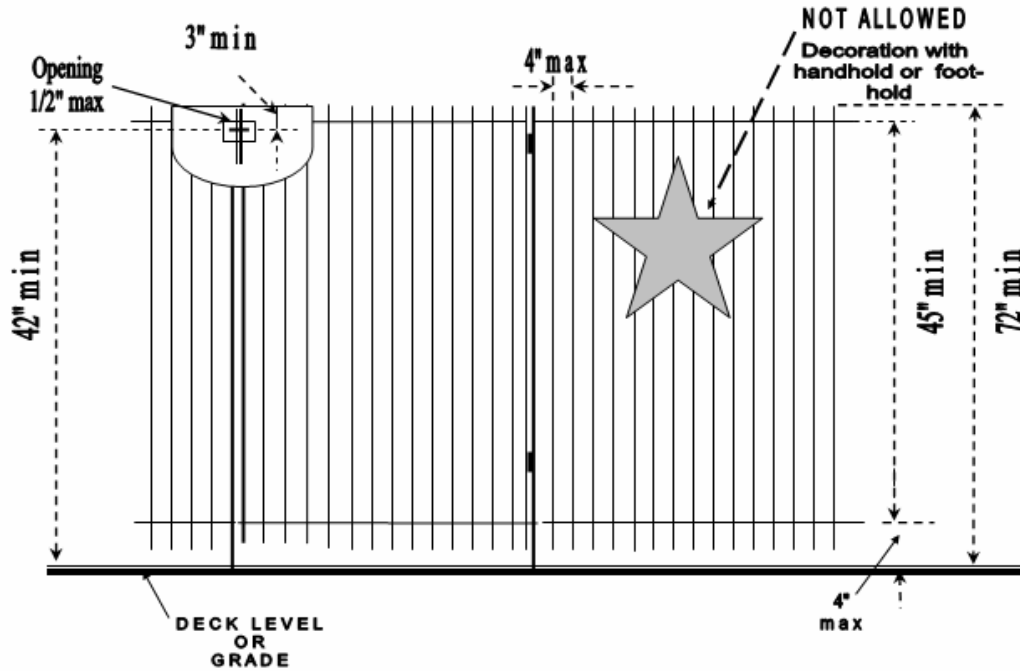
**K.** Gates, doors or fire exits that open directly into a public pool enclosure from a dwelling unit, hotel, motel room, or other public building are prohibited, unless the barrier complies with this regulation. For spas or baths that are associated with a specific guest or motel room, the owners of the facility shall ensure compliance with barrier requirements.

**L.** Pools not meeting the barrier requirements will have two years from the effective date of this regulation to come into compliance. Variances from the barrier requirements shall not be granted.

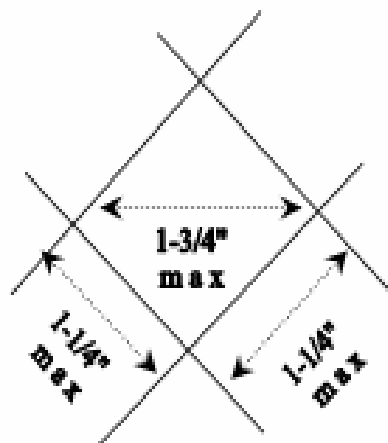
[7.18.3.33 NMAC - Rp, 7 NMAC 18.1.II.201-203, 03/30/05]

**7.18.3.34 POOL ENCLOSURE DIMENSIONS AND REQUIREMENTS:**

**A.** Enclosure detail:

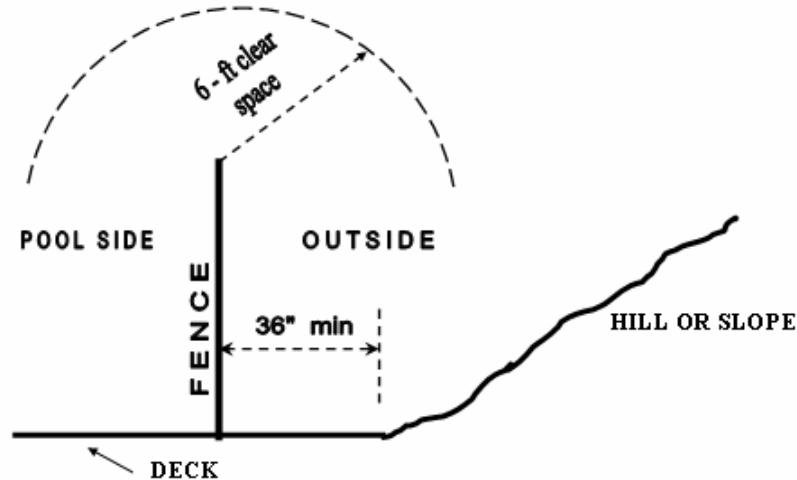


**B.** Chain link fence detail:





## C. Enclosure clearance requirements:



[7.18.3.34 NMAC - Rp, 7 NMAC 18.1.II.201-203, 03/30/05]

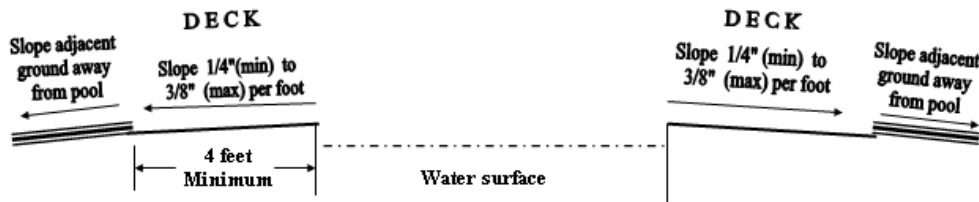
**7.18.3.35 DECKS:**

- A.** All pools shall have a continuous, unobstructed deck, surrounding the pool that is no less than four feet wide, which may include the coping.
- B.** Exception: on spas with a diameter, length or width of less than twelve feet, a continuous deck, that is no less than four feet wide, shall be provided around at least fifty percent of a spa. Egress may only be permitted on to the deck.
- C.** Decks around rockeries and waterfalls shall conform to specifications stated in Section 7.18.3.16 NMAC of this rule.
- D.** A deck that is no less than four feet wide shall be provided behind diving equipment, slides, lifeguard chairs or starting platforms.
- E.** Decks shall slope between one-fourth inch per foot to a maximum of three-eighths inch per foot and shall be drained to the perimeter area or area drains.
- F.** Outdoor pools decks may drain to landscaping in a manner that will not create muddy, hazardous or unsanitary conditions.
- G.** Indoor pools shall use properly plumbed deck drains that drain to an approved receptor by means of an indirect connection.
- H.** Drainage shall remove pool and spa splash water, deck cleaning water and rainwater without leaving standing water.
- I.** The surface of the deck shall not drain into the pool or the overflow gutter and shall not be returned to the recirculation system.
- J.** Site drainage shall be provided to direct all perimeter deck drainage, as well as general site and roof drainage, away from the pool. When required, yard drains shall be installed to prevent the accumulation or puddling of water around the pool area.
- K.** Except for trench type drainage systems, deck drains shall be spaced or arranged so that not more than two hundred square feet of area is tributary to each drain and drains shall not be more than twenty-five feet apart.
- L.** Runway drains shall not be interconnected with overflow system drain lines.
- M.** The deck area shall be kept clean of all trash and debris.
- N.** Deck surfaces shall be constructed of concrete, non-slip tile, or other impervious material with a slip-resistant, easily cleanable surface.
- O.** Wood decking, carpeting or artificial turf deck surfaces are prohibited within four feet of public pools, or within the limits of the deck drainage area, whichever is greater.
  - (1) The slope on such surface shall be increased to between three-eighths inch and one-half inch per foot.
  - (2) Such material is prohibited in indoor pools.
  - (3) Decks not meeting this requirement will have two years from the effective date of this regulation to come into compliance.
- P.** Joints between concrete deck slabs shall be effectively sealed and shall be designed to protect the pool, coping and its mortar bed from movement of the deck.
- Q.** New or replacement expansion joints shall not be constructed of wood.
- R.** Adjoining deck surface elevations shall vary no more than one-fourth inch.

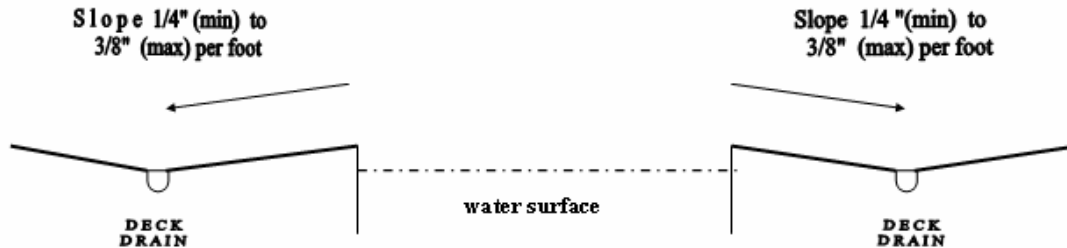
[7.18.3.35 NMAC - Rp, 7 NMAC 18.1.200, 03/30/05]

**7.18.3.36 DECK AND DECK DRAIN REQUIREMENTS:**

- A. Deck without deck drains:



- B. Decks with drains:



[7.18.3.36 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.3.37 RECIRCULATION SYSTEM:**

A. Except for fill and draw public baths, all public pools, shall have recirculation and filtration systems with piping, pumps, filters, disinfection and other equipment to maintain pool water quality in all parts of the pool as required by this regulation. The recirculation system for public baths shall meet the applicable requirements of Section 7.18.3.30 NMAC of this rule.

B. The system of pumps, filters, disinfection facilities and other equipment shall be of adequate size and design to recirculate, filter and disinfect the entire volume of pool water in the following maximum time intervals:

- (1) wave pools/watercourse ride - six hours;
- (2) wading pools - one hour;
- (3) waterpark slide pools - one hour;
- (4) all other special use pools - thirty minutes;
- (5) spas, thirty minutes - and
- (6) all other public pools - six hours.

C. Any recirculation system lawfully installed prior to the effective date of this regulation, that does not meet the maximum recirculation time period, may continue in use, until the recirculation system is repaired or the pool is remodeled, only if the recirculation system complies with all standards of disinfection and water clarity established by this regulation.

D. The recirculation system shall have flow rate meter(s) or device(s), installed in accordance with manufacturers' directions, to measure all necessary flow rates as indicated by this regulation, except for fill-and-draw public baths.

- E. Each public pool shall have its own recirculation system that is not connected to any other pool.

[7.18.3.37 NMAC - Rp, 7 NMAC 18.1.III.300, 03/30/05]

**7.18.3.38 SURFACE SKIMMING AND PERIMETER OVERFLOW GUTTER SYSTEMS:**

A. Surface skimmers or perimeter overflow gutter systems shall be provided at all public pools. Such systems shall be designed and constructed to skim the surface of the pool or spa water when the water level is maintained within the operating water level range of the system's rim or weir device.

B. Where skimmers are provided the following provisions will apply.

(1) All skimmers installed in a public pool shall be NSF/ANSI 50-2004 certified.

(2) Each skimmer shall be equipped with a strainer basket and a self-adjusting weir device that shall operate freely with continuous action to variations in water level over a range of at least three inches.

(3) Skimmers shall be designed for a flow-through rate of not less than thirty gallons per minute and the total capacity of all skimmers in any pool shall be at least eighty percent of the required filter flow of the recirculation system.

(4) Each skimmer shall be equipped with a self-activating equalizer line, a flow control device, and an anti-entrapment plate.

(5) Skimmers or perimeter gutter systems shall be located to achieve effective skimming action over the entire surface area of the pool.

(6) Skimmer covers located on a walking surface shall be securely seated, slip-resistant, of sufficient strength to withstand normal deck use, and not constitute a tripping or safety hazard.

(7) Where skimmers are used, there shall be one skimmer for each five hundred square feet of surface area, with a minimum of two skimmers. One skimmer shall be provided for each one hundred fifty square feet of spa or wading pool water surface area, or fraction thereof.

- (8) The operating water level for surface skimmers shall be within the vertical operating range of the skimmers.

- C. Where overflow systems are used the following provisions will apply.
- (1) Overflow systems shall be provided around the entire perimeter of public pools.
  - (2) Overflow system drains shall not exceed fifteen feet on centers. The overflow gutter bottom shall be sloped one-fourth inch per foot to the drainage outlets.
  - (3) The gutter outlets shall be covered with department approved drain grates.
  - (4) The gutter shall be capable of continuously removing fifty percent or more of the recirculated water and returning it to the filter.
  - (5) Water from overflow systems shall recirculate through the filter or, in cases of pools installed prior to the effective date of this regulation, water may be discharged into the sewer. If a sewer is used, there shall be a minimum eight-inch air gap between the overflow system drain line and the top rim of the approved receptacle. Enclosed pipeless gutters shall have clean-out covers at a maximum of fifteen-foot intervals and shall have a slope of not less than one-eighth inch per foot.
  - (6) Public pools with perimeter overflow systems shall have surge tanks unless designed to use inpool surge.
  - (7) Perimeter overflow systems shall be connected to the recirculation system with a system surge capacity of at least one gallon per square foot of pool surface.
    - (a) External surge systems shall be capable of transferring water at a rate equal to one hundred percent of the pool's design flow rate.
    - (b) Gutters shall drain in two minutes or less after sudden flooding.
    - (8) The operating water level for perimeter overflow gutter systems shall be slightly over the overflow gutter lip.
- [7.18.3.38 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### 7.18.3.39 INLETS AND OUTLETS:

- A. Pool inlets and outlets shall be sized and arranged to produce a uniform circulation of water to maintain a uniform level of disinfectant residual throughout the pool.
  - B. Inlets shall not protrude from the public pool floor or wall to create a hazard.
  - C. Grates shall be designed to prevent entrapment of fingers.
  - D. All outlet grates, anti-entrapment plates and inlet fittings shall have tamper-proof screws that cannot be removed except with tools.
  - E. There shall be at least one inlet per five hundred square feet of pool surface area or per fifteen thousand gallons of water, whichever results in the greater number of inlets.
  - F. All inlets shall be adjustable to obtain the desired rate and direction of water flow. If the distance across any portion of the public pool is more than thirty feet, multiple inlets shall be provided on opposite ends.
  - G. Inlets from the recirculation system shall be submerged at least twelve inches below water level.
  - H. If the pool width is greater than twenty-five feet, multiple outlets shall be provided. Multiple outlets shall be spaced not more than twenty feet apart or more than ten feet from side walls, and shall be located to provide uniform withdrawal of water from the deepest part of the pool.
  - I. The total velocity through outlet grate openings shall not exceed one and one-half feet per second. The total velocity through anti-entrapment suction outlet covers shall not exceed six feet per second.
  - J. Vacuum outlets on public pools shall be self closing. Public pools that do not meet this requirement shall have two years from the effective date of this regulation to come into compliance with this requirement.
  - K. Pool outlets shall be valved and connected to the recirculation pump.
  - L. Pool outlets shall have a design capacity equal to one hundred percent of the re-circulation pump capacity.
  - M. Pools shall have a minimum of two hydraulically balanced suction outlet openings with anti-entrapment covers or grates with a minimum surface area of one hundred forty-four square inches per pool pump suction line provided at the lowest point of the pool floor to drain the entire floor area.
  - N. The system shall be designed so that neither one of the two outlets can be cut out of the suction line by a valve or other means which would allow entrapment of the bather on the suction outlet opening.
- [7.18.3.39 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### 7.18.3.40 POOL FILL SPOUTS AND INLETS: For pool fill spouts and inlets the following shall apply.

- A. Over-the-rim fill spouts.
    - (1) Over-the rim fill spouts shall have an air gap above the pool deck, a minimum of six inches or two times the diameter of the pipe, whichever is greater.
    - (2) Over-the-rim fill spouts shall be located under a diving board, hand rail or beside grab rails.
  - B. Through-the-wall fill lines shall be located above the water level and equipped with an appropriate backflow prevention device installed on the potable water supply for cross-connection prevention and control.
  - C. If directly connected to the pool recirculation system, a reduced pressure device, for the purpose of cross-connection prevention and control, shall be installed on the potable water supply before it connects to the pool recirculation piping.
- [7.18.3.40 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### 7.18.3.41 PIPING:

- A. Pool recirculation piping, if plastic, shall be NSF/ANSI 14-2004: "*plastic materials, pipe, fittings and appurtenances for potable water and wastewater*" certified.
- B. Public pool or spa backwash or drain lines shall be permanently piped with an air gap, equivalent to two times the pipe diameter, but in no case less than eight inches above the flood level of the approved receptor.
  - (1) All of the plumbing drains serving the pool sewer system shall discharge into the sanitary sewer system or other department approved disposal method.

(2) All discharges to the sanitary sewer from any public pool or associated facility shall be equipped with a two-chamber sand interceptor meeting the requirements set forth in the current appropriate code adopted by the department, the New Mexico construction industries division, the county or municipal plumbing authority, or the operator of the sewer system.

C. Exposed piping shall be properly and permanently labeled to easily and adequately identify the piping function and direction of flow to the operator.

[7.18.3.41 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### 7.18.3.42 PUMPS:

A. A pump and motor shall be provided for recirculation of pool water, except for fill and draw public baths and flow through public baths that meet the requirements of Paragraph (2) of Subsection B of 7.18.3.30 NMAC of this rule.

B. All pumps shall have a strainer on the suction side of the pump.

(1) Strainers installed below water level shall have a valve on each side to facilitate cleaning.

(2) The strainer inlet shall be at least equal in size to the pump suction line.

C. Performance of pumps shall meet the conditions of flow required for filtering and backwashing the filters against the TDH developed by the complete system. Pumps shall be capable of providing design flow rates to match the TDH.

D. Public pool pumps shall be NSF/ANSI 50-2004 certified.

E. Pumps shall be sized to meet flow requirements, under soiled filter conditions as specified in Section 7.18.3.37 NMAC, of this rule. Pumps shall also be sized to create pressures or vacuums necessary to meet the manufacturers recommendations for filter cleaning.

[7.18.3.42 NMAC - Rp, 7 NMAC 18.1.II.200 & 7 NMAC 18.1.III.300, 03/30/05]

#### 7.18.3.43 FILTERS:

A. Filters shall be capable of maintaining pool water clarity under conditions of maximum user load as described in Paragraph (9) of Subsection A of Section 7.18.4.11 NMAC, Pool Water Quality.

B. Filters for public pools shall be backwashed, cleaned and maintained according to manufacturer's instructions.

C. The filter rate shall not exceed the following:

(1) high rate sand filters - twenty gallons per minute per square foot of filter media or that rate approved by the manufacturer for that particular filter, whichever is less;

(2) rapid sand filters - three gallons per minute per square foot of filter media;

(3) diatomaceous earth filters - two gallons per minute per square foot of filter media for pools, one and one half gallons per minute per square foot of filter media for spas; or

(4) cartridge filters - .375 gallons per minute per square foot of effective filter area.

D. Adequate means to release air from the filter tank shall be provided.

E. Filter components, which require servicing, shall be accessible and available for inspection and repair.

F. Filters shall be designed so that filtration surfaces can be easily inspected and serviced.

G. Filters shall be NSF/ANSI 50-2004 certified.

[7.18.3.43 NMAC - Rp, 7 NMAC 18.1.II.200 & 7 NMAC 18.1.III.300, 03/30/05]

**7.18.3.44 POOL HEATERS:** Public pool heaters and boilers shall have a current certificate of operation issued by the appropriate plumbing or mechanical inspection authority. In addition, all public pool heaters and energy sources shall be designed, constructed and operated to comply with applicable local, state or federal codes and standards as well as the manufacturer's specifications.

[7.18.3.44 NMAC - Rp, 7 NMAC 18.1.III.300, 03/30/05]

#### 7.18.3.45 DISINFECTANT AND CHEMICAL FEEDERS:

A. Automatic disinfection of public pools shall be provided and shall maintain a disinfecting residual in the pool waters at all times, except for fill and draw public baths and flow through public baths that meet the requirements of Paragraph (2), Subsection B of Section 7.18.3.30 of this rule.

B. Hand dosing of disinfectant or the introduction of disinfectant into the pool through the skimmers or the main drain is prohibited.

C. The disinfection agent for public pools shall be registered for such use by the U.S. Environmental Protection Agency and shall be capable of being tested by a test kit.

D. Automatic disinfection equipment shall have controls capable of fine feed rate adjustment, and a graduated and clearly marked dosage adjustment.

E. For public pools, disinfection equipment shall:

(1) be capable of feeding at least one pound equivalent chlorine per fifteen thousand gallons of pool capacity per twenty-four hours; or,

(2) be capable of feeding at least two and one fourth pounds of bromine per fifteen thousand gallons of pool capacity per twenty-four hours where bromine sanitation is applicable.

F. Hypochlorinators, erosion (flow-through) feeders, or other adjustable output rate disinfectant feeding equipment shall be NSF/ANSI 50-2004, "circulation system components for swimming pools" certified.

G. All public spa pools and wading pools shall be equipped with oxidation-reduction potential (ORP) automatic disinfection and pH controllers. Public spa pools and wading pools not meeting this requirement will have two years from the effective date of this regulation to come into compliance.

H. Where chlorine gas is used as the disinfectant, the following shall apply.

(1) The feeders and other containers shall be housed in a room or compartment separate from other pool equipment; such room or compartment shall:

- (a) be at or above ground level;
- (b) have a door that opens to the outside of the building in the room or compartment where the chlorine gas is stored; the door shall open away from the public access area;
- (c) be located so that chlorine gas, if accidentally released, will not flow into the pool area or into building ventilation systems;
- (d) have lighting and ventilation switches located outside the enclosure, adjacent to the door, or the door shall be equipped with a switch that automatically activates the mechanical ventilation and lighting systems;
- (e) have adequate ventilation to outside fresh air with at least four (4) complete air changes per minute; and
- (f) have a platform scale for measuring the weight of the chlorine cylinders.

(2) The pool operator shall use a full face negative pressure respirator with a chlorine cartridge approved by the national institute of occupational safety and health (NIOSH) for protection against chlorine gas; or a self-contained breathing apparatus approved by the NIOSH shall be supplied, kept in good working condition and mounted outside the chlorine enclosure.

(3) Gas chlorinators shall have a fail-safe mechanism that ceases chlorination in case of malfunction.

(4) Gas chlorinators shall be equipped with an anti-siphon chlorine injection device.

(5) The vent line from the gas chlorinator shall vent away from occupied areas; the exterior vent line shall be screened.

(6) Pools shall have appropriate equipment for maintaining required pH levels.

I. Where disinfectants other than chlorine or bromine are used, such disinfectants shall:

(1) achieve water disinfection equal to that provided by free chlorine or bromine at the concentration specified in Section 7.18.4.10 NMAC; and

(2) be approved by the department; the approval may place special requirements and conditions on its use.

J. Ozone may be used only with department approval as a supplemental disinfection system.

[7.18.3.45 NMAC - Rp, 7 NMAC 18.1.IV.401, 03/30/05]

#### **7.18.3.46 AIR INDUCTION SYSTEMS:**

A. Air induction systems shall only be allowed in spa pools.

B. Air induction systems shall be designed to prevent electrical shock hazards.

C. Air intake sources shall be positioned and designed to minimize contaminants, such as deck water or dirt, from entering the spa pool.

D. Air induction systems shall have a timer-controlled operation and shall be limited to a maximum of fifteen minutes. Air induction system controls shall be located a minimum of six feet horizontally from the edge of the spa pool.

E. Air induction systems shall be completely separate from the spa pool recirculation system.

[7.18.3.46 NMAC - Rp, 7 NMAC 18.1.IV.401, 03/30/05]

#### **7.18.3.47 METERS AND GAUGES:**

A. Flow rate meters or gauges shall be installed in all recirculation systems and flow-through public baths. Such meters shall:

(1) measure flow in gallons per minute;

(2) be mounted as recommended by the manufacturer; and

(3) be located to be easily read.

B. Pressure gauges or vacuum gauges shall be installed on all public pools so that pressure or vacuum readings, appropriate to filter type, may be obtained on both the filter influent and effluent lines.

[7.18.3.47 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### **7.18.3.48 EQUIPMENT ENCLOSURE:**

A. New pool construction, beginning with the effective date of this regulation, shall have an equipment enclosure with a minimum of fifty square feet of floor area and a minimum of three feet of unobstructed access to operational, informational and maintenance portions of the equipment.

B. Equipment enclosures shall be adequately ventilated.

C. Equipment enclosures shall protect the equipment and be locked, permitting access only to authorized personnel.

D. Equipment enclosures shall have adequate drainage.

E. Equipment enclosures shall be lighted to properly operate and maintain equipment.

F. All electrical lights, fixtures, outlets, and other equipment shall be in compliance with applicable electrical codes.

[7.18.3.48 NMAC - Rp, 7 NMAC 18.1.IV.401, 03/30/05]

#### **7.18.3.49 BATHHOUSE AND TOILET FACILITIES:**

A. A bathhouse shall be provided at all general-use public pools, and maintained in good working order and sanitary condition at all times.

B. Where a general-use public pool is operated in conjunction with a companion facility, such as a recreation facility, a bathhouse common to both facilities is allowed, provided the minimum facility ratios and locations described in Subsections C, D and E of this section are followed.

C. Bathhouses shall:

(1) be located within two hundred feet of the general-use public pool;

(2) have floors that are slip resistant, easily cleanable, and coved to a height of four inches;

(3) have interior wall and ceiling finishes that are smooth, easily cleanable, and impervious to water;

(4) have hose bibs for washing down the bathhouse interior;

(5) have floors with a minimum slope of one-fourth inch per foot that drain to floor drains;

(6) have ventilation to minimize condensation and odors with a minimum of two air changes per hour; and

(7) have shower rooms or stalls with walls that are impervious to water to a height of six feet above the floor. Shower rooms and

stalls shall comply with the following requirements:

- (a) shower rooms and stalls shall have an effective water tight joint between the wall and the floor;
- (b) shower stalls shall have doors or curtains for each compartment;
- (c) glass bath or shower doors shall be made of safety glass;
- (d) wooden racks or duck boards over shower floors are prohibited;
- (e) rubber or waterproof mats shall be cleaned and dried daily; and
- (f) shower stall floors shall be finished with non-slip, impervious surfaces.

**D.** General-use public pools shall provide toilet facilities in the following numbers based upon maximum pool user load:

(1) women, one per forty pool users or fraction thereof, with a minimum of two;

(2) men, one per forty pool users or fraction thereof, with a minimum of two (urinals shall be an acceptable substitute for no more than one-half of the toilets); and

(3) lavatories adjacent to toilets, one per every two toilet facilities.

**E.** General-use public pools shall provide one showerhead per forty pool users or fraction thereof, with a minimum of two.

**F.** Hot and cold or tempered water only shall be provided at all showerheads.

**G.** Soap shall be provided at all showerheads and lavatories.

**H.** If the bathhouse is remodeled, it shall come into compliance with the current requirements of these regulations.

**I.** Beginning with the effective date of this regulation, all new construction of limited-use pools shall:

(1) provide toilets and lavatories in the following numbers based upon maximum user load:

(a) women, one per forty pool users or fraction thereof, with a minimum of two;

(b) men, one per sixty pool users or fraction thereof, with a minimum of two (urinals shall be an acceptable substitute for no more than one-half of the toilets); and

(2) provide such toilets and lavatories within two hundred feet of the public pool.

**J.** When all private accommodations or living units are located within two hundred feet of a limited-use public pool, it shall constitute compliance with the requirements of Paragraphs (1) and (2) of this subsection.

**K.** When provided, additional bathhouse facilities adjacent to the pool shall comply with the requirements of Paragraphs (2) through (7) of Subsection C of 7.18.3.49 NMAC and shall comply with the fixture requirements of Subparagraphs (a) and (b) of Paragraph (1) of Subsection I of 7.18.3.49 NMAC.

[7.18.3.49 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.3.50 VISITOR AND SPECTATOR AREAS:** Visitors and spectators shall be allowed within the pool room or pool enclosure if they are restricted to a separate area not used by bathers during competition or demonstration events.

[7.18.3.50 NMAC - Rp, 7 NMAC 18.1.II.201, 03/30/05]

**7.18.3.51 FOOD SERVICE:**

**A.** Glass and rigid plastic containers are prohibited within the pool enclosure.

**B.** Food and drink shall be permitted in the visitor and spectator areas or in separated snack areas for pool users.

**C.** Trash containers shall be provided in the food service areas.

[7.18.3.51 NMAC - Rp, 7 NMAC 18.1.II.202, 03/30/05]

**7.18.3.52 DRINKING FOUNTAINS:** Drinking fountains shall be provided at all general-use public pools.

[7.18.3.52 NMAC - Rp, 7 NMAC 18.1.II.201, 03/30/05]

**7.18.3.53 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a permitted or unpermitted public pool is located;

(2) have a right of entry on any premises where any records that are required by the public swimming pool rules or permit conditions are kept;

(3) have access to and copy any records that the public swimming pool rules or permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.3.53 NMAC - Rp, 7 NMAC 18.1.IV.400, 03/30/05]

**7.18.3.54 to 7.18.3.200 [RESERVED]**

**7.18.3.201 CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

[7.18.3.201 NMAC - N, 03/30/05]

**7.18.3.202 SEVERABILITY:** If any provision of application of this part is held invalid, the remainder of this part, or any other application, shall not be affected.

[7.18.3.202 NMAC - Rp, 7 NMAC 18.1.V.500, 03/30/05]

**7.18.3.203 REFERENCES IN OTHER REGULATIONS:** Any reference to the public swimming pool regulations or to any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public

swimming pool rules” in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.  
[7.18.3.203 NMAC - Rp, 7 NMAC 18.1.V.501, 03/30/05]

**7.18.3.204 SAVINGS CLAUSE:** Repeal or supercession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.  
[7.18.3.204 NMAC - Rp, 7 NMAC 18.1.V.502, 03/30/05]

**7.18.3.205 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state or local regulations.  
[7.18.3.205 NMAC - Rp, 7 NMAC 18.1.V.502, 03/30/05]

**7.18.3.206 PENALTY:** Any person who violates any provisions of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.  
[7.18.3.206 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

**7.18.3.207 LIMITATION OF DEFENSE:** The existence of a valid permit for the installation, modification or operation of a public pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.  
[7.18.3.207 NMAC - N, 03/30/05]

**HISTORY OF 7.18.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives: HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72. EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74. EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

**History of Repealed Material:** 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) repealed 03/30/05.

**Other History:**

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995. Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) was replaced by 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction, effective 03/30/05.

<p style="text-align: center;"><b>NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD</b></p> <p><b>TITLE 7 HEALTH</b> <b>CHAPTER 18 SWIMMING POOLS</b> <b>PART 4 PUBLIC SWIMMING POOLS, SPAS AND BATHS: MAINTENANCE AND OPERATION REQUIREMENTS</b></p> <p><b>7.18.4.1 ISSUING AGENCY:</b> New Mexico Environmental Improvement Board. [7.18.4.1 NMAC - Rp, 7 NMAC 18.1.I.100, 03/30/05]</p> <p><b>7.18.4.2 SCOPE:</b> Owners and operators of public swimming pools, public spas, public baths or other public bathing attractions. [7.18.4.2 NMAC - Rp, 7 NMAC 18.1.I.101, 03/30/05]</p> <p><b>7.18.4.3 STATUTORY AUTHORITY:</b> NMSA 1978, Sections 74-1-1 through 74-1-16. [7.18.4.3 NMAC - Rp, 7 NMAC 18.1.I.102, 03/30/05]</p> <p><b>7.18.4.4 DURATION :</b></p>	<p>Permanent. [7.18.4.4 NMAC - Rp, 7 NMAC 18.1.I.103, 03/30/05]</p> <p><b>7.18.4.5 EFFECTIVE DATE:</b> 03/30/05, unless a later date is cited at the end of a section. [7.18.4.5 NMAC - Rp, 7 NMAC 18.1.I.104, 03/30/05]</p> <p><b>7.18.4.6 OBJECTIVE:</b> To protect the public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions. [7.18.4.6 NMAC - Rp, 7 NMAC 18.1.I.105, 03/30/05]</p> <p><b>7.18.4.7 DEFINITIONS :</b> Unless otherwise defined in this rule, the words and phrases used in this rule have the same meanings as in Section 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions. [7.18.4.7 NMAC - Rp, 7 NMAC 18.1.I.106, 03/30/05]</p> <p><b>7.18.4.8 ADOPTION BY REFERENCE:</b> Outside standards, listings, and publications referenced in this rule are part of this rule. [7.18.4.8 NMAC - N, 03/30/05]</p>	<p><b>7.18.4.9 ENFORCEMENT AUTHORITY:</b></p> <p><b>A.</b> Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.</p> <p><b>B.</b> Department representatives shall be responsible for the enforcement of this rule. [7.18.4.9 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]</p> <p><b>7.18.4.10 POOL WATER SUPPLY:</b></p> <p><b>A.</b> Owners and operators of public pools shall insure that only approved water supplies are used to fill, add to, or flow through a public pool. The water supply facility shall be properly located, protected, and operated at all times.</p> <p><b>B.</b> Owners and operators of public pools shall obtain departmental approval of water supplies used to fill, add to, or flow through a public pool.</p> <p><b>C.</b> Water shall be easily accessible, adequate, and of safe and sanitary quality.</p> <p><b>D.</b> There shall be no cross connection between a sewer or liquid waste disposal system and a public pool. [7.18.4.10 NMAC - Rp, 7 NMAC 18.1.IV.400, 03/30/05]</p>
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**7.18.4.11 POOL WATER QUALITY:**

**A.** Water in public pools shall be maintained in accordance with the water quality and physical parameters that follow.

(1) The free available chlorine in pools, except spas and spray pads, shall be maintained between 1.0-ppm free available chlorine and 5.0 ppm free available chlorine.

(2) The free available chlorine in spas and spray pads shall be maintained between 2.0 ppm free available chlorine and 5.0 ppm free available chlorine.

(3) The combined chlorine in all pools shall not exceed 0.5 ppm.

(4) The total available bromine in pools, except spas and spray pads, shall be maintained between 2.0 ppm total available bromine and 6.0 ppm total bromine.

(5) The total available bromine in spas shall be maintained between of 2.0 ppm total available Bromine and 6.0 ppm total available bromine.

(6) The total available bromine in spray pads shall be between 4.0 ppm total available bromine and 6.0 ppm total available bromine.

(7) The pH of all public pools shall be maintained between 7.2 and 7.8.

(8) The cyanuric acid in all outdoor public pools shall not exceed 100 ppm. Cyanuric acid shall not be used in indoor public pools.

(9) Water clarity in all public pools shall be maintained so that the bottom and main drain of the pool are clearly visible at all times from the deck above the deepest part of the pool.

(10) Fecal or pathogenic bacteria and algae shall not be present in any public pool.

(11) The maximum temperature of a public pool shall not exceed 104 degrees fahrenheit or 40 degrees celsius.

**B.** The department may require the installation of oxidation-reduction potential (ORP) automatic disinfection and pH controls or similar controls on any public pool when there are recurring violations of the water quality parameters for disinfection and pH levels.

**C. Testing Equipment:**

(1) All public pools shall have fully functional test kit(s) or equipment for measuring the pH, free and combined chlorine concentration, or bromine, (or concentration of other approved disinfectant), and cyanuric acid if stabilized chlorine is used.

(2) Test kits shall use EPA approved methods.

(3) Test kits for measuring free and total chlorine or bromine shall use *diethyl-P-phenylene diamine* (DPD) as the reagent.

**D.** The frequency of meas-

uring pH, chlorine, bromine, water clarity, or cyanuric acid shall be done prior to daily opening and as specified in Subsection L of 7.18.4.11 NMAC.

**E.** If pH and sanitizing are automatically monitored and controlled through the use of a properly operating automated system, tests need only be conducted prior to the daily opening of the facility, and at one additional time half way through that daily operation.

**F.** Notwithstanding other provisions of this part, the department may require any other testing frequencies for pool water parameters or chemicals added to the pool to protect public health.

**G.** Public spa pools shall be drained and refilled at least once every 30 days.

**H.** If, at any time, testing indicates that the pool water does not conform to the requirements in Subsection A of 7.18.4.11 NMAC, the pool operator shall immediately close the pool to the public until the requirements are satisfied.

**I.** Hand dosing of disinfectant is not allowed except to super-chlorinate or bring the residual up to required levels when the pool is closed.

**J.** The circulation system shall not be turned off except for necessary maintenance or when the pool is taken out of service for an extended period of time.

**K.** If a fecal accident occurs, the operator of a public pool shall follow the procedures and specifications in Section 7.18.4.27 NMAC of this rule.

**L.** Water quality testing in public pools for disinfectant level and pH shall be performed according to the following schedule.

(1) If pH and disinfectant levels in indoor or outdoor pools are not automatically monitored and controlled through the use of a properly operating automated system, tests shall be performed as follows:

(a) outdoor pools using non-stabilized chlorine shall be tested every hour;

(b) indoor pools using non-stabilized chlorine shall be tested every four hours;

(c) outdoor pools using stabilized chlorine shall be tested every four hours;

(d) all pools using bromine shall be tested every four hours.

(2) For indoor and outdoor pools that are automatically monitored and controlled through properly operating automated systems, tests for pH and disinfectant levels need only be conducted immediately prior to the daily opening of the facility and at one additional time half way through that daily operation.

(3) The level of cyanuric acid in stabilized pools shall be tested weekly.

[7.18.4.11 NMAC - Rp, 7 NMAC 18.1.IV.401, 03/30/05]

**7.18.4.12 LIFEGUARDS:**

**A.** Lifeguards shall be present and on duty at all general-use public pools during operating hours.

(1) There shall be at least one lifeguard actively on duty for every 40 bathers and use of the 10/20 guest protection standard and guest protection zone is required.

(2) General use spas, public baths, and spray pads are exempt from the lifeguard requirement.

(3) When swim teams and swimming exercise classes are facility users, the owner or designated agent may allow substitution of a coach that is certified by the American red cross or an equivalent organization in first aid and cardiopulmonary resuscitation (CPR) and is trained to deal with safety hazards. Both the owner and the sponsoring organization furnishing the swim coach shall be responsible for assuring proper credentials, training and bather controls are maintained in accordance with these requirements.

(4) An attendant is required to be present during designated lap swimming hours.

**B.** Lifeguards shall be present and on duty at all limited-use public pools during operating hours where:

(1) the total water surface area available for swimming is 2,500 square feet or greater; or

(2) the maximum depth of the water is greater than five feet and the maximum number of bathers permitted within the pool at any one time is calculated at one person per 25 square feet of water surface area.

**C.** Lifeguards do not have to be present and on duty at limited-use public pools during operating hours where:

(1) the total water surface area available for swimming is less than 2,500 square feet;

(2) the maximum depth of the water is less than five feet; or

(3) the maximum depth of the water is greater than five feet and the maximum number of bathers permitted within the pool at any one time is calculated at one person per 50 square feet of water surface area.

**D.** In a public pool where a lifeguard is not present, children under the age of 14 shall be accompanied by a responsible observer, 18 years or older, who shall be present within the barrier area to stay and monitor their children at all times. Pool operators or owners shall verify adult supervision of children in limited-use pools where lifeguards are not required.

**E.** Lifeguards, pool operators or owners shall enforce the following rules at all public pools:

(1) bathers shall take a cleansing shower before entering a general-use pool;



(2) no person under the influence of an intoxicating liquor or drug shall use the pool;

(3) no food or drink shall be permitted within four feet of the pool; glass containers are not permitted within the pool enclosure;

(4) for general use pools, food and drink shall be permitted only in the visitor and spectator areas;

(5) trash containers shall be provided in the food service areas;

(6) no person shall bring, throw or carry food, drink, smoking material, trash, or debris, into the pool; and

(7) no person shall run or engage in horseplay in or around a public pool.

**F.** The owner or operator of each special-use pool shall establish a plan for lifeguards and attendants at their facility and shall submit the plan to the department for review. The plan shall:

(1) set forth in detail where lifeguards and other attendants will be stationed;

(2) describe training and emergency procedures;

(3) include provisions for back-up lifeguards and attendants in the event of a multiple person rescue; and

(4) include any other provisions addressing pool depth, wave action, line of sight, bather loads or other special conditions affecting the safety of users; and

(5) the department shall approve any significant change in the plan for lifeguards and attendants before it is put into effect.

**G.** Except as otherwise required in this rule, each attendant employed at a public pool shall be:

(1) certified by the American red cross or an equivalent organization in first aid and cardiopulmonary resuscitation (CPR); and

(2) be trained to deal with safety hazards related to the particular facility at which they are employed.

**H.** An attendant who is knowledgeable in all safety procedures and basic operation of the pool shall be present at all general use pools during times of operation.

[7.18.4.12 NMAC - Rp, 7 NMAC 18.1.II.201 & 202, 03/30/05]

#### **7.18.4.13 ACCIDENTS:**

**A.** Operators of public pools shall report in writing to the department any drowning or other death occurring on the pool's premises.

**B.** Such reports shall be submitted within twelve hours of the occurrence and the pool shall immediately suspend operation until allowed to re-open by the department.

[7.18.4.13 NMAC - N, 03/30/05]

#### **7.18.4.14 HAZARDS:**

**A.** There shall be no protrusions, extensions, obstructions, tripping hazards, or other means of entanglement in the pool or on the pool deck that could cause bather injury or entrapment. Equipment and devices in the pool and at pool side, such as ladders, drain covers, anti-entrapment covers, handrails, fill lines and diving devices shall be installed so they can only be removed or adjusted with the use of tools.

**B.** All anti-entrapment covers shall be in place and secure during all times the public pool is in use.

**C.** Signs, as specified in Section 7.18.4.26 NMAC, shall be posted at all times.

[7.18.4.14 NMAC - Rp, 7 NMAC 18.1.II.202, 03/30/05]

#### **7.18.4.15 PREVENTION OF DISEASE:**

**A.** All public pool users and employees afflicted with a communicable disease that is capable of being transmitted in a public pool or who are suffering from sores shall be excluded from a public pool.

**B.** A cleansing shower with soap is required of all bathers entering a public pool.

**C.** Footbaths are prohibited.

[7.18.4.15 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.4.16 ANIMALS:** Animals are not allowed within the pool enclosure or barrier of any public pool except for service animals.

[7.18.4.16 NMAC - N, 03/30/05]

#### **7.18.4.17 CLEANLINESS:**

**A.** Public pool buildings, grounds, dressing rooms, walkways and all other facilities shall be kept clean, in a sanitary condition, and maintained free of garbage, trash and other refuse.

**B.** Dirt and scum in pools shall be removed at least daily or more often as necessary to maintain sanitary conditions.

**C.** All public pools shall be maintained so that the pool is free of accumulated dirt, debris, leaves, or other floating, submerged or settled material.

**D.** All public pools shall be equipped with a vacuum cleaner capable of effectively removing settled material from the bottom of the pool.

**E.** All public pools shall be equipped with a pole mounted skimming net to remove floating or submerged leaves or other debris from the pool.

[7.18.4.17 NMAC - Rp, 7 NMAC 18.1.II.200 & 201, 03/30/05]

**7.18.4.18 OFF SEASON MAINTENANCE:** When a public pool is not in use after seasonal operation or when a public pool is under construction or renovation, water clarity shall be maintained and algae growth prevented.

**A.** Other water quality parameters are not required to be met.

**B.** The facility shall not give off objectionable odors, become a breeding ground for insects or vectors or create any other nuisance or safety hazard.

[7.18.4.18 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### **7.18.4.19 BATHER LOAD:**

**A.** The maximum number of bathers permitted within a pool at any one time shall not exceed:

(1) public pools, except for spa pools and wave pools: one person for each 25 square feet of water surface;

(2) spa pools: one person for each ten square feet of water surface; and

(3) wave pools: one person for each 50 square feet of water surface.

**B.** When calculating the water surface area for bathing load, 300 square feet shall be subtracted from the total water surface area available for swimming for each diving board or platform.

[7.18.4.19 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### **7.18.4.20 STARTING PLATFORMS:**

**A.** Starting platforms shall be removed when not in use by competitive swimmers; or

(1) shall be equipped with protective equipment designed to prevent access;

(2) be firmly secured when in use; and

(3) shall have non-slip top surfaces.

**B.** When the starting blocks are removed, anchor sockets shall be capped.

[7.18.4.20 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

#### **7.18.4.21 GATES AND DOORS IN PUBLIC POOL ENCLOSURES:**

Gates and doors shall not be blocked open or otherwise disabled to prevent closing and latching. Facilities providing lifeguard service and monitored public access may have open gates or doors during operating hours.

[7.18.4.21 NMAC - N, 03/30/05]

#### **7.18.4.22 WATER SLIDE OPERATION:**

**A.** Lifeguards shall be on duty at the slide splash area.

**B.** The platform area shall have an attendant in place.

**C.** The slide may not be

used if the main drain of the splash pool is not clearly visible from the deck when the flume water is turned off.

**D.** Entry to the slide shall be regulated so that only one person is allowed to enter the slide every ten seconds.

**E.** Radio communication or other means of communication approved by the department shall be provided between the flume entry attendant and the splash pool or slide runoff lifeguard.

**F.** Each water slide shall provide the flume entry attendant the means to monitor the slide entry and exit.

[7.18.4.22 NMAC - N, 03/30/05]

**7.18.4.23 TEMPORARY SPECIAL USE POOLS:** Owners of pools that are used for public promotions at sports fields, county fairs, portable pools and similar special uses shall be reviewed by the department on an individual case basis. The department may require special conditions as part of approval of such pools to assure health and safety.

[7.18.4.23 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.4.24 INSTRUCTIONAL USE OF LIMITED-USE POOLS:** The department may allow the use of limited-use public pools for swimming related instruction to the general public provided that:

**A.** use by the public is limited to instruction classes only;

**B.** the instructor shall be certified by the American red cross or an equivalent organization in first aid and CPR; and be trained to deal with safety hazards related to the particular attraction at which they are employed;

**C.** the department is notified in advance of the time and place of the classes; and

**D.** sanitary facilities are available to bathers as required in Section 7.18.3.49 NMAC.

[7.18.4.24 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.4.25 LIFESAVING EQUIPMENT:** The following lifesaving equipment shall be provided at all public pools in a location where it is easily accessible by persons using the pool.

**A.** Required signs, as specified in Section 7.18.4.26 NMAC, shall be posted where they can be easily seen by persons using the pool.

**B.** A sign shall be posted stating the location of the emergency phone.

**C.** A sign shall be posted at the phone that indicates emergency phone numbers and the facility address to enable emergency and rescue personnel to locate the pool.

**D.** All public pools shall be equipped with a first aid kit containing a minimum of 24 items. The kit shall be placed in a department approved location and shall include the following first aid supplies:

- (1) first aid pocket guide;
- (2) first aid kit supply list;
- (3) assorted sterile gauze pads with adhesive tape;
- (4) antiseptic wipes or hydrogen peroxide;
- (5) scissors and tweezers;
- (6) triangular bandages;
- (7) roller gauze;
- (8) blood borne pathogen spill kit;
- (9) disposable single use gloves;
- (10) eye protection, face shield, or goggles;

(11) mask or barrier for rescue breathing or CPR;

(12) heat retention blanket;

(13) small trash bag or biohazard bag; and

(14) assorted adhesive bandage strips.

**E.** All public pools shall be equipped with devices, in good operating condition, to aid victims in distress as follows:

(1) a light and sturdy rescue pole at least 12 feet in length with a double crook life hook attached;

(2) two or more U.S. coast guard approved ring buoys, located at opposite sides of the pool, with an attached one quarter inch rope not less than one and one-half times the maximum width of the pool or swimming area;

(3) at pools requiring lifeguards, a backboard with means to secure victim to the board and provide immobilization of head, neck, and back; and

(4) at pool requiring lifeguards, one rescue tube per lifeguard shall be provided.

**F.** All public pools shall be equipped with a clearly marked emergency pump shut-off switch to be located within 20 feet, but no closer than four feet, of a pool. The shut-off switch shall be accessible to the public, have an audible alarm, and operate at all times.

(1) An automatic shut-off system may be installed in lieu of a manual shut-off switch.

(2) All pools not meeting this requirement shall have one year from the effective date of this regulation to come into compliance.

**G.** Except where required by the department, the equipment required in Section 7.18.4.25 NMAC shall not apply to public spa pools, wading pools, spray pads and public baths.

[7.18.4.25 NMAC - Rp, 7 NMAC 18.1.II.200, 03/30/05]

**7.18.4.26 REQUIRED SIGNS:**

**A.** An American red cross resuscitation chart, or equivalent, shall be conspicuously posted in the swimming pool area.

**B.** A sign shall be posted in the pool enclosure or barrier stating the design bathing load capacity of the pool. The pool owner shall be responsible for seeing that the maximum bathing load capacity is not exceeded.

**C.** A sign shall be posted in the pool enclosure or barrier stating "Warning- no lifeguard service is provided. All children under the age of 14 shall be accompanied by an observer 18 years or older. In case of emergency, contact: (a person or emergency telephone number shall be stated on the sign).

**D.** A precaution sign or signs shall be mounted adjacent to the entrance of a spa or bath, which read as follows.

(1) "Extended exposure to hot water may be detrimental to the health of elderly persons, persons with health problems, such as heart conditions, diabetes, or low/high blood pressure, small children, or pregnant women. Consult with a physician before using spa or bath."

(2) "Do not use the spa or bath while under the influence of alcohol, narcotics, or other drugs that cause sleepiness, drowsiness, or raise/lower blood pressure."

(3) "Do not use the spa or bath alone."

(4) "Over exposure to heated water may cause nausea, dizziness, and fainting."

**E.** Whenever a pool is closed to swimming for any reason, all gates and doors not utilized for egress to other parts of the building or buildings shall be locked. When the department orders that a pool shall be closed, the department shall post signs at all entrances to the pool stating that the pool is closed.

**F.** Signs shall be posted describing the proper way to use a pool slide or water slide. The signs shall contain wording that includes the following.

(1) "Slide feet first only."

(2) "Slide sitting up or lying on your back."

(3) "Only one person at a time may be on the slide."

(4) "Always enter the pool feet first; do not somersault, twist, or dive from the end of the slide."

[7.18.4.26 NMAC - Rp, 7 NMAC 18.1.II.202 & 203, 03/30/05]

**7.18.4.27 FECAL ACCIDENT PROCEDURE:**

**A.** The following procedure shall be used for a formed stool that is solid and non-liquid.

(1) Direct everyone to leave all pools into which water containing the feces is circulated. Do not allow anyone to enter the contaminated pool until all decontamination procedures are completed.

(2) Remove as much of the fecal material as possible using a net or scoop and dispose of it in a sanitary manner. Clean and disinfect the net or scoop. After cleaning, leave the net or scoop immersed in the pool during disinfection. Vacuuming stool from the pool is not allowed.

(3) Raise the free available chlorine concentration to 2.0 ppm, pH 7.2-7.5. Ensure this concentration is found throughout all co-circulating pools by sampling at least three widely spaced locations away from return water outlets. This free available chlorine concentration was selected to keep the pool closure time to approximately 30 minutes. Other concentrations or closure times can be used as long as the CT inactivation value is kept constant.

(4) Maintain the free available chlorine concentration at 2.0ppm, pH 7.2-7.5, for at least 25 minutes before reopening the pool. Ensure that the filtration system is operating while the pool reaches and maintains the proper free available chlorine concentration during the disinfection process.

(5) Establish a fecal accident log. Document each fecal accident by recording the following:

- (a) the date and time of the event;
- (b) if the accident is a result of a formed stool or diarrhea;
- (c) the free available chlorine concentration at the time or observation of the event and before re-opening the public pool;
- (d) the pH at the time or observation of the event and before re-opening the public pool;
- (e) the procedures followed to respond to the fecal accident (including the process used to increase free chlorine residual if necessary); and
- (f) the chlorine contact time.

**B.** The following procedure shall be used for diarrhea or a non-formed stool or a liquid stool.

(1) Direct everyone to leave all pools into which water containing the feces is circulated. Do not allow anyone to enter the contaminated pool until all decontamination procedures are completed.

(2) Remove as much of the fecal material as possible using a net or scoop and dispose of it in a sanitary manner. Clean and disinfect the net or scoop. After cleaning, leave the net or scoop immersed in the pool during disinfection. Vacuuming stool from the pool is not allowed.

(3) Raise the free available chlorine concentration to 20ppm and maintain the pH between 7.2 and 7.5. Ensure this concentration is found throughout all co-

circulating pools by sampling at least three widely spaced locations away from return water outlets. This chlorine and pH level should be sufficient to inactivate cryptosporidium and should be maintained for at least 8 hours, equivalent to a CT inactivation value of 9600. A higher or lower free available chlorine level/inactivation time can be used as long as a CT inactivation value equaling 9600 is maintained for cryptosporidium inactivation.

(4) Ensure that the filtration system is operating while the pool reaches and maintains the proper free available chlorine concentration during disinfection.

(5) Backwash the filter thoroughly after reaching the CT value. Be sure the effluent is discharged directly to waste and in accordance with state or local regulations. Do not return the backwash through the filter. Where appropriate, replace filter media.

(6) Pool users may be allowed in the pool after the required CT value has been achieved and the free available chlorine level has been returned to the normal operating range allowed by the department. Maintain the free available chlorine concentration and pH at standard operating levels based on state or local regulations.

**C.** The following procedure shall be used to determine the CT Value.

(1) CT refers to concentration (C) of free available chlorine in ppm multiplied by time (T) in minutes. If pool operators want to use a different chlorine concentration or inactivation time, they need to ensure that CT values always remain the same.

(a) Example one - If an operator finds a formed fecal accident in the pool and the pool has a free available chlorine reading of 3 ppm and a pH of 7.5, to determine how long the pool should be closed to swimmers, locate 3 ppm in the left column of Paragraph (3) of Subsection C of Section 7.18.3.26 NMAC below and then move right for the pool closure time. The pool should be closed for 19 minutes.

(b) Example two - The CT inactivation value for cryptosporidium is 9600, which equals (20 ppm) x (480 minutes). The operator determines that only 15 ppm free available chlorine can be maintained after a diarrheal accident in the pool. How long would hyperchlorination take? Answer:  $9600=CT=(15)(T)$ ;  $T=9600/15=640$  minutes=10.7 hours.

(2) Many conventional pool test kits cannot measure free available chlorine levels above 5 ppm to 10 ppm. Pool operators shall use chlorine test strips that can measure free available chlorine in a range that includes 20ppm (such as those used in the food industry) or make dilutions following DPD chlorine test kit instructions. Use chlorine-free water for dilutions.

(3) The required free available chlorine concentrations and pool closure time required for disinfection of pools after a formed fecal accident shall be as follows:

Concentration (ppm)	Pool closure time (minutes)
<0.4	105
0.6	72
0.8	55
1.0	45
1.2	39
1.4	34
1.6	30
1.8	28
2.0	25
2.2	24
2.4	22
2.6	21
2.8	20
3.0	19

(4) A free available chlorine residual of 2.0 ppm shall be present before the pool can be reopened.

[7.18.4.27 NMAC - Rp, 7 NMAC 18.1.II.200 & 201, 7 NMAC 18.1.IV.401, 03/30/05]

**7.18.4.28 RECORDS:**

**A.** Public pools shall keep daily operating records that shall include the following:

- (1) date;
- (2) time of backwashing;
- (3) disinfectant residuals;
- (4) filter pressure;
- (5) circulation rate;

- (6) pH;
  - (7) types and quantities of chemicals added;
  - (8) visibility of pool bottom;
  - (9) the numbers of bathers;
  - (10) name of certified operator;
  - (11) name of life guard on duty;
- and

(12) testing or calibration of automatic sensors or probes.

**B.** Public pools shall keep weekly records of cyanuric acid levels.

**C.** Public pools shall record all accidents; including fecal accidents.

**D.** All such records shall be made available to the department upon request for inspection or copying.

[7.18.4.28 NMAC - Rp, 7 NMAC 18.1.II.201, 03/30/05]

**7.18.4.29 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public pool is located;

(2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;

(3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.4.29 NMAC - Rp, 7 NMAC 18.1.II.108, 03/30/05]

**7.18.4.30 to 7.18.4.100 [RESERVED]**

**7.18.4.101 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[7.18.4.101 NMAC - N, 03/30/05]

**7.18.4.102 SEVERABILITY:**

If any provision of application of this part is held invalid, the remainder of this part, or any other application, shall not be affected.

[7.18.4.102 NMAC - Rp, 7 NMAC 18.1.V.500, 03/30/05]

**7.18.4.103 REFERENCES IN**

**OTHER REGULATIONS:** Any reference to the public swimming pool regulations or any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.4.103 NMAC - Rp, 7 NMAC 18.1.I.501, 03/30/05]

**7.18.4.104 SAVINGS CLAUSE:**

Repeal or supercession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.4.104 NMAC - Rp, 7 NMAC 18.1.V.502, 03/30/05]

**7.18.4.105 COMPLIANCE**

**WITH OTHER REGULATIONS:** Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.4.105 NMAC - Rp, 7 NMAC 18.1.V.503, 03/30/05]

**7.18.4.106 PENALTY:**

Any person who violates any provisions of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.4.106 NMAC - Rp, 7 NMAC 18.1.I.109, 03/30/05]

**7.18.4.107 LIMITATION OF**

**DEFENSE:** The existence of a valid permit for the installation, modification, or operation of a public pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.4.107 NMAC - N, 03/30/05]

**HISTORY OF 7.18.4 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives: HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72.

EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74.

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

**History of Repealed Material:** 7 NMAC 18.1, Public Swimming Pools and Public

Baths (filed 10/27/1995) repealed 03/30/05.

**Other History:**

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995.

Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) was replaced by 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation Requirements, effective 03/30/05.

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 7 HEALTH  
CHAPTER 18 SWIMMING POOLS  
PART 5 PUBLIC SWIMMING POOLS, SPAS AND BATHS:  
FEES**

**7.18.5.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[7.18.5.1 NMAC - Rp, 7 NMAC 18.1.I.100, 03/30/05]

**7.18.5.2 SCOPE:**

Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.

[7.18.5.2 NMAC - Rp, 7 NMAC 18.1.I.101, 03/30/05]

**7.18.5.3 STATUTORY**

**AUTHORITY:** NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.5.3 NMAC - Rp, 7 NMAC 18.1.I.102, 03/30/05]

**7.18.5.4 DURATION:**

Permanent.

[7.18.5.4 NMAC - Rp, 7 NMAC 18.1.I.103, 03/30/05]

**7.18.5.5 EFFECTIVE DATE:**

03/30/05, unless a later date is cited at the end of a section.

[7.18.5.5 NMAC - Rp, 7 NMAC 18.1.I.104, 03/30/05]

**7.18.5.6 OBJECTIVE:**

To establish fees for the administration of rules and standards regarding the inspection, enforcement, training, review of plans, and other appropriate program components for

public swimming pools, public spas, public baths and other public bathing attractions as specified in 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction, and 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation. [7.18.5.6 NMAC - Rp, 7 NMAC 18.1.I.105, 03/30/05]

**7.18.5.7 DEFINITIONS:** Unless otherwise defined in this rule, the words and phrases used in this rule have the same meanings as in Section 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions. [7.18.5.7 NMAC - Rp, 7 NMAC 18.1.I.106, 03/30/05]

**7.18.5.8 ADOPTION BY REFERENCE:** Outside standards, listings, and publications referenced in this rule are part of this rule. [7.18.5.8 NMAC - N, 03/30/05]

**7.18.5.9 ENFORCEMENT AUTHORITY:**

**A.** Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.

**B.** Department representatives shall be responsible for the enforcement of this rule. [7.18.5.9 NMAC - Rp, 7 NMAC 18.1.I.108, 03/30/05]

**7.18.5.10 CONSTRUCTION PERMIT FEES:**

**A.** Permit fees for new construction, remodeling, or renovation issued pursuant to Section 7.18.2.10 NMAC, Construction Permits, shall be the following:

(1) for a general-use pool, limited-use pool, or spa pool, the fee shall be \$150.00;

(2) for multiple general-use or limited-use pools or spa pools located at the same site, the fee shall be \$150.00 for each general-use or limited-use pool or spa pool;

(3) for public wading pools, public baths or spray pads, the fee shall be \$125.00 for each pool;

(4) for a special-use pool, the fee shall be \$150.00; and

(5) for multiple special-use pools located at the same site, the fee shall be \$150.00 for each special-use pool.

**B.** All applicable fees shall be paid at the time the construction permit application is submitted to the department.

**C.** All fees shall be remitted to the department by check or money order made payable to the "water recreation

facilities fund".

**D.** Any check returned for non-payment for any reason shall result in cancellation of the construction permit.

**E.** All fees are non-refundable. [7.18.5.10 NMAC - Rp, 7 NMAC 18.1.I.108, 03/30/05]

**7.18.5.11 OPERATING PERMIT FEES:**

**A.** Operating permit fees issued pursuant to Section 7.18.2.12 NMAC, Operating Permits, shall be:

(1) for all general-use pools and spas, the fee shall be \$150.00 for each pool per year;

(2) for limited use pools, the fee for each pool shall be:

(a) up to 600 square feet of pool surface area, \$100.00 per year;

(b) from 601 square feet to 1000 square feet of pool surface area, \$125.00 per year;

(c) from 1001 square feet of pool surface area and greater, \$150.00 per year;

(3) for all public wading pools, public baths or spray pads, the fee shall be \$100.00 for each pool per year; and

(4) for all special-use pools, the fee shall be \$150.00 for each pool per year.

**B.** Payment of fees.

(1) An operating permit fee shall be assessed for each separate public pool at a facility or site.

(2) Fees are payable at the time the annual operating permit is issued by the department. Annual operating permits will not be issued until the department receives all appropriate fees.

(3) All fees shall be remitted to the department by check or money order made payable to the "water recreation facilities fund".

(4) Non-payment of all appropriate fees, including the return of any check for non-payment for any reason, shall result in cancellation of the operating permit.

(5) All fees are non-refundable.

[7.18.5.11 NMAC - N, 03/30/05]

**7.18.5.12 RE-INSPECTION FEE:**

If a site inspection results in the issuance of a written notice of non-approval or suspension, the department may assess a re-inspection fee of \$50.00 to re-inspect that public swimming pool. The re-inspection fee shall be remitted to the department prior to a subsequent re-inspection being conducted. [7.18.5.12 NMAC - N, 03/30/05]

**7.18.5.13 VARIANCE FEE:** If a variance is requested pursuant to Section 7.18.2.23 NMAC, Variance, an application fee of \$50.00 shall be remitted by the applicant at the time the variance application is

submitted to the department. The fee is non-refundable.

[7.18.5.13 NMAC - N, 03/30/05]

**7.18.5.14 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public pool is located;

(2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;

(3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.5.14 NMAC - Rp 7 NMAC 18.1.I.109, 03/30/05]

**7.18.5.15 to 7.18.5.50 [RESERVED]**

**7.18.5.51 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[7.18.5.51 NMAC - N, 03/30/05]

**7.18.5.52 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[7.18.5.52 NMAC - Rp, 7 NMAC 18.1.V.500, 03/30/05]

**7.18.5.53 REFERENCES IN OTHER REGULATIONS:**

Any reference to the public swimming pool regulations or any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.5.53 NMAC - Rp, 7 NMAC 18.1.V.501, 03/30/05]

**7.18.5.54 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part or the swimming pool rules shall not affect any administrative or judicial

action initiated under those prior versions.  
[7.18.5.54 NMAC - Rp, 7 NMAC  
18.1.V.502, 03/30/05]

**7.18.5.55 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with the swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.5.55 NMAC - Rp, 7 NMAC  
18.1.V.503, 03/30/05]

**7.18.5.56 PENALTY:**

Any person who violates any provision of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.5.56 NMAC - Rp, 7 NMAC  
18.1.I.109, 03/30/05]

**7.18.5.57 LIMITATION OF DEFENSE:**

The existence of a valid permit for the installation, modification or operation of a pool shall not constitute a defense to a violation of any section of this regulation, except the requirement for obtaining a permit.

[7.18.5.57 NMAC - N, 03/30/05]

**HISTORY OF 7.18.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives: HSSD 72-2, Swimming Pool Regulations Governing the Sanitary Design, Equipment, Construction and Operation, filed 9/27/72. EIB 74-2, Regulations Governing Public Baths and Public and Semi-Public Swimming Pools, filed 7/15/74. EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths, filed 3/25/76.

**History of Repealed Material:** 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) repealed 03/30/05.

**Other History:**

EIB 76-1, Regulations Governing Public Swimming Pools And Public Baths (filed 3/25/76) was reformatted, renumbered and replaced by 7 NMAC 18.1, Public Swimming Pools and Public Baths, effective 11/30/1995. Portions of 7 NMAC 18.1, Public Swimming Pools and Public Baths (filed 10/27/1995) was replaced by 7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees, effective 03/30/05.

**NEW MEXICO GAMING CONTROL BOARD**

**This is an amendment to 15.1.5 NMAC, Sections 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 effective 2/28/05.**

**15.1.5.7 DEFINITIONS:**

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "Auxiliary member"** means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code section 501(c)(19) or (23) and applicable regulations; "auxiliary member" does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee's tax exempt status.

**C. "Component"** means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, meter; and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

**D. "Control,"** when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or licensee; when used as a verb, "control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

**E. "Key executive"** means an executive of a licensee or other person having the power to exercise signif-

icant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds \$75,000.

**F. "Licensed premises"** means the area [~~of a structure, within the gaming establishment,~~] that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

**G. "Majority interest"** means an ownership interest, whether direct or indirect, of more than 50% in the licensee.

**H. "Manage"** means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

**I. "Manufacturer"** means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the state or for sale, lease or distribution outside the State from any location within the State.

**J. "Member"** means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization's charter, articles of incorporation, bylaws, or rules, and who is in good standing.

**K. "Modification"** means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; "modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

**L. "Person"** means a legal entity or an individual.

**M. "Premises"** means the land together with all building's improvements and personal property located on the land.

**[M] N. "State"** means the state of New Mexico.

**[N] O. "This title"** means Title 15, Chapter 1 of the state administrative code.

[11/30/98; 15.1.5.7 NMAC - Rn & A, 15 NMAC 1.5.7, 3/31/00; A, 5/31/00; A, 2/14/02; A, 2/28/05]

**15.1.5.8 NATURE OF**

**LICENSE AND APPLICATION REQUEST:**

**A.** Any license, certification, registration, renewal, finding of suitability, or other approval issued by the board is deemed a revocable privilege. No person holding such a license, certification, registration, renewal, finding of suitability, or other approval is deemed to have any rights therein.

**B.** Any application submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

**C.** Any application for license, certification, registration, renewal, finding of suitability, or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board. Without limiting the foregoing, the investigation may shall include a background investigation and a credit check of the applicant and all persons having a substantial interest in the applicant.

**D.** By applying for and obtaining any license, certification, registration, renewal, finding of suitability, or other approval from the board, the holder agrees to abide by all provisions of the act and this rule.

**E.** By applying for a license, certification, registration, renewal, finding of suitability, or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board. [11/30/98; 15.1.5.8 NMAC - Rn & A, 15 NMAC 1.5.8, 3/31/00; A, 2/28/05]

**15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:**

**A.** Every application, statement, and notice required to be filed under the act or this rule must shall be submitted on forms supplied or approved by the board and must shall contain such information and documents as specified.

**B.** The applicant must shall file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the

ten-year period immediately preceding the filing date of the application.

**C.** Upon request of the board, the applicant must shall further supplement any information provided in the application. The applicant must shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

**D.** An applicant must shall submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board will shall consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

**E.** All information required to be included in an application must shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant must shall file a written amendment in accordance with this rule.

**F.** The application and any amendments must shall be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature must shall certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

**G.** The applicant must shall cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board will shall examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

**H.** The board will shall automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the act and this rule.

**I.** Neither the state, the board, any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, may shall be held liable for any inaccurate information obtained through such an investigation.

**J.** All new applications submitted to the New Mexico gaming control board shall be completed within 120 days of receipt of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

[11/30/98; 15.1.5.10 NMAC - Rn, 15 NMAC 1.5.10, 3/31/00; A, 2/14/02; A, 5/14/04; A, 2/28/05]

**15.1.5.11 SEPARATE APPLICATIONS REQUIRED; HOLDING OF MULTIPLE LICENSE TYPES PROHIBITED:**

**A.** A licensee may shall not be issued more than one type of license. A licensee may shall not own a majority interest in, manage, or otherwise control a holder of another type of license issued pursuant to the provisions of the Act.

**B.** No affiliate or affiliated company may shall hold any type of license except the type held by the affiliated licensee unless the affiliate or affiliated company does not own a majority interest in, manage, or otherwise control the affiliated licensee and the board determines that such licensure will shall not unduly impair competition in the state gaming industry or otherwise be contrary to the public health, safety, morals, or general welfare.

**C.** This rule is not intended to prohibit a gaming operator licensee from obtaining licensure of its gaming machines as required by the act and this rule or from transferring or disposing of a gaming machine in accordance with this title.

[11/30/98; 15.1.5.11 NMAC - Rn, 15 NMAC 1.5.11, 3/31/00; A, 2/14/02; A, 2/28/05]

**15.1.5.12 ORGANIZATION AND MEMBERSHIP REQUIREMENTS FOR NONPROFIT ORGANIZATIONS; GAMING MACHINES FOR MEMBERS ONLY:**

**A.** Only active members and auxiliary members of a nonprofit organization gaming operator licensee may shall play gaming machines on the licensed premises. No guest or member of the public may shall play a gaming machine licensed to a nonprofit organization gaming operator licensee. No member of the public may shall enter the licensed premises

except during the course of authorized business and provided the person remains on the licensed premises no longer than reasonably necessary to conduct such business.

**B.** To qualify to hold and operate a gaming operator's license, the nonprofit organization ~~must~~ shall have at least 50 bona fide active, sworn members who pay dues on a monthly, quarterly, annual, or other periodic basis. The organization may have, in addition to its regular members, auxiliary members, but auxiliary members may not be counted in order to meet the minimum membership requirements described in this subsection.

**C.** The applicant ~~must~~ shall submit to the board, with the initial application, a copy of the applicant's current charter, articles of incorporation, bylaws, or rules that establish membership requirements. In addition, with the initial application and license renewal applications, the organization ~~must~~ shall submit evidence of good standing and the names and addresses of the applicant's current bona fide members and any auxiliary members. In lieu of the membership list, the board may accept, in its discretion, a statement from the highest ranking official of the nonprofit organization attesting to the fact that the organization meets the membership requirements described in this subsection. [11/30/98; 15.1.5.12 NMAC - Rn, 15 NMAC 1.5.12, 3/31/00; A, 2/28/05]

#### **15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS:**

**A.** To qualify to hold and operate a gaming operator's license, a racetrack ~~must~~ shall be licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races.

**B.** The applicant ~~must~~ shall submit to the board a copy of the applicant's current license from the horse racing commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year. Thereafter, a licensee ~~must~~ shall submit to the board, within ten (10) days of issuance by the state horse racing commission, a copy of the licensee's current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year.

**C.** Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed twelve hours at the licensee's discretion.

"Daily period" means the 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.

[11/30/98; 15.1.5.13 NMAC - Rn, 15 NMAC 1.5.13, 3/31/00; A, 2/14/02; A, 2/28/05]

#### **15.1.5.14 BUSINESS PLAN:**

**A.** The applicant for a gaming operator's license ~~must~~ shall submit with the application a proposed business plan for the conduct of gaming. The plan ~~must be submitted on a form provided or approved by the board, and must~~ shall include the following:

(1) an 8-1/2" x 11" drawing to scale of the building in which the applicant proposes to conduct gaming, with the area designated as the proposed licensed premises clearly outlined;

(2) a description of the type and number of gaming machines proposed for operation, including details of machine features, such as whether the machines are video versus spinning reel or are coin-in/coin-out versus coin-in/credit-out machines;

(3) generic description of the games to be played on the machines and the proposed placement of the machines on the licensed premises;

(4) administrative, accounting, and internal control procedures, including monetary control operations;

(5) security plan;

(6) staffing plan for gaming operations, including identification of key executives and employees;

(7) advertising and marketing plan;

(8) method to be used for prize payouts;

(9) details of any proposed progressive systems; and

(10) any other information requested by the board.

**B.** The business plan must provide for the following accounts:

(1) an escrow account or accounts to be established and maintained in accordance with board requirements for the purpose of holding in reserve large or progressive prizes to be won by participants; and

(2) a depository account exclusively for the collection and payment of the gaming tax in accordance with the provisions of the Tax Administration Act, Chapter 7, Article 1 NMSA 1978.

**C.** The business plan ~~must~~ shall provide for payment from gaming machines such that the payouts are not less than 80% ~~or more than 96%~~ over the lifetime of the machine.

**D.** A gaming operator's license ~~will~~ shall not be granted unless the board first determines that the business plan submitted is suitable for the type of opera-

tion proposed and otherwise complies with the requirements of the act and this rule.

[11/30/98; 15.1.5.14 NMAC - Rn, 15 NMAC 1.5.14, 3/31/00; A, 2/28/05]

#### **15.1.5.15 COMPULSIVE GAMBLING ASSISTANCE PLAN:**

**A.** An applicant for a gaming operator's license ~~must~~ shall submit with the application a plan for assisting in the prevention, education, and treatment of compulsive gambling. The plan ~~must~~ shall include all information required in 15.1.18 NMAC.

**B.** No gaming operator's application ~~will~~ shall be approved unless the board first approves the applicant's compulsive gambling assistance plan.

**C.** Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer the plan once implemented ~~will~~ shall be grounds for suspension or revocation of the gaming operator's license, assessment of a fine, or both.

**D.** The board ~~will~~ shall establish minimum standards for the content, structure and implementation of, and periodic reporting requirements on, the compulsive gambling assistance plan.

**E.** The board may contract with the state of New Mexico department of health or such other entity deemed qualified by the department of health to provide technical assistance in reviewing and recommending to the board approval of compulsive gambling assistance plans.

[11/30/98; 15.1.5.15 NMAC - Rn & A, 15 NMAC 1.5.15, 3/31/00; A, 2/14/02; A, 2/28/05]

#### **15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:**

**A.** The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

**B.** Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee submit an application of finding of suitability within 30 days of the first day of employment as a key executive.

**C.** The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator



licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of 5% or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of 5% or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 5% or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 10% or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee: (a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee; (b) officers with check-writing authority or other financial responsibility; (c) board members; (d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and (e) any person who has access to the internal structure or software of any gaming machine or associated equipment; and

(11) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

**D.** A finding of suitability relates only to the involvement specified in the application. A key executive ~~[will]~~ shall be required to seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

**E.** The board may waive the requirement for finding of suitability of

an institutional investor unless the board determines that public policy requires that the institutional investor apply for such a finding.

**F.** A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph 8 of Subsection C of 15.1.5.16 NMAC or Paragraph 9 of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

**G.** In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

**H.** The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

**I.** Upon final determination by the board of the applicant's suitability, the board ~~[will]~~ shall issue a certification of such finding to the applicant.

**J.** A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**K.** An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

**L.** No person ~~[may]~~ shall be employed as a key executive who has failed to file an application for finding of suitability as required by this rule. A licensee ~~[will]~~ shall be subject to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if the licensee fails to ensure that the key executive has made the required application or employs as a key executive anyone who is required to file an application for finding of suitability but has failed to do so.

[11/30/98; 15.1.5.16 NMAC - Rn & A, 15 NMAC 1.5.16, 3/31/00; A, 10/15/00; A, 2/14/02; A, 7/31/02; A, 2/28/05]

#### **15.1.5.17 APPLICATION FOR WORK PERMIT:**

**A.** Application for a work permit ~~[must]~~ shall be made, processed, and determined in the same manner as set forth in the act or this rule for other applications. No person may be employed as a gaming employee unless the board has first approved the application for such a permit.

**B.** The applicant ~~[must-]~~ shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. ~~[The fingerprints will]~~ Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs ~~[must]~~ shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs also ~~[must]~~ shall have been taken no earlier than three months before the date the application for work permit was filed.

**C.** In addition to grounds for denial of an application described in the act and this rule, the board ~~[may]~~ shall deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

**D.** A work permit issued to a gaming employee ~~[must]~~ shall identify the manufacturer's, distributor's, or gaming operator's license under which the permit is issued and ~~[must]~~ shall have clearly imprinted on the permit a statement that the permit is valid for gaming purposes.

**E.** A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

**F.** A work permit expires unless renewed in accordance with this title or if the employee is not employed as a gaming employee for more than 90 days.

**G.** A work permit is property of the state of New Mexico. Any gaming employee whose employment is terminated for any reason shall surrender his or her work permit to the board upon termination. A licensee shall notify the board, in writing, of a work permit termination within three (3) business days of the termination.

**H.** Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit

gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**I.** The holder of a work permit ~~must~~ shall submit an application for a new work permit if the employee changes employers and the new employer is an applicant or licensee of the board. The employee ~~may~~ shall not begin working for the new employer until the employee has ~~obtained~~ completed a new work permit application.

**J.** Upon the receipt of a completed application, an applicant shall be provided a provisional gaming license which shall be terminated upon the issuance of a permanent work permit or the written determination to deny the work permit. [11/30/98; 15.1.5.17 NMAC - Rn & A, 15 NMAC 1.5.17, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05]

#### 15.1.5.18 APPLICATION FOR GAMING MACHINE LICENSE:

**A.** Application for a gaming machine license ~~must~~ shall be made, processed, and determined in the same manner as set forth in the Act and this rule for other applications. No gaming machine or associated equipment ~~may~~ shall be used for gaming by any licensee without prior written approval of the board.

**B.** No gaming machine ~~may~~ shall be licensed unless it is of a brand, type, and series that has been approved by the board pursuant to the mandatory testing procedures set forth in this title. In addition, each individual gaming machine ~~must~~ shall be licensed by the board before the gaming machine ~~may~~ shall be used in any gaming activity. Such licensure ~~will~~ shall include a license number assigned by the board to the individual gaming machine.

**C.** The application for a gaming machine license ~~must~~ shall include a detailed description of the gaming machine for which approval is sought, including the manufacturer's name, the model, and the permanent serial number. [11/30/98; 15.1.5.18 NMAC - Rn, 15 NMAC 1.5.18, 3/31/00; A, 2/28/05]

#### 15.1.5.19 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:

**A.** A person may act as a manufacturer or distributor only if that person has received from the board a license specifically authorizing that person to act as a manufacturer or distributor or is a manufacturer of associated equipment that has been issued a waiver pursuant to Section 60-2E-13(D) of the act.

**B.** Applications for manufacturer's or distributor's licenses ~~must~~ shall be made, processed, and determined in the same manner as applications for other gaming licenses as set forth in the Act and this rule.

**C.** An applicant for a manufacturer's license or distributor's license may be required to post, as a condition of issuance of the license, a bond or irrevocable letter of credit in a manner and in an amount established by the board. Any such instrument ~~must~~ shall be issued by a surety company authorized to transact business in New Mexico and ~~must~~ shall be satisfactory to the board.

[11/30/98; 15.1.5.19 NMAC - Rn & A, 15 NMAC 1.5.19, 3/31/00; A, 7/31/02; A, 2/28/05]

#### 15.1.5.20 APPLICATION AMENDMENT AND WITHDRAWAL:

**A.** If there is any change in the information submitted to the board in the application, the applicant ~~must~~ shall file, within 10 days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

**B.** An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board ~~will~~ shall establish the new filing date of the application with respect to the time requirements for action on the application.

**C.** An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, ~~will~~ shall become effective on the date determined by the board.

**D.** An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board. [11/30/98; 15.1.5.20 NMAC - Rn, 15 NMAC 1.5.20, 3/31/00; A, 2/28/05]

#### 15.1.5.21 APPLICATION FEES:

**A.** The applicant ~~must~~ shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

**B.** Applicants ~~must~~ shall submit the following nonrefundable fees with an application for licensure or other approval:

- (1) manufacturer's license, \$10,000;
- (2) distributor's license, \$5,000;
- (3) gaming operator's license for

racetrack, \$25,000;

(4) gaming operator's license for nonprofit organization, \$100;

(5) approval of application to install pre-approved modification to a licensed gaming machine filed by gaming operator licensee, \$25;

(6) gaming machine license, \$100 per machine;

(7) work permit, \$25;

(8) certification of finding of suitability, \$25 for each person requiring investigation; and

(9) approval of amended gaming operator license, \$50 for amended license due to addition or deletion of five or fewer machines; \$250 for all other amended licenses.

**C.** In addition to any non-refundable license or approval fee paid, the applicant ~~must~~ shall pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack ~~must~~ shall pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation. Upon completion of the investigation and determination of the actual fees and costs, the board ~~will~~ shall refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants ~~must~~ shall reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants ~~must~~ shall fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

**D.** Investigative fees are charged at the rate of \$50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses ~~will~~ shall be reimbursed based on state mileage and per diem rules, and office expenses, document copying costs, and other reasonable expenses incurred. Checks ~~must~~ shall be made payable to the New Mexico gaming control board.

**E.** In addition to any non-refundable application and supplementary investigation fees and costs, licensed manufacturers and distributors ~~must~~ shall pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor ~~must~~ shall pay the estimated cost of the inspection in advance. Upon completion of

the inspection and determination of the actual cost, the board ~~[will]~~ shall refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor ~~[must]~~ shall fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of \$50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

**F.** The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board ~~[may]~~ shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant ~~[will]~~ shall be debarred from filing any other application with the board until all such fees and costs are paid in full.

**G.** If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board ~~[will]~~ shall notify the applicant, in writing. The board ~~[will]~~ shall discontinue investigation and processing of the application and ~~[will]~~ shall issue a final, written order denying the application.

**H.** The maximum fee for processing any application ~~[will]~~ shall not exceed \$100,000, regardless of actual costs of supplemental investigations.

**I.** The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

**J.** Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation ~~[will]~~ shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

**K.** Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[11/30/98; 15.1.5.21 NMAC - Rn, 15 NMAC 1.5.21, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05]

#### 15.1.5.22 DISCLOSURE OF GAMING CONTRACTS:

**A.** An applicant or a licensee ~~[must]~~ shall submit to the board copies of all written gaming contracts and summaries of all oral gaming contracts under which the contractor ~~[may receive]~~ receives, directly or indirectly, any compensation based on earnings, profits, receipts, or net take from gaming in the state. The

board may review the contracts and require the applicant or licensee to modify the gaming contracts to conform to the provisions of the act or this title. Failure to modify the contracts as required by the board ~~[will]~~ shall be grounds for denial of the application or for other action against the licensee.

**B.** Every person who is a party to any such contract with an applicant or a licensee ~~[must]~~ shall provide any information requested by the board, including filing an application for finding of suitability, if requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, reputation, and all other information requested by the board.

**C.** Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's gaming contract with any person who failed to provide the requested information.

[11/30/98; 15.1.5.22 NMAC - Rn, 15 NMAC 1.5.22, 3/31/00; A, 2/14/02; A, 2/28/05]

#### 15.1.5.23 CONDITIONS OF APPROVAL OF APPLICATION:

The approval of any application or renewal of licensure is subject to the following conditions and constitutes the following agreements by the licensee:

**A.** The licensee ~~[will]~~ shall at all times make its gaming establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement.

**B.** The licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an affiliate, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its authorized representative, the licensee ~~[must]~~ shall authorize all third parties in possession or control of the requested documents to allow the board or representative to examine such documents.

**C.** The licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the board.

**D.** With respect to new license applications, the licensee ~~[will]~~ shall commence the activity approved by the board within 90 days after the date of approval by the board on the application. Failure to commence the approved activity

voids the board's approval, and the licensee ~~[must]~~ shall file a new application. The board, in its discretion, may waive the requirements of a new application. The licensee ~~[must]~~ shall make written application for waiver to the board within 30 days of the date the board's action on the original application becomes void.

**E.** The licensee ~~[will]~~ shall be responsible for all registration, taxation, and licensing imposed by the act or other state law upon the license, gaming machine, or associated equipment. Nothing in this subsection shall be construed as authorizing the imposition of any license fee or tax in contravention of Section 60-2E-39 of the Act.

[11/30/98; 15.1.5.23 NMAC - Rn, 15 NMAC 1.5.23, 3/31/00; A, 2/14/02; A, 2/28/05]

#### 15.1.5.25 RESTRICTION ON REAPPLICATION ~~[AFTER DENIAL]~~:

Any applicant whose application has been denied or whose license has been permanently suspended, revoked, or subjected to other limiting action in any jurisdiction ~~[may]~~ shall not reapply for licensing or approval by the board at any time.

[11/30/98; 15.1.5.25 NMAC - Rn & A, 15 NMAC 1.5.25, 3/31/00; A, 2/14/02; A, 2/28/05]

#### 15.1.5.26 CHANGE IN NUMBER OF GAMING MACHINES; APPLICATION TO AMEND GAMING OPERATOR LICENSE:

**A.** A gaming operator licensee ~~[may]~~ shall not increase the number of gaming machines on, or remove a gaming machine from, the licensed premises without prior written approval from the board.

**B.** A request to change the number of gaming machines on the licensed premises ~~[must]~~ shall be submitted as an application for amendment to the gaming operator license. The application ~~[must]~~ shall be made and processed in the manner prescribed by the board for other applications, using forms provided or approved by the board.

(1) If the requested change is an increase in the number of gaming machines on the licensed premises, the applicant ~~[must]~~ shall also submit, in accordance with this rule, an application for gaming machine license for each additional machine. The licensee also ~~[must]~~ shall submit a detailed diagram of the licensed premises showing the proposed location of all gaming machines.

(2) If the requested change is a reduction in the number of machines due to the sale, transfer or disposal of one or more machines, the applicant ~~[must]~~ shall ensure

that such sale, transfer, or disposal is made in accordance with the procedures set forth in 15.1.16 NMAC.

**C.** No application ~~[may]~~ shall be made for any gaming machine the addition of which ~~[will]~~ shall cause the number of gaming machines on the licensed premises to exceed the number authorized by the act.

**D.** The board may deny the request for amended license on any grounds deemed reasonable by the board. [11/30/98; 15.1.5.26 NMAC - Rn, 15 NMAC 1.5.26, 3/31/00; A, 2/28/05]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.6 NMAC, Sections 6, 7, 8, 9, 10, 11 and 12 effective 2/28/05.

**15.1.6.6 OBJECTIVE:** This rule establishes standards and requirements for premises on which licensed ~~[for the conduct of gaming under]~~ gaming machines are operated by a gaming operator licensee pursuant to the Gaming Control Act. [N, 11/30/98; 15.1.6.6 NMAC - Rn, 15 NMAC 1.6.6, 10/15/00; A, 2/14/02; A, 2/28/05]

**15.1.6.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A.** "Act" means the New Mexico Gaming Control Act.

**B.** "ATM" means a machine used for banking services, including withdrawals and deposits, balance inquiries, transfers, and other services; "ATM" includes credit card cash advance machines and other devices activated by debit or credit cards.

**C.** "Licensed premises" means the area ~~[of a structure, within the gaming establishment,]~~ that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

**D.** "Premises" means the land together with all building's improvements and personal property located on the land.

[N, 11/30/98; 15.1.6.7 NMAC - Rn & A, 15 NMAC 1.6.7, 10/15/00; A, 2/14/02; A, 2/28/05]

**15.1.6.8 SUITABILITY OF PREMISES:** ~~[The proposed licensed premises is subject to board approval and~~

~~must]~~ The board shall approve any proposed licensed premises prior to commencement of gaming. The licensed premises shall meet the requirements of the act and regulations promulgated under the act. The board ~~[may deny any application for a gaming operator license]~~ shall not approve any proposed licensed premises if the board determines that the proposed licensed premises ~~[is]~~ are unsuitable for the conduct of gaming. Without limiting the generality of the foregoing, the proposed licensed premises ~~[may]~~ shall be unsuitable if:

**A.** it is located in a place where gaming is prohibited by a valid zoning ordinance of the city or county or is otherwise in violation of any fire safety, health or building codes;

**B.** it is owned or controlled by any person that is unqualified or disqualified to hold a gaming license, regardless of the qualifications of the person who has applied for or holds the license to conduct gaming operations on the premises;

**C.** an ATM is located in the licensed premises;

**D.** the area to be used for gaming is not separated from the rest of the premises by a permanent physical barrier; or

**E.** the conduct of gaming on the proposed premises would otherwise be contrary to New Mexico law or public policy.

[N, 11/30/98; 15.1.6.8 NMAC - Rn & A, 15 NMAC 1.6.8, 10/15/00; A, 2/28/05]

### 15.1.6.9 AREA OF LICENSED PREMISES; RESTRICTIONS:

**A.** The area approved as the licensed premises ~~[must]~~ shall be clearly marked. No gaming shall be permitted outside of the licensed premises. All gaming devices ~~[must]~~ shall be located within the licensed premises and such other locations for the storage, display, repair and maintenance of the gaming devices as may be approved in advance by the board.

**B.** ~~[No license will be issued for any premises under construction]~~ Gaming shall not commence until the licensed premises have been constructed and been approved by the board.

**C.** No building ~~[may]~~ shall contain, and no area ~~[may]~~ shall constitute, a licensed premises for more than one licensee.

**D.** No gaming operator's license shall encompass more than one licensed premises.

~~[D.]E.~~ The area approved as the licensed premises ~~[must]~~ shall be physically separated by a permanent barrier from all other general areas.

~~[E.] E.~~ No area that is a premises licensed under the New Mexico Liquor

Control Act ~~[may]~~ shall be designated as a racetrack gaming operator's licensed premises under the act. Alcoholic beverages shall not be sold, served, delivered, or consumed on ~~[the]~~ any racetrack operator's gaming licensed premises.

[N, 11/30/98; 15.1.6.9 NMAC - Rn, 15 NMAC 1.6.9, 10/15/00; A, 2/14/02; A, 7/31/02; A, 2/28/05]

### 15.1.6.10 OWNERSHIP OF PREMISES:

**A.** Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises ~~[must]~~ shall furnish the following information to the board within 30 days of the effective date of the lease:

(1) name, address, and brief statement of the nature of business of the lessor of the premises;

(2) brief description of the material terms of the lease;

(3) copy of all documents by which the applicant or licensee has a right to possess the premises, including the lease;

(4) statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and

(5) any other information required by the board.

**B.** Every person who is a party to any lease with an applicant or a licensee ~~[must]~~ shall provide any information requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, and reputation.

**C.** Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's lease with any person who failed to provide the requested information.

**D.** If the applicant or licensee owns all or part of the premises on which gaming is proposed to be conducted, the applicant or licensee ~~[must]~~ shall fully disclose to the board complete information about the interest held by any other person, including an interest held under any mortgage, deed of trust, bonds, or any other instrument, and all other information required by the board.

**E.** The licensee ~~[must]~~ shall furnish to the board complete information pertaining to any change in any premises lease or any change of ownership of, or interest in, the premises in which gaming is conducted within 30 days after the effective date of such change.

[N, 11/30/98; 15.1.6.10 NMAC - Rn, 15

NMAC 1.6.10, 10/15/00; A, 2/14/02; A, 2/28/05]

### 15.1.6.11 MODIFICATION OF LICENSED PREMISES:

A. No licensee ~~[may]~~ shall modify its licensed premises without obtaining the prior written approval of the board. As used in this section, modification does not include painting walls or installing or removing flooring, as long as the placement of gaming machines on the licensed premises ~~[is]~~ are unchanged.

B. Application to modify the licensed premises ~~[must]~~ shall be made ~~[on forms provided by]~~ to the board and submitted with the non-refundable application fee set forth in the application. The application must include a detailed diagram showing the proposed location of each gaming machine after the modification. The board, in its discretion, may waive the non-refundable application fee if it determines that the change is not substantial.

C. No application for modification of a licensed premises ~~[will]~~ shall be approved unless the licensed premises, as modified, ~~[will]~~ shall meet all the requirements of the act and this rule.

D. Modification of a licensed premises includes changing the location of gaming machines on the licensed premises. Any licensee seeking to change the location of gaming machines on the licensed premises ~~[must]~~ shall submit an application to modify the licensed premises to the board.

[N, 11/30/98; 15.1.6.11 NMAC - Rn, 15 NMAC 1.6.11, 10/15/00; A, 2/28/05]

### 15.1.6.12 TRANSFER OF LICENSE TO NEW PREMISES

A. No gaming ~~[operator's]~~ license may be transferred to a new ~~[operator]~~ licensee shall transfer its gaming operations or license to an unapproved premises without the prior written approval of the board. An application for such a transfer ~~[must]~~ shall be submitted ~~[on forms provided or approved by]~~ to the board and ~~[must]~~ shall contain the same information and satisfy the same requirements as required on an original licensing application with respect to approval of the licensed premises.

B. Failure of the licensee ~~[of]~~ to obtain the board's prior approval of transfer of the gaming operations or the gaming operator's license may subject the licensee to suspension or revocation, or the licensee to fines, or both.

[N, 11/30/98; 15.1.6.12 NMAC - Rn, 15 NMAC 1.6.12, 10/15/00; A, 2/28/05]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.8 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 19 effective 2/28/05.

15.1.8.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "Audit" means an examination of an applicant's or licensee's accounting records, financial situation, and business practices to determine compliance with generally accepted accounting principles, state law, or rules adopted by the gaming control board.

C. "Business year" means the annual period used by a licensee for internal accounting purposes.

D. "Cash equivalent" means an instrument of equal liquidity and security as that of legal tender.

E. "Credit play" means operation of a licensed gaming machine that accumulates awards on a display rather than dispensing the winnings from a hopper; one credit equals the denomination of the game being played.

F. "Credit slip" means a cash-out ticket for winnings earned on a gaming machine that provides for credit play.

G. "Drop" means the total amount of money and tokens removed from the drop box, or for cashless gaming machines, the amount of credits deducted during play.

H. "Drop box" or "drop bucket" means a container in a locked part of the gaming machine or its cabinet that is used to collect the money and tokens retained by the gaming machine that are not used to make automatic payouts from the machine.

I. "Gaming tax transfer account" means a bank account maintained by a gaming operator licensee for the exclusive purpose of gaming tax payments to the state treasurer on a monthly basis.

J. "Gross revenue" means all receipts from the operation of gaming machines before any deductions and equals the total of cash wagered by patrons and cash received for credit play.

K. "Hold percentage" means the percent of coins or credits played that are retained by the gaming machine; it is determined by subtracting the payback percentage from 100%.

L. "Hopper" means an assembly inside the gaming machine that receives, holds, and dispenses coins.

M. "Licensed premises" means the area ~~[of a structure, within the gaming establishment]~~ that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

N. "Payback percentage" means the theoretical percentage that will be won by a player during a cycle of play on the machine.

O. "Premises" means the land together with all building's improvements and personal property located on the land.

~~[O-]~~ P. "Soft meter" means an internal electronic accounting system that can be displayed on the screen of a gaming machine or in the coin window on a reel gaming machine.

~~[P-]~~ Q. "Standard financial statements" means statements that represent fairly an entity's financial position and results of operation in conformity with generally accepted accounting principles.

~~[Q-]~~ R. "State" means the state of New Mexico.

~~[R-]~~ S. "Statements on auditing standards" means the auditing standards and procedures published by the American institute of certified public accountants.

~~[S-]~~ T. "Taxation and revenue" means the New Mexico department of taxation and revenue.

~~[T-]~~ U. "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

[12/31/98; 15.1.8.7 NMAC - Rn & A, 15 NMAC 1.8.7, 10/15/00; A, 12/28/01; A, 2/28/05]

### 15.1.8.8 BOARD AUDIT PROCEDURES:

A. The board will establish and maintain an audit and compliance services division that ~~[will]~~ shall have the responsibility to:

(1) conduct periodic and special audits or reviews of the books and records of licensees;

(2) review the accounting methods and procedures used by licensees;

(3) review and observe methods and procedures used by licensees to count and handle cash, tokens, and credit slips;

(4) examine the licensees' records, procedures, and internal controls for the exchange of cash with a gaming patron;

(5) examine and review licensees' internal control procedures;

(6) examine accounting and bookkeeping records and ledger accounts of the licensee or an affiliate of the licensee;

(7) examine the books and

records of any licensee when conditions indicate the need for such action or upon the request of the board; and

(8) determine each licensee's compliance with the act and board rules.

**B.** The audit and compliance services division ~~will~~ shall conduct each audit in conformity with the statements on auditing standards or compliance standards established by the board. The audit and compliance services division ~~will~~ shall prepare a report at the conclusion of each audit and will submit a copy of the report to the board.

**C.** At the conclusion of each audit, the audit and compliance services division ~~will~~ shall review the results of the audit with the licensee. The licensee may, within 10 days of receipt of the review report, submit to the board, in writing, reasons why the board should reject the results of the audit. The board ~~will~~ shall consider the licensee's submission in determining whether any corrective or disciplinary action is necessary.

**D.** When the audit and compliance services division finds the licensee is required to pay additional taxes or fees or is entitled to a refund, the audit and compliance services division ~~will~~ shall report its findings, and the legal basis upon which the findings are made, to the board and to the licensee.

[12/31/98; 15.1.8.8 NMAC - Rn & A, 15 NMAC 1.8.8, 10/15/00; A, 12/28/01; A, 2/28/05]

### 15.1.8.9 ACCOUNTING RECORDS:

**A.** Each licensee ~~must~~ shall keep accurate, complete, legible, and permanent records, in the manner required or approved by the board and in accordance with generally accepted accounting principles, pertaining to revenue that is taxable or subject to fees under the act. Each licensee that keeps permanent records in an electronic format ~~must~~ shall provide to the audit and compliance services division, upon request, a detailed index of computer records in a format satisfactory to the board.

**B.** Each licensee ~~must~~ shall use double-entry accounting and maintain detailed subsidiary records, including the following:

(1) detailed records of revenues, expenses, assets, liabilities, and equity of the gaming establishment;

(2) gaming machine analysis reports that compare, by each machine, actual hold percentages to theoretical hold percentages;

(3) the records required either by the board's minimum standards for internal control systems or, if the board determines that the licensee's system is at least equivalent to the board's minimum standards, the

records required by the licensee's system of internal control;

(4) journal entries prepared by the licensee and its independent accountant; and

(5) any other records that the board specifically requires to be maintained.

**C.** If a licensee fails to keep adequate gaming revenue records, the board may compute the amount of taxable revenue upon the basis of an audit conducted by the audit and compliance services division, on the basis of any information within the board's possession, upon statistical analysis, or upon any other basis deemed reasonable by the board.

**D.** Non-profit licensees are required to have a designated gaming accountant, who shall be found suitable as a key person by the board. The gaming accountant shall have a reasonable amount of experience in accounting/bookkeeping. In the event that the designated gaming accountant cannot provide monthly financial statements and books acceptable to the board, the board may require the non-profit licensee to contract with a qualified independent bookkeeper. The independent bookkeeper is not required to be found suitable as a key executive or to obtain a work permit so long as the bookkeeper duties are limited to preparing the gaming books and financial statements and not signing gaming forms.

[12/31/98; 15.1.8.9 NMAC - Rn & A, 15 NMAC 1.8.9, 10/15/00; A, 5/14/04; A, 2/28/05]

### 15.1.8.10 REPORTING AND PAYMENT PROCEDURES:

**A.** Fees required under the act and all reports relating to taxes and fees ~~must~~ shall be received by the board not later than the due date specified by law. In addition, reports relating to taxes ~~must~~ shall be received by taxation and revenue not later than the due date specified by law. Fees and reports ~~will~~ shall be deemed to be timely filed if the licensee shows, to the board's satisfaction, that the licensee deposited the fees and reports in a United States post office or mailbox, with first-class postage prepaid, properly addressed to the board, and in the case of tax reports, to taxation and revenue, within the time allowed for payment of the fees and filing of the reports.

**B.** All gaming operator licensees ~~must~~ shall remit to the state the gaming tax as provided for by the act. Tax payments ~~will~~ shall be calculated based on net take from the gaming operator licensee's gaming machines, as verified by the machines' soft meters.

**C.** A gaming operator

licensee ~~must~~ shall establish and maintain a single gaming tax transfer account exclusively for gaming tax payments to the state treasurer. In maintaining such bank account:

(1) the gaming operator licensee ~~must~~ shall maintain a minimum balance at all times in the gaming tax transfer account; alternatively, the account ~~must~~ shall be secured at all times by a line of credit or bond issued by a bank or security company acceptable to the board; for purposes of this subsection, "bond" includes cash, cash equivalent instruments or such other instruments as the board determines provide immediate liquidity;

(2) the minimum balance or the security ~~must~~ shall be equivalent to at least 6% of the previous month's net take from all gaming machines of the non-profit gaming operator licensee and at least 15% of the previous month's net take from all gaming machines of the racetrack gaming operator licensee;

(3) no withdrawals from the gaming tax transfer account ~~may~~ shall cause the account balance to be less than the minimum balance requirement described above;

(4) the gaming tax is due on or before the date designated by taxation and revenue; funds in the gaming tax transfer account ~~will~~ shall be transmitted no later than the designated day; any account found with insufficient funds ~~will~~ shall constitute a violation of this subsection and an unsuitable method of operation;

(5) tax liability ~~will~~ shall be calculated based on gaming machine polling for the previous month; and

(6) any delinquent monies not available in the bank and account designated by the state treasurer at the time of any required tax payment ~~will~~ shall be subject to an interest penalty as determined by taxation and revenue; the interest penalty is in addition to any other penalties imposed by the board or taxation and revenue.

**D.** All gaming operator licensees ~~will~~ shall be liable for all portions of gaming revenue from such times as the funds are received into the gaming machine until the funds are deposited into the designated bank and account of the state treasurer.

[12/31/98; 15.1.8.10 NMAC - Rn & A, 15 NMAC 1.8.10, 10/15/00; A, 12/28/01; A, 2/28/05]

### 15.1.8.11 RECORDS OF OWNERSHIP OF LICENSEE:

**A.** Each company licensee that is a corporation ~~must~~ shall keep on the premises of its gaming establishment and ~~must~~ shall provide to the board or audit and compliance services division, upon request, the following corporate documents:

(1) a certified copy of the articles of incorporation, and any amendments;

(2) a copy of the bylaws and any amendments;

(3) a copy of the certificate of authority issued by the New Mexico secretary of state authorizing the corporation to transact business in the state;

(4) a list of all current and former officers and directors;

(5) minutes of all meetings of the corporation's shareholders;

(6) minutes of all meetings of the corporation's directors;

(7) a list of all shareholders, including each shareholder's name, address, number of shares held, and the date the shares were acquired;

(8) the stock certificate ledger;

(9) a record of all transfers of the corporation's stock; and

(10) a record of amounts paid to the corporation for issuance of stock and any other capital contributions.

**B.** A company licensee that is a partnership ~~must~~ shall keep on the premises of its gaming establishment and provide to the board or audit and compliance services division upon request, the following partnership documents:

(1) a copy of the partnership agreement and the certificate of limited partnership, if applicable;

(2) a list of the partners, including names, addresses, percentage of interest held by each, amount and date of each capital contribution of each partner, date the interest was acquired, and salary paid by the partnership to each partner; and

(3) a record of all withdrawals of partnership funds or assets.

**C.** A company licensee that is a limited liability company ~~must~~ shall keep on the premises of its gaming establishment, and provide to the board or audit and compliance services division upon request, the following documents:

(1) a list of the full name and last known mailing address of all current and former members and managers;

(2) a copy of the articles of organization and all amendments or restatements of the articles;

(3) a copy of every current and prior operating agreement, and every amendment thereto;

(4) a current statement of capital contributions made by each member, including the amount of cash and the agreed value of other property received by the limited liability company and the agreed value of services as a capital contribution rendered by each member to the limited liability company;

(5) a statement of the cash, property and services that each member has agreed to contribute or render to the limited

liability company in the future, and of the principal balance outstanding under any promissory note payable in respect of a capital contribution, and the amount of the capital contribution with which each such member will be credited upon receipt of such cash, property or services by the limited liability company; and

(6) a statement of the times at which, or events the occurrence of which, will require additional contributions to or withdrawals from capital.

**D.** Each sole proprietorship licensee ~~must~~ shall keep on the premises of its gaming establishment, or provide to the board or audit and compliance services division upon request, a schedule that shows the name and address of the proprietorship, the amount and date of the proprietor's original investment and any additions and withdrawals.

[12/31/98; 15.1.8.11 NMAC - Rn & A, 15 NMAC 1.8.11, 10/15/00; A, 2/28/05]

#### 15.1.8.12 RETENTION OF RECORDS:

Each licensee ~~will~~ shall provide to the audit and compliance services division, upon request, the records required to be maintained by Section 11 of this rule. Unless the board otherwise approves or requires, the licensee ~~must~~ shall retain all such records within the state for at least five years or for such longer period as required by law. Failure to keep and provide such records upon request constitutes an unsuitable method of operation.

[12/31/98; 15.1.8.12 NMAC - Rn & A, 15 NMAC 1.8.12, 10/15/00; A, 2/28/05]

#### 15.1.8.13 STANDARD FINANCIAL STATEMENTS FOR NON-PROFITS:

**A.** Non-profit licensees shall prepare monthly financial statements covering all financial activities of the licensees' gaming operations for submission to the board. Gaming financial statements include monthly and year to date profit and loss statements and balance sheets.

**B.** The monthly financial statements shall be prepared using a double entry accounting system.

**C.** Non-profit licensees shall prepare financial statements in accordance with the uniform chart of accounts prescribed by the board.

**D.** Non-profit licensees shall submit their financial statements to the board and to the non-profit licensee's governing body no later than the 28th day of the following month. Each financial statement shall be signed by the preparer, who thereby attests to the completeness and accuracy of the data provided.

**E.** In the event that a non-profit licensee fails to submit monthly gaming financial statements to the board, the

board may require the non-profit licensee to provide annual CPA audited financial statements.

**F.** Non-profit licensees shall submit copies of their federal income tax returns (Form 990) to the board within 30 days of filing with the internal revenue service.

[12/31/98; 15.1.8.13 NMAC - Rn, 15 NMAC 1.8.13, 10/15/00; A, 5/14/04; A, 2/28/05]

#### 15.1.8.15 SYSTEM OF INTERNAL CONTROL PROCEDURES FOR LICENSEES:

**A.** Each licensee ~~must~~ shall establish written administrative and accounting procedures for the purpose of verifying the licensee's liability for taxes under the act and for the purpose of exercising effective control over the licensee's internal financial affairs. The procedures ~~must~~ shall be designed to satisfy the requirements, and include the provisions, set forth in Section 60-2E-35 of the act. In addition, the gaming operator licensee's or applicant's procedures ~~must~~ shall meet the minimum standards established pursuant to board regulations.

**B.** The licensee ~~may~~ shall not implement internal control procedures that do not satisfy the minimum standards unless the board, in its sole discretion, determines that the licensee's proposed internal control procedures satisfy the requirements set forth in Section 60-2E-35 of the act and approves the proposed system in writing. Within 30 days after a licensee receives notice of such approval, the licensee ~~will~~ shall comply with the approved procedures, amend its written procedures as necessary, and submit to the board a copy of the written procedures as amended and a written description of the variations from the minimum control standards. The licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner ~~must~~ shall sign the report.

**C.** Each racetrack licensee ~~will~~ shall require its independent certified public accountant to submit to the licensee, on an annual basis, two copies of a written report analyzing the licensee's compliance with approved procedures and minimum control standards. Using the criteria established by the board, the accountant ~~will~~ shall report each event and procedure that the accountant believes does not satisfy the minimum standards or variations that have been approved by the board in writing pursuant to subsection 15.1.8.15(B) NMAC. Not later than 120 days after the end of the licensee's business year, the licensee ~~will~~ shall submit to the board a copy of the accountant's report and any other documentation relating to the licensee's items of noncompliance noted by the accountant and

describing the corrective measures taken.

**D.** Before adding any computerized system for monitoring gaming machines or any computerized associated equipment, the licensee ~~[must]~~ shall do the following:

(1) amend its accounting and administrative procedures and internal controls to comply with the minimum standards;

(2) submit to the board a copy of the procedures as amended and a written description of the amended procedures signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner;

(3) comply with any requirements imposed by the board regarding administrative approval of computerized gaming machine monitoring systems or associated equipment; and

(4) after complying with 15.1.8.15.D(1) NMAC through 15.1.8.15.D(3) NMAC above, implement the procedures as amended.

**E.** If the board determines at any time that the licensee's administrative or accounting procedures do not comply with the requirements of this section, or the licensee is out of compliance with the approved minimum internal controls, the board ~~[will]~~ shall notify the licensee in writing. Within 30 days after the date of such notice, the licensee ~~[will]~~ shall amend its procedures accordingly, submit a copy of the amended procedures, and provide, in writing, a description of any remedial measures taken.

**F.** Failure to comply with the minimum standards or any approved variations minimum standards constitutes an unsuitable method of operation.

[12/31/98; 15.1.8.15 NMAC - Rn & A, 15 NMAC 1.8.15, 10/15/00; A, 12/28/01; A, 2/28/05]

#### **15.1.8.16 NET TAKE COMPUTATIONS:**

**A.** For each gaming machine, gross revenue equals the total of cash received from patrons for playing a game, cash received in payment for credit extended by a licensee to a patron for playing a game, and compensation received for conducting a game in which the licensee is not a party to the wager. Net take equals gross revenue less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators. In addition, if the licensee retains detailed documentation supporting the deduction, the licensee may deduct the actual cost to the licensee, its agent or employee, or an affiliate of the licensee, of any personal property (other than costs of travel, food, refresh-

ments, lodging, or services) distributed to a patron as the result of a legitimate wager.

**B.** The difference between the initial hopper load and the total amount that is in the hopper at the end of each business year ~~[must]~~ shall be adjusted accordingly as an addition to or subtraction from the drop. If the licensee does not make, or makes inaccurate, additions to or subtractions from the drop, the audit and compliance services division may compute an estimated total amount in the slot machine hoppers and may make reasonable adjustments to gross revenue during the course of an audit.

**C.** A licensee ~~[will]~~ shall not exclude from gross revenue money paid out on wagers that are knowingly accepted by the licensee in violation of the act, this title, or other state or federal laws.

**D.** If in any month the amount of net take is less than zero, the licensee may deduct the excess in the succeeding months until the loss is fully offset against net take.

[12/31/98; 15.1.8.16 NMAC - Rn & A, 15 NMAC 1.8.16, 10/15/00; A, 2/28/05]

#### **15.1.8.17 TRANSMISSION OF DAILY REPORTS OF GAMING RECEIPTS AND PAYOUTS:**

**A.** Information regarding the preceding day's gaming receipts and payouts ~~[must]~~ shall be made available to the board through the central monitoring system by no later than 8:00 a.m. the next day. In case of an electronic or other malfunction of the central monitoring system or the licensee's site controller, the gaming operator licensee may, with board approval, submit a hard copy of the report to the board by fax transmission or other approved reporting method. The licensee ~~[must]~~ shall notify the board of the malfunction and request approval of an alternative reporting method before the reporting deadline. Persistent failure of the licensee to comply with the requirements of this rule constitutes an unsuitable method of operation.

**B.** The board may access current data from the licensee's site controller at any time the board determines such access is necessary or appropriate.

[12/31/98; 15.1.8.17 NMAC - Rn, 15 NMAC 1.8.17, 10/15/00; A, 2/28/05]

#### **15.1.8.19 MINIMUM BANKROLL REQUIREMENTS:**

**A.** Each gaming operator licensee ~~[must]~~ shall maintain, in the manner required or approved by the board:

(1) cash or cash equivalents in an amount equal to the value of the highest possible jackpot that could be won from a single gaming machine at the gaming establishment plus the value of the cash winnings and non-cash prizes to be paid in periodic

payments or such higher amount as the board may determine; and

(2) if the gaming operator licensee operates a progressive system, cash or cash equivalents in an amount the board finds sufficient to protect the gaming operator licensee's patrons against defaults in gaming debts owed by the licensee.

**B.** If at any time the licensee's available cash or cash equivalents are less than the amount required by this section, the licensee ~~[must]~~ shall immediately notify the board of the deficiency. Failure to maintain the minimum bankroll requirement or a higher bankroll as required by the board, or failure to notify the board of any deficiencies, is an unsuitable method of operation.

[12/31/98; 15.1.8.19 NMAC - Rn, 15 NMAC 1.8.19, 10/15/00; A, 2/28/05]

### **NEW MEXICO GAMING CONTROL BOARD**

**This is an amendment to 15.1.9 NMAC, Sections 8, 9, 10, 11, 12, 13, 14, 15 and 16 effective 2/28/05.**

#### **15.1.9.8 GENERAL REQUIREMENTS:**

**A.** The gaming operator licensee or applicant ~~[must]~~ shall develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the licensed premises which shall be reviewed by the board or board's designated representatives. The procedures and controls ~~[must]~~ shall be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls ~~[must]~~ shall provide at least the level of control described in this rule[-] and shall, at a minimum conform to the standards established in the minimum internal controls for nonprofits or racetracks appended hereto as appendix 1 and 2 respectively, unless a variance has been approved by the board.

**B.** Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls ~~[must]~~ shall identify the employees authorized to perform each function and ~~[must]~~ shall ensure an appropriate level of security for each function.

**C.** Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board ~~[will]~~ shall be acceptable to the board.

**D.** Any amendment to a licensee's internal controls ~~[must be~~



~~approved~~ shall be provided in writing ~~by~~ to the board or the board's designee before implementation by the licensee.

**E.** Any amendment that does not meet the standards of the minimum internal controls shall come before the board for approval.

~~[E]~~ **E.** Failure to develop and implement the necessary internal controls, implementation of substandard internal controls, or failure to obtain board approval before amending internal controls, constitutes an unsuitable method of operation.

~~[F]~~ **G.** The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security. [N, 12/31/98; 15.1.9.8 NMAC - Rn & A, 15 NMAC 1.9.8, 1/31/02; A, 2/28/05]

**15.1.9.9 METER READINGS:** Procedures and controls ~~[must]~~ shall be developed and implemented for reading, recording and retaining hard and soft meter readings and for reporting, investigating, and adjusting unusual meter readings. [N, 12/31/98; 15.1.9.9 NMAC - Rn, 15 NMAC 1.9.9, 1/31/02; A, 2/28/05]

**15.1.9.10 DROP, COUNT, AND WRAP PROCEDURES:** Internal controls ~~[must]~~ shall include procedures and controls for:

**A.** maintaining physical custody of, and restricting and documenting access to, coin drop cabinet keys, bill acceptor drop box release keys, bill acceptor drop box storage rack keys, and bill acceptor drop box contents keys;

**B.** ensuring that access to coin drop boxes and bill acceptor boxes is restricted and that drop, count, and wrap procedures are performed only by authorized personnel;

**C.** ensuring that all drop buckets and bill acceptor boxes are accounted for during the drop, count, and wrap procedures and preventing the commingling of coins or bills before the count is completed;

**D.** securing drop buckets or bill acceptor boxes from the time they are removed from the gaming machine cabinets to the time they are transported to the count room;

**E.** prior to the count, if a weigh scale is to be used, ensuring proper calibration, testing, and securing of the weigh scale, and documentation of those procedures; if a weigh scale interface is used, restricting access to the weigh scale interface to authorized persons;

**F.** securing coin room inventory if the count room serves as a coin room;

**G.** restricting access to the count room to count team members during

the count;

**H.** monitoring the drop, count, and wrap procedures and documenting the results; and

**I.** delivering all monies and count documents to the appropriate secured location for safekeeping. [N, 12/31/98; 15.1.9.10 NMAC - Rn, 15 NMAC 1.9.10, 1/31/02; A, 2/28/05]

**15.1.9.11 HOPPER CONTENTS; FILLS; ADJUSTMENTS:** The gaming operator licensee's internal controls ~~[must]~~ shall include procedures and controls for securing drop and hopper contents when gaming machines are temporarily removed from the floor; refilling an empty hopper; making hopper adjustments; and restricting access to computerized fill systems in a manner that prevents access by unauthorized persons and fraudulent payouts. [N, 12/31/98; 15.1.9.11 NMAC - Rn, 15 NMAC 1.9.11, 1/31/02; A, 2/28/05]

**15.1.9.12 ACCOUNTING AND AUDITING PROCEDURES:**

**A.** The gaming operator licensee's internal controls ~~[must]~~ shall provide for completion of accounting and auditing procedures on the gaming machine site controller at reasonable intervals. The internal controls ~~[must]~~ shall include procedures to:

(1) verify that the site controller is transmitting and receiving data from the gaming machines properly and that coin-in and bill-in meter readings are accurate;

(2) compare the bill-in meter reading to the total bill acceptor drop amount or ticket printer amounts and resolve variances before generation and distribution of gaming machine statistical reports;

(3) reconcile gross gaming revenue monthly;

(4) reconcile tickets printed with payouts for validated tickets; and

(5) document and maintain all gaming machine auditing reports and follow-up procedures as required in this title.

**B.** Gaming operator licensees ~~[must]~~ shall retain the audit tape that records an exact duplicate of all tickets printed and transactions recorded for a period of five years. The audit tape ~~[must]~~ shall be identified by gaming machine and stored in a secure area. [N, 12/31/98; 15.1.9.12 NMAC - Rn, 15 NMAC 1.9.12, 1/31/02; A, 2/28/05]

**15.1.9.13 GAMING DEVICE CONTROL; COMPUTER ACCESS:**

**A.** The gaming operator licensee ~~[must]~~ shall develop and maintain internal controls that provide for document-

ed access to gaming devices, limited access to keys, locked cabinets, and counting areas, and maintenance of a readily-accessible device history log in each gaming machine or on file.

**B.** The gaming operator licensee ~~[must]~~ shall maintain a personnel access list that includes, at a minimum, the employee's name, identification number, and a list of functions the employee is authorized to perform and the dates such authority was given. The licensee's internal controls ~~[must]~~ shall ensure that only authorized personnel have physical access to computer hardware and software, that reports and other computer-generated output are available and distributed only to authorized personnel. [N, 12/31/98; 15.1.9.13 NMAC - Rn, 15 NMAC 1.9.13, 1/31/02; A, 2/28/05]

**15.1.9.14 BACKUP AND RECOVERY CONTROL:** Backup and recovery policies for gaming machines and computerized systems ~~[must]~~ shall be written and distributed to all appropriate personnel. The policies ~~[must]~~ shall include information and procedures that ensure timely restoration of data in order to resume operations after a power outage or hardware or software failure. [N, 12/31/98; 15.1.9.14 NMAC - Rn, 15 NMAC 1.9.14, 1/31/02; A, 2/28/05]

**15.1.9.15 APPLICATIONS CONTROL:** The gaming operator licensee ~~[must]~~ shall establish procedures that assure the accuracy of data input into the computerized system, the integrity of the processing performed by the system, and the verification and distribution of the output generated by the system. Examples of such controls include establishing passwords or other proper authorization prior to input, using parameters or reasonableness checks, and comparing control totals on reports to amounts input. [N, 12/31/98; 15.1.9.15 NMAC - Rn, 15 NMAC 1.9.14, 1/31/02; A, 2/28/05]

**15.1.9.16 EPROM TESTING AND DUPLICATION:**

**A.** Procedures and controls ~~[must]~~ shall provide that, at least once per year, tests are conducted to ensure the integrity of a sample of gaming machine game program EPROMs. Only certified technicians, manufacturers, and distributors may conduct such tests.

**B.** EPROMs ~~[may]~~ shall not be duplicated except with board approval, unless the person seeking to duplicate the program is a licensed manufacturer. In either case, the licensee ~~[must]~~ shall ensure compliance with all applicable federal copyright laws. Approval by the board to duplicate game program EPROMs

does not constitute an opinion as to such compliance.

**C.** The licensee [must] shall develop and maintain procedures for each of the following:

(1) removal of EPROMs from devices, verification of the existence of errors, and correction of errors by duplication from the master game program;

(2) copying one gaming device program to another approved program;

(3) verification of duplicated EPROMs with electrical failures;

(4) destruction, as needed, of EPROMs with electrical failures; and

(5) securing the EPROM duplicator and master game EPROMs from unrestricted access.

**D.** Records [must] shall be maintained documenting the procedures described in this section 15.1.9.16. The records include the date, gaming machine number for both source and destination machines, manufacturer, program number, personnel involved, reason for duplication, disposition of any permanent EPROM, and lab approval number.

**E.** EPROMs returned to gaming devices [must] shall include the date and information that is identical to that shown on the manufacturer's label.

[N, 12/31/98; 15.1.9.16 NMAC - Rn, 15 NMAC 1.9.16, 1/31/02; A, 2/28/05]

## NEW MEXICO GAMING CONTROL BOARD

**This is an amendment to 15.1.10 NMAC, Sections 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43 and 44 effective 2/28/05.**

### 15.1.10.8 METHODS OF OPERATION:

**A.** All gaming establishments [must] shall be operated in a manner suitable to protect the health, safety, morals, and general welfare of the public.

**B.** It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy. Willful or persistent use of methods of operation deemed unsuitable, or failure of the licensee to use suitable methods, [will] shall constitute grounds for revocation of the license and imposition of a fine or other disciplinary action by the board.

[12/31/98; 15.1.10.8 NMAC - Rn, 15 NMAC 1.10.8, 3/31/00; A, 2/28/05]

### 15.1.10.9 UNSUITABLE METHODS OF OPERATION:

Any activity by any licensee or its agents or employees that is contrary to the health, safety, morals, or welfare of the public, is deemed an unsuitable method of operation.

Without limitation, and in addition to any other specific methods of operation or conduct identified in this title as unsuitable, the following [may] shall be determined to be unsuitable methods of operation:

**A.** failing to exercise discretion and sound judgment in the operation of the activity authorized under the license;

**B.** permitting persons who are obviously intoxicated to participate in gaming;

**C.** serving or allowing possession of alcoholic beverages by any person on the licensed premises of a race-track gaming operator licensee;

**D.** directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

**E.** employing as a key executive any person who has been denied a gaming license, work permit, or finding of suitability in any jurisdiction, or who has failed or refused to apply for such permit or finding;

**F.** failing to comply with all federal, state and local laws and regulations governing the operations of a gaming establishment, including without limitation the payment of all fees and taxes;

**G.** possessing or permitting the operation of any unlicensed gaming machine, gaming device, or other unauthorized device on the gaming establishment;

**H.** conducting, operating, or dealing with any cheating game or device on the gaming establishment, knowingly or unknowingly, that alters or tends to alter the normal random selection of criteria that determine the results of the game;

**I.** except as otherwise provided in this rule, selling, transferring or otherwise assigning interest in the license or revenues from the license;

**J.** denying the board or its agents or other authorized persons access to a gaming establishment or records, wherever located, as authorized by the act and rules adopted by the board;

**K.** a nonprofit operator licensee knowingly or unknowingly permitting persons other than members or auxiliary members to participate in gaming on the licensed premises;

**L.** employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

**M.** misrepresentation of any material fact or information to the board;

**N.** engaging in, furthering, or profiting from any illegal activity or practice or any violation of the act or this

title;

**O.** obstructing or impeding the activities of the board or its employees or agents;

**P.** facilitating, participating in, or allowing the issuance of any loans or extending credit to a patron for gaming purposes;

**Q.** conducting or permitting the conduct, knowingly or unknowingly, of any gaming activity other than that allowed pursuant to the license;

**R.** cashing or permitting the cashing of governmental assistance checks, including welfare checks and child support payments;

**S.** failing to follow, or to ensure that employees follow, the minimum internal controls established by regulation or failure to notify the board of any changes to the minimum internal controls;

**T.** failing to require employees to wear work permits or key executive identification as required in this title;

**U.** employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license as required by the act [and];

**V.** failing to adhere to the compulsive gambling guidelines or plan; and

**[W] W.** otherwise failing to conduct gaming operations in accordance with the act or this title.

[12/31/98; 15.1.10.9 NMAC - Rn & A, 15 NMAC 1.10.9, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05]

### 15.1.10.11 VIOLATION OF LAW OR REGULATIONS AS GROUNDS FOR REVOCATION OR SUSPENSION:

**A.** Violation of any provision of the act or of this title by a licensee, its agent, or employee is deemed contrary to the public health, safety, morals, and welfare and constitutes grounds for suspension or revocation of the license, or imposition of a fine, or both.

**B.** It is the responsibility of every licensee to keep informed of the content of the act, rules promulgated under the act, and all amendments to either. Ignorance of the act, rules, or amendments thereto [will] shall not be an excuse or defense for such violations.

[12/31/98; 15.1.10.11 NMAC - Rn, 15 NMAC 1.10.11, 3/31/00; A, 2/28/05]

### 15.1.10.12 INVESTIGATION OF LICENSEE'S CONDUCT:

The board is charged by law with the duty of observing the conduct of all licensees for the purpose of ensuring that licenses [will] shall not be

held by unqualified or disqualified persons, unsuitable persons, or persons who conduct gaming operations in an unsuitable manner. Such investigations ~~will~~ shall be conducted in the manner and to the extent deemed necessary by the board.

[12/31/98; 15.1.10.12 NMAC - Rn, 15 NMAC 1.10.12, 3/31/00; A, 2/28/05]

#### 15.1.10.14 UNLICENSED AND SUSPENDED GAMES OR GAMING DEVICES:

**A.** No unlicensed or unauthorized games ~~may~~ shall be operated at the gaming establishment, nor ~~may~~ shall a licensee offer for sale, distribution, or play any gaming device that ~~may~~ shall be used in gaming without first having obtained all necessary licenses and having paid all current fees and taxes applicable to such devices.

**B.** A licensee who desires to temporarily remove or suspend a game from play ~~must~~ shall give the board advance written notice of the type and number of games sought to be suspended and the beginning date and duration of the proposed suspension. In addition, the licensee ~~must~~ shall physically remove the gaming device from any area accessible by members, in the case of a nonprofit operator licensee, or the public, in the case of a racetrack gaming operator licensee, and place it in a secured area approved by the board. However, a gaming device may remain on the licensed premises while in a suspended status if the licensee removes all detachable fixtures such as drop boxes and similar removable items. Thereafter, the board ~~will~~ shall inspect and seal the gaming device and allow it to remain on the licensed premises during the suspension period. Temporary removal of a gaming device under this subsection ~~may~~ shall not exceed 60 days.

**C.** Before any suspended game or gaming device ~~may~~ shall be reactivated and placed into play, the licensee ~~must~~ shall:

(1) advise the board in writing of the licensee's intention and date to reactivate such game or gaming device;

(2) pay all applicable fees and taxes; and

(3) offer the game or gaming device for play following the board's reinspection of the sealed gaming device.

**D.** If a gaming operator licensee ~~must~~ shall remove a gaming machine from the gaming area due to suspected cheating, tampering, or malfunction, the gaming operator:

(1) ~~must~~ shall immediately notify the board by telephone of the temporary removal and file a written report within five days; remove the gaming machine to a secure location as directed by the board; and

ensure that the gaming machine is secured during any investigation deemed necessary by the board or its agent;

(2) may temporarily replace the removed gaming machine with a pre-approved gaming machine obtained from a licensed distributor or manufacturer, provided the gaming operator licensee and licensed distributor or manufacturer fully disclose the terms of the temporary replacement and provided the terms are satisfactory to the board; and

(3) ~~must~~ shall notify the board of the date on which the removed gaming machine will be returned to play and provide proof satisfactory to the board that the replacement gaming machine has been removed from the licensed premises and returned to the distributor.

[12/31/98; 15.1.10.14 NMAC - Rn, 15 NMAC 1.10.14, 3/31/00; A, 2/28/05]

#### 15.1.10.15 PLAY BY PERSONS UNDER THE AGE OF 21 PROHIBITED:

**A.** Licensees ~~must~~ shall display posters in full public view at both the entrance to and inside the licensed premises stating, at a minimum, "THESE PREMISES ARE RESTRICTED BY LAW TO PERSONS 21 YEARS OF AGE OR OLDER."

**B.** The board ~~will~~ shall prescribe the form and size of the poster and will make copies available to all licensees.

**C.** In the event a person under 21 years of age attempts to claim cash or non-cash winnings, the gaming operator licensee ~~must~~ shall treat the play of the game as void. The underage player ~~will~~ shall not be entitled to any prize won or to a refund of any amounts bet.

[12/31/98; 15.1.10.15 NMAC - Rn & A, 15 NMAC 1.10.15, 3/31/00; A, 2/28/05]

**15.1.10.16 PROHIBITED ADVERTISING:** ~~[No nonprofit operator licensee may advertise to the general public the location or times that gaming activity has been or will be conducted by the licensee or the prizes awarded or to be awarded in connection with gaming activity.]~~ No racetrack gaming operator licensee ~~may~~ shall allow, conduct, or participate in any false or misleading advertising concerning gaming on its licensed premises. Any advertising by the nonprofits shall advertise that gaming is for members only.

[12/31/98; 15.1.10.16 NMAC - Rn, 15 NMAC 1.10.16, 3/31/00; A, 2/28/05]

#### 15.1.10.17 GAMING BY OWNERS, DIRECTORS, OFFICERS, KEY EXECUTIVES, WORK PERMITEES OR TECHNICIANS:

**A.** None of the following members of a nonprofit operator licensee,

or of any affiliate of the licensee, shall play any gaming device made available to members and auxiliary members by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee:

~~[(1) the officer holding the highest rank;]~~

~~[(2)](1)~~ officers, members or auxiliary members who have (a) check-writing authority or other access to any account in which gaming receipts may be deposited; or (b) other financial or decision-making responsibility over any gaming activity;

~~[(3)](2)~~ key executives, such as the gaming manager; and

~~[(4)](3)~~ any person who has access to software or an area within the internal structure of any gaming machine or associated equipment in which the functioning of the gaming machine may be altered or manipulated.

**B.** No officer, director, owner, or key executive of a racetrack gaming operator licensee, or of any affiliate of the licensee, shall play any gaming device made available to the public by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee.

**C.** Except for the purpose of servicing the gaming device, no technician shall play any gaming device located at a gaming establishment that is operated by the technician's employer or by any licensee for which the technician or the technician's employer provides services.

**D.** No person holding a work permit shall play any gaming device while on duty as a gaming employee.

[12/31/98; 15.1.10.17 NMAC - Rn & A, 15 NMAC 1.10.17, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05]

#### 15.1.10.18 GAMING MACHINE OWNERSHIP IDENTIFICATION:

**A.** In addition to any other requirements for identification set forth in this title, a gaming operator licensee ~~must~~ shall affix the following items in a prominent place to each gaming machine offered for play or display the information on signs approved by the board and placed in at least two conspicuous areas on the licensed premises:

(1) a sign or label that identifies the person or persons responsible for repairs or malfunctions of the machine, payments of winnings, and disputes regarding payments; and

(2) the board's address and telephone number to report malfunctions and complaints.

**B.** A licensee ~~may~~ shall not offer for play a gaming machine that fails to display the information required by this title.

[12/31/98; 15.1.10.18 NMAC - Rn, 15 NMAC 1.10.18, 3/31/00; A, 2/28/05]

#### 15.1.10.19 PUBLICATION OF PAYOFFS:

**A.** Payoff schedules applicable to every licensed gaming machine [must] shall be displayed at all times on the machine or in a conspicuous place immediately adjacent to it. Payoff schedules [must] shall accurately state actual payoffs applicable to the particular machine and [may] shall not be worded in a manner that misleads or deceives the public.

**B.** Presentation of any misleading or deceptive matter on a payoff schedule or failure to make payment in strict accordance with posted payoff schedules is an unsuitable method of operation.

[12/31/98; 15.1.10.19 NMAC - Rn, 15 NMAC 1.10.19, 3/31/00; A, 2/28/05]

#### 15.1.10.21 DETERMINATION AND POSTING OF ODDS:

**A.** The gaming operator licensee shall post the odds of winning in a conspicuous place on the face of each gaming machine or in a conspicuous place immediately adjacent to the gaming machine. Failure to post odds for any gaming machine shall subject the licensee to disciplinary action.

(1) The odds [must] shall be posted in a manner which is clearly legible.

(2) If the odds are posted adjacent to the gaming machine, the posting [must] shall clearly identify the gaming machine to which it applies.

**B.** The odds to be posted on a gaming machine shall be the odds of any player achieving a winning outcome from the games available on that gaming machine. For example, if the odds are that a player will win something from the particular gaming machine 20% of the time, a notice containing the words "The odds of winning are 1 in 5" should be posted as required in this section.

[12/31/98; 15.1.10.21 NMAC - Rn, 15 NMAC 1.10.21, 3/31/00; A, 5/14/04; A, 2/28/05]

#### 15.1.10.22 SECURITY:

**A.** Gaming operator licensees [must] shall implement and maintain security measures that [will] shall ensure safe and honest operation of the gaming establishment.

**B.** Security personnel shall possess and maintain valid work permit cards at all times while on duty.

**C.** A sufficient number of security personnel [must] shall be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. If the board determines at any time that security meas-

ures are inadequate, the board may require that the licensee provide additional security measures to the board's satisfaction. Failure to maintain adequate security measures is an unsuitable method of operation.

[12/31/98; 15.1.10.22 NMAC - Rn, 15 NMAC 1.10.22, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05]

#### 15.1.10.24 AUTHORIZED GAMES; GAME REQUIREMENTS:

**A.** Limited gaming permitted pursuant to Section 60-2E-2(A) of the act [will] shall include only the play of approved games on licensed gaming machines. Table games, side bets, unapproved games, and all other forms of unauthorized gaming are expressly prohibited.

**B.** No game [may] shall be played on a licensed premises until the board has authorized the game in conformity with the gaming operator applicant's or licensee's approved business plan and the gaming machine has been connected and transmitting satisfactorily to the board's central monitoring system.

**C.** The following games, one or more of which may be simulated on a single gaming machine, are approved for play on a licensed premises:

- (1) draw poker;
- (2) keno;
- (3) blackjack;
- (4) line-up symbols and numbers
- (5) any other game authorized by

the board.

[12/31/98; 15.1.10.24 NMAC - Rn, 15 NMAC 1.10.24, 3/31/00; A, 12/28/01; A, 2/28/05]

#### 15.1.10.25 PAYMENT OF WINNINGS:

**A.** No gaming machine offered for play by a nonprofit operator licensee [may] shall award a prize that exceeds \$4,000. Nonprofit operator licensees [may] shall not offer periodic payments of cash or non-cash winnings and [must] shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**B.** Except as otherwise provided in this rule, a racetrack gaming operator licensee [must] shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**C.** Nonpayment of winnings and non-cash prizes awarded [may] shall subject the gaming operator licensee to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if nonpayment is due to:

(1) the gaming operator licensee's failure or refusal to maintain minimum bankroll requirements established in this

title;

(2) the gaming operator licensee's failure or refusal to fund or maintain annuities as required by this title;

(3) the gaming operator licensee's failure or refusal to pay winnings after the board has issued a final order in a patron dispute, unless an appeal of the board's order is pending and enforcement of the order has been stayed by the board or a court of competent jurisdiction;

(4) use of unfair, deceitful, or illegal practice by the gaming operator licensee, its agent, or employee; or

(5) any other reason deemed appropriate by the board.

[12/31/98; 15.1.10.25 NMAC - Rn, 15 NMAC 1.10.25, 3/31/00; A, 12/28/01; A, 2/28/05]

#### 15.1.10.26 PERIODIC PAYMENTS:

**A.** Periodic payments of winnings and non-cash prizes awarded to a patron as the result of any licensed game offered by a racetrack gaming operator licensee [may] shall be made if one of the following is established as the method of funding the periodic payments:

(1) an irrevocable surety bond or an irrevocable letter of credit with an independent administrator that provides periodic payments to a winner if the licensee defaults for any reason; the written agreement establishing an irrevocable surety bond or irrevocable letter of credit must be submitted to the board for approval;

(2) an irrevocable trust with an independent administrator in accordance with a written trust agreement approved by the board that provides periodic payments from an unallocated pool of assets to a group of winners; the trust [must] shall expressly prohibit the winner from encumbering, assigning, or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to his or her estate; the assets of the trust [must] shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments required; or

(3) another irrevocable method of providing the periodic payments to a winning patron that is approved by the board and consistent with the purpose of this rule.

**B.** The funding of periodic payments [must] shall be completed within 30 days of the date the patron wins or is awarded a prize.

**C.** Periodic payments [may] shall not be used for winnings of, or non-cash prizes worth, \$50,000 or less. Periodic payments for total amounts won greater than \$50,000 [must] shall be paid as

follows:

(1) for winnings greater than \$50,000 but less than \$100,000, payments ~~[must]~~ shall be at least \$10,000 annually;

(2) for winnings of \$100,000 or more, payments ~~[must]~~ shall be no less than 1/10 of the total amount annually;

(3) for winnings of \$500,000 or more, payments ~~[must]~~ shall be made in the manner set forth in paragraph 15.1.10.26(C)(2) above or in such other manner approved by the board upon application by the licensee; and

(4) the first payment ~~[must]~~ shall be made upon validation of the win.

**D.** Periodic payments of non-cash prizes awarded ~~[may]~~ shall be offered if the patron has the right to decide whether to receive the non-cash prize or cash equivalent of the non-cash prize each time a periodic payment is due. The cash equivalent ~~[will]~~ shall be the actual cost to the licensee of the non-cash prize on the day such prize was won. The amount of the periodic payments to be funded ~~[must]~~ shall be determined by the present value of the cash equivalent of the non-cash prize based on the prime rate.

**E.** For any licensed game for which periodic payments are or may be used, the racetrack gaming operator licensee ~~[must]~~ shall display signs on each gaming device setting forth either the amount or the terms of the payment to be made.

**F.** If the licensee fails to fund the periodic payments as required by this rule, the licensee ~~[must]~~ shall immediately notify the board in writing and ~~[must]~~ shall immediately cease offering any licensed game for which periodic payments are used.

**G.** The present value of all winnings and non-cash prizes offered payable by a periodic payment ~~[must]~~ shall be used in calculating the minimum bankroll of the location.

**H.** The board may waive one or more of the requirements of this section if the racetrack gaming operator licensee submits a written request for waiver to the board and the board makes a written finding that such waiver is not contrary to the public interest and the purposes of the act.

[12/31/98; 15.1.10.26 NMAC - Rn, 15 NMAC 1.10.26, 3/31/00; A, 12/28/01; A, 2/28/05]

#### 15.1.10.27 PAYMENT OF GAMING CREDITS:

**A.** Gaming operator licensees ~~[must]~~ shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the licensee and approved by the board before opening the licensed premises for gaming activity. Such procedures ~~[must]~~ shall be modified at

the direction of the board, in its sole discretion.

**B.** A player ~~[may]~~ shall redeem credit slips at the designated place in the licensed premises where the gaming credit was issued. A credit slip ~~[must]~~ shall be redeemed within 180 days of the date of issuance. Funds reserved for the payment of a credit slip ~~[must]~~ shall be treated as net take if unredeemed within 180 days from the date of issuance. The 180-day redemption policy ~~[must]~~ shall be prominently displayed on the licensed premises.

**C.** No payment for gaming credits awarded on a gaming machine ~~[may]~~ shall be made unless the credit slip:

(1) is presented on a fully legible, valid, printed credit slip, with a bar code that can be validated, containing the information required;

(2) is not mutilated, altered, or tampered with in any way, or previously paid;

(3) is not counterfeit in whole or in part; and

(4) is presented by a person authorized to engage in licensed gaming at the licensed premises.

**D.** The gaming operator licensee ~~[must]~~ shall designate employees authorized to redeem credit slips during hours of operation. Gaming credits ~~[must]~~ shall be immediately paid in cash or by check when a player presents a credit slip for payment that meets the requirements of this section. No gaming credits ~~[may]~~ shall be paid in tokens, chips or merchandise.

**E.** All credit slips redeemed by a gaming operator licensee ~~[must]~~ shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

**F.** The state, the board, and the agents and employees of either are not liable for the payment of any gaming credits on any credit slips.

[12/31/98; 15.1.10.27 NMAC - Rn, 15 NMAC 1.10.27, 3/31/00; A, 2/28/05]

#### 15.1.10.28 PATRON DISPUTES (NON-PROFITS/RACETRACKS ONLY):

**A.** In the event a dispute arises with a patron concerning payment of alleged winnings, the gaming operator licensee shall notify the patron in writing, at the time of the dispute, that the patron has a right to contact the board regarding the dispute.

**B.** When a patron advises a licensee or any of its agents of an alleged gaming machine error in a payout and the dispute cannot be resolved, the licensee will take the necessary steps to secure the machine until such time as an agent with the gaming control board arrives and collects the necessary data from the gaming

machine.

~~[B.]~~ **C.** A gaming operator licensee shall notify the board within 48 hours of the time the dispute arises if the licensee refuses to pay alleged winnings to a patron, and the licensee and the patron are unable to resolve the dispute to the patron's satisfaction, or the dispute involves \$500 or more. The board shall conduct whatever investigation it deems necessary and shall determine whether payment should be made. An agent of the board may conduct the investigation and report to the board for a final decision.

~~[C.]~~ **D.** Within 30 days of receipt of notice of the dispute, the board shall notify the licensee and patron in writing of the board's decision regarding the dispute.

~~[D.]~~ **E.** It is a violation of this rule for a gaming operator licensee to fail to notify the board of a dispute within 48 hours or to notify a patron at the time of the dispute of the patron's rights or to fail to pay the patron after an adverse decision by the board.

[12/31/98; 15.1.10.28 NMAC - Rn, 15 NMAC 1.10.28, 3/31/00; A, 5/14/04; A, 2/28/05]

#### 15.1.10.29 COMPLIANCE REVIEW AND REPORTING:

**A.** Whenever the board determines that special circumstances exist that require additional management review by a licensee, the board may impose a condition upon any licensee to require implementation of a compliance review and reporting system by the licensee.

**B.** The terms of the condition may include, but are not limited to, the requirement that:

(1) the condition will expire on a certain date or after a designated period of time without board action;

(2) the condition may be administratively removed by the board if a specified activity ceases or a specified event occurs; or

(3) a periodic review ~~[will]~~ shall be conducted by the board and upon such review the board may remove or continue to require the condition.

**C.** Notwithstanding the provisions of subsection 15.1.10.29(B) NMAC above, a licensee may request, upon application to the board, modification or removal of the condition imposed.

**D.** The purpose of the compliance review and reporting system is to monitor activities relating to the licensee's continuing qualifications under the act and this title. The system ~~[must]~~ shall be in the form of a written plan and ~~[must]~~ shall be submitted to the board for approval.

**E.** The written plan ~~[must]~~

shall implement the compliance review and reporting system and [must] shall designate the person responsible for the system. The plan [must] shall require periodic reports to senior management of the licensee. Such reports [must] shall be advisory, and the licensee [will] shall maintain responsibility for compliance with the act and this title. The licensee [must] shall provide copies of the reports to the board.

**F.** The activities to be monitored [must] shall be set forth in the written plan. Without limitation, the board may require the following activities to be monitored:

(1) associations with persons denied licensing or other related approvals by the board or who may be deemed unsuitable to be associated with a licensee;

(2) business practices or procedures that may constitute grounds for denial of a gaming license;

(3) compliance with other special conditions that may be imposed by the board upon the licensee;

(4) review of reports submitted pursuant to the act and rules adopted by the board;

(5) compliance with all laws and rules and orders of the board or other governmental agencies having jurisdiction over gaming activities or the licensee's or affiliate's business activities; and

(6) review of such other activities determined by the board as being relevant to the licensee's continuing qualifications under the provisions of the act and board regulations.

[12/31/98; 15.1.10.29 NMAC - Rn, 15 NMAC 1.10.29, 3/31/00; A, 2/28/05]

#### **15.1.10.30 INFORMATION TO BE PROVIDED BY LICENSEES:**

**A.** Every licensee [will] shall report to the board, on a quarterly basis, the full name and address of every person, including lending agencies, who has any right, direct or indirect, to share in the profits of such licensed gaming activities, or to whom any interest or share in the profits of a licensed gaming activity has been pledged as security for a debt or deposited as a security for the performance of any act or to secure the performance of a contract or sale. Such report [must] shall be submitted concurrently with an application for renewal of the license.

**B.** Every gaming operator licensee [must] shall report to the board, within 10 days of the date of the event, the name, date of birth, and social security number of any person who acquires the right or ability to control the licensee. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influ-

ence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee.

**C.** Every licensee [must] shall report to the board in writing any change in key executive personnel. The report [must] shall be made no later than 30 days after the change.

**D.** A company licensee, other than a publicly traded corporation, [must] shall obtain the board's prior approval before issuing or transferring 5% or more of its securities to any person. Any company licensee seeking approval [must] shall file a report of the proposed action and request the board's approval. The licensee [must] shall supplement the report with any additional information the board determines is reasonably necessary to its decision to approve or disapprove the proposed action. The request [will] shall be deemed filed upon receipt of such information for purposes of the 90-day period set forth in Section 60-2E-25(A) of the act.

**E.** Any person licensed by the board, including employees with work permits, and any affiliate, [must] shall notify the board in writing of any criminal conviction and criminal charge pending against such person within 10 days of such person's arrest, summons, or conviction. Notice is not required for any non-felony traffic violation unless the violation results in suspension or revocation of a driver's license or is based on allegations of driving under the influence of intoxicating liquor or drugs. Failure to give proper notice to the board may be grounds for disciplinary action.

**F.** Each licensee [must] shall report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any gaming device sold or offered for sale, offered for play, or used for any other gaming purpose within the state by such licensee. The report [must] shall be in writing and [must] shall be submitted not later than seven days after discovery of the plan, scheme, device or other method of cheating. The subject matter and reports of the investigation conducted under this subsection [will] shall be considered confidential except that the board may, in its sole discretion, take whatever steps it deems necessary or appropriate to address or mitigate the cheating problem, including distributing a warning about the cheating problem to other state licensees or other licensing jurisdictions.

**G.** An individual who is the holder of a work permit [key executive identification must] or certification of finding of suitability shall notify the board in writing of any change in address or gaming employment within 15 days of the change. Refusal or failure to notify the board of any

change in address [or] shall be grounds for disciplinary action. Refusal or failure to obtain a new work permit or [key person identification] certification of finding of suitability upon change in gaming employment [will] shall be grounds for disciplinary action.

**H.** Every licensee will report and provide all civil complaints of which they are a party and any supporting documentation deemed necessary by the board.

[12/31/98; 15.1.10.30 NMAC - Rn, 15 NMAC 1.10.30, 3/31/00; A, 12/28/01; A, 2/28/05]

#### **15.1.10.31 ACCESS TO GAMING ESTABLISHMENT AND RECORDS:**

**A.** No applicant or licensee [may] shall fail or refuse to produce records or evidence or to give information upon demand by the board or its agent. No applicant or licensee [may] shall interfere or attempt to interfere with any effort by the board or its agent to obtain such records or evidence.

**B.** Each licensee [must] shall immediately make available for inspection by the board or its agent all papers, books, and records produced by any gaming operation and all areas of the gaming establishment or the premises of any other licensee. The board or any of its agents [must] shall be given immediate access to the gaming establishment or the premises of any other licensee for the purpose of examining or inspecting any gaming device and any records or documents required to be kept under the act or this title. The authority to examine and inspect includes the authority to make copies of any such documents and records.

[12/31/98; 15.1.10.31 NMAC - Rn, 15 NMAC 1.10.31, 3/31/00; A, 2/28/05]

#### **15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:**

**A.** A nonprofit operator licensee may utilize up to 65% of net take, after payment of the gaming tax and income taxes, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the 65% maximum shall be distributed as follows:

(1) up to 40% of net take for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine; and

(2) for payment of other allowable gaming expenses, an amount equal to the difference between 65% of net take less the amount paid to the distributor as

described above.

**B.** The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices.

**C.** A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section until the gaming tax and other applicable taxes have been paid and provided all taxes and fees are current.

**D.** A nonprofit operator licensee or distributor licensee shall not enter into a contract, written or oral, in which the distributor's compensation or other payment is based on a percentage of net take for furnishing gaming machines under a lease or other arrangement until the contract has been reduced to writing and approved by the board.

**E.** The nonprofit operator licensee shall distribute at least 60% of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of licensee's fiscal year end. The maximum 40% remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

**F.** All distributions for charitable and educational expenses shall be made no later than 120 days after the close of the nonprofit licensee's fiscal year end.

**G.** Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

(1) Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and

the distribution is used for charitable purposes.

**H.** Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

**I.** The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the act.

[12/31/98; 15.1.10.32 NMAC - Rn & A, 15 NMAC 1.10.32, 3/31/00; A, 7/31/02; A, 5/14/04; A, 2/28/05]

#### **15.1.10.33 GAMING OPERATIONS MANAGEMENT CONTRACTS:**

**A.** If the proposed arrangement between a gaming operator licensee and a licensed distributor includes management of gaming activity on the licensed premises by a licensed distributor, or if the gaming operator licensee wants to enter into a management contract with any other approved person, the management contract ~~must~~ shall:

(1) provide that only gaming activity allowed pursuant to the act will be conducted on the licensed premises;

(2) list the responsibilities of each of the parties, including but not limited to maintaining and improving the licensed premises; hiring, firing, training and promoting employees and establishing employment practices; maintaining the books and records of the gaming operation; preparing financial statements and reports; hiring and supervising security personnel; obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage; and ensuring compliance with all applicable laws, including state and federal laws;

(3) provide for the establishment and maintenance of satisfactory accounting systems and procedures, including a system of internal controls that meets the minimum standards established by the board;

(4) provide for the timely deposit of all gaming receipts required to be deposited into the gaming tax transfer account as set forth in this rule;

(5) provide for the establishment and maintenance of a separate operating account as required in this rule and limit access to the account to the nonprofit operator licensee;

(6) retain for the gaming operator licensee the right to timely receive, on at least a monthly basis, financial reports and information used or necessary to prepare the

reports;

(7) retain for the gaming operator licensee the right to full and immediate access to all books and records for the purpose of verification of any information produced in connection with, or relating to, gaming activities;

(8) provide for a term not to exceed five years;

(9) detail the method of compensating the contract manager and the amounts paid and provide for verification by the gaming operator licensee prior to payment;

(10) provide the grounds for modifying or terminating the agreement;

(11) provide the means for dispute resolution;

(12) prohibit subcontracting of all or part of the agreement;

(13) retain ownership of the gaming operator license with the licensee;

(14) verify that the management contractor is not an affiliate of the licensee; and

(15) specify that the agreement will not go into effect until approved by the board.

**B.** The gaming operator licensee may not enter into any management contract if the board determines that:

(1) the management contract fails to meet the minimum requirements described in this section;

(2) the management contractor or any principal, management official, or key executive of the management contractor is not licensed or is unsuitable for licensure; or

(3) the licensed distributor has failed to pay the gaming tax on the sale, lease, or other transfer of gaming devices to the gaming operator licensee.

[12/31/98; 15.1.10.33 NMAC - Rn & A, 15 NMAC 1.10.33, 3/31/00; A, 2/28/05]

#### **15.1.10.34 DAMAGE TO OR THEFT FROM DEVICES:**

**A.** Upon discovery of theft from or damage to a gaming device that affects operation of the device, the licensee or owner of the gaming device ~~must~~ shall request an investigation by the board's agents, the department of public safety, or local law enforcement and ~~must~~ shall immediately notify the board.

**B.** After investigation by the board's agents or other law enforcement agency, the licensee or owner of the gaming device ~~must~~ shall obtain and submit the following reports to the board:

(1) service or repair report with hard and soft meter readings from the gaming device with an audit ticket attached; the meter readings ~~must~~ shall be taken as soon as possible after discovery of the theft or damage; and

(2) when possible, an offense

report or complaint report from the board's agents or other law enforcement agency. [12/31/98; 15.1.10.34 NMAC - Rn, 15 NMAC 1.10.34, 3/31/00; A, 2/28/05]

#### 15.1.10.35 LICENSE TRANSFER PROHIBITED:

**A.** Any license granted or renewed by the board may not be transferred. For purposes of this section, "transfer" includes assigning the license.

**B.** A transfer of license ownership that occurs after the board has issued the license [will] shall automatically terminate the license as of the date of the transfer. For purposes of this section, a change in ownership or structure of the licensee constitutes a transfer of the license unless the board determines otherwise following the former licensee's written request for a determination.

**C.** A change in ownership or structure of the licensee, or change in ownership of the license, in which one or more owners previously certified as suitable by the board retain ownership of the licensee, and no new persons obtain an ownership interest in the licensee or license, does not constitute a transfer of license ownership. The board, however, may require that any or all of the remaining owners submit applications to obtain findings of suitability. Failure of the licensee to request a determination, or to submit applications for findings of suitability as required [will] shall automatically terminate the license.

[12/31/98; 15.1.10.35 NMAC - Rn & A, 15 NMAC 1.10.35, 3/31/00; A, 12/28/01; A, 2/28/05]

#### 15.1.10.36 POSSESSION AND VERIFICATION OF WORK PERMITS AND KEY EXECUTIVE IDENTIFICATION:

**A.** Every gaming employee and key executive must wear his or her valid work permit or key executive identification where easily visible at all times when engaged in the conduct of gaming activities. A work permit or key executive identification is not valid if it does not include the board-issued license number under which the work permit or identification was issued.

**B.** Refusal or failure to wear the work permit or key executive identification as required in this rule [will] shall be grounds for disciplinary action. [12/31/98; 15.1.10.36 NMAC - Rn, 15 NMAC 1.10.36, 3/31/00; A, 12/28/01; A, 2/28/05]

#### 15.1.10.37 HOUSE RULES:

**A.** A licensee may establish house rules applicable to the operation of gaming machines or other gaming activities as long as the rules do not conflict with

the act or this title. Before any licensee enacts or adopts any house rules, the rules [must] shall be submitted to the board for approval.

**B.** A copy of the house rules [must] shall be in the licensee's possession at all times and made available to any person on request.

[12/31/98; 15.1.10.37 NMAC - Rn, 15 NMAC 1.10.37, 3/31/00; A, 2/28/05]

#### 15.1.10.38 LICENSE POSTING REQUIREMENT:

All licenses issued under the act [must] shall be posted by the licensee and kept posted at all times in a conspicuous place on the licensed premises.

[12/31/98; 15.1.10.38 NMAC - Rn, 15 NMAC 1.10.38, 3/31/00; A, 2/28/05]

#### 15.1.10.39 DETENTION AND QUESTIONING:

The gaming operator license [must] shall post in a conspicuous place on the licensed premises a notice in boldface type, clearly legible and in substantially the following form: "Any gaming operator licensee or any of his officers, employees or agent who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."

[12/31/98; 15.1.10.39 NMAC - Rn, 15 NMAC 1.10.39, 3/31/00; A, 2/28/05]

#### 15.1.10.42 MINIMUM LIVE RACE DAYS AND RACES:

**A.** A racetrack gaming operator's license [will] shall become automatically void if the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet.

**B.** Maintaining fewer than four live race days or nine live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races required by Section 60-2E-28(B) of the act or these rules if the licensee submits to the board written approval by the racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to any of the following:

(1) inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) strikes or work stoppages by jockeys or other persons necessary to conduct a race or meet;

(4) power outages, electrical failures, or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other

threats to the public health or safety; or

(6) any other act, event or occurrence that is not within the control of the licensee even with the exercise of reasonable diligence or care.

**C.** Failure of a racetrack gaming operator licensee to submit to the board written approval by the racing commission of a variance in the licensee's live race days or races constitutes a failure to maintain the minimum number of live races required by the act and these rules regardless of the cause for the variance.

**D.** Upon determination by the board that a racetrack gaming operator licensee has failed to maintain the minimum number of live race days or races as required by the act and these rules:

(1) the gaming operator's license [will] shall become automatically void and of no legal effect;

(2) the gaming operator licensee [must] shall immediately cease the conduct of all gaming activity;

(3) the board will immediately disable all gaming devices on the gaming operator licensee's premises or under the gaming operator licensee's control and [will] shall take the gaming devices into the board's custody in a manner to be determined by the board.

**E.** A racetrack gaming operator licensee whose license has been voided may apply for a new license from the board at any time. The application for licensure [will] shall be processed in the same manner as a new application. The applicant [must] shall submit all required forms, including but not limited to license and key person applications, and [must] shall pay all applicable fees and costs.

**F.** Voiding of a license by the board pursuant to Section 60-2E-27(B) of the act and these rules does not constitute a denial, permanent suspension or revocation of the license for cause by the board or a limiting action by the board on the gaming operator licensee.

[15.1.10.42 NMAC - N, 10/15/00; A, 2/28/05]

#### 15.1.10.43 CESSATION OF GAMING ACTIVITIES; SURRENDER AND CANCELLATION OF LICENSE

**A.** Any gaming operator licensee that ceases gaming activities for more than seven consecutive days and has not requested and received authorization from the board under section 15.1.10.43 (B) NMAC, [must] shall surrender its gaming operator's license to the board within 10 days of ceasing those activities. The board [will] shall cancel the gaming operator's license as of the date gaming activities ceased, and no further gaming activities by the gaming operator's licensee [will] shall be permitted. Cancellation of a gaming



operator's license does not constitute revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. The gaming operator's licensee ~~[must]~~ shall submit a new application and obtain a new gaming operator's license before resuming gaming activities.

**B.** Upon written request, the board may authorize a gaming operator licensee to temporarily cease gaming activities ~~[for a period not to exceed 90 days. The board may grant an extension when a licensee's gaming activities cease due to extraordinary circumstances beyond the licensee's control and the licensee submits a written request for an extension.].~~ A gaming operator licensee who is authorized by the board to temporarily cease gaming activities ~~[must]~~ shall notify the board of its intent to resume gaming activities but ~~[may]~~ shall not resume such activities until approved by the board.

**C.** If a gaming operator licensee wishes to cease gaming activities indefinitely, with no intent to resume gaming activities, the gaming operator licensee:

(1) shall notify the board of its intentions to cease gaming activities indefinitely;

(2) shall submit to a final audit by the board to insure that all taxes, charitable payments and outstanding obligations of the gaming operation have been paid;

(3) shall ensure that all gaming machines are removed from the premises in a manner that complies with the Gaming Control Act and board rules;

(4) shall comply with any other requirements imposed by the board.

(5) shall physically surrender the gaming operator's license and all gaming badges.

**D.** If a gaming operator licensee complies with the requirements of Subsection C of 15.1.10.43 NMAC, the board shall cancel the gaming operator's license. Cancellation of the gaming operator's license shall not constitute a revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. Failure to comply with the provisions of Subsection C of 15.1.10.43 NMAC shall be grounds for revocation of the gaming operator's license. The board may take action to revoke the gaming operator's license notwithstanding the fact that the gaming operator licensee has ceased gaming activities.

~~[C.]~~ **E.** The ceasing of gaming activities does not relieve the gaming operator licensee or former gaming operator licensee of its obligations to pay any tax, fee or cost due or to submit any report or information required as a result of engaging in gaming activities.

~~[D.]~~ **F.** The board may take disciplinary action against any gaming

operator licensee that ceases gaming activities without notice to the board, including revoking the gaming operator's license, imposing a fine, or both.

[15.1.10.43 NMAC - N, 12/28/01; A, 2/28/05]

#### 15.1.10.44 ALLOCATION OF GAMING MACHINES

**A.** Only racetrack gaming operator licensees are eligible to allocate gaming machines or receive allocated gaming machines.

**B.** Gaming machines ~~[may]~~ shall be allocated only pursuant to a valid allocation agreement. The allocation agreement must:

(1) specify the number of gaming machines to be allocated;

(2) specify the terms of the allocation agreement;

(3) provide that the allocation agreement confers to the receiving racetrack only the right to operate the gaming machines;

(4) establish terms of payment for use of the allocated gaming machines;

(5) specify that the receiving racetrack will be responsible for payment of the gaming tax and all fees associated with the licensing of the allocated gaming machines;

(6) specify that the receiving racetrack be responsible for statutorily required payments based on net take, including payment of twenty percent of the net take from the allocated gaming machines to horse-

men's purses and one-quarter of one percent of the net take to fund or support programs for the treatment and assistance of compulsive gamblers;

(7) provide that the receiving racetrack may not allocate the gaming machines;

(8) specify the party responsible for repairs and maintenance of the allocated gaming machines;

(9) provide that the allocation agreement cannot be modified without approval of the board and the New Mexico racing commission; and

(10) provide that the allocation agreement ~~[will]~~ shall not become effective until approved in writing by the board and the New Mexico racing commission.

**C.** No allocation agreement ~~[may]~~ shall cause the number of gaming machines on the licensed premises to exceed the number authorized by the act.

**D.** The board ~~[will]~~ shall take action on a proposed allocation agreement at a public meeting of the board. The board may disapprove any allocation agreement if the board determines that:

(1) the allocation agreement fails to meet the minimum requirements described in this section;

(2) the allocating racetrack or

receiving racetrack is not in compliance with minimum internal controls or other statutory requirements or board rules;

(3) the proposed allocation would otherwise be contrary to the public health, safety and welfare.

**E.** Movement of any allocated machine is subject to notice requirements established by board rules and procedures.

[15.1.10.44 NMAC - N, 4/30/02; A, 2/28/05]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.14 NMAC, Section 10 effective 2/28/05.

### 15.1.14.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:

**A.** If after investigation the board determines that a license, registration, finding of suitability or other prior approval by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board shall initiate a hearing by issuing a complaint.

**B.** The complaint shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

**C.** The board shall serve the complaint, together with a summary of evidence in the board's possession and a transcript of testimony at any investigative hearing conducted in the matter, upon the licensee. Service and proof of service shall be made ~~[by registered or certified mail or by personal service. Proof of service may be provided by a certificate or affidavit of service signed by the person effecting service and which specifies the date and manner of service.]~~ in any manner permitted by the New Mexico rules of civil procedure for the district courts.

**D.** The summary of evidence is confidential and shall not be disclosed to any person other than the respondent until public hearing.

**E.** The respondent shall file a written answer with the board within 30 days of service of the complaint.

[12/31/98; 15.1.14.10 NMAC - Rn, 15 NMAC 1.14.10, 5/31/00; A, 5/14/04; A, 2/28/05]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.16 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, and 14 effective 2/28/05.

### 15.1.16.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "EPROM"** means erasable programmable read-only memory used for storing program instructions in a gaming device, including game programs and video graphics.

**C. "Licensed premises"** means the area ~~[of a structure, within the gaming establishment,]~~ that has been approved for gaming on the premises, that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines ~~[; the licensed premises may consist of no more than two non-contiguous areas of the same structure].~~

**D. "Person"** means a legal entity or an individual.

**E. "Premises"** means the land together with all building's improvements and personal property located on the land.

~~[E]~~ **F. "State"** means the state of New Mexico.

~~[F]~~ **G. "This title"** means Title 15, Chapter 1 of the state administrative code.

[N, 12/31/98; 15.1.16.7 NMAC - Rn & A, 15 NMAC 1.16.7, 10/15/00; A, 2/28/05]

### 15.1.16.8 RESTRICTION ON SALES, DISPLAY, DISTRIBUTION, TRANSPORTATION AND OPERATION OF GAMING DEVICES:

**A.** Except as otherwise provided in this rule, no person ~~[may]~~ shall sell, display, supply, ship, transport, or distribute any gaming device or associated equipment for use or play in the state, and no person ~~[may]~~ shall sell, display, supply, ship, transport or distribute any gaming device or associated equipment out of the state, unless the person is licensed by the board as a distributor or manufacturer.

**B.** No licensee ~~[may]~~ shall sell or transfer a gaming device to any person that could not lawfully own or operate the gaming device.

**C.** No purchaser or transferee ~~[may]~~ shall operate a gaming machine without first obtaining a gaming operator's license in the manner set forth in this title.

[N, 12/31/98; 15.1.16.8 NMAC - Rn, 15 NMAC 1.16.8, 10/15/00; A, 2/28/05]

### 15.1.16.9 TRANSPORTATION OF GAMING DEVICES INTO THE STATE:

**A.** A gaming device is shipped or transported into the state when the starting point for shipping or transporting begins outside the state and terminates in the state.

**B.** A licensed manufacturer shipping or transporting a gaming device into the state ~~[must]~~ shall provide the following information to the board, prior to shipment, on forms provided or approved by the board:

(1) the full name, address, and license number of the person making the shipment;

(2) the method of shipment and the name of the carrier, if any;

(3) the full name, address, and license number of the person to whom the devices are being sent and the destination of the shipment, if different from the address;

(4) the number of gaming devices in the shipment;

(5) the serial number of each gaming device;

(6) the model number and description of each gaming device;

(7) the expected arrival date of the gaming devices at their destination within the state; and

(8) such other information as required by the board.

**C.** Each EPROM transported into the state ~~[must]~~ shall be delivered to the board by the manufacturer licensee for inspection and testing prior to delivery to the gaming operator licensee. Upon satisfactory completion of inspection and testing, the board ~~[will]~~ shall notify the distributor or gaming operator licensee designated to receive the EPROM. No EPROM ~~[may]~~ shall be delivered to a distributor or gaming operator licensee without prior inspection and approval in writing by the board. Any distributor or gaming operator licensee receiving any EPROM directly from the manufacturer ~~[must]~~ shall notify the board immediately.

[N, 12/31/98; 15.1.16.9 NMAC - Rn & A, 15 NMAC 1.16.9, 10/15/00; A, 1/31/02; A, 2/28/05]

### 15.1.16.10 RECEIPT OF GAMING DEVICES IN THE STATE:

**A.** Any person in the state that receives a gaming device ~~[must]~~ shall, upon receipt of the gaming device, provide the board with the following information on forms provided or approved by the board:

(1) the full name, address, and license number of the person receiving the gaming device;

(2) the full name, address, and license number of the person from whom

the gaming device was received;

(3) the date of receipt of the gaming device;

(4) the serial number of each gaming device;

(5) the model number and description of each gaming device;

(6) the manufacturer of the gaming device;

(7) the location where the gaming device will be placed and the license number of the licensed premises;

(8) the expected date and time of installation of the gaming device at the new location; and

(9) such other information as required by the board.

**B.** If the gaming device ~~[will]~~ shall not be placed in operation within five days of its receipt, the person who received the gaming device ~~[must]~~ shall notify the board of the address where the gaming device is warehoused. The warehouse location ~~[must]~~ shall be approved in advance by the board. At the time the gaming device is removed from inventory and transported to another location within the state, the owner ~~[must]~~ shall comply with the requirements in section 15.1.16.11 NMAC of this rule.

[N, 12/31/98; 15.1.16.10 NMAC - Rn, 15 NMAC 1.16.10, 10/15/00; A, 2/28/05]

### 15.1.16.11 TRANSPORTATION OF GAMING DEVICES BETWEEN LOCATIONS IN THE STATE:

**A.** Manufacturer licensees, distributor licensees, and, subject to the limitations set forth in this rule, gaming operators licensees, are authorized to transport gaming devices within the state.

**B.** Except as otherwise provided in this rule, any authorized person transporting a gaming device from one location to another in the state for any purpose ~~[must]~~ shall notify the board before transporting the gaming device and provide the following information on forms provided or approved by the board:

(1) the full name, address, and license number of the person transporting the gaming device from its current location;

(2) the reason for transporting the gaming device;

(3) the full name, address, and license number of the person to whom the gaming device is being sent and the destination of the gaming device if different from that address;

(4) the name and address of the carrier and the method of transport;

(5) the model and serial number of the gaming device;

(6) the gaming device license number, if any;

(7) the manufacturer of the gaming device;

(8) the expected date and time of delivery and/or installation of the gaming machine at the new location;

(9) such other information as the board may require.

C. This section 15.1.16.11 NMAC does not apply to the movement of gaming machines within the same location. Such relocation is subject to board approval pursuant to rule 15.1.16 NMAC.

D. A gaming operator licensee ~~may~~ shall sell or transfer a gaming machine only to another gaming operator licensee or to a licensed distributor or manufacturer. The gaming operator licensee ~~must~~ shall notify the board in advance by providing the information required by this section.  
[N, 12/31/98; 15.1.16.11 NMAC - Rn, 15 NMAC 1.16.11, 10/15/00; A, 2/28/05]

#### 15.1.16.12 APPROVAL TO DISTRIBUTE GAMING DEVICES OUTSIDE OF THE STATE:

A. Manufacturers and distributors located in the state ~~may~~ shall not sell, ship, transport, or distribute a gaming device out of the state without the prior approval of the board. Applications for approval to sell, ship, transport, or distribute gaming devices out of the state ~~must~~ shall be made, processed, and determined in such manner and using such forms as the board may provide or approve. Each application ~~must~~ shall include:

(1) the full name, state of residence, and address of the purchaser;

(2) the full name, state of residence, and address of the person to whom shipment is being made, if different than the purchaser;

(3) the destination;

(4) the number of gaming devices to be shipped;

(5) the serial number of each gaming device;

(6) the model number of each gaming device and year manufactured;

(7) the denomination of each gaming device, if applicable;

(8) the expected date and time of shipment;

(9) the method of shipment and name and address of the carrier; and

(10) a statement by the purchaser under penalty of perjury that the gaming devices ~~will~~ shall be used only for lawful purposes.

B. Manufacturers and distributors ~~may~~ shall not ship gaming devices to any destination where possession of gaming devices is illegal.

C. An agent of the board may inspect all gaming devices before distribution outside of the state. Manufacturers and distributors ~~must~~ shall make the gaming devices available for

inspection upon request.

D. If the board does not deny the application for approval to distribute gaming devices outside of the state within 15 working days of receipt of a complete application, the application ~~will~~ shall be deemed approved.

[N, 12/31/98; 15.1.16.12 NMAC - Rn, 15 NMAC 1.16.12, 10/15/00; A, 2/28/05]

#### 15.1.16.13 PLACEMENT OF GAMING MACHINES:

A. All gaming machines at a licensed premises ~~must~~ shall be physically located as follows:

(1) in an area that is at all times monitored by the owner, manager, or a gaming employee to prevent access or play of the gaming machines by persons under the age of 21;

(2) in an area that ensures that public access to the gaming machines is restricted to persons legally entitled to play the gaming machines at the licensed premises; and

(3) in the sight and control of the owner, manager, or a gaming employee.

B. The initial placement of gaming machines on a licensed premises ~~must~~ shall be approved by the board in accordance with the business plan submitted by the applicant pursuant to board rule 15.1.5 NMAC.

C. Any relocation of the gaming machine within the licensed premises constitutes modification of the licensed premises and requires prior approval by the board pursuant to rule 15.1.6 NMAC.

D. Licensed manufacturers and distributors may store and display, and persons certified pursuant to this title ~~may~~ shall repair, gaming machines only at locations approved in advance by the board.

[N, 12/31/98; 15.1.16.13 NMAC - Rn, 15 NMAC 1.16.13, 10/15/00; A, 2/28/05]

#### 15.1.16.14 DISPOSAL OF GAMING MACHINES:

A. A gaming machine ~~may~~ shall be disposed of only with the board's approval and only if the manner of disposition makes the machine incapable of use or operation. Any person seeking to dispose of a gaming machine ~~must~~ shall notify the board in writing prior to disposal and provide the following information:

(1) the full name, address, and license number of the person seeking to dispose of the gaming machine;

(2) the serial number of the gaming machine;

(3) the model number and description of the gaming machine;

(4) the manufacturer of the gaming machine;

(5) the gaming machine license number;

(6) the gaming machine's hard meter readings;

(7) the location of the gaming machine;

(8) the proposed manner, time, and place of disposal; and

(9) any other information required by the board.

B. Unless the board notifies the person seeking to dispose of the gaming machine within 30 days of receipt of the notice required by this section, the method of disposal ~~will~~ shall be deemed approved.

C. The person seeking to dispose of a gaming machine ~~must~~ shall submit to the board, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all persons witnessing the disposal.

[N, 12/31/98; 15.1.16.14 NMAC - Rn, 15 NMAC 1.16.14, 10/15/00; A, 1/31/02; A, 2/28/05]

### NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.18 NMAC, Sections 8, 9, 10, 11 and 12 effective 2/28/05.

#### 15.1.18.8 PLAN REQUIRED FOR LICENSURE:

An applicant for a gaming operator's license ~~must~~ shall submit a compulsive gambling assistance plan with its application. The plan ~~must~~ shall meet or exceed the minimum standards set forth in this rule. The development of such a plan by the applicant, and the approval of the plan by the board, are conditions of issuance of the original gaming operator's license. The maintenance of the plan as approved by the board is a condition of annual renewal of the license.

[4/15/99; 15.1.18.8 NMAC - Rn, 15 NMAC 1.18.8, 3/31/00; A, 2/28/05]

#### 15.1.18.9 MINIMUM STANDARDS FOR COMPULSIVE GAMBLING ASSISTANCE PLAN:

A. The compulsive gambling assistance plan ~~must~~ shall include all of the following elements unless the applicant or gaming operator licensee obtains a written waiver of any element from the board:

(1) identification of a plan manager or other person responsible for ensuring that the plan is implemented and administered as approved by the board and monitored to maintain the minimum standards established by this rule;

(2) a mission statement that identifies the goals of the gaming operator licensee in administering the plan;

(3) policies concerning the handling of compulsive gambling problems, commitment to training, intervention, the employee's role and duties, management's role and duties, and the patron's responsibilities;

(4) specific, detailed procedures to determine appropriate intervention techniques in a given circumstance, and carrying out the intervention techniques;

(5) printed materials to educate patrons about compulsive gambling and inform them of local and statewide resources available to compulsive gamblers and their families; the materials ~~may~~ shall include signs ~~and~~ or posters located inside the licensed premises and brochures discussing compulsive gambling issues and sources of treatment and information, samples shall be attached; the primary purpose of all such printed material shall be for the purpose of promoting a responsible gambling message; the plan ~~must~~ shall also specify the source of the printed materials, the authority for the use of said materials and the proposed distribution methods and location;

(6) policy and procedures that prohibit facilitating, participating in, or allowing the issuance of any loans or extension of credit to a patron for gaming purposes;

(7) a comprehensive employee training plan satisfactory to the board, including training manuals and other materials necessary to educate employees about compulsive gambling issues; the training plan ~~must~~ shall include instruction in the psychology of the compulsive gambler, methods of recognizing compulsive gambling behavior, intervention techniques and other subjects as determined by the board;

(8) form for certifying, to the board's satisfaction, that each employee required to obtain the training has done so within the time period specified by this rule;

(9) details of a follow-up training program to periodically reinforce employee training;

(10) estimated costs for implementation and administration; ~~and~~

(11) timetable and procedures for implementing the compulsive gambling assistance plan; the plan must be implemented no later than 90 days from the date gaming commences on the licensed premises[=];

(12) details from licensee on the provider to whom referrals will be made;

(13) treatment providers shall provide documentation showing that they are licensed, in good standing and have a documented competency in the field of problem gambling issues; and

(14) any other policies and procedures recommended by the state of New Mexico department of health and approved

by the board or established by the board.

~~B. [Any other policies and procedures designed to encourage responsible gaming, including methods for preventing gaming by minors, may be included in the plan.]~~ The board shall submit the entire plan to the state of New Mexico department of health for evaluation. The New Mexico department of health shall recommend to the board approval or disapproval of the plan.

[4/15/99; 15.1.18.9 NMAC - Rn, 15 NMAC 1.18.9, 3/31/00; A, 2/28/05]

#### 15.1.18.10 EMPLOYEE TRAINING:

A. The compulsive gambling assistance plan ~~must~~ shall be designed with employee training and education as fundamental aspects of the plan. The purpose of the training is to develop awareness of compulsive gambling and to provide resources to assist the employee in handling compulsive gambling issues.

B. The employee training program ~~must~~ shall include training and materials on the following topics:

(1) characteristics and symptoms of compulsive gambling behavior;

(2) prevalence of compulsive gambling in the general population;

(3) relationship of compulsive gambling to other addictions;

(4) social costs of compulsive gambling, such as indebtedness, costs for treatment, suicide, criminal behavior, lost jobs, and counseling for family problems;

(5) identification of vulnerable populations, including women, low-income patrons, the elderly, and persons who abuse drugs and alcohol;

(6) intervention techniques to be employed where a compulsive gambling problem is identified or suspected; and

(7) assistance and referral programs, including specific resources and training on how to discuss compulsive gambling with a patron and give advice concerning access to available services.

C. Training must be conducted within 60 days of the employee's hire date and re-certification must be done annually. Certification and re-certification of such training ~~must~~ shall be submitted on a form provided or approved by the board. Failure to submit the required certification may result in administrative action against the gaming operator licensee.

D. This rule shall not be construed as requiring gaming employees to identify compulsive or other problem gamblers.

[4/15/99; 15.1.18.10 NMAC - Rn, 15 NMAC 1.18.10, 3/31/00; A, 2/28/05]

#### 15.1.18.11 ANNUAL REPORT

**OF ACTIVITIES:** Each gaming operator licensee ~~must~~ shall submit to the board, no later than March 31 annually, a report detailing the licensee's compulsive gambling activities for the previous 12-month period ending December 31. The report ~~must~~ shall be in form and content prescribed or approved by the board.

[15.1.18.11 NMAC - N, 1/31/02; A, 2/28/05]

#### 15.1.18.12 COMPULSIVE GAMBLING FUNDS DISTRIBUTION:

A racetrack gaming operator shall spend all funds required by statute to fund or support programs for the treatment and assistance of compulsive gamblers each year within 120 days after the close of the licensee's fiscal year.

A. Racetracks shall spend no more than 15 % on administrative costs, including the salary of the plan manager or other person responsible for ensuring that the plan is implemented and administered and for marketing of compulsive gambling issues.

B. Racetracks shall spend the remainder of the compulsive gambling funds on compulsive gambling training for employees, crisis intervention and prevention programs, gambling assistance and treatment, and a helpline as identified in the plan and approved by the board.

[15.1.18.12 NMAC - N, 5/14/04; A, 2/28/05]

### NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Section 9 of 16.16.5 NMAC, effective 03-10-2005.

#### 16.16.5.9 NEW MEXICO LICENSING EXAMINATION:

A. As of January 15, 1995, all candidates for licensure shall be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.

B. The board examination shall only be seen by board members and individuals preparing and administering the examination and by examination candidates while sitting for the examination.

C. As soon as practicable after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.

(1) Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided

in 16.16.2.10 or 16.16.2.11 NMAC and 16.16.2.12 NMAC and 16.16.6.8 NMAC.

(2) Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of application and examination as set forth in 16 NMAC 16.

**D.** A score of seventy-five percent (75%) or better is required on each section of the board's examination.

**E.** Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

(1) Failed candidates must repeat all portions of the board's examination.

(2) The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 and 16.16.2.9 NMAC).

**F.** Any candidate detected cheating in any manner during the course of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

**G.** The deadline for challenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 16.16.13 NMAC. It adds a new section, 11 effective 03-10-2005.

### 16.16.13.11 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER CONTINUING EDUCATION REQUIREMENT.

**A.** A licensee has twelve (12) months to complete the sixteen (16) hours of continuing education required to renew a license.

**B.** A licensee may request in writing, at least thirty (30) days prior to the license's expiration, an emergency deferral or waiver of the continuing education requirement should any of the following occur:

(1) licensee experiences pro-

longed debilitating illness; or

(2) one of licensee's immediate family members suffers prolonged debilitating illness; or

(3) licensee is called to active duty by the national guard, any branch of the United States armed forces, or other recognized public service.

**C.** The written request for deferral or waiver shall contain an explanation of the underlying circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 15 and 17 of 16.16.19 NMAC effective 3-10-2005.

### 16.16.19.15 RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:

**A.** An optometrist who performs an eye examination and fits a patient for contact lenses shall ~~[upon request,]~~ prepare and provide the patient with a replacement contact lens prescription ~~[as prescribed by this rule (16.16.19 NMAC)]~~ when the optometrist completes the patient's contact lens fitting.

**B.** ~~[If the patient requests his/her replacement contact lens prescription during an initial or subsequent eye examination, providing the prescription has not expired, the optometrist shall prepare and provide the prescription to the patient as prescribed by this rule (16.16.19 NMAC) at the time the optometrist completes the patient's contact lens prescription that is appropriate to the documented clinical needs of the patient.]~~ Repealed.

**C.** Optometrists shall display, in a prominent location in their office(s), a sign to inform their patients that they have a right to a copy of their replacement contact lens prescription.

**D.** ~~[Upon receipt of a prescription request from a patient who did not originally request or receive a replacement contact lens prescription during an initial or subsequent eye examination, the optometrist shall provide to the patient, at any time during which the prescription is valid, the prescription containing the original expiration date.]~~ The optometrist shall provide the patient with a copy of the replacement contact lens prescription as long as the prescription is valid. The replacement copy will still show the original expiration date.

~~(4) The optometrist will provide~~

~~this service for the patient at no additional cost or required contact lens purchase.~~

~~(2) If the patient requests that the optometrist deliver the prescription to the patient or to another person, the optometrist may charge the patient for the cost of delivery.~~

~~(3) The replacement contact lens prescription request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five (5) years.]~~

**E.** A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

### 16.16.19.17 COMPLIANCE REQUIRED; VIOLATION PENALTIES:

**A.** Selling of contact lenses or prescription eyeglasses, frames, or mountings for lenses in an establishment in which the majority of the establishment's income is not derived from being engaged in that endeavor, is prohibited; with the exception that a pharmacist licensed and regulated by the New Mexico board of pharmacy is not prohibited by these regulations from selling contact lenses.

**B.** Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

**C.** It is a violation of this rule for any person to dispense contact lenses to a patient in this state by mail or otherwise without having a valid prescription verified by a licensed prescribing optometrist or physician.

**D.** Violation of Subsection B and C of this rule is a misdemeanor violation punishable by a fine of \$1,000 for each lens dispensed, and the fine is in addition to any other penalty imposed for violations of this rule.

**E.** Adapting, substituting, or changing the contact lens prescription, including brand name or specific material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

**F.** Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

**G.** The board of optometry may impose a civil fine or no more than one thousand (\$1,000) on a licensed optometrist

who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

**H.** A person or entity who is not a licensed optometrist or a licensed physician, but is a registered New Mexico contact lens dispenser or seller shall not sell or dispense a contact lens to a resident of this state unless the patient has, at the time of sale or dispensing, a copy of a valid replacement contact lens prescription or the contact lens dispenser or seller has obtained verification of valid replacement contact lens prescription in accordance with Subsection I of this section.

**I.** A contact lens may not be sold, dispensed or distributed to a patient in this state by a registered New Mexico contact lens dispenser or seller unless one of the following has occurred:

(1) the patient has given or mailed to the seller an original valid written replacement contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile a copy of a valid written replacement contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid replacement contact lens prescription to a seller designated by the patient to act on his/her behalf.

**J.** A verification shall not be provided pursuant to Paragraph (3) of Subsection I of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if the request is received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within ~~three (3) working days~~ eight (8) hours of receipt;

(3) if the request is not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within ~~three (3) working days~~ eight (8) hours as of 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescribing optometrist shall promptly contact the patient to determine if

a designation is in effect; ~~under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any replacement contact lens prescription;~~ and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday, but does not include a holiday.

**K.** A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five (5) years.

**L.** A person who violates the provisions of Subsection H of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Effective February 28, 2005, the Public Employee Labor Relations Board hereby repeals 11.21.4 NMAC, Impasse Resolution, filed March 1, 2004. Part 4 (11.21.4 NMAC) is reserved for future Impasse Resolution regulation.

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.1 NMAC, Sections 7 and 16, effective 02-28-05.

### 11.21.1.7 DEFINITIONS:

**A.** Statutory definition: The terms defined in Section 4 of the act (NMSA 1978, Sec. 10-7E-4) shall have the meanings set forth therein.

**B.** Additional definitions: The following terms shall have the meanings set forth below.

(1) "Act" means the New Mexico Public Employee Bargaining Act (NMSA 1978, Sections 10-7E-1 through 10-7E-26 including any amendments to that statute.

(2) "Amendment of certification" means a procedure whereby an incumbent labor organization certified by the board to represent a unit of public employees or a public employer may petition the board to amend the certification to reflect a change such as a change in the name or the affiliation of the labor organization or a change in the name of the employer.

(3) "Certification of incumbent bargaining status" shall mean a procedure whereby a labor organization recognized by a public employer as the exclusive repre-

sentative of an appropriate bargaining unit on June 30, 1999 petitions the board for a declaration of bargaining status under Section 24(B) of the act (NMSA 1978, Section 10-7E-24(B).

(4) "Challenged ballot" means the ballot of a voter in a representation election whose eligibility to vote is questioned either by a party to the representation case or by the director.

(5) "Complainant" means an individual, organization, or public employer, that has filed a prohibited practices complaint.

(6) "Confidential employee" means a person who devotes a majority of his time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

(7) "Director" means the director of the public employee labor relations board.

(8) "Document" means any writing, photograph, film blueprint, microfiche, audio or video tape, data stored in electronic memory, or data stored and reproducible in visible or audible form by any other means.

(9) "Probationary employee" for state employees shall have the meaning set forth in the State Personnel Act and accompanying regulations; for other public employees, other than public school employees, it shall have the meaning set forth in any applicable ordinance, charter or resolution, or, in the absence of such a definition, in a collective bargaining agreement; provided, however, that for non-state employees a public employee may not be considered to be a probationary employee for more than one (1) year after the date he or she is hired by a public employer. If otherwise undefined, the term shall refer to an employee who has held his or her position, or a related position, for less than six months.

(10) "Prohibited practice" means a violation of Section 10-7E-19, 10-7E-20 or 10-7E-21(A) of the act (NMSA 1978, Section 10-7E-19, 10-7E-20 or 10-7E-21(A).

(11) "Public employer" means the state or a political sub-division thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as provided in article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than state for collective bargaining purposes only.

(12) "Public employee" means a regular non-probationary employee of a public employer; provided that, in the public schools, "public employee" shall also

include a regular probationary employee.

(13) "Representation case" or "representation proceeding" means any matter in which a petition has been filed with the director requesting a certification or decertification election, or an amendment of certification, or unit clarification.

(14) "Respondent" means a party against whom a prohibited practices complaint has been filed.

(15) "Rules" means the rules and regulations of the board (these rules), including any amendments to them.

(16) "Unit accretion" means the inclusion in an existing bargaining unit of employees who do not belong to any existing bargaining unit and who share a community of interest with the employees in the existing unit and whose inclusion will not render the existing unit inappropriate.

(17) "Unit clarification" means a proceeding in which a party to an existing lawful collective bargaining relationship petitions the board to change the scope and description of an existing bargaining unit; to consolidate existing bargaining units represented by the same labor organization; or to realign existing bargaining units of state employees represented by the same exclusive representative into horizontal units, where the board finds the unit as clarified to be an appropriate bargaining unit and no question concerning representation arises.

(18) "Unit inclusions or exclusions" means the status of an individual, occupational group, or group of public employees in clear and identifiable communities of interest in employment terms and conditions and related personnel matters, as being within or outside of an appropriate bargaining unit based on factors such as supervisory, confidential or managerial status, the absence thereof, job context, principles of efficient administration of government, the history of collective bargaining, and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

[11.21.1.7 NMAC - N, 3-15-04; A, 02-28-05]

#### 11.21.1.16 NOTICE OF HEARING:

**A.** After the appropriate notice or petition is filed in a representation, prohibited practices or impasse resolution case, the director shall hold a status and scheduling conference with the parties to determine the issues; establish a schedule for discovery, including the issuance of subpoenas, and pretrial motions; and set a hearing date.

**B.** Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking

proceeding, the time and place of the hearing, the manner in which interested persons may present their views, and the manner in which interested persons may obtain copies of proposed rules. Notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.

**C.** ~~[Upon setting a rulemaking hearing, the director or the board shall cause notice of hearing to be issued setting forth the nature of the rulemaking proceeding, the time and place of the hearing, the manner in which interested persons may obtain copies of proposed rules, notices of rulemaking hearings shall be sent by regular mail to all persons who have made requests for such notice, and shall be published in at least one newspaper of general circulation in New Mexico at least thirty (30) days prior to commencement of the hearing.]~~ A party to a representation, prohibited practices or impasse resolution case in which a hearing is scheduled may request postponement of the hearing by filing a written request with the director, and serving the request upon all other parties, at least five (5) days before commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than twenty (20) days after the previously set date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.

**D.** ~~A party to a representation, prohibited practices, or impasse resolution case in which a hearing is scheduled may request postponement of the hearing by filing a written request with the director, and serving the request upon all other parties, at least five (5) days before commencement of the hearing. The requesting party shall state the specific reasons in support thereof. Upon good cause shown, the director shall grant a postponement to a date no more than twenty (20) days later than the previously set hearing date. Only in extraordinary circumstances may the director grant a further postponement, or a postponement to a date more than twenty (20) days after the previously set date.]~~

[11.21.1.16 NMAC - N, 3-15-04; A, 02-28-05]

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.2 NMAC, Sections 8, 12, 13, 17, 24, 25, 35, 37, 38 and 39, effective 02-28-05.

#### 11.21.2.8 COMMENCEMENT

**OF CASE:** A representation case is commenced by filing a representation petition with the director on a form prescribed by the director. The form shall include, at a minimum, the following information: the petitioner's name, address, phone number, state or national affiliation, if any, and representative, if any; the name, address and phone number of the public employer or public employers whose employees are affected by the petition; a description of the proposed appropriate bargaining unit and any existing recognized or certified bargaining unit; the geographic work locations, occupational groups, and estimated numbers of employees in the proposed and any existing bargaining unit; a statement of whether or not there is a collective bargaining agreement in effect covering any of the employees in the proposed or any existing bargaining unit and, if so, the name, address and phone number of the labor organization that is party to such agreement; a statement of what action the petition is requesting; ~~and a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge.~~

In addition, a petition seeking a certification or decertification election, shall be supported by a thirty percent showing of interest in the existing or proposed bargaining unit. A petition shall contain a signed declaration by the person filing the petition that its contents are true and correct to the best of his or her knowledge and, in the case of a decertification petition that he or she is a member of the labor organization to whom the decertification petition applies.

[11.21.2.8 NMAC - N, 3-15-04; A, 02-28-05]

#### 11.21.2.12 INFORMATION REQUESTED OF PARTIES:

**A.** Within ten (10) days of the filing of a representation petition, the director shall by letter request of any party that appears to have an interest in the proceeding, including any public employees involved and any incumbent labor organizations, its position with respect to the appropriateness of the bargaining unit petitioned for; a statement of any issues of unit inclusion or exclusion that the party believes may be in dispute, and any other issue that could affect the outcome of the proceeding.

**B.** From any public

employer involved, the director, within ten (10) days of the filing of a representation petition, shall also request a list of the employees who would be eligible to vote if the petitioned-for unit were found to be appropriate, based on the payroll period that ended immediately ~~proceeding~~ preceding the filing of the petition. The public employer shall be instructed to file such a list within ten (10) days of the director's request. The board shall make the list available to the parties.

[11.21.2.12 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.13 INITIAL INVESTIGATION OF PETITION:** After a petition has been filed, the director shall investigate the petition. The investigation shall include the following steps and shall be completed within thirty (30) days of the filing of the petition.

**A.** The director shall check the showing of interest (if applicable) against the list of eligible employees, in the proposed unit filed by the public employer to determine whether the showing of interest has been signed and dated by a sufficient number of employees and that the signatures are sufficiently current. If signatures submitted for a showing of interest meet the requirements set forth in these rules, they shall be presumed valid unless the director is presented with clear and convincing evidence that they were obtained by fraud, forgery or coercion. In the event that evidence of such fraud, forgery or coercion is presented to the director, the director shall investigate the allegations as expeditiously as possible and shall keep the showing of interest confidential during the investigation. The director shall dismiss any petition supported by an improper or insufficient showing of interest, consistent with Section 23 (opportunity to present additional showing), and shall explain in writing the basis of the dismissal. The director's determination as to the sufficiency of a showing of interest is an administrative matter solely within the director's authority and shall not be subject to questions or review.

**B.** The director shall determine the facial validity of the petition, including the facial appropriateness of the petitioned-for unit and may request the petitioner to amend a facially inappropriate petition. In the absence of an appropriate amendment, the director shall dismiss a petition asking for an election in, or a clarification to, a facially inappropriate unit, or that is otherwise facially improper, in which case he shall explain his reasons in writing.

**C.** The director shall determine whether there are significant issues of unit scope, unit inclusion or exclusion, labor organization or public employer status; a bar to the processing of the petition; or other

matters that could affect the proceedings. The director shall make the determination pursuant to the provisions of 10-7E-13(C) and 10-7E-24 of the Public Employee Bargaining Act.

[11.21.2.13 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.17 CONSENT ELECTION:** Where the parties are in agreement on all issues required to be resolved in order to proceed to an election, and the director is satisfied that the issues are so resolved, including unit scope, ~~are acceptable to the board;~~ the director shall draw up a consent election agreement to be signed by all parties and by the director. Consent election agreements are subject to board review and may be set aside by the board on its own initiative. If a consent election agreement is not set aside at the board's next regular meeting or the following regular meeting, the director shall proceed to an election on the basis of the agreement.

[11.21.2.17 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.24 ELIGIBILITY TO VOTE:**

**A.** Employees in the bargaining unit shall be eligible to vote in the election if they were employed during the last payroll period preceding date of the consent election agreement or the direction of election issued by the director or the board, and are still employed in the unit on the date of the election.

**B.** Employees in the bargaining unit who are eligible to vote but who will be absent on the day of voting because of hospitalization, temporary assignment away from normal post of duty, leave of absence, vacation at a location more than fifty (50) miles distant from the polling place, or other legitimate cause, may request an absentee ballot from the director. Except for good cause shown, such ~~Such~~ a request must be received by the director at least ten (10) days before the election, in which case the director, after preliminarily determining the employee's eligibility to vote, shall provide the employee with a ballot to be submitted to the director by mail. To be counted, an absentee ballot must be received by the director at least one day before the ballot count. The director shall establish procedures to permit an absentee ballot to be challenged, as provided in Section 30, below.

**C.** The employer or employer's whose employees comprise the bargaining unit shall submit to the director and to all other parties a list of all employees eligible to vote in the election no later than ten (10) days before the commencement of the election balloting. Employees whose names do not appear on the list but

who believe they are eligible to vote may cast ballots through the challenged ballot procedure set forth in Section 30, below.

[11.21.2.24 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.25 PRE-ELECTION CONFERENCE:**

At a reasonable time at least fifteen (15) days before the election, the director shall conduct a pre-election conference with all parties to resolve such details as the polling location(s), the use of manual or mail ballots or both, the hours of voting, the number of observers permitted, and the time and place for counting the ballots. The director shall notify all parties by mail of the time and place of the pre-election conference, at least five (5) days in advance of the conference. The conference may proceed in the absence of any party. The director will attempt to achieve agreement of all parties on the election details, but in the absence of agreement, shall determine the details. In deciding the polling location(s) ~~and~~ the use of manual or mail participation in the election by employees in the bargaining unit ~~There~~ there shall be a strong preference for on-site balloting.

[11.21.2.25 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.35 AMENDMENT OF CERTIFICATION:**

A petition for amendment of certification may be filed at any time by an exclusive representative or an employer to reflect such a change as a change in the name of the exclusive representative or of the employer, or a change in the affiliation of the labor organization. The director shall dismiss such a petition within thirty (30) days of its filing if the director determines that it raises a question concerning representation and the petitioner may proceed otherwise under these rules. If the director finds sufficient facts to show that the amendment should be made, after giving all parties notice and an opportunity to submit their views, the director shall issue an amendment of certification within thirty (30) days of the filing of the petition. The director's decision dismissing the petition or issuance of amended certification may be appealed to the board pursuant to the procedures set out in Section 22, above.

[11.21.2.35 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.2.37 UNIT CLARIFICATION:**

**A.** Except as provided in Section 24(A) of the act, where the circumstances surrounding the creation of an existing collective bargaining unit are alleged to have changed sufficiently to warrant a change in the scope and description of that unit, or a merger or realignment of previously existing bargaining units represented



by the same labor organization, either the exclusive representative or the employer may file with the director a petition for unit clarification. Such a petition seeking realignment of existing units into horizontal units may be filed and processed only when it relates to state employees.

**B.** Upon the filing of a petition for unit clarification, the director shall investigate the relevant facts, and shall either set the matter for hearing or shall issue a report recommending resolution of the issues within thirty (30) days of the filing of the petition. In the director's investigation or through the hearing, the director or hearing examiner shall determine whether a question concerning representation exists and, if so, shall dismiss the petition. In such a case, the petitioner may proceed otherwise under these rules.

**C.** If the director or hearing examiner determines that no question concerning representation exists and that the petitioned-for clarification is justified by the evidence presented, the director or hearing examiner shall issue a report clarifying the unit within thirty (30) days of the filing of the petition if no hearing is determined necessary, or within thirty (30) days of the hearing if a hearing is determined necessary. If the director determines that a question concerning representation exists, he or she shall dismiss the petition.

**D.** A director or hearing examiner determination on a unit clarification petition shall be appealable to the board under the same procedures set forth in Section 22, above.

[11.21.2.37 NMAC - N, 3-15-04; A, 02-28-05]

#### **11.21.2.38 ACCRETION**

**A.** The exclusive representative of an existing collective bargaining unit, ~~[or the employer of employees who belong to an existing collective bargaining unit]~~ may petition the board to include in the unit employees who do not belong, at the time the petition is filed, to any existing bargaining unit, who share a community of interest with the employees in the existing unit, and whose inclusion in the existing unit would not render that unit inappropriate.

**B.** If the number of employees in the group sought to be accreted is less than ten percent (10%) of the number of employees in the existing unit, the board shall presume that their inclusion does not raise a question concerning representation requiring an election, and the petitioner may proceed by filing a unit clarification petition under these rules. Such a unit clarification petition to be processed, must be accompanied by a showing of interest demonstrating that no less than thirty percent (30%) of the employees in the

group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit. No group of employees may be accreted to an existing unit without an election if the board determines that such group would constitute a separate appropriate bargaining unit.

**C.** If the number of employees in the group sought to be accreted is greater than ten percent (10%) of the number of employees in the existing unit, the board shall presume that their inclusion raises a question concerning representation, and the petitioner may proceed only by filing a petition for an election under these rules. Such a petition, in an accretion situation, must be accompanied by a showing of interest demonstrating that no less than thirty percent (30%) of the employees in the group sought to be accreted wish to be represented by the exclusive representative as part of the existing unit.

[11.21.2.38 NMAC - N, 3-15-04; A, 02-28-05]

#### **11.21.2.39 VOLUNTARY RECOGNITION:**

**A.** A labor organization representing ~~the [greater than]~~ majority ~~[support]~~ of employees in an appropriate collective bargaining unit and a public employer, after a petition for certification has been filed, may enter into a voluntary recognition agreement in which the employer recognized the labor organization as the exclusive representative of all of the employees in the unit. Such petition shall be accompanied by a showing of majority support, which shall be verified in accordance with the procedures of Section 11, above.

**B.** Prior to board approval of any voluntary recognition, the director shall post notice of filing of petition in the manner provided for in Section 15, above. The director shall also give notice to any individuals or labor organizations that register with the director to be informed of such petitions.

**C.** If an intervenor does not file a petition for intervention within ten (10) days then the board shall consider the petition for approval of the voluntary recognition if accompanied by consent of the employer.

**D.** The board shall treat a voluntary recognition relationship so established and approved the same as a relationship established through board election and certification, unless the board finds the agreed-to bargaining unit to be inappropriate. In that event, the board may require the filing and processing of a petition as provided for in these rules, and the conduct of an election, before recognizing the relationship.

**E.** If an intervenor files a

proper petition pursuant to Section 16 above, within the ten (10) day time period, then the board may not approve a voluntary recognition, and the director shall proceed in the manner set forth for representation petitions as provided in Section 10 to 14 and 17 to 34 above.

[11.21.2.39 NMAC - N, 3-15-04; A, 02-28-05]

## **NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

This is an amendment to 11.21.3 NMAC, Sections 18 and 22, effective 02-28-05.

**11.21.3.18 HEARING EXAMINER REPORTS:** The hearing examiner shall issue his or her report within the same time limits and following the same requirements provided in ~~[11.21.3.18]~~ 11.21.2.21 NMAC for hearing examiner reports in representation cases.

[11.21.3.18 NMAC - N, 3-15-04; A, 02-28-05]

#### **11.21.3.22 ARBITRATION DEFERRAL:**

**A.** If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the director determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the director may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.

**B.** Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the director, and shall advise the director in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

**C.** If the complaining party advises the director that it wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, then the director shall review the arbitrator's award. If in the opinion of the director, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the act and sufficient to remedy any violation found, then the director shall dismiss the complaint. If the director finds that the pro-

hibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the act, or that the remedy is inadequate, then the director shall take such other action as he or she deems appropriate. Among such other actions, the director may accept the arbitrator's factual findings while substituting his or her own legal conclusions and/or remedial requirements.

**D.** In the event that no arbitrator's award has been issued within one year following deferral under this rule, then the director may, after notice[~~]~~ and in the absence of good cause shown to the contrary, dismiss the complaint.

**E.** The director's decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in 11.21.3.13 NMAC. Interim decisions of the director under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board. [11.21.3.22 NMAC - N, 3-15-04; A, 02-28-05]

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.5 NMAC, Sections 9 through and 14, effective 02-28-05.

**11.21.5.9** [~~ABATEMENT~~ The board shall abate, for a period of sixty (60) days, the processing of any matter filed with it which would come within the cognizance of the local board whose application is pending approval. All limitations periods, whether applicable to representation or prohibited practice matters, shall be tolled during the pendency of any such application.]  
**CONTENTS OF APPLICATION:**

**A.** The application for approval shall include, at a minimum, the following: the name of the local public employer; the name, address and phone number of the local governing body; a complete and fully integrated copy of the proposed resolution, ordinance or charter amendment creating the proposed local board, along with an electronic document or compact disk containing the same information; and the evidence that the proposed resolution, ordinance or charter amendment has either been approved by the local governing body, or submitted for approval pursuant to local procedures.

**B.** All proposed resolutions, ordinances or charter amendments under subsection (A) above shall follow the board approved templates provided at [www.state.nm.us/pelrb](http://www.state.nm.us/pelrb); provided, however, that the public employer may propose vari-

ances to the templates where appropriate, pursuant to section 11.21.5.10 NMAC. [11.21.5.9 NMAC - N, 3-15-04; Rn, 11.21.5.13 NMAC & A, 02-28-05]

**11.21.5.10** [~~LETTER OF INTENT~~ A public employer may file with the board a letter of intent to establish a local board within the meaning of the act. In the event such a letter of intent is filed, the processing of any matter thereafter filed with the board, which would fall within the cognizance of such local board, shall be abated for thirty (30) days during which period the public employer shall file a formal application for approval of a local board as provided in 11.21.5.8 NMAC.]  
**CONTENTS OF APPLICATION FOR VARIANCE FROM BOARD APPROVED TEMPLATES:**

**A.** In certain instances variances from the board approved templates may be required by the unique facts and circumstances of the relevant local public employer, to effectuate the purposes of the act.

**B.** In such instances, the application for approval shall additionally specify the particular facts and circumstances requiring such variance, and inform the board of any incumbent exclusive representative under Section 10-7E-24(B) of the act (NMSA 1978, Section 10-7E-24(B) and Section 11.21.2.36 NMAC of these rules, and any other labor organizations believed by the public employer to be involved in attempting to organize any local public employees.

**C.** Upon receipt of an application for approval seeking variance from the board approved templates, the director shall hold a status conference with the local public employer or its representative and any identified interested labor organizations, to determine the issues and set a hearing date. Upon setting a rule-making hearing, the director shall cause notice of the hearing to be issued in accordance with Subsection B 11.21.1.16 NMAC of these rules. In the event that the board determines that such variance is warranted, and the resolution, ordinance or charter amendment otherwise conforms to the requirements of the act and these rules, it shall authorize the director to proceed in processing the application pursuant to these rules.

[11.21.5.10 NMAC - N, 3-15-04; Repeal, 02-28-05; N, 02-28-05]

**11.21.5.11** [~~CRITERIA FOR REVIEW~~ The board shall review all application for approval of local boards in light of the requirements of Section 10 of the act (NMSA 10-7E-10) and upon a finding that the application for the local board meets the statutory standards shall approve

such application and remand to the local board any proceedings held in abeyance.]  
**ABATEMENT:** The board shall abate, for a period of forty-five (45) calendar days, the processing of any matter filed with it subsequent to the application for approval that would come within the cognizance of the local board whose application is pending approval. All limitation periods, whether applicable to representation or prohibited practice matters, shall be tolled during the pendency of any such application.

[11.21.5.11 NMAC - N, 3-15-04; Repeal, 02-28-05; N, 02-28-05]

**11.21.5.12** [~~CORRECTION FOLLOWING REVIEW~~ In the event that an application demonstrates that the local board does not meet the standards of Section 10 of the act (NMSA 10-7E-10) the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have a period of the balance of the sixty (60) days, or an additional ten (10) days from receipt of the notice of rejection, whichever is later, in which it may make such changes as are necessary to qualify for approval and then may resubmit its application, or may take such other action as it may deem to be appropriate. Any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures.]  
**REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:**

**A.** Upon receiving an application for approval of a local board, the board shall conduct an administrative review of the application and, at a properly noticed public meeting or hearing, shall formally approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law.

**B.** In considering an application for approval of a local board, the board shall review all applications for approval of local boards in light of the requirements of Section 10 of the act (NMSA 10-7E-10) and Section 11.21.5 NMAC of these rules. The board shall require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 of the Act (NMSA 10-7E-10) and Section 11.21.5 NMAC of these rules, and to be approved.

**C.** Upon a finding that the application for the local board meets statutory and regulatory requirements, the board shall approve such application and remand to the local board any proceedings held in abeyance.

**D.** In the event that an application demonstrates that the local board does not meet the standards of Section 10 of the act (NMSA 10-7E-10) and

Section 11.21.5 NMAC of these rules, the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have a period of the balance of the forty-five (45) calendar days, or an additional ten (10) days from receipt of notice of rejection, whichever is later, in which to make such changes as are necessary to qualify for approval, and resubmit its application. After the expiration of time in which an application may be resubmitted any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures.

[11.21.5.12 NMAC - N, 3-15-04; Rn, 11.21.5.14 NMAC & A, 02-28-05]

**11.21.5.13 [CONTENTS OF APPLICATION:** The application for approval shall include, at a minimum, the following:

**A.** the name of the local public employer;

**B.** the name, address and phone number of the local governing body;

**C.** a certified copy of the ordinance, resolution, or charter amendment creating, or which will create the proposed local board;

**D.** a description of the composition of the local board and the method of appointment of the members to the local board;

**E.** a statement or representation that the term of the local board members shall not exceed one year, and a representation that a local board member may serve an unlimited number of terms;

**F.** a description of the manner in which vacancies to the local board shall be filled;

**G.** a statement or representation that no local board member shall hold or seek any other public office or public employment or be an employee of any organization representing public employees or public employers;

**H.** a representation that all compensation to local board members shall be in accordance with the provisions of the New Mexico Per Diem and Mileage Act.]

**POST APPROVAL REPORTING REQUIREMENTS:** Following board approval of a local board, the local board or the public employer that created it shall file with the board and amendments to the ordinance, resolution, or charter amendment, creating the local board. Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the act (10-7E-10), the local board shall be so notified and be given a period of thirty (30) days to come into compliance or prior approval shall be revoked.

[11.21.5.13 NMAC - N, 3-15-04; Rn, 11.21.5.15 NMAC & A, 02-28-05]

**11.21.5.14 [REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:** Upon receiving an application for approval of a local board, the board shall conduct an administrative review of the application and at a properly noticed public meeting or hearing, shall formally consider and approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law. In considering an application for approval of a local board, the board shall approve such application upon finding that the local board meets the requirements of Section 10 of the act (NMSA 10-7E-10). The board may require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 (NMSA 10-7E-10) and to be approved.]

**REVOCAION OF APPROVAL OF LOCAL BOARD:** Upon the issuance of a final order or judgment by a court of competent jurisdiction, finding that a local board is not in compliance with the act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.

[11.21.5.14 NMAC - N, 3-15-04; Rn, 11.21.5.16 NMAC & A, 02-28-05]

**11.21.5.15 [POST APPROVAL REPORTING REQUIREMENTS:**

Following board approval of a local board, the local board, or the public employer that created it, shall file with the board any amendments to the ordinance, resolution, or charter amendment, creating the local board which are relevant to Section 10 of the act (NMSA 10-7E-10). Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the act (NMSA 10-7E-10), the local board shall be so notified and be given a period of thirty (30) days to come into compliance or prior approval shall be revoked.] [RESERVED]

[11.21.5.15 NMAC - N, 3-15-04; A, 02-28-05]

**11.21.5.16 [REVOCAION OF APPROVAL OF LOCAL BOARD:**

Upon the issuance of a final order or judgment by a court of competent jurisdiction, find that a local board is not in compliance with the act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.] [RESERVED]

[11.21.5.16 NMAC - N, 3-15-04; A, 02-28-05]

## NEW MEXICO PUBLIC EMPLOYEE LABOR RELATIONS BOARD

This is an amendment to 11.21.6 NMAC, Section 9, effective 02-28-05.

**11.21.6.9 [LETTER OF INTENT AND/OR] APPLICATIONS FOR APPROVAL OF LOCAL BOARDS AND REPRESENTATION PETITIONS:** Where [a] an [letter of intent and/or] application for approval of a local board and a representation petition(s) involving the same public employer are pending before the board, the director, [is] in his/her discretion, may abate the processing of the representation petition(s) as provided for in 11.21.5 NMAC. In no event, shall the processing of a representation petition be abated when either a notice of hearing pursuant to 11.21.2.19 NMAC or a notice of election pursuant to 11.21.2.26 NMAC has issued. [11.21.6.9 NMAC - N, 3-15-04; A, 02-28-05]

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY TRAINING AND RECRUITING DIVISION Law Enforcement Academy

This is an amendment to 10.29.6 NMAC, Section 10, effective February 28, 2005.

**10.29.6.10 ELIGIBILITY OF RETIREES:** In the event a retired certified officer who has appropriately separated from law enforcement service makes application to [retain] obtain or regain New Mexico certification by waiver of basic training, such applicants shall satisfy the following requirements:

**A.** Applicant must have graduated from a certified law enforcement academy that was comparable to or exceeded the standards of the programs of the New Mexico academy.

**B.** Separation period shall not exceed twenty (20) years.

**C.** Separation must be under honorable conditions.

**D.** Biennial training shall be complete and current.

**E.** Applicant shall complete current DPS/TRD basic firearms qualifications.

**F.** Complete all other conditions required under the current certification by waiver of basic training, except for the physical fitness and agility requirements.

**G.** Complete any other

requirements imposed on applicant by  
sponsoring agency.

[10.29.6.10 NMAC - N, 07-01-03; A, 02-  
28-05]

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**End of Adopted Rules Section**

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## 2005

## SUBMITTAL DEADLINES AND PUBLICATION DATES

<b>Volume XVI</b>	<b>Submission Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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