

**TITLE 7           HEALTH**  
**CHAPTER 37   CLEAN INDOOR AIR**  
**PART 2        CERTIFICATION OF CIGAR BARS**

**7.37.2.1       ISSUING AGENCY:** New Mexico Department of Health, Public Health Division.  
[7.37.2.1 NMAC - N, 05/30/2008]

**7.37.2.2       SCOPE:** These rules apply to all entities seeking to operate under the cigar bar exemption to the smoking prohibition of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq.  
[7.37.2.2 NMAC - N, 05/30/2008]

**7.37.2.3       STATUTORY AUTHORITY:** These rules are promulgated pursuant to the following statutory authorities: Section 9-7-6 E of the Department of Health Act, and Section 24-16-3 B(2) of the Dee Johnson Clean Indoor Air Act.  
[7.37.2.3 NMAC - N, 05/30/2008]

**7.37.2.4       DURATION:** Permanent.  
[7.37.2.4 NMAC - N, 05/30/2008]

**7.37.2.5       EFFECTIVE DATE:** May 30, 2008, unless a later date is cited at the end of a section.  
[7.37.2.5 NMAC - N, 05/30/2008]

**7.37.2.6       OBJECTIVE:** This rule is intended to establish standards for the application and issuance of certificates for cigar bar status under the Dee Johnson Clean Indoor Air Act.  
[7.37.2.6 NMAC - N, 05/30/2008]

**7.37.2.7       DEFINITIONS:** Unless otherwise defined below, terms used in these rules have the same meanings as set forth in the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq.:

**A.       “Applicant”** means an establishment or agent of an establishment that has applied for a certificate from the department and whose application has not yet been granted or denied; “applicant” includes an applicant for the renewal of a certificate.

**B.       “Application”** means an establishment’s application to the department for a certificate, and includes any supporting materials; “application” includes both an application for initial certification and an application for renewal certification.

**C.       “Application review period”** means the time period allotted under these rules for the department to determine whether to grant or deny an application.

**D.       “Bar”** means an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises, in which the serving of food in the establishment is only incidental to the consumption of those beverages.

**E.       “Certificate”** means a document issued by the department certifying that an establishment’s application to the department for cigar bar status under the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., has been approved by the department.

**F.       “Certificated establishment”** means an establishment that has applied for and been granted a certificate from the department, whose certificate has not expired or become otherwise invalid under these rules.

**G.       “Cigar”** means a roll of tobacco that is wrapped in a substance containing tobacco, and that is intended for smoking, and does not include cigarettes.

**H.       “Cigar bar”** means an establishment that:

- (1) is a bar;
- (2) is engaged in the business of selling cigars for consumption by patrons on the premises;
- (3) generated at least ten percent of its total annual sales in the year 2007 from the sale of cigars, not including sales from vending machines; and
- (4) generates ten percent or more of its total annual gross revenue or at least ten thousand dollars (\$10,000) in annual sales from the sale of cigars, not including sales from vending machines.

**I.       “Cigarette”** means:

- (1) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco; or

(2) a bidi or kretek.

**J. "Department"** means the New Mexico department of health.

**K. "Establishment"** means a business enterprise that encompasses a single, contiguous physical location.

**L. "Secretary"** means the secretary of the New Mexico department of health.

**M. "Smoking"** means inhaling, exhaling, burning, carrying or holding any lighted or heated tobacco product, including all types of cigarettes, cigars and pipes and any other lighted or heated tobacco product.

[7.37.2.7 NMAC - N, 05/30/2008]

#### **7.37.2.8 CERTIFICATE APPLICATION:**

**A.** All applications for a certificate under these rules shall be made on the forms prescribed by the department. Forms may be obtained from the public health division of the department.

**B.** An applicant shall submit sales receipts and invoices for the previous twelve (12) months in support of its application.

**C.** An applicant shall submit to the department, together with its application, an application fee of three hundred dollars (\$300.00). A certificate shall not be issued to an establishment that has failed to submit an applicable fee.

**D.** All applications shall be submitted to the department via certified U.S. mail.

**E.** The department shall review the application, and shall determine whether to grant or deny the application within forty-five (45) days from the date that the application was received by the department. If the department determines to grant a certificate to an establishment, it shall mail the certificate via certified U.S. mail to the mailing address identified in the establishment's application.

**F.** Notwithstanding the foregoing, in the event that the department deems an application or its supporting documentation to be insufficient to evidence that the establishment meets the definition of cigar bar, the department may either deny the application or request additional information or documentation from the establishment. Upon the department's rendering of a request for additional information or documentation, the department's forty-five day application review period shall be tolled and shall not resume until the department receives additional materials in response to its request. Upon the department's receipt of any additional materials submitted in support of the application (whether or not those materials were requested by the department), twenty (20) days shall be added to the application review period.

**G.** A certificated establishment applying for renewal of its certificate shall submit a renewal application to the department, complete with all required documentation and applicable fees, within twelve (12) months of the issuance of the establishment's previous certificate.

**H.** A certificate shall not authorize a certificated establishment to violate any portion of the Dee Johnson Clean Indoor Air Act, NMSA 1978, section 24-16-1 et seq., nor shall a certificate authorize any certificated establishment to operate in violation of a county or municipal ordinance that is more stringent than that Act.

[7.37.2.8 NMAC - N, 05/30/2008]

#### **7.37.2.9 VALIDITY OF CERTIFICATE:**

**A.** A certificate shall remain valid for twelve (12) months, except as otherwise provided by these rules. The department shall identify on the face of each certificate the date of the certificate's expiration.

**B.** A certificated establishment that ceases to be a bar shall have its certificate automatically rendered invalid.

[7.37.2.9 NMAC - N, 05/30/2008]

#### **7.37.2.10 EFFECT OF NON-CERTIFICATION, EXPIRATION OR INVALIDATION:**

**A.** An establishment that does not hold a valid certificate from the department may not operate under the cigar bar exemption of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., and may be subject to penalties provided under that Act for its violation.

**B.** An establishment whose certificate has expired or otherwise become invalid shall (upon the certificate's expiration date or upon the occurrence of the event that results in invalidation) immediately return the certificate to the department via certified U.S. mail; the establishment may not operate under the cigar bar exemption of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., until the establishment applies for and receives a new certificate from the department.

[7.37.2.10 NMAC - N, 05/30/2008]

**7.37.2.11 DISCLOSURE OF CHANGE OF NAME OF ESTABLISHMENT OR OWNERSHIP:** An applicant or certificated establishment that changes its name shall submit written notification to the department within thirty (30) days of said change. An applicant or certificated establishment that violates this rule shall have its certificate automatically rendered invalid.  
[7.37.2.11 NMAC - N, 05/30/2008]

**7.37.2.12 NONTRANSFERABILITY OF CERTIFICATES:** A certificate shall not be transferred to another establishment. This rule shall apply regardless of whether the other establishment shares the same or a common owner or owners. A certificate conveyed to another establishment in violation of this section shall be automatically rendered invalid.  
[7.37.2.12 NMAC - N, 05/30/2008]

**7.37.2.13 DISPLAY OF CERTIFICATE:** A certificate shall be prominently displayed within the premises of the certificated establishment so that it is in full public view at all times.  
[7.37.2.13 NMAC - N, 05/30/2008]

**7.37.2.14 ENFORCEMENT OF THE DEE JOHNSON CLEAN INDOOR AIR ACT:**

**A.** Pursuant to NMSA 1978, Section 24-16-16, enforcement of any violation of the Dee Johnson Clean Indoor Air Act shall be conducted by the local fire, police or sheriff's department having appropriate jurisdiction over the location where a violation occurs.

**B.** Persons may register complaints regarding an alleged violation of the Dee Johnson Clean Indoor Air Act with either the department or the local fire, police or sheriff's department. Upon receiving a complaint, the department shall refer the matter to a local fire, police or sheriff's department having appropriate jurisdiction for enforcement.  
[7.37.2.14 NMAC - N, 05/30/2008]

**HISTORY OF 7.37.2 NMAC: [RESERVED]**

**Pre NMAC History:** none.

**History of Repealed Material:** [RESERVED]