

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, 7.18.2.1 NMAC, 07/30/08]

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, 7.18.2.2 NMAC, 07/30/08]

7.18.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-1 through 74-1-16.
[7.18.2.3 NMAC - Rp, 7.18.2.3 NMAC, 07/30/08]

7.18.2.4 DURATION: Permanent.
[7.18.2.4 NMAC - Rp, 7.18.2.4 NMAC, 07/30/08]

7.18.2.5 EFFECTIVE DATE: 07/30/08, unless a later date is cited at the end of a section.
[7.18.2.5 NMAC - Rp, 7.18.2.5 NMAC, 07/30/08]

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, 7.18.2.6 NMAC, 07/30/08]

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) "CC" means combined chlorine.
 - (4) "CO" means certified operator.
 - (5) "CPR" means cardiopulmonary resuscitation.
 - (6) "CPSC" means consumer product safety commission (U.S.).
 - (7) "CT" means the concentration (C) of chlorine in ppm multiplied by time (T) in minutes.
 - (8) "DE" means diatomaceous earth.
 - (9) "DPD" means diethyl-p-phenylene diamine.
 - (10) "fps" means feet per second.
 - (11) "FAB" means free available bromine.
 - (12) "FAC" means free available chlorine.
 - (13) "gpm" means gallons per minute.
 - (14) "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.
 - (15) "NSF" means national sanitation foundation. The NSF standards referenced in the public swimming pool rules can be found at: www.nsf.org.
 - (16) "ppm" means parts per million. See notation under mg/l for use.
 - (17) "TDH" means total dynamic head.
 - (18) "TAB" means total available bromine.
 - (19) "TAC" means total available chlorine.
- B.** "Adjacent" means adjoining, contiguous, or both.
- C.** "Air induction system" means a plumbing system which provides the source of air for the air/water mixture to a hydrotherapy jet.
- D.** "Ancillary facilities" means an area used in conjunction with, or the operation of, a public pool such as public dressing, locker, shower, or bathroom area, equipment room, pool deck area or building space intended to be used for pool users.

- E.** “Approved” means accepted in writing by the department.
- F.** “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.
- G.** “Architect” means any individual currently registered and in good standing under the “New Mexico Architectural Act”.
- H.** “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.
- I.** “Backwash” means the process of cleaning the filter media by reversing the flow of water.
- J.** “Backwash cycle” means the time required to backwash the filter media.
- K.** “Backwash rate” means the rate of water flow through the filter media per unit of filter area, expressed in gallons per minute per square feet.
- L.** “Barrier” means a wall, building, fence or any combination thereof to control access to the pool, pool deck, adjoining areas, and the enclosure.
- M.** “Bather” means any person, excluding on-duty lifeguards and spectators, using a public pool or within the public pool enclosure for the purpose of water sports, recreation, swimming, wading, bathing, therapy or related activities.
- N.** “Bather load” means the number of persons in the water or using the water slide, spray pads, watercourse, interactive play attractions or fountains at any given moment.
- O.** “Bathhouse” means a structure containing dressing rooms, showers or toilet facilities for use with an adjacent public pool.
- P.** “Bathing attraction”, see class C pool.
- Q.** “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.
- R.** “Break in grade” means a place in the public pool floor where the slope changes.
- S.** “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, modify, or repair any public pool, spa pool or bathhouse and the appurtenances thereto.
- T.** “Cardiopulmonary resuscitation (CPR)” means a lifesaving technique involving both chest compressions to circulate blood and mouth-to-mouth breathing, to restart a non-beating heart.
- U.** “Certified operator” means a person who has a valid department-approved certification to operate a public pool as specified in the public swimming pool rules.
- V.** “Chemical feeder” means a device for applying chemical to the public pool water.
- W.** “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, drain covers, 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.
- X.** “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, filtering, disinfecting, and returning the water back to the public pool within a required turnover rate. See, recirculation system.
- Y.** “Class A pool” means any public pool including, but not limited to, general admission pools, aquatic centers, recreation parks, schools, colleges and universities, organizational camps, daycare facilities, clubs, recreation districts, city, municipal, county and state pools and pools operated by other political subdivisions as defined by law. Class A pools shall not include pools located at boarding schools, college and university exclusively associated with specific living units but would not be open to the entire college or university population or the general public.
- Z.** “Class B pool” means any public pool, located at, and operated to serve a facility having six or more living or guest units at:

- (1) travelers' accommodations, including hotels, motels, inns, lodging, campgrounds, bed and breakfast facilities;
- (2) apartments, condominiums, retirement homes, assisted-living facilities, mobile homeparks;
- (3) class A exclusions for boarding schools, colleges and universities, 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) homeowners 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.

AA. "Class C 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) waterslides;
- (6) vortex pools;
- (7) interactive play attractions;
- (8) watercourse rides;
- (9) activity pools; or
- (10) portable pools.

AB. "Class D pool" means any public pool used for physical therapy or rehabilitation including but not limited to post-operative and pre-operative strength training, assistance of buoyancy of water, and other one-on-one training.

AC. "Class E 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.

AD. "Club" means a facility constructed to provide entertainment, athletic or physical conditioning for its members, guests, invitees, occasional users, patrons, or clientele. It includes, but is not limited to, racquetball clubs, country clubs, golf clubs, health spas, fitness, sports and wellness facilities or aerobics instruction facilities.

AE. "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.

AF. "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.

AG. "Coping" means the cap on the wall that provides a finishing edge around the public pool or public spa. It may be formed, cast in place, precast, brick, stone, or pre-fabricated from metal or plastic materials.

AH. "Cove" means the radius that joins the floor and the wall of a public pool or spa.

AI. "Cross connection" means an unprotected connection between the piping carrying potable water and the piping or fixtures that carry public pool water, or other non-potable water, where a contamination of potable water may occur.

AJ. "Deck" means areas immediately adjacent to or attached to a public pool that are specifically constructed or installed for sitting, standing or walking.

AK. "Deck level diving board" means a diving structure or device rising no more than 18 inches above design water level.

AL. "Department" means the New Mexico environment department.

AM. "Department representative" means the secretary of the environment department or his/her designees.

AN. "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.

AO. "Enclosure" means the public pool area inside the barrier excluding spectator areas.

AP. "Engineer" means any individual currently registered and in good standing under the "New Mexico Engineering and Surveying Act".

- AQ.** “Fill and draw public bath” means a public bath that shall be completely drained, cleaned, and disinfected prior to each use.
- AR.** “Filter” means the material that separates particulate matter from the recirculating water.
- AS.** “Filter area” means the area available to separate particulate matter from the recirculating water, expressed in square feet.
- AT.** “Filter design flow rate” means the flow rate of a filter calculated by multiplying the filter area by the filtration rate, expressed in gallons per minute.
- AU.** “Filtration” means the process of removing particulate matter from water by recirculating the water through the filter medium elements.
- AV.** “Filtration rate” means the flow rate of water through a filter expressed in gallons per minute per square foot of filter area.
- AW.** “Flow meter” means a device that measures the rate of flow of water or liquid through piping.
- AX.** “Flow rate” means the volume of water or liquid flowing past a given point in a specified time. Generally expressed in U.S. gallons per minute (gpm) or gallons per hour (gph).
- AY.** “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.
- AZ.** “Flume” means an inclined channel for conveying water.
- BA.** “Foothold” means:
- (1) a slip resistant ledge that is attached to the side of the pool or a wall, or
 - (2) any protrusion or indentation that could be used to climb a barrier.
- BB.** “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.
- BC.** “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.
- BD.** “Guest protection zone” means a defined and prescribed area of a public pool that a lifeguard is responsible for monitoring.
- BE.** “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.
- BF.** “Horseplay” means any unsafe activity that could endanger anyone at a public pool.
- BG.** “Hot springs public bath” means a flow-through public bath with circulation of naturally occurring geothermal mineral water through the bath and where the flowing water is discharged to waste or circulated elsewhere such that the entire volume of water in the bath is completely replaced in more than thirty minutes.
- BH.** “Impervious” means a material that does not allow another substance to pass through or penetrate.
- BI.** “Interactive fountains”, see spray pads.
- BJ.** “Lifeguard” means a qualified person currently certified to perform functions that include, but are not limited to, water rescue, lifesaving, and medical care of injuries specific to the public pool facility. The lifeguard certification must be current and obtained from the American red cross, the national pool and waterpark association, United States lifesaving association or an equivalent organization approved by the department.
- BK.** “Lifeguard station” means the designated work area or work station of the lifeguard.
- BL.** “Lifesaving equipment” means emergency, lifesaving, and medical care equipment.
- BM.** “Main drain” means an outlet located at the bottom of a public pool or spa to transfer water to the recirculating pump.
- BN.** “Modify” means any activity at a public pool or public bath or its appurtenances or ancillary facilities, that changes the design, plumbing, hydraulics, equipment, illumination levels or structure, to the extent that its design, configuration or operating characteristics differ in any respect from those of the original.
- BO.** “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.
- BP.** “Operating water level range” means the operating water level defined in one of the following ways according to the type of pool construction:
- (1) “overflow gutter system” means the manufacturer’s maximum stated operating range above the design water level;

(2) “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.

BQ. “Operator”, see certified operator.

BR. “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.

BS. “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.

BT. “Pool slide” means an attraction that has a configuration as defined in the Code of Federal Regulations Vol. 16, Part 1207 and is used to allow users to slide from an elevated height to a public pool.

BU. “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 guests or invitees; 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.

BV. “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 soaking, 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.

BW. “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 class A class B, class C, class D, and class E pools or public spa pools, spray pads, bathing attractions and public baths. Plumbing fixtures associated with a specific living unit, 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, lodging and bed and breakfast facilities, 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;

(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.

BX. “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 or recreational uses, 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, hot water, cold water, mineral baths, hydrojet circulation, 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 class A or class B.

BY. “Recirculation system”, see circulation system.

BZ. “Repair” means the routine maintenance or replacement of existing equipment with an equivalent equipment type to maintain the public pool in good working condition. Repairs are not considered modifications under 7.18.2.7.BN NMAC.

CA. “Secretary” means the secretary of the New Mexico environment department.

CB. “Self-closing and self-locking device” means a device that causes a gate or door to automatically fully close and lock without human or electrical power.

CC. “Separation tank” means a tank used with a filter to facilitate the separation of filtrate material for disposal.

CD. “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.

CE. “Skimmer” means a device installed in a public pool or spa that permits the removal of floating debris and surface water to the recirculating pump.

CF. “Skimmer weir” means that part of a skimmer which adjusts automatically to small changes in water level to ensure a continuous flow of water to the skimmer.

CG. “Spa”, see public spa pool.

CH. “Spray pad” means a pool or basin occupied by constructed features that spray water in various arrays for the purpose of wetting the persons playing in the spray streams.

CI. “Supplemental disinfectant” means a department approved disinfectant that is intended to augment water quality in a public pool or spa and provide disinfection.

CJ. “Swimming pool”, see public pool.

CK. “Test kit” means a testing device approved by the secretary, capable of measuring all water quality parameters required in public swimming pool rules.

CL. “Total available bromine (TAB)” means the sum of the free available and combined bromine.

CM. “Total available chlorine (TAC)” means the sum of the free available and combined chlorine.

CN. “Total discharge head” means the sum of the static discharge head, the discharge velocity head, and the friction head in the discharge line of the pump.

CO. “Total dynamic head (TDH)” means the arithmetic difference between total discharge head and the suction head. This value is used in developing the performance curve.

CP. “Total suction head” means the arithmetic total of the static suction head, friction head loss, and velocity head loss on the suction side of pump.

CQ. “Total system head loss”, see total dynamic head (TDH).

CR. “Tripping hazard” means any abrupt rise, spalling walks, sunken or raised walkways, or other condition that could cause tripping.

CS. “Turnover rate” means the time required to circulate the entire volume of the pool or spa water through the circulation system once.

CT. “Underwater light” means a lighting fixture which illuminates a pool or spa from beneath the water surface.

CU. “User”, see bather.

CV. “Valve” means any device in a pipe that will partially or totally obstruct the flow of water or air, or permit flow in one direction only.

CW. “Variance” means written permission from the department to use an alternative measure of compliance with any provision in the public swimming pool rules, except those specifically prohibited in the rule. The alternative measure shall provide public health and safety protection that is equal to or greater than the protections provided in this rule.

CX. “Walking surface” means any surface used as a direct access surface for a pool, well as the area leading to and from the pool to locker, restroom or change room facilities.

CY. “Watercourse ride” means a water recreation attraction designed to convey bathers on inner tubes, logs, or raft-like devices, using an artificially created current.

CZ. “Water depth” means the vertical distance from the bottom of the pool to the top of the design water level.

DA. “Water safety instructor” means a currently certified American red cross water safety instructor, or a person having equivalent certification as determined by the department.

DB. “Waterslide” means a slide at a public pool consisting of one or more flumes and designed to convey users from an elevated height to a public pool.

DC. “Water surface” means that portion of the pool surface where swimming, recreational bathing, or wading is allowed.

[7.18.2.7 NMAC - Rp, 7.18.2.7 NMAC, 07/30/08]

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 - Rp, 7.18.2.8 NMAC, 07/30/08]

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, 7.18.2.9 NMAC, 07/30/08]

7.18.2.10 CONSTRUCTION PERMITS:

- A.** No person shall construct or modify a public pool or bath, or part thereof, or convert a private pool or bath into a public pool or bath 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 or modification of public pools or baths 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 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, for class B pools, the department shall have up to 30 working days to issue the permit, issue the permit with conditions, or deny the permit. For class A, C, D and E pools, the department shall have up to 90 working 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 and 20.1.5 NMAC.
[7.18.2.10 NMAC - Rp, 7.18.2.10 NMAC, 07/30/08]

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 and pump room layout, and any associated room, ancillary facilities, or locations;
 - (6) location of all above and below ground utilities;
 - (7) one piping schematic showing the locations, direction of flow, and the dimensions of all piping, pipe size, inlets, fill spouts, main drains, skimmers, gutter outlets, perimeter overflow gutter systems, vacuum fittings, and all other appurtenances and equipment connected to the pool circulation system;
 - (8) one cross section of the step treads and risers;
 - (9) means of disposing of backwash and wastewater in accordance with the law;
 - (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, if applicable), barriers, gates and doors;
 - (17) electrical layout drawings and specifications for the deck (area) and underwater lighting;
 - (18) 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) bather load;
 - (7) pool volume, turnover rate, type of filter media proposed and the manufacturer-recommended maximum and design filtration and filter flow rates, and total filter area;
 - (8) manufacturer’s make and model numbers of the pump, and automatic chemical feeders or other disinfection equipment, maximum design filter head loss (under clean and dirty conditions), pump curve showing the system head curves and the pump performance curves showing design flows, total suction head, total discharge head, and total dynamic head (or total system head loss), basis for pump selection, and other hydraulic engineering calculations or supporting documentation that the department may require;
 - (9) source of water used at the pool, including water samples or results of water sampling (if requested by the department); and
 - (10) other information the department may require.
- E.** Plans shall show the location of emergency telephones.
- 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 revoke any construction permits or approvals that are issued in error, or obtained based upon material misrepresentations or erroneous information provided by the applicant.
- G.** The department may also issue a stop work order whenever construction work deviates from approved plans and specifications without prior written approval from the department, violates any permit condition, or is in violation of this or any other law or regulation. The department shall provide written notice of the stop work order to the person performing the work or causing the work to be performed, and the person receiving such notice shall cease and desist from performing, or causing the performance of, the work until authorized in writing by the department to proceed.
- H.** Private pools that are converted into public pools or public pools that were previously operating without a permit shall be subject to the swimming pool rule’s provisions including, but not limited to, the requirement to obtain a construction permit.

[7.18.2.11 NMAC - Rp, 7.18.2.11 NMAC, 07/30/08]

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 for a period of time for which the pool will be operating or a period of twelve consecutive months, whichever is less. The operating permit shall only be issued after completion of a department inspection that demonstrates compliance with the public swimming pool rules and after receipt of all applicable fees.

C. No person shall operate a public pool without first:

- (1) receiving a construction permit from the department, if applicable;
- (2) obtaining an approved final construction inspection, if applicable;
- (3) applying for a permit to operate such pool;
- (4) receiving a permit from the department; and
- (5) paying all applicable fees.

D. The permit shall remain the property of the department and shall 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 issue a permit for the operation of a public pool only after completion of a department inspection that demonstrates compliance with the applicable public swimming pool rules.

G. Operating permits for all continuous year-round public pools shall expire on the last day of the anniversary month of the date of original issue provided the permit is issued annually in accordance with 7.18.2.12.B NMAC.

H. Any public pool that has been closed or not operated for a period of thirty days or more shall be granted permission to re-open only after completion of a department re-inspection that demonstrates compliance with applicable public swimming pool rules.

I. The designated certified operator of a seasonal or year round public pool shall be present for the seasonal pre-opening or operating permit inspection.

J. The certified operator shall request an inspection to receive an operating permit prior to the opening date of operation of any public pool.

K. Operating permits are non-transferable between facilities or persons.
[7.18.2.12 NMAC - Rp, 7.18.2.12 NMAC, 07/30/08]

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. The certified operator shall be responsible for providing supervision and direction to ensure the proper sanitation, safety, operation, and maintenance of the public pool, spa, or bath and all physical and mechanical equipment.

B. Operators of public pools shall be trained and certified through a department approved training course in swimming pool, spa or bathhouse, as applicable, sanitation and safety.

C. The department may grant certification following presentation and confirmation of certification from other department-approved certifying organizations.

D. Certifications shall expire three years following date of issue or on the expiration date for certifications issued by other approved certifying organizations.

E. The department will develop a training and certification program that addresses the certified operator requirements. The department shall review and maintain a list of department-approved training courses and their instructors, and department-approved certifying organizations. All approvals shall be subject to periodic review and reconsideration by the department.

[7.18.2.13 NMAC - Rp, 7.18.2.13 NMAC, 07/30/08]

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, 7.18.2.14 NMAC, 07/30/08]

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, 7.18.2.15 NMAC, 07/30/08]

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 if the permit holder or operator is still out of compliance at the end of five working days following the deadline for compliance, 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, 7.18.2.16 NMAC, 07/30/08]

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, 7.18.2.17 NMAC, 07/30/08]

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 re-instatement 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, 7.18.2.18 NMAC, 07/30/08]

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, 7.18.2.19 NMAC, 07/30/08]

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) any 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, 7.18.2.20 NMAC, 07/30/08]

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, 7.18.2.22 NMAC, 07/30/08]

7.18.2.23 VARIANCE:

A. The department may grant a variance from the design and construction or operation and maintenance provisions of the public swimming pool rules' through written permission for the use of 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. No variances shall be granted for procedural requirements, such as submitting construction or operating permit applications, including paying fees, obtaining construction or operating permits, operator certifications, or requesting a hearing.

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 and upon change of ownership or transfer of property, the new owner or their designated agent must re-apply for the variance.

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) remit applicable fee by check or money order made payable to the "water recreation facilities fund;"

- (3) state the applicant's name and mailing address;
- (4) state the date of the application;
- (5) state the provision or provisions of this regulation for which the variance is sought;
- (6) state in detail the extent to which the applicant wishes to vary from the provision or provisions;
- (7) state the period of time for which the variance is sought;
- (8) state why the applicant believes the variance is justified;
- (9) be accompanied by any relevant documents or material which the applicant believes would support the application for a variance; and
- (10) contain other relevant information the department may request.

E. Within twenty working 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 at the time of the annual operating permit inspection to determine whether all variance conditions have been met. If conditions of the variance have not been met, an operating 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 department'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 working 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, 7.18.2.23 NMAC, 07/30/08]

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 conditions of the variance have not been met, or 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 and conditions 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. All variances shall become void upon change of ownership. Upon change of ownership, the new owner shall re-apply for a variance.

E. Any person who has been granted a variance shall sign a department approved indemnification and release of liability statement form. Variances shall not be valid unless and until the department receives a completed and signed indemnification and release of liability statement form back from the applicant.

[7.18.2.24 NMAC - Rp, 7.18.2.24 NMAC, 07/30/08]

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 equipment to determine compliance with the public swimming pool rules or any permit or variance condition; and
 - (5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit or variance condition.
- [7.18.2.25 NMAC - Rp, 7.18.2.25 NMAC, 07/30/08]

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 - Rp, 7.18.2.51 NMAC, 07/30/08]

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, 7.18.2.52 NMAC, 07/30/08]

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, 7.18.2.53 NMAC, 07/30/08]

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, 7.18.2.54 NMAC, 07/30/08]

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, 7.18.2.55 NMAC, 07/30/08]

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, 7.18.2.56 NMAC, 07/30/08]

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 - Rp, 7.18.2.57 NMAC, 07/30/08]

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.
7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05), repealed 07/30/08.

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.

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05), was replaced by 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions effective 07/30/08.