Comment Summary 15.10.2 DEFINITIONS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Skye Devore Distiller's Guild	15.10.2.7 I. Cider definition does not match statute. The definition in proposed (existing) rule limits cider to seven percent (7%) alcohol by valume, however 13 line 17-21 of HB255 Final Signed lists the limit at eight-point five percent (8.5%). T. Changes definition of Growler. Growler is defined in statute on page 3 line 11-14 of HB255 Final Signed. Question: Does the word "traditionally" in this case mean that a growler can be any size as long as it is less than one gallon? If so, then we cannot see harm in this change. U. Defines Howler but does not include what is eligible to be filled into one. There is later mention of Howlers in 15.11.20.10C4 which makes this problematic.	Will change "cider" to conform to statute. "Growler" will remain, as it is one gallon max, and the use of the term traditionally, is there for context in regards to crowlers and howlers. "Howler" definition will be altered to contain the contents of the container.
Cynthia L. Sanchez	What is the definition of licensed premise under this rule? Under this rule, will a restaurant be allowed to add a bar area under the new definition of licensed premise? Can package liquor store designate an area as a bar under the licensed premise new definition?	The rule states: unless otherwise defined below, terms used will have the same meanings as set forth in the Act.
Kerry Lee	If a restaurant is able to act as a bar, can a package store designate a "bar" on their premises based on the new definition of a premises?	This is a question regarding interpretation of rules and statute.
Mark M. Rhodes	2. APPROVED OPERATOR. While a Resident Agent generally is appointed as the NM resident who accepts service of license related documents on behalf of the license, the new definition of "Approved Operator" includes a Resident Agent. I am often asked to help out of state clients coming into New Mexico by becoming their initial Resident Agent. I will cease this practice and turn away new out of state businesses if this is enacted into law.	The Division will eliminate 15.10.2.7(E)(4), in order to avoid possible liability issues for Resident Agents who are not involved in the sale of alcoholic beverages.
Chris Chant Steel Bender Brewyard	Definition of Cider. The recent changes to the Liquor Control Act amended the definition of cider. The regulations need to include those	Will change "cider" to conform to statute.

	changes. (apples and pears instead of fruit and up to eight and on-half percent.) Definition of Growler. The definition of growler in the proposed regulations includes the word "traditionally" and "sixty-four ounces". Why? The law just limits total capacity to one gallon. Is this definition intended to exclude howlers of thirty-two ounces (or any container with less than sixty-four ounces) from the alcoholic beverage items that can be delivered under a delivery permit? Is there a reason or policy that seeks to encourage larger sizes of growlers and crowlers for delivery? Is this just a recitation of history or common practice which has no legal consequences? If so, it is confusing and unnecessary.	The use of the term "traditionally" and continued use of the "sixty-four ounces" is to provide context and to differentiate from "howler."
Alana Harris	15.10.2.7 I. Cider definition does not match statute. The definition in proposed (existing) rule limits cider to seven percent (7%) alcohol by volume, however 13 line 17-21 of HB255 Final Signed lists the limit at eight-point five percent (8.5%). T. Changes definition of Growler. Growler is defined in statute on page 3 line 11-14 of HB255 Final Signed. Point of questions: Does the word "traditionally" in this case mean that a growler can be any size as long as it is less than one gallon? If so, then we cannot see harm in this change. U. Defines Howler but does not include what is eligible to be filled into one. There is later mention of Howlers in 15.11.20.10 C 4 which makes this problematic.	Will change "cider" to conform to statute.

Comment Summary 15.10.31 PREMISES-GENERAL REQUIREMENTS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.10.32 PREMISES-LOCATION AND DESCRIPTION OF LICENSED PREMISES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Duke Klauck	I object to the requirement in the new proposed regulations that outdoor areas be attached to a licensed building. Outdoor areas can be controlled adequately whether attached by a fence or corridor or freestanding. The regulations specifically state that buildings operated under one liquor license do not need to be connected by indoor passageways. This should be extended to outdoor areas.	The division will remove the requirement that outdoor controlled access areas are connected to indoor controlled access areas. As demonstrated, outdoor areas can adequately be controlled even if not connected to a structure or building.
John Masterson	I have concern about proposed changes to 15.10.32.10(D,E) and 15.10.32.14(B): During the pandemic, ABC issued us a temporary license to expand our premises into the gravel parking lot behind our building. The parking lot is separated from the brewery's indoor licensed premises by a city alleyway. We obtained permission from the city to make use of the alleyway as part of our application for the temporary license, and it was approved by ABC. We are planning on making the temporary beer garden permanent by submitting an amended floorplan application, but the proposed rules appear to prohibit our previously approved configuration. Adding "unless an exception to this rule is approved in writing by the Director" might solve this issue for us. Please advise.	The division will add the suggested language creating an exception possibility to the rule requirements, on a case-by-case basis.
Skye Devore Distiller's Guild	15.10.32.10 C and D. This section pertains to roads and parking lots being excluded from Licensed Premises and Controlled Access Areas. During the pandemic, your division issued temporary licenses to our membership to expand into these areas. We would respectfully ask that you add "unless	Roads and parking lots may not be permanently secured for the sale and service of alcoholic beverages. The division will include an

	an exception is approved in writing by the Director" in case the issue should ever come up again. 15.10.32.14 This section defines Outdoor Controlled Access Areas. Several in our membership have brought up concerns surrounding the need to connected and contiguous with an indoor controlled access area, particularly because parking lots and roads are not permitted to be included or considered per 15.10.32.10. Additionally, those in rural areas who are permitting acreage will face a disproportionate burden when presented with havin to enclose the area with a physical barrier as opposed to letting distance define the space. For instance, one of our members is looking a large property – 8 acres – and the requirement to fence the entire area is a daunting and expensive task. In such a large area customers leaving the premises is not a concern. We would ask that you take this feedback into consideration and adjust if needed.	exception on a case-by-case basis. The division will remove the requirement that outdoor controlled access areas are connected to indoor controlled access areas. As demonstrated, outdoor areas can adequately be controlled even if not connected to a structure or building.
Mark M. Rhodes	CONTROLLED ACCESS AREAS: The language proposed excludes "fuel filling Stations". While this may have made sense when written, a recent NM appellate decision, Morris v Giant Four Corners, Inc. has created arguments for convenience store operators to have liability. I believe that the language requires further thought.	Because of the flexibility within the Act, in defining licensed premises, the Division will address parking lots and fuel pump areas on a case by case basis.
Linda L. Aikin	Outdoor areas attached to structure. I agree with the other comments that the new definition of licensed premises does not require that outdoor areas be attached to a building. When I had a client in Nob Hill, he could not get the patio approved because there was a sidewalk between the building and the patio which was not under the exclusive control of the licensee.	The division will remove the requirement that outdoor controlled access areas are connected to indoor controlled access areas. As demonstrated, outdoor areas can adequately be controlled even if not connected to a structure or building.
Chris Chant	Licensed Premises. We currently operate two wine grower licenses and two small brewer licenses and one wholesaler license on our property in	The division will remove the requirement that outdoor

Steel Bender Brewyard	Los Ranchos de Albuquerque. The property includes five buildings, but the liquor licenses are issued for and operated in only two of those five buildings. We understand that the new law permits us to use one winegrower and one small brewer license for multiple buildings on our property. We will definitely consolidate the operation of those licenses under one small brewer's license and one winegrower's license. We are also considering the establishment of a package and novelty store in a third building on the property. There is an additional grassy area on our property that we would like to include for operation of the winegrower's license and the small brewer's license. In order to use that grassy area, the requirement in the proposed regulation that all outdoor areas be connected to one of the licensed buildings needs to be eliminated. The recent amendment to the Liquor Control Act state that all areas of the property are part of the licensed premises. There is no longer a requirement that serving areas be connected by indoor passageways. We don't think that the regulations should limit use of the entire premises if all of the service areas are clearly marked and enclosed as required for patio areas. There is controlled access if the outdoor area is enclosed as required for patios. Under the new law, we don't understand the logic of requiring that outdoor areas be attached to a building when buildings no longer need to be attached to one another. The grassy area is at the edge of our property, but the entrance to our premises and parking lot areas separate that area from the licensed buildings. We cannot attach that grassy area to any of the buildings. That space is approximately 2500 square feet. We would be able to locate kegs or anything else needed for service in that area within the outdoor controlled access area. Servers would not need to go back and forth to the main building to serve customers. Our parking lot is situated on the property in such a way that all customers walk cross the entrance or driveway when going from their cars to enter our primary building. It is not a street and the traffic is not heavy. We	controlled access areas are connected to indoor controlled access areas. As demonstrated, outdoor areas can adequately be controlled even if not connected to a structure or building.

	have never had any problems or issues as a result of the path that customers take to enter our establishment.	
Alana Harris	15.10.32.10 D. and C. in this section pertain to roads and parking lots being excluded from Licensed Premises and Controlled Access Areas. During the pandemic, your division issued temporary licenses to our membership to expand into these areas. We would respectfully ask that you add "unless an exception is approved in writing by the Director" in case the issue should ever come up again. 15.10.32.14 This section defines Outdoor Controlled Access Areas. Several in our membership have brought up concerns surrounding the need to be connected and contiguous with an indoor controlled access area, particularly because parking lots and roads are not permitted to be included or considered per 15.10.32.10. Additionally, those in rural areas who are permitting acreage of land will have a disproportionate burden when presented with having to enclose the area with a physical barrier as opposed to letting distance define the space. For instance, one of our members is looking a large property, 8 acres, and the requirement to fence the entire area is daunting. In such a large are the idea that customer will leave the premises is not a concern. We would ask that you take this feedback into consideration and adjust if needed.	The division will add language creating an exception possibility to the rule requirements, on a case-by-case basis. The division will remove the requirement that outdoor controlled access areas are connected to indoor controlled access areas. As demonstrated, outdoor areas can adequately be controlled even if not connected to a structure or building.

Comment Summary 15.10.33 PREMISES-MINORS ON LICENSED PREMISES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
John L. Thompson	15.10.33.12 Please consider clarifying language to account for 2019 HB 151 which allows for minors of at least 18 years of age who are employed by a licensed NM Wholesaler and who are licensed under the New Mexico	The division will amend the rule to conform to the Act, allowing minors with a CDL to be employed as drivers by NM Wholesalers.

	Commercial Driver's License Act to deliver packaged alcoholic beverages.	
Mark M. Rhodes	AGE YOU CAN WORK WITH LIQUOR. Existing law and the rules circulated require you to be 19 years old to work around liquor(except as a bartender where you must be 21), HB 255 changes the law to 18. This needs to be clarified.	The division will amend the rule to conform to the Act.
Rep. Antonio Maestas	Please change 19 to 18 as it relates to the minimum age of the server.	The division will amend the rule to conform to the Act.

Comment Summary 15.10.51 SALES-RESTRICTIONS ON SALES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Dan Musso	Hello, I am emailing you in regards to one of the new liquor laws that has recently gone into effect. I am gravelly concerned with the law which allows establishments to begin serving alcohol at, in my opinion, too early in the day. After learning that establishments can now serve alcohol to their patrons as early as 7:00 a.m. I strongly believe this to be a big mistake. With New Mexico already having one of the highest driving while intoxicated, as well as fatalities due to drunk drivers per capita in the U.S.A the aforementioned law will significantly increase these awful incidents. I strongly oppose the sale of alcohol before 12:00p.m. except in cases where the establishment only serves it's patron(s) alcohol if food is served with the alcohol after 11:00 a.m. Thank you for your time and consideration. Feel free to contact me if you have any questions or concerns.	The changes to time of alcoholic beverage service on Sundays was made by statute. The Division cannot change limit alcoholic beverage service times to 11:00am or 12:00pm, as the Legislature has authorized it to begin at 7:00am.
Lynette Vargas	Dear Desirae. As of July 1 for sales and packages are ridiculous!! We have enough problems. The 7 am time is crazy. They should just leave it at 10am. This is going to cause higher DWI. Lot more accidents to happen. Thank you.	The changes to time of alcoholic beverage service on Sundays was made by statute. The Division cannot change limit alcoholic beverage service times to 11:00am or

		12:00pm, as the Legislature has authorized it to begin at 7:00am.
Greg Templeton	15.10.51.15 Sales of Certain Spiritous Liquors: I respectfully request a ruling for Twisted Shotz a 4x25ml (100ml) single pack, 20% ABV as a legal package to sell in NM retail liquor stores. Pictures of Twisted Shots for reference are below. A live sample pack can be sent if requested. 	The Division will not accept this comment, as a four pack is readably consumable while departing the licensed establishments, similar to a single container less than three fluid ounces.
John L. Thompson	15.10.51.15 We would suggest that ABC consider reasonable restrictions allowing for 50ml containers of spirits to be included as a value-added product in	The Division will accept this comment, as it conforms to the intent of the statute, and the

	conjunction with a spirits purchase of 750ml or larger. For instance, during the holiday season it is common for spirits to have a 50ml (mini) included with a 750ml of spirits. Pictures below for reference:  	50ml container is only a portion of the larger purchase of a 750ml or larger package.
John L. Thompson	15.10.51.12 We would suggest that this section be repealed entirely. BYOB exceptions create ambiguity pertaining to the chain of custody of product, product origins, and raises liability concerns. Should a repeal not be entertainable, please consider requiring a receipt/invoice showing that BYOB product was sourced from a NM retailer similar to the provision for Wholesaler donated product in 15.10.51.12E.	The Division will accept this comment in part, as it will require receipt/invoice showing the host sourced the BYOB product form a NM retailer.
Cynthia L. Sanchez	Can packs of miniatures be sold as they are more than 3 ounces?	The proposed rule answers this question.
Kerry Lee	Are 3oz or less liquor containers able to be packed into multiple packs allowing them to be sold in a more than one scenario?	The proposed rule answers this question.
Matt Dogali	On behalf of the American Distilled Spirits Alliance (ADSA), thank you for the opportunity to submit comments on the Liquor Control Act Proposed Rules: 15.10.51.15 Sales of Certain Spiritous Liquors. *15.10.51.15 SALES OF CERTAIN SPIRITOUS LIQUORS:* *A. A licensee shall not sell spiritous liquor in a closed container of three fluid ounces or less, for consumption off the licensed premises, this does not include sales in which 10 containers of three fluid ounces or less are packaged together by the manufacture and meant for sale as a single unit.* *B. Nothing within this section shall prohibit the sales of spiritous liquors in open containers of three fluid ounces or less, for consumption on the licensed premises.*	The Division, will accept this comment in part. As it will keep the language of the exception, but reformat the exceptions in order to clarify the 10 container exception.

	ADSA is a group of leading companies with common needs and interests in the manufacturing, importation, and marketing of distilled spirits products in the United States and around the world. Member companies represent over 60 percent of all distilled spirit sales nationwide. Consumer demand for packaging that promotes moderate, responsible consumption along with convenience, affordability and portion control continues to rise across a wide variety of food and beverage products. For the spirits industry, small sized packages promote moderation and portion control. For example, one 50 milliliter spirits bottle equals one standard drink and eliminates the guesswork when portioning. These package sizes also allow those who are price sensitive to enjoy a little taste of luxury brands they might not otherwise afford. With the COVID-19 pandemic, small sizes indeed offer a greater level of personal safety and hygiene. Some consumers rely on small spirits bottles for safety. By using a single-serve container, the person consuming the beverage is in control of the amount of alcohol used in their drink and they also maintain control over any nefarious chemicals that could be added without their knowledge. While we believe eliminating spirits sales in containers of three fluid ounces or less will have the opposite effect on moderation since consumers will buy the next larger size, we appreciate the agency's proposed rule language allowing for sales in which 10 containers of three fluid ounces or less that are packaged together by the manufacturer for sales as a single unit. We believe this will meet the legislative intent to ban single spirits serving sales of three fluid ounces or less. We ask the agency to clarify in the final rules that the allowance includes packaging containing 10 or more containers of three fluid ounces or less if they are packaged together by the manufacturer and meant for sale as a single unit.	
Linda L. Aikin	Sales to Intoxicated Persons. This regulation is often referenced as the Happy Hour regulation. As the title indicates, it is intended to eliminate the promotions that encourage customers to drink too much and then drive home. There is no provision of the Liquor Control Act that is intended to	The division accepts the comment and will not change the rule language, so that it includes package sales, for the

	discourage people from drinking as much as they like at home. (There are certainly public health and other reasons to discourage individuals from drinking too much, but the ABC's authority does not extend beyond what occurs on the licensed premises.) The provisions only addresses "SALES" to intoxicated persons. If someone buys two of the same package product because there is a two-for-one promotion, that would be illegal if the customer were intoxicated at the time of purchase. It doesn't matter what the quantity or the cost of the packaged alcoholic beverage is as long as the individual making the purchase is not intoxicated. If the customer is not intoxicated at the time of the purchase, there is nothing wrong or illegal about the sale and it doesn't violate any provision of the Liquor Control Act. The addition of package sales to this regulation is a cost control and is anti-competitive. Owners of a business should be able to sell their products at any price they like. What if the product has been sitting on the shelf for a long time and no one wants to buy it? Why is the licensee required to keep it on the shelf? Why can't it be sold below cost? I don't see any provision of the Liquor Control Act which provides authority for the addition of cost controls on package liquor sales.	reasons stated within the comment.
Pat Block New Mexico Retail Association and Walmart Incorporated	I am providing comment in favor of the proposed language in section 15.10.51.15 of the New Mexico Administrative Code. We support the language permitting the sales of items in which 10 containers of three fluid ounces or less are packaged together by the manufacture and meant for sale as a single unit. We would suggest examining the proposed language in this to ensure you intend to use the word "manufacture", and not "manufacturer. We have not identified any other concerns with the draft language, so we support adoption of the proposed rule as presented (with the possible exception of the manufacture/manufacturer language).	The division will make the suggested change from "manufacture" to "manufacturer" in order to clarify and not create confusion.

Comment Summary 15.10.52 SEGREGATED ALCOHOL SALES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Linda L. Aikin	Controlled Access Areas and Segregated Sales. The sign required in the segregated sales area regulation makes no practical sense in a convenience store or grocery store. Minors can't be prevented from entering the area unless the licensee posts guards around the liquor display areas. If a minor enters a convenience store alone, the licensee can't be expected to prevent the minor form walking by the beer coolers. The same problem exists in a grocery store. If mom or dad asks her or his child to go get some bread, the minor might go down the liquor aisle to get there. That shouldn't be something illegal for which the licensee can be cited. Placement of the liquor department in the corner of a grocery store used to be the practice, but it is often in the middle of the stores now. When the liquor department was located in the corner of a grocery store, minors sometimes went into the department when no one was there, opened a container of liquor and drank it. Location of liquor in the middle of the store means that more people will see what is happening on that aisle, but it also means that there is a possibility that a minor will walk down the aisle alone. When the segregated area concept was first proposed by Hess Yntema (former ABQ city councilor), he complained that liquor should not be sold on the same aisle as items like diapers. The segregated liquor area regulation goes a little further than needed to shield and protect individuals from seeing alcoholic beverages.	The Division accepts this comment in part. The Division is required to have rules segregated sales by statute. However, the Division will modify the rule, so that it addresses the practical floorplan designs of large grocery stores and smaller convenience stores.

Comment Summary 15.10.53 SALES-WHOLESALERS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
John L. Thompson	15.10.53.10 We would request that ABC use this section to apply limits on NM Liquor license holders for printing, such as third-party wine lists, booklets, and other print jobs. NM wholesalers are limited to $500 per quarter or $2,000.00 annually for in-house print jobs per the email below from former Director Root. We humbly ask that the contents of the email below be added permanently into rule. **From:** Root, MaryKay, RLD [mailto:MaryKay.Root@state.nm.us] **Sent:** Friday, April 14, 2017 11:33 AM **To:** Thomas, Michael (Ext. 431362) <Michael.Thomas@NATDISTCO.COM> **Cc:** Greg Templeton (gtempleton@sgws.com) <gtempleton@sgws.com> **Subject:** RE: Accounts Requesting support for Wine list Good morning Mike and Greg, Excellent issues – I want to make sure that what we ask of you is appropriate. I can see that $500 would be difficult as an annual cap and could make sense as a quarterly cap for in-house printing or as an amount toward third party printing. I believe $500/quarter captures the spirit of the law for printing and I ask that you keep me informed as this rolls out, should any modification be required. Thank you so much for working together and seeking answers. I hope you are able to get some down time for the holiday weekend. MK Mary Kay Root, Esq. Director, Alcohol & Gaming Division New Mexico Regulation & Licensing Department Toney Anaya Building 2550 Cerrillos Road Santa Fe, NM 87505 (505) 476-4550 15.10.53.8 We would ask that the ABC consider a ten business day window in which retailers may return wine and spirits products to a wholesaler. Wine and spirits are substantially more costly than other industry staples and generally don't have an expiration date, with that volume busy can be attractive to achieve more competitive price. The ten-day return window would prevent a faux volume buy and subsequent return of a portion of the product as a means of manipulating the volume buying process.	The division will not create a rule for "print limits" as they fall under the general rule on inducements. The division will not create a "ten business day window" for returns of wines and spirits, as doing such may create confusion amongst retailers in believing they can return products for any reason within 10 days of purchase.

Comment Summary 15.10.54 SALES-CLUBS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.10.55 INTERNET SALES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
John L. Thompson	15.10.55.8 This section appears to attempt to create a delineation between delivery as authorized via HB255 versus shipping direct to consumers via common carrier. Please consider further clarification to distinguish the two separate activities. It is important to note that direct sales to consumers using web-based platforms with shipment by common carrier continues to grow at an alarming rate. This business practice quite often avoids state taxation, regulation, and enforcement while sending profits out of state while the social cost of those transactions remains in NM.	The division believes the rule creates the necessary delineation between alcoholic beverage delivery and shipping to consumers via common carrier. The activity commenter is worried about is actually governed by statute within the Act.
Laura Curtis DoorDash, Inc. And Alex Mooney DoorDash, Inc.	***We support N.M. AD MIN. CODE 15.10.55.9, "Use of Internet Website and Application Based Platforms for Delivery Sales."*** As an initial matter, DoorDash strongly supports proposed regulation N.M. AD MIN. CO DE 15.10.55.9, "Use of Internet Website and Application Based Platforms for Delivery Sales." We believe that the proposed language in N.M. ADMIN. CODE 15.10.55.9(A)-(B) will directly benefit local economies and residents. As such, we encourage adoption of N.M. ADMIN. CODE 15.10.55.9 as proposed.	This comment further exemplifies why the division will leave the proposed language in rule.

Comment Summary 15.10.61 CITATIONS-FINES AND PENALTIES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.10.70 OPERATION AND PROFITING BY AUTHORIZED PERSONS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Jacqueline Flug	Below Section 15.10.70.8(A)(1) refers to the receipt of payments and says they must be "done by." The words "done by" are confusing me. Is this meant to mean received by? Third party platforms do not tend to process payments, most use one of two payment processing companies Stripe or Braintree. Accordingly, payments aren't "done by" third party platforms but are facilitated by them. Additionally, I would see the goal of this section is make sure all payments for alcoholic beverages are received by a licensee, correct? Is there a way to clarify this?	The Division will clarify the rule addressed in the comment by replacing the word "done" with the word "completed" so that it reads "completed by."
Carrie L. Bonnington	Preliminarily, Instacart joins in the comments submitted by Jacqueline Flug on behalf of Drizly with respect to Sections 15.1070.8(A)(1) and 15.11.2.15(D)(1). Instacart respectfully requests that the New Mexico Regulation and Licensing Department Alcoholic Beverage Control Division (Division) also consider the following comments to the proposed rules. 1. Section 15.1070.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS Section 15.10.70.8(A)(1) provides in pertinent part: A. No person other than the [approved operator] licensee or lessee or employees of the [approved operator] licensee or lessee, shall sell or serve alcoholic beverages at the licensed premises. (1) All orders, sales, service, dispensing, delivery and receipt of payment for alcoholic beverages must be done by the [approved operator] licensee or employees of the [sic] [approved operator], or the employees of a third-party delivery licensee contracted with for delivery purposes.	The Division will clarify the rule, and accept the comment, and replace the word "done" with the word "completed."

	As noted above, Instacart agrees with Drizly's comment that the phrase "done by" is confusing and does not accurately reflect the payment process for alcohol purchases using third party platforms. As an unlicensed third party, Instacart does not engage in any retail sales of alcohol beverages. All sales, and all receipts, are issued to consumers by Instacart's retail partners. Instacart merely facilitates the connection between the retail licensee and the consumer. In addition, Instacart requests that the term "employee" be expanded when referencing third-party delivery licensees. Most third-parties, including Instacart, utilize independent contractors to make deliveries on behalf of the retailer. Accordingly, Instacart proposes the following revised language for consideration: A. No person other than the [approved operator] licensee or lessee or employees of the [approved operator] licensee or lessee, shall sell or serve alcoholic beverages at the licensed premises. (1) All orders, sales, service, dispensing, delivery and receipt of payment for alcoholic beverages *must be completed* done by the [approved operator] licensee or employees of the*licensee*. [approved operator]. *A* or the employees of a third-party delivery licensee *or its employees or independent contractors* contracted with for delivery purposes *may facilitate orders between consumers and licensees and may deliver alcohol beverages in response to an order accepted by the licensee.*	
Linda L. Aikin	Operation and Profiting by Authorized Persons. 15.10.70. Thank you for eliminating the words "approved operator" in 15.10.70.8(A). That phrase was interpreted by prior administrations to mean that only the lessee could operate or profit from the sale of alcoholic beverages. Use of the words "licensee or lessee" eliminates much of that confusion. My biggest problems in the past were hotel management agreements where the employees were sometimes employees of the owner of the hotel and sometimes employees of the hotel management company. It shouldn't matter which company is the employer as long as both parties are	The Division does not accept the proposal of including "affiliates" or their employees to be included in who can perform sales and serve, dispense, deliver, and receive payment for alcoholic beverages, as the portion that allows affiliates and their employees to profit from

	approved as the owner and lessee of the license. Could you please insert "or lessee" in 15.10.70.8(A)(2)? Similarly, I suggest that the phrase "approved operator" be eliminated in 15.10.70.8(B) and that "owner or lessee" be used in place of "approved operator" throughout 15.10.70.8(B). The owner and lessee of a liquor license should be permitted to split profits on the license. In the past, the ABC required that rent under a liquor license lease a flat monthly amount and not a percentage of sales. However, in the case of a hotel management agreement, the income is often deposited by the management company in the account of the owner of the hotel and the management company receives a percentage of the income as the management fee. As long as the hotel owner is also the owner of the liquor license and the management company is the approved lessee of the liquor license, it shouldn't matter that the management company is paid a percentage of the liquor sales as part of a percentage of all hotel income. This would be real progress for hotel in our tourist-based economy. The hotel management exception was added in 2017, but a phrase was added between the time that public comment period ended and the regulation was published. (the phrase about approval by the director of a reasonable split of profits). If "approved operator" is eliminated, as suggested above, the hotel management exception really isn't needed. (Section (4) of (B) could be eliminated.) Finally, the concept of affiliate is included in the exception to the profiting. (Not as clearly as possible, but the word affiliate appears in Section B.) It should be included in the operation part A of the regulation. I have had several affiliates approved over the years. A big company may have a number of subsidiaries. One of the subsidiaries is a company named something like "Big Company Associates." All employees of all the subsidiaries are employees of the employment subsidiary. The benefit of a separate employment subsidiary is that employees do not lose seniority when transferred from one subsidiary to another subsidiary.	activity on a licensed premises is limited to revenues received from the sale of products other than alcoholic beverages.

Comment Summary 15.11.2 REQUIRED DOCUMENTS ON LICENSED PREMISES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Jacqueline Flug	Additionally, Section 15.11.2.15(D)(1) refers to the "identification". What exactly does that mean? Is that a note that a driver's license was shown and scanned or does it mean the actual image of the driver's license, or something else? I ask because data privacy and security laws are complex and typically saving an image of someone's driver's license is something no one really wants to do. I actually think the last person suited to protect personal information are liquor retailers themselves. I believe most scanning software simply keep a record that the ID was run but do not store images of the ID. Accordingly, can this be clarified and if it does mean an actual image is your agency able to have a discussion about data privacy and security?	The Division removed the word "identification" and replaced it with "name" in order to clarify what information is required by the rule.
Skye Devore Distiller's Guild	15.11.2.15D This section outlines documentation that is required for delivery. The wording implies "all delivery employees must have on their person, during delivery all of the info listed in #1 through #4, for a period of 6 months". We agree with the requirement to have the documentation of that particular day's deliveries; however, if the requirement is implying that 6 months of records be with the employee every day that is onerous and extreme. Could you please clarify?	The Division accepts the input in multiple comments that requiring certain documentation be maintained on the delivery personnel, as proposed, would create undue hardship and now will require that it be maintained at the licensed premises.
Carrie L. Bonnington	2. Section 15.11.2.15(D)(1) DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES Instacart joins Drizly's comment requesting clarification regarding the specific intent of Section 15.11.2.15(D)(1) and the reference to maintaining the "identification and age information for the customer who ordered and paid for the alcoholic beverages." Instacart proposes the following revised language: (1) *The name and age* for the customer who ordered and paid for the alcoholic beverages. 3. Section 15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF	The Division removed the word "identification" and replaced it with "name" in order to clarify what information is required by the rule. The Division accepts the input in multiple comments that requiring certain documentation be maintained

	ALCOHOLIC BEVERAGES Instacart respectfully requests that Section 15.11.2.15(C) be amended to include reference to a "physical *or electronic copy*" of the receipt. Although delivery orders may be placed telephonically, most orders are received electronically. As such, the entire process is automated and designed to proceed electronically. Exclusively requiring a physical receipt is inconsistent with the electronic flow utilized for alcohol delivery and presents significant operational hurdles.	on the delivery personnel, as proposed, would create undue hardship and now will require that it be maintained at the licensed premises. The Division is not accepting the comment that an electronic copy of the receipt be sufficient to accompany the delivery. As electronic receipts may be generated for products maintained as surplus inventory and purchased during the course of the delivery.
Alana Harris	15.11.2.15D. This section outlines documentation that is required for delivery. The wording implies "all delivery employees must have on their person, during delivery all of the info listed in #1 through #4, for a period of 6 months". We agree with the requirement to have the documentation of that particular day's deliveries, however if the requirement is implying that 6 months' worth of records be with the employee every day that is onerous and extreme. Could you please clarify?	The Division accepts the input in multiple comments that requiring certain documentation be maintained on the delivery personnel, as proposed, would create undue hardship and now will require that it be maintained at the licensed premises.

Comment Summary 15.11.20 LICENSES AND PERMITS-ALCOHOLIC BEVERAGE DELIVERY

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Tyke Schoser	I am all for the delivery of liquor to homes. I think the delivery of alcohol to homes would probably cause a reduction in drunk driving incidents. I agree that the liquor shouldn't be delivered to public locations such as	The Division believes this concern is addressed in the proposed rules, regarding

	businesses, campuses, and parks. Alcohol should only be delivered when an individual is shown to have access to a house. No delivery to someone standing in front of a house.	record keeping of name and age of consumer, along with location of delivery.
Teresa Dahl-Bredine	On the behalf of our company, Little Toad Creek Brewery & Distillery, I am writing to express my concerns about the new proposed alcohol rules and how they will affect our business. During the past year with all the restrictions on our business we have pivoted to focus on distribution of our craft beer and spirits products. This is now a key component of our success. There are proposed rules which will inhibit our distribution sales capabilities within the state of New Mexico. I am particularly concerned about the elimination of the Craft Distiller's access to sales of craft canned RTD (ready-to-drink) cocktails through restaurant delivery. The final version of House Bill 255 that passed this year says: Section 4 B. An alcoholic beverage delivery permit issued to a valid restaurant licensee shall only convey the authority to deliver alcoholic beverages concurrently with the delivery of a minimum of ten dollars ($10.00) worth of food; provided that under no circumstances shall the delivery of alcoholic beverages be more than seven hundred fifty milliliters of wine, six twelve-ounce containers of prepackaged wine, beer, cider or spirituous liquors or one locally produced growler… This language would allow for delivery of canned cocktails from a restaurant premises with the correct licenses. In contrast, the proposed rules say: 15.11.20.10 DELIVERY RESTRICTIONS AND REQUIREMENTS FOR RESTAURANT LICENSES: A. Restaurant licenses are limited to the delivery of alcoholic beverage types allowed by their license.B.Alcoholic beverages shall only be delivered to customers concurrently with the delivery of a minimum of ten dollars ($10.00) worth of food.C.Delivery of alcoholic beverages to one location, during a three hour period of time, shall not exceed:(1) seven hundred fifty milliliters of wine; (2) six twelve-ounce containers of prepackaged wine, beer, cider;(3)one growler of product manufactured by a small brewer; or(4)one	The Division is accepting the comment in part, as the use of "ready to drink" manufactured package cocktails meet the statutory language for delivery. However, allowing for six ready to drink cocktails does not match the limitation placed on restaurant licenses to serve no more than 3 spirituous liquor drinks to a customer.

	howler of a cocktail containing no more than four and one-half ounces of spiritous liquors, in order to comply with Section 60-6A-4(F)(6), NMSA 1978, of the act. The howlers used must contain the DBA of the licensee etched onto the glass or have the receipt secured onto the container. D. Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent Comparing the highlighted texts-the proposed rule leave out 12-ounce containers of spirits, which is a distinct disadvantage to Craft Distillers. Canned cocktails are an important emerging market. We have invested a considerable amount of time and money in developing our canned cocktails and believe they would be a great fit for restaurants to sell for delivery with food orders. Many restaurants are seeking a simple solution to adding spirits to their menus, and the ready-to-drink cocktails fit that need. This will be a good market for our distillery and other NM Craft Distillers. Our canned cocktails range in ABV from 10% to 12.9%, which is no higher than the average ABV of wine. We strongly believe that these should be added back into the language in the rules in order to be in alignment with the passed legislation and to provide craft distillers with equal opportunity as compared to craft producers of beer, cider, and wine. If there needs to be a limit on the ABV we recommend 13% ABV max RTD cocktails in 12 ounce containers in 4-packs (most RTD cocktails are packaged in 4-packs). This would be in alignment with alcohol content of other allowed packed products for delivery.	
John L. Thompson	15.11.20.10 In Section C of 15.11.20.10 it appears that the language conflicts with that of HB255. In Section 4, Subsection 4 of HB255 (Page 8, line 24&25 of the Final Version) HB255 authorizes six 12oz containers of pre-packaged wine, beer, cider, or spirituous liquors or one locally produced growler to be delivered. Please consider allowing for the delivery of ready to drink beverages in the aforementioned pre-packaged containers. The inclusion of pre-packaged beverages ensures that the consumer received a product with a factory seal, known and listed ingredients, while ensuring that the	The Division is accepting the comment in part, as the use of "ready to drink" manufactured package cocktails meet the statutory language for delivery. However, allowing for six ready to drink cocktails does not match the limitation placed on restaurant licenses

	delivered beverage has a reasonable ABV and that the product ordered and sold is the product that is delivered.	to serve no more than 3 spirituous liquor drinks to a customer.
Skye Devore Distiller's Guild	15.11.20.8B (1)This section pertains to what types of package are allowed to be delivered. By leaving out Howler as an allowable option as defined above, distilleries are at a distinct disadvantage. We would respectfully ask that Howlers be included in this section. (2)Limits delivery to local option district. This was not part of statute in HB255 and poses significant problems for our members who are in closely situated local option districts such as Los Ranchos, Espanola, Corrales, and Albuquerque/Rio Rancho. Please consider removing this requirement. 15.11.20.10C(4) Lists the types of beverages that Restaurant License holders can deliver. Other licensees don't have the same privilege in 15.11.20.8B(1) with regards to Howlers of cocktails. This section also does not allow for restaurants to deliver prepackaged canned cocktails since the words "spirituous liquors" are left out and the word Howler is inserted instead. We would recommend that this be revised since it appears permissive under statute.	The Division will not be allowing for a licensee to have statewide delivery capabilities. In order to operate a license in a local option district, a license holder needs to be approved by the local option district governing body, pursuant to the Act. Allowing statewide delivery circumvents LOD approval. The Division will allow for licensees to delivery in near proximity to their license, for the reason that some licensees may be located on the edge of LODs or some LODs are closely situated.
Carrie L. Bonnington	2. Section 15.11.20.8(C)(4) ALCOHOLIC BEVERAGE DELIVERY PERMIT Section 15.11.20.8(C)(4) requires the holder of an alcoholic beverage delivery permit to "obtain valid proof of the delivery recipient's identity and age and keep records of such in accordance with 15.11.2.15 NMAC." Instacart proposes the following revised language: (4) Shall *require the delivery recipient to produce a valid form of identification to confirm his/her* identity and age and shall keep *a record confirming a valid form of identification was provided.* 4. Section 15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE	The requirement that permittees "obtain valid proof of the recipient's identity and age" is established in statute. The Division accepts the exemplar contract as a requirement at initial licensure, however, a copy of all executed contracts must be provided to the Division after execution.

	As drafted, Section 15.11.20.11(A)(4) presents practical challenges for Instacart and other third-party delivery companies. For example, Instacart often obtains the required delivery license/permit before finalizing any contracts with a retail licensee so that Instacart is legally authorized to conduct deliveries at the time the delivery contract is executed. Requiring applicants to provide executed contracts before receiving a delivery license will necessarily require additional and unnecessary contract revisions. Accordingly, Instacart proposes the following revision: (4) *An exemplar contract* between applicant and a licensee holding an alcoholic beverage delivery *permit. Upon renewal, applicant will provide an updated list of all licensees applicant has contracted with to offer delivery services.*	
Mark M. Rhodes	4. ALCOHOL DELIVERY: This portion of the law is a potential lawyers retirement fund. The points set out here are by no means meant to be all inclusive but rather some of the potential problem areas. WHAT CAN BE DELIVERED: the language of HB255 states "a valid restaurant delivery license shall only convey the authority to deliver alcoholic beverages concurrently with the delivery of ……(food); provided that under no circumstances shall the delivery of alcoholic beverages be more than 750 milliliters of wine, six twelve-ounce containers of prepackaged wine, beer, cider or spiritous liquors(Emphasis added) or one locally produced growler." There are 25.36 ounces of spiritous liquors in a fifth and 33.8 ounces in a liter or quart. So, you can order a bottle of wine; a six pack or a couple of quarts of spiritous liquor to be delivered with your food. While the rule changes try to clean up this clear language in the statute, it is a question for another day whether clear language can be changed by the agency interpreting the statute WHEN DOES DELIVERY STOP: While the proposed rules restrict restaurants from "serving" after 11pm, there is no comparable clarification on when restaurant deliveries must be completed unless delivery and service are deemed identical.	"There are 25.36 ounces of spiritous liquors in a fifth and 33.8 ounces in a liter or quart. So, you can order a bottle of wine; a six pack or a couple of quarts of spiritous liquor to be delivered with your food" is the reason for the Divisions rule, limiting restaurant delivery. Additionally, the rules establish that delivery must adhere to license requirements, if a licensee cannot serve alcohol after 11, then it is given that it cannot delivery after 11. The Division does not have the authority to establish a fund for enforcement

	ENFORCEMENT: The State does not have the resources to consistently enforce compliance with any delivery statute and/or rule implemented. Furthermore, even if they did, it is highly questionable that police could enter a private residence without a warrant after the delivery. If delivery creates more alcohol related problems within the State, there is no fund set up in the statute nor rules to help the possible victims of our state's delivery statute and I feel there should be.	purposes, nor a fund for possible victims.
Laura Curtis DoorDash, Inc. And Alex Mooney DoorDash, Inc.	***II. We request clarification regarding a third-party alcohol delivery licensee's ability to hold a retail liquor license.*** Currently, proposed regulation N.M. ADMIN. CODE 15.11.20.11(D)(2) states: A third-party alcohol delivery licensee shall not: … (2) Buy, hold or deliver alcoholic beverages under its own license; DoorDash understands that N.M. ADMIN. CODE 15.11.20.11(D)(2) prohibits a third-party alcohol delivery licensee from selling alcohol under the third-party alcohol delivery license, and we do read the proposed regulation to prohibit an entity from concurrently holding a third-party alcohol delivery license and a retail liquor license. However, the proposed regulation may be interpreted to preclude a third-party alcohol delivery licensee from holding a retail liquor license, which would result in an unfair restraint against entities desiring to hold both a third-party alcohol delivery license and a retail liquor license. Accordingly, in the interest of avoiding any ambiguity, we suggest the following addition to N.M. ADMIN. CODE 15.11.20.11(D)(2): A third-party alcohol delivery licensee shall not: … (2) Buy, hold or deliver alcoholic beverages under its own license. *Nothing in this section shall preclude a third-party alcohol delivery licensee from holding a retail liquor license;*	The Division added the proposed language, in regards to a third-party alcohol delivery licensee being able to hold any other type of license authorized by the Act.
Linda L. Aikin	Home deliveries within local option district. I don't agree with this requirement. It is way too limiting for small LODs like the Village of Los	The Division accepts the comment in part. The Division will not be allowing

	Ranchos, Rio Communities, etc. Also, no one other than zoning or planning employees of an LOD know where the boundaries of LODs are.	for a licensee to have statewide delivery capabilities. In order to operate a license in a local option district, a license holder needs to be approved by the local option district governing body, pursuant to the Act. Allowing statewide delivery circumvents LOD approval. The Division will allow for licensees to delivery in near proximity to their license, for the reason that some licensees may be located on the edge of LODs or some LODs are closely situated.
Robert Houston And Anna Jones 505 Spirits	**1) Rule Restricting Delivery by County & local Option District** In HB 255, Section 4: The legislature created the ability for businesses in New Mexico to deliver alcohol. In this section there is no mention of a geographical limit to delivery within the state, though a similar but less restrictive rule was included in another bill which was not taken up. The sponsors intentionally left it out HB 255, which was voted on and passed by our elected representatives. Under E. of Section 4, statute states: "The director shall promulgate rules to implement the provisions of this section, which shall include the following requirements and restrictions:" While a series of restrictions are called for by the statute, there is no call there for or mention of delivery boundaries. A geographical restriction has been included in the proposed rules. **We request that the rules directly follow the statute and allow for statewide delivery for the following reasons:**	The Division will not be allowing for a licensee to have statewide delivery capabilities. In order to operate a license in a local option district, a license holder needs to be approved by the local option district governing body, pursuant to the Act. Allowing statewide delivery circumvents LOD approval. The Division will allow for licensees to delivery in near proximity to their license, for the reason that

	Disadvantage to Rural Businesses: One of the goals of this legislation, which was discussed at great length during the session, is to help New Mexico businesses grow. Allowing businesses to deliver only in their county & LOD creates a competitive disadvantage for rural businesses. Distilleries, breweries, and wineries that are in rural counties with low populations, where jobs and economic development are arguably most needed and important, will be cut off from selling to the bulk of customers in the state, who are concentrated in the urban centers. **Impact on Economy in Rural Areas:** The ability for these businesses to sell products to consumers in the urban centers would move dollars from urban areas to rural areas and to businesses that are manufacturing value added goods, resulting in additional revenue and opportunity throughout the state, and not just in the three largest cities. **Impact on Consumers in Rural Areas:** New Mexican consumers who live in rural parts of the state will likewise be disadvantaged. They will be unable to order products, made in New Mexico, from producers around the state, and will be limited to what is available in their county only. **2) Rule Restricting Delivery for Restaurants/Omission of Spirits** We are also concerned about the restrictions for deliveries by restaurants under the proposed rules. In the statute, it is specified that restaurants can deliver: "seven hundred fifty milliliters of wine, six twelve-ounce containers of prepackaged wine, beer, cider or **spirituous liquors** or one locally produced growler." In the proposed rules the words "spirituous liquors" have been omitted. **We again request that the rules directly follow the statute.** The ability to deliver pre-made cocktails is another direct benefit not only to New Mexico restaurants but to value added manufacturing in New Mexico by New Mexico distillers who are creating many such beverages.	some licensees may be located on the edge of LODs or some LODs are closely situated. The Division is accepting the comment in part, as the use of "ready to drink" manufactured package cocktails meet the statutory language for delivery. However, allowing for six ready to drink cocktails does not match the limitation placed on restaurant licenses to serve no more than 3 spirituous liquor drinks to a customer.
Chris Chant Steel Bender Brewyard	<u>Local option district limitation.</u> This is not in the Liquor Control Act. We are located in the Village of Los Ranchos and would not be able to delivery to anyone in Albuquerque under this limitation. Is there a reason for this limitation? If you don't want delivery people driving too far with the alcoholic beverages, couldn't you insert a distance limitation? We	The Division will not be allowing for a licensee to have statewide delivery capabilities. In order to operate a license in a local

	don't thing that third-party delivery services or even licensees will know exactly where the boundaries of each local option district are.	option district, a license holder needs to be approved by the local option district governing body, pursuant to the Act. Allowing statewide delivery circumvents LOD approval. The Division will allow for licensees to delivery in near proximity to their license, for the reason that some licensees may be located on the edge of LODs or some LODs are closely situated.
Alana Harris	15.11.20.8B. (1) This section pertains to what types of package are allowed to be delivered. By leaving out Howler as an allowable option as defined above, distilleries are at a distinct disadvantage. We would respectfully ask that Howlers be included in this section. (2) Limits delivery to local option district. This was not part of statute in HB 255 and poses significant problems for our members who are in Los Ranchos, Corrales, those who are close to Rio Rancho but in Albuquerque and those who are in Espanola. Please consider removing this requirement. 15.11.20.10C. (4) Lists the types of beverages that Restaurant license types can deliver. Other license types don't have the same privilege in 15.11.20.8 B (1) with regards to Howlers of cocktails. This section also does not allow for restaurants to deliver prepackaged canned cocktails since the words "spirituous liquors" are left out and the Howler is inserted instead. We would recommend that this be added since it appears permissive under statute.	The use of "howler" in rule is a restriction placed on licenses without package abilities. Craft Distiller's do not have the same restrictions, they may deliver multiple howlers, they may deliver growlers. The Division will not be allowing for a licensee to have statewide delivery capabilities. In order to operate a license in a local option district, a license holder needs to be approved by the local option district governing body, pursuant to

		the Act. Allowing statewide delivery circumvents LOD approval. The Division will allow for licensees to delivery in near proximity to their license, for the reason that some licensees may be located on the edge of LODs or some LODs are closely situated.
Rep. Antonio Maestas	Dear Director: thank you for all your work. A few things. I don't think the delivery portion of state law grants the Division to collect any information pertaining to the purchaser of alcohol via delivery. This is a tremendous overreach by the executive, is overly burdensome of small business and has no basis in public policy. These proposed rules should be struck. This would also effect the questions being asked on the Restaurant B license application. The law states that a restaurant may deliver 6, 12 ounce containers of an "alcoholic beverage." Changing this to "beer" in rule would be contrary to law.	The statute requires the Director promulgate rules which shall include the following requirements… The Division is ensuring delivery meets those requirements with the proposed rules. Otherwise there is no way to enforce those requirements. A half-pint of whiskey is 8oz. This comment allows for over 3 pints of whiskey to be delivered by a restaurant.

Comment Summary 15.11.21 LICENSES AND PERMITS-APPLICATIONS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.22 LICENSES AND PERMITS-RENEWAL AND SUSPENSION

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.23 LICENSES AND PERMITS-CHANGE IN LICENSEE

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Anthony (T.J.) J. Trujillo	PROPOSED CHANGES TO AND COMMENTS ON TITLE 15, CHAPTER 11, PART 23 The NMAA proposes the addition of a new section to Title 15, Chapter 11, Part 23, which is set forth below as 15.11.23.14: 15.11.23.14 VARIANCE: A. Any applicant or licensee may seek a variance from the rules and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material which the petitioner believes would support his petition. Petitions shall: (1) state the petitioner's name and address; (2) state the date of the petition; (3) describe the facility or activity for which the variance is sought; (4) state the address or description of the property upon which the facility or activity is located; (5) identify the rules from which the variance is sought; (6) state in detail the extent to which the petitioner wishes to vary from the rules; (7) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the facility or activity; and	Rules already establish exception, or varience, options where applicable. Additionally, this comment would require the Division to utilize the Uniform Licensing Act, for professional licenses, in regulating business licenses governed by the Liquor Control Act, which has a procedure for the director to issue rulings which relate to and are of limited application to one or a small number of licensees.

	(8) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable. B. The variance petition shall be reviewed in accordance with the adjudicatory procedures of the Uniform Licensing Act. C. The division may grant the requested variance, in whole or in part, subject to conditions, or may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. D. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires. Comment: NMAA maintains that this proposed rule provision is a logical outgrowth of the Division's proposed rules because it relates to the overall regulatory framework. In general, regulatory frameworks that propose a onesize-fits-all approach—such as the Division's proposed rules—contain variance provisions that allow applicants and licensees to petition regulators to craft solution to balance competing objectives. New Mexico statutes and rules contain numerous examples of variance provisions, and NMAA requests that the Division take judicial notice of such examples. These examples of variance provisions include, but are not limited to, rule provisions under the Water Quality Act and the Mining Act. Even the new draft rules dealing with cannabis contain a variance provision.	

Comment Summary 15.11.24 LICENSES AND PERMITS-RESTAURANT LICENSE

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule
Carol Wight	Your references to Restaurant(a)(A) and (b)(B) licenses are significantly different in the rule than in the statute. This may cause confusion.	In both rule and statute Restaurant A authorizes beer

		and wine, Restaurant B authorizes beer, wine and spirit.
Ralph Atencio	Bars should not be allowed in restaurants with A or B licenses. The food-to-alcohol ratio is not enough to differentiate between licenses, and the new rules should not allow restaurants to become drinking establishments.	The Division believes the proposed rules, along with statutory requirements, will keep restaurants as primarily food establishments.
Lillian Grady	/I am unable to attend the liquor license rulemaking hearing scheduled for 7/26/2021but would like to comment. It is my opinion that bars should not be allowed in restaurants with A or B licenses. The food to alcohol ratio is not enough to differentiate between licenses, and the new rules should not allow restaurants to become drinking establishments. The primary function of a restaurant is the sale of food yet many operate as drinking establishment. Your consideration in this matter is greatly appreciated.	The Division believes the proposed rules, along with statutory requirements, will keep restaurants as primarily food establishments.
Cynthia L. Sanchez	Under this rule, will a restaurant be allowed to add a bar area under the new definition of licensed premise?	The proposed rule amendment does not remove the requirement of that restaurant licensees "may not have any counters dedicated primarily to the display, service, or consumption of alcoholic beverages, with incidental food service."
Kerry Lee	What safeguards will be put in place to prevent a restaurant licensee from acting like and becoming a bar?	The proposed rules, along with statute, contain several "safeguards" to prevent restaurant licensees from becoming a bar.
Rajiv P. Shah	I oppose the new rule that ABC is trying to allow bars at restaurants with A & B licenses. The food to alcohol ratio is not enough to differentiate	The proposed rules, as amended, do not allow "bars" within restaurant licensed

	between licenses. With this new rule restaurants won't be food establishments anymore but drinking establishments. Restaurants are in business to serve food and not to serve spirits. It will devaluate liquor licenses that currently liquor stores own or lease to run their business. It likely will hurt business like ours that only rely on sale of alcohol to stay in business. I request ABC not to approve bars at restaurants with A & B licenses.	establishments. As it prohibits them from having any counters dedicated primarily to the display, service, or consumption of alcoholic beverages (i.e. bars).
Anjana Shah	I oppose the new rule that ABC is trying to allow bars at restaurants with A & B licenses. Restaurants are in business to serve food and not to serve spirits. It will devaluate liquor licenses that currently liquor stores own or lease to run their business. It will also hurt business like ours that rely on sale of alcohol. I request ABC not to approve bars at restaurants with A & B licenses.	The proposed rules, as amended, do not allow "bars" within restaurant licensed establishments. As it prohibits them from having any counters dedicated primarily to the display, service, or consumption of alcoholic beverages (i.e. bars).
Maurice P. Bonal	Concerning page 2(3-f) Detailed Floor Plan with Photos; I have talked to many bars since the Governor closed all bars for 55 weeks (March 17, 2020 to April 26, 2021). Given the Governors closure of bars during this pandemic period, how is the ABC going to control Restaurant Licenses (A or B) from turning their food counters as outlined on page 2 (3-f) into regular bars? The regulations do not contain language strictly prohibiting these Restaurant Licensees from turning their food counters into regular bars. The ABC Director, Andrew Vallejos, sent out a summary of HB-255, shortly after the session, to all Liquor Licensees and In that summary, he stated the following: "One of the key considerations in adopting the new restaurant with spirits licenses was to draw a distinction so that, as a practical matter, restaurants don't morf into bars."	By having the language "Except for food counters where patrons may sit to order food and drinks, a restaurant may not have any counters dedicated primarily to the display, service, or consumption of alcoholic beverages, with incidental food service" in rule, the Division is ensuring that restaurant licensees do not operate as a bar.

	I strongly recommend and it is obviously important to the Director, that page 2 (3-f) include Director Vallejos' language prohibiting food counters to morf into bars…	
Anthony (T.J.) J. Trujillo	15.11.24.8 LIMITATIONS ON RESTAURANT LICENSE TYPES: A person holding a restaurant with beer and wine license or a restaurant with spirits license is subject to the following limitations: A. The primary source of revenue for a restaurant holding [~~a~~] any restaurant license must be the sale of food, meaning that sixty percent or more of the gross receipts must be derived from the sale of food, not alcoholic beverages, which must be demonstrated to the satisfaction of the division upon renewal of the license. B. [~~A~~] All restaurant [~~licensee is~~] licensees are prohibited from selling alcoholic beverages for consumption off the licensed premises except as provided by Subsection D of 15.10.51.9 NMAC or, when issued an alcoholic beverage delivery permit, through appropriate delivery methods. C. [~~A~~] All restaurant [~~licensee is~~] licensees are prohibited from serving alcoholic beverages after the restaurant ceases the sale of food or 11:00 p.m., whichever is earlier. D. A restaurant with beer and wine license is non-transferable from person to person or from location to location. A restaurant with spirits license is non-transferable from person to person, but may be transferred from location to location within its local option district. E. The sale of alcohol through a restaurant beer and wine license is limited to beer and wine, unless the restaurant a licensee has applied for and been granted a New Mexico spirituous liquors permit. A New Mexico spiritous liquors permit holder may sell beer, wine, and spirits made by a New Mexico Craft Distiller. F. A restaurant may only purchase alcohol through a duly licensed wholesaler, except that a restaurant licensee that also holds a small brewer's or winegrower's license may be duly licensed as a wholesaler, solely for the purpose of selling beer or wine to the licensee's restaurant that it has manufactured through its own license.	The Division is not accepting the comment into the proposed rule amendments. As this would create an arbitrary requirement for an individual customer to occupy an entire table at restaurant license establishments, for no other reason than to restrict individuals from being able to drink alcoholic beverages at a counter while in the establishment of a restaurant license.

	G. Bar service is not permitted. No bar areas will be approved under these types of licenses; however, a preparation station for wait staff to prepare the beverages for delivery to the tables is allowed. All food and drinks must be delivered by wait staff to individual tables. Comment: The Division's website contains a document called "Instructions for Restaurant Liquor License Application." Page 2 of 4 of that document contains a paragraph entitled "3. Detailed Floor Plan with Photos," and subparagraph f states: "Bar service is not permitted. No bar areas will be approved under this type of license, however a prep station for wait staff to prepare the beverages for delivery to the tables is allowed. All food and drinks must be delivered by wait staff to individual tables or customers seated at food counter." NMAA maintains that this instructional paragraph should be contained in the proposed rules instead of just in the application instructions. Without this change, the rule provision is arbitrary and capricious and otherwise not in accordance with law. Moreover, other than some grammar and punctuation changes to convert the instructional language into this rule provision, NMAA did make one substantive change, whereby NMAA eliminated the phrase "or customers seated at a food counter." NMAA maintains that this phrase essentially allows a licensee to create a bar and call it a food counter. Therefore, NMAA proposes that this phrase should be deleted. Without this change, the rule provision would be arbitrary and capricious and otherwise not in accordance with law.	

Comment Summary 15.11.25 LICENSES AND PERMITS-SPECIAL DISPENSER AND PUBLIC CELEBRATION PERMITS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.26 LICENSES AND PERMITS-FEES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.27 LICENSES AND PERMITS-INTERLOCAL OPTION DISTRICT TRANSFER

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.28 LICENSES AND PERMITS-BED AND BREAKFAST LICENSE

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.29 LICENSES AND PERMITS-TASTING PERMITS

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.30 PURCHASING COOPERATIVES

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule

Comment Summary 15.11.31 ALCOHOL SERVER TRAINING-CERTIFICATION

Comment Submitted By:	Comment	Reason Comment Accepted or Not Included in Final Rule