

July 26, 2021 ABC Rulemaking Hearing

1. Al Lucero
2. Allison K. Smith
3. Amanda Davis
4. A. McDevitt
5. Billy
6. Caitlin
7. Carol
8. C. Kempski
9. Colin
10. Cynthia
11. Darren Bond
12. David Kittleson
13. Gary Archuleta
14. G. Templeton1
15. John Nye
16. John "call in user 7"
17. John Thompson
18. John Rosen
19. Kevin McDonald
20. Linda Aikin
21. Marian Ortega
22. Mark Rhodes "call in user 6"
23. Robert
24. Ruben Baca
25. Sky Morries-Devore
26. T.J. Trujillo
27. Tara M.
28. Tom Shook "user"
29. Call in user 3
30. Call in user 5

ABC/RLD Staff

Phillip Sanchez
Andrew Vallejos
Debra Lopez
Desirae Griego
Bernice Geiger

Hearing Officer: Max Shepard "Dell"


Court Reporter: Kim Shollenbarger

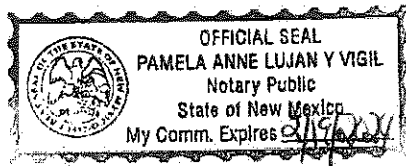
Affidavit of Publication in New Mexico Register

I, Matthew Ortiz, certify that the agency noted on Invoice # 5540 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXI, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 5540, and that Invoice # 5540 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant: 
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 23rd day of June, 2021.

Notary Public: 
My Commission Expires: 7/9/2024



1205 Camino Carlos Rey | Santa Fe, NM 87507 | nmcpr.state.nm.us

Hon. Hector Balderas
Attorney General

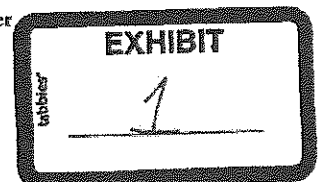
Hon. Brian S. Colón
State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

Kenneth Ortiz
General Services Department

Daniel Cordova
Interim Director, NM State Law Library



NOTICE OF PROPOSED RULEMAKING

The New Mexico Regulation and Licensing Department (RLD) Alcoholic Beverage Control Division (ABC) gives notice of its initiation of a proposed rulemaking to amend sections of (or alternatively repeal and replace) the following rules: 15.10.2 NMAC, Definitions; 15.10.31 NMAC, Premises - General Requirements; 15.10.32 NMAC, Premises - Location and Description of Licensed Premises; 15.10.33 NMAC, Premises - Minors on Licensed Premises; 15.10.51 NMAC, Sales - Restrictions on Sales; 15.10.52 NMAC, Segregated Alcohol Sales; 15.10.53 NMAC, Sales - Wholesalers; 15.10.54 NMAC, Sales - Clubs; 15.10.55 NMAC, Internet Sales; 15.10.61 NMAC, Citations - Fines and Penalties; 15.10.70 Operation and Profiting by Authorized Persons and Alternating Proprietorships; 15.11.2 NMAC, Required Documents on Licensed Premises; 15.11.21 NMAC, Licenses and Permits - Applications; 15.11.22 NMAC, Licenses and Permits - Renewal and Suspension; 15.11.23 NMAC, Licenses and Permits - Change in Licensee; 15.11.24 NMAC, Licenses and Permits - Restaurant License; 15.11.25 NMAC, Licenses and Permits - Special Dispenser and Public Celebration Permits; 15.11.26 NMAC, Licenses and Permits - Fees; 15.11.27 NMAC, Licenses and Permits - Inter-Local Option District Transfers; 15.11.28 NMAC, Licenses and Permits - Bed and Breakfast License; 15.11.29 NMAC, Licenses and Permits - Tasting Permits; 15.11.30 NMAC, Purchasing Cooperatives; and 15.11.31 NMAC, Alcohol Server Training, along with a proposed new rule 15.11.20 NMAC, Licenses and Permits - Alcoholic Beverage Delivery. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by ABC. ABC may also consider alternative proposals for amending or replacing the current rules.

A public hearing will be held on **July 26, 2021, from 1:00 p.m. to 5:00 p.m. and if the hearing is not concluded at that time, will continue to July 27, 2021, from 1:00 p.m. to 5:00 p.m.** via Cisco Webex platform. Any member of the public who wishes to make a comment at the hearing must contact Desirae Griego at 505-476-4552 or Desirae.Griego@state.nm.us by no later than 12:00 pm on July 22, 2021, in order to be placed upon the public comment listing and to receive the Cisco Webex invitation. The invitation will include a call-in number for those participants who are unable to access the Cisco Webex platform via computer. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The ABC may limit the time for each comment.

A copy of the full text of the proposed rules may be obtained from the ABC website, www.rld.state.nm.us/abc, or by calling Desirae Griego at 505-476-4552 during regular business hours.

Concise explanatory statement:

ABC is considering amending sections of rule **15.10.2 NMAC, Definitions**. ABC is considering changes to many sections of the rule. In particular, defining additional terms, including, but not limited to: "delivery" and "shipping" in order to clarify what activities are authorized by the 2021 amendments to the Liquor Control Act.

ABC is considering repealing and replacing sections of rule **15.10.31 NMAC, Premises - General Requirements**. ABC is considering changes this rule to bring it to current format standards. Additionally, ABC is making changes to the sanitation requirements of the rule to further ensure the public's health and safety.

ABC is considering amending sections of rule **15.10.32 NMAC, Premises - Location and Description of Licensed Premises**. ABC is considering changes to many sections of this rule due changes in the definition for "licensed premises" in the Liquor Control Act. Additionally, the changes clarify where alcoholic beverage sales and consumption may take place on a licensed premises.

ABC is considering amending sections of rule **15.10.33 NMAC, Premises - Minors on Licensed Premises**. The proposed changes clarify the prohibition on minors participating in the delivery of alcoholic beverages, as employees of liquor license holders and third-party delivery services.

ABC is considering amending sections of rule **15.10.51 NMAC, Sales - Restrictions on Sales**. The proposed changes remove prior contradictory language regarding gambling, thus clarifying prohibited activities on licensed premises. Additionally, the changes will clarify sales of certain spirituous liquors quantities and sales to customers on licensed premises while in a motor vehicle.

ABC is considering amending sections of rule **15.10.52 NMAC, Segregated Alcohol Sales**. The proposed changes will clarify that alcoholic beverage display areas need to be located in the controlled access area of the licensed premises.

ABC is considering amending sections of rule **15.10.53 NMAC, Sales - Wholesalers**. The proposed changes will cause commercial coercion and bribery to conform with the 2021 amendment to the Liquor Control Act on inducements.

ABC is considering amending sections of rule **15.10.54 NMAC, Sales - Clubs**. The proposed changes will remove prior contradictory language regarding gambling on a licensed premises. Additional changes will address the number of fund raising events, by other non-profit organizations, a club may allow on its facilities per year.

ABC is considering amending sections of rule **15.10.55 NMAC, Internet Sales**. The proposed changes will cause the rule to conform to the use of internet, application, and telephonic platforms for the purchase of alcoholic beverages through delivery and other means, as allowed by 2021 amendments to the Liquor Control Act.

ABC is considering amending sections of rule **15.10.61 NMAC, Citations - Fines and Penalties**. The proposed changes will add fines and penalties for violations relating to delivery of alcoholic beverages.

ABC is considering amending sections of rule **15.10.70 NMAC, Operation and Profiting by Authorized Persons and Alternating Proprietorships**. The proposed changes will create a framework in which contracts between licensees and third-party delivery services relate to profit sharing.

ABC is considering amending sections of rule **15.11.2 NMAC, Required Documents on Licensed Premises**. The proposed changes address the required documents delivery personal are required to have on their person during the delivery of alcoholic beverages to customers.

ABC is proposing the new rule **15.11.20 NMAC, Licenses and Permits – Alcoholic Beverage Delivery**. This rule will establish the framework in which licensees may obtain an alcoholic beverage delivery permit and in which third-party delivery services may obtain a third-party alcohol delivery license. The rule will also clarify what permit holders and license holders are able to do in regards to delivery of alcoholic beverages and restrictions on alcoholic beverage delivery based on location of licensee, size of licensee's retail space, and type of license held.

ABC is considering amending sections of rule **15.11.21 NMAC, Licenses and Permits – Applications**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments of the Liquor Control Act.

ABC is considering amending sections of rule **15.11.22 NMAC, Licenses and Permits – Renewal and Suspension**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments of the Liquor Control Act.

ABC is considering amending sections of rule **15.11.23 NMAC, Licenses and Permits – Change in Licensee**. The proposed change clarifies instances in which a change of ownership of a license occurs and creates an additional means of a reportable change of structure without a change of ownership.

ABC is considering amending sections of rule **15.11.24 NMAC, Licenses and Permits – Restaurant License**. The proposed changes address the new restaurant b license created by 2021 amendments to the Liquor Control Act, as well as the creation of a New Mexico spirituous liquors permits for, what will be renamed, restaurant a licenses.

ABC is considering amending sections of rule **15.11.25 NMAC, Licenses and Permits – Special Dispenser and Public Celebration Permits**. The proposed changes address the ability for New Mexico small manufacturers to obtain private celebration permits. Additionally, the changes will conform to 2021 amendments to the Liquor Control Act in regards to reciprocity between New Mexico small manufacturers.

ABC is considering amending sections of rule **15.11.26 NMAC, Licenses and Permits – Fees**. The proposed changes relate to fees for licenses and permits created by 2021 amendments to the Liquor Control Act.

ABC is considering amending sections of rule **15.11.27 NMAC, Licenses and Permits – Inter-Local Option District Transfers**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments to the Liquor Control Act.

ABC is considering amending sections of rule **15.11.28 NMAC, Licenses and Permits – Bed and Breakfast License**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments of the Liquor Control Act.

ABC is considering amending sections of rule **15.11.29 NMAC, Licenses and Permits – Tasting Permits**. The proposed changes clarify where within licensed premises a tasting may be conducted, pursuant to a permit issued by ABC.

ABC is considering amending sections of rule **15.11.30 NMAC, Purchasing Cooperatives**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments of the Liquor Control Act.

ABC is considering amending sections of rule **15.11.31 NMAC, Alcohol Server Training – Certification**. The proposed change amends the rule to reflect the current name of the division, conforming to 2019 amendments of the Liquor Control Act. Additionally, the changes will reflect the requirement that delivery be addressed in server trainings.

Constitutional and statutory authority: Section 60-3A-7, NMSA 1978.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Desirae Griego, Alcoholic Beverage Control Division, Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, by electronic mail to Desirae.Griego@state.nm.us, or by fax to (505) 476-4595. All written comments must be received no later than 5 p.m. (MST) on Friday, 23, 2021. The ABC encourages the early submission of written comments. The public comment period is from June 22, 2021, to Friday, July 23, 2021, at 5:00 p.m. (MST).

The ABC will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Desirae Griego at 505-476-4552 or Desirae.Griego@state.nm.us at least 10 calendar days prior to the commencement of the hearing.

AFFIDAVIT OF PUBLICATION

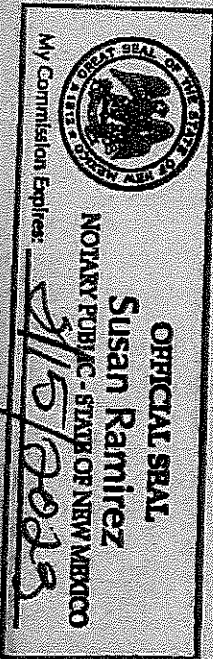
STATE OF NEW MEXICO

County of Bernalillo SS

NOTICE OF PROPOSED
DRULEMAKING
THE NEW MEXICO
REGULATORY
AND LICENSING
DEPARTMENT
DOLIC BEVERAGE
CONTROL DIVISION
ABC CIVIL
NOTICE OF FITS
IN THE

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

06/22/2021



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

22 day of June of 2021

PRICE \$1,355.69

Statement to come at the end of month.

ACCOUNT NUMBER 1008575

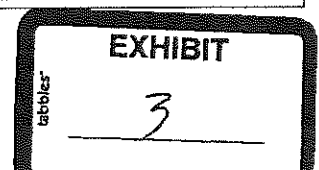
EXHIBIT
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Affidavit of Notice to the Public

I, Phillip A. Sanchez, the undersigned, on oath, swear and affirm that the Notice of Public Hearing on the proposed amendments to rules 15.10.2 NMAC, Definitions; 15.10.31 NMAC, Premises - General Requirements; 15.10.32 NMAC, Premises - Location and Description of Licensed Premises; 15.10.33 NMAC, Premises - Minors on Licensed Premises; 15.10.51 NMAC, Sales - Restrictions on Sales; 15.10.52 NMAC, Segregated Alcohol Sales; 15.10.53 NMAC, Sales - Wholesalers; 15.10.54 NMAC, Sales - Clubs; 15.10.55 NMAC, Internet Sales; 15.10.61 NMAC, Citations - Fines and Penalties; 15.10.70 Operation and Profiting by Authorized Persons and Alternating Proprietorships; 15.11.2 NMAC, Required Documents on Licensed Premises; 15.11.21 NMAC, Licenses and Permits - Applications; 15.11.22 NMAC, Licenses and Permits - Renewal and Suspension; 15.11.23 NMAC, Licenses and Permits - Change in Licensee; 15.11.24 NMAC, Licenses and Permits - Restaurant License; 15.11.25 NMAC, Licenses and Permits - Special Dispenser and Public Celebration Permits; 15.11.26 NMAC, Licenses and Permits - Fees; 15.11.27 NMAC, Licenses and Permits - Inter-Local Option District Transfers; 15.11.28 NMAC, Licenses and Permits - Bed and Breakfast License; 15.11.29 NMAC, Licenses and Permits - Tasting Permits; 15.11.30 NMAC, Purchasing Cooperatives; and 15.11.31 NMAC, Alcohol Server Training, along with a proposed new rule 15.11.20 NMAC, Licenses and Permits - Alcoholic Beverage Delivery, was provided to the public as identified below:

1. On June 16, 2021, I verified that the Notice of Public Hearing was electronically posted on the then existing New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division website at <http://rld.state.nm/abc/tobacco-products>, in accordance with the State Rules Act at NMSA 1978, Section 14-4.5.6.
2. On July 9, 2021, I verified that the Notice of Public Hearing continued electronically posted on the new New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division website at <https://www.rld.nm.gov/alcohol-beverage-control>.
3. On June 21, 2021, a copy of the Notice of Public Hearing was emailed to persons who had made a request for notice from the agency of announcements addressing the subject of rulemakings and who had provided the agency an electronic mail address, in accordance with the State Rules Act, NMSA 1978, Section 14-4-5.2. The list of persons included the following:

<u>Skye Morris-Devore</u>	<u>skyedevore@gmail.com</u>
Ekaterina Puccini di Mattei Timofeyew Zimmer	<u>zimmerpeters@comcast.net</u>
Angelica Backer	<u>angelica@thecellartaos.com</u>
R. Melez	<u>rmelez@yahoo.com</u>
<u>Matt Volquardsen</u>	<u>matt.volquardsen@tiajuanas.net</u>
Cynthia Sanchez	<u>cyndisanchez512@gmail.com</u>
Ted Calhoun	<u>calhoun@newmexico.com</u>
Linda Aikin	<u>lla@cybermesa.com</u>



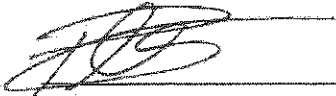
Ronnie Merrill	laluzmarket@hotmail.com
Susie Saavedra	saavedrasusie@yahoo.com
<u>Brian</u>	brian@leftturndistilling.com
Jeff Macko	jmacko@msn.com
Michael Calhoun	Michael@redriverbrewing.com
Kerry Lee	kdluper@gmail.com
Matt Biggs	matt@reddoorbrewing.com
Rebecca Lescombes	rlescombes@lescombeswinery.com
Spangler, Toby	Toby.Spangler@diageo.com
Tracey Master	TMaster@tcnm.us
Casados, Donna	donna.casados@lacnm.us
Maura Schanefelt	Maura.Schanefelt@co.mckinley.nm.us
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Max Bower	max@amadorlive.com
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cori.sisson@tiajuanas.net	cori.sisson@tiajuanas.net
Sean Davis	davis.seanc@gmail.com
Jaci Flug	jaci.flug@drizly.com
Karen's Email	kcpettine@hotmail.com
Archuleta, Gary	Gary.Archuleta@RNDC-USA.COM
Allison Smith	aklobby@gmail.com
Kimberly Yacone	kimberly@fgbpizza.com
John Thompson	johnleet3@yahoo.com
Josh Rosen	joshr@strategies360.com
<u>Matt</u>	matt@tuskventures.com
John	johnmnye@yahoo.com.au
Greg Templeton	gtempleton@sgws.com
Canteen Brew House	canteenbrewhouse@gmail.com
Gordon Schaeffer	gordon@fetch.com

4. On June 21, 2021, a copy of the Notice of Public Hearing was emailed to the electronic mail address of record for all entities that hold a liquor license issued by the agency, totaling two thousand eight hundred thirty-two (2,832) electronic mail addresses.

5. On June 21, 2021, a copy of the Notice of Public Hearing was emailed to the Small Business Regulatory Advisory Commission, through Westlee Painter, at WestleeA.Painter@state.nm.us, pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Section 14-4A-4.

6. On June 21 2021, I verified that the Notice of Public Hearing was electronically posted on the New Mexico Sunshine Portal website, in accordance with the State Rules Act at NMSA 1978, Section 14-4-5.6.

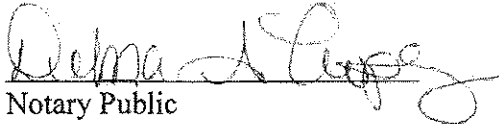
Further Affiant Sayeth Naught.



Phillip A. Sanchez, Affiant

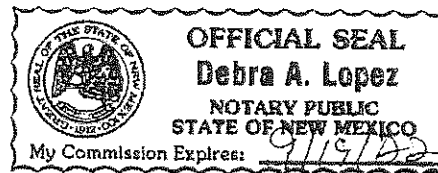
State of New Mexico }
County of Santa Fe }

SWORN TO and SUBSCRIBED before me on the 26th day of July, 2021, by Phillip A. Sanchez.



Notary Public

9/19/22
My Commission Expires



TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 2 DEFINITIONS

15.10.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, [~~Alcohol and Gaming~~] Alcoholic Beverage Control Division.

15.10.2.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.

15.10.2.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the Liquor Control Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

15.10.2.4 DURATION: Permanent.

15.10.2.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.

15.10.2.6 OBJECTIVE: This rule is intended to locate all definitions of terms used in the act, or in Title 15, Chapters 10 and 11, in one rule.

15.10.2.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 10 and Chapter 11, have the same meanings as set forth in the Liquor Control Act.

A. "The Act" means the New Mexico Liquor Control Act, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A of Chapter 60 NMSA 1978.

B. "Affiliate of the licensee" means any of the following:

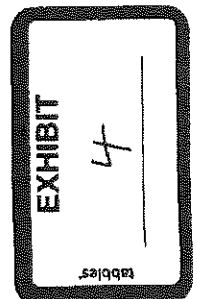
- (1) A corporation is an affiliate of a licensee if:
 - (a) the corporation, or its officers, directors or controlling shareholders, owns a majority of stock of a licensee that is itself a corporation; or
 - (b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, if the licensee owns a majority of the corporation; or
 - (c) the company is owned by the same entities or individuals that own the licensee.
- (2) A limited liability company is an affiliate of a licensee if:
 - (a) the limited liability company, or its manager or controlling members, owns a majority of the stock of a licensee that is a corporation;
 - (b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, owns the controlling membership interest in the limited liability company; or
 - (c) a licensee that is a corporation is the manager of the limited liability company;or
- (d) the limited liability company is owned by the exact same entities or individuals that own the licensee.
- (3) Any other entity is an affiliate if there is a demonstration of common ownership with the entity holding the license.

C. "Alcoholic beverage display area" means that portion of a licensee's premises in which all alcoholic beverages on display for sale are contained.

D. "Applicant" means (a) an individual 19 years of age or older seeking a server permit under the Alcohol Server Education Article of the Liquor Act; or (b) a person or legal entity applying for a liquor license.

E. "Approved operator" means the [~~licensee or lessee approved by the division to operate a liquor license.~~] the following:

- (1) a licensee or lessee approved by the division to operate a liquor license;
- (2) the licensee's or lessee's officers, directors, managers, and members owning a ten percent interest or greater in the licensee or lessee;
- (3) the licensee's or lessee's principle officer or an individual appointed to act on the principle officer's behalf; and
- (4) the designated resident agent for the licensee or lessee.



F. **“Bartender”** means a person who pours alcohol into a container, or who opens alcohol in containers, for immediate service and consumption on the premises, except for the service of wine or beer at a customer’s table in a restaurant.

G. **“Bed and breakfast”** means a business establishment that offers temporary lodging with meals included and has a guest capacity of 20 or fewer persons.

H. **“Bona fide guest”** means a person whose presence in a non-profit club is in response to a specific invitation by a member of the club and for whom the member assumes responsibility.

~~[H-]L.~~ **“Cider”** means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit that contains not less than one-half of one percent alcohol by volume and not more than seven percent of alcohol by volume.

~~[I-]J.~~ **“Commercial gambling”** means any of the following:

- (1) participating in the earnings of or operating a gambling place;
- (2) receiving, recording or forwarding bets or offers to bet;
- (3) possessing one or more facilities with the intent to receive, record or forward bets or offers to bet;
- (4) becoming a custodian of anything of value that was bet or offered to be bet;
- (5) conducting a lottery in which either the consideration or the prize are of value;
- (6) possessing one or more facilities to conduct a lottery or betting with intent to do so; or
- (7) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game.

~~[J-]K.~~ **“Commercial gambling”** does not mean the following:

- (1) activities authorized pursuant to the New Mexico Lottery Act;
- (2) the conduct of activities on the licensed premises of the holder of a club license that is regulated by the New Mexico Bingo and Raffle Act at Sections 60-2B-1 to -14 NMSA 1978, or is specifically exempted from regulation by the provisions of the New Mexico Bingo and Raffle Act; and
- (3) gaming authorized pursuant to the Gaming Control Act, Sections 60-2E-1 to -62 NMSA 1978, on the premises of a gaming operator licensee licensed pursuant to that act.

~~[K-]L.~~ **“Controlling shareholders”** means persons or entities who own fifty percent or more of the outstanding shares of stock in a corporation.

~~[L-]M.~~ **“Controlled access area”** means that portion of a licensed premises under the licensee’s or lessee’s direct control where the licensee or lessee stores, sells, serves, delivers, and provides a place for patrons to consume alcoholic beverages.

~~[M-]N.~~ **“Craft distiller”** means a person or entity that is engaged in bona fide manufacture of ~~[spiritous]~~ spirituous liquors, holds a valid federal license to produce ~~[spiritous]~~ spirituous liquors, and owns or controls fully operational distilling equipment.

O. **“Delivery”** means the transporting of alcoholic beverages from a licensed premises to consumers, off of a licensed premises, at or near the time of purchase, constituting a sale of alcoholic beverages. Delivery does not include curbside pickup by consumers while seated in a motor vehicle.

~~[N-]P.~~ **“Director”** means the director of the alcohol and gaming division.

~~[O-]Q.~~ **“Division”** means the ~~[alcohol and gaming]~~ alcoholic beverage control division of the New Mexico regulation and licensing department.

~~[P-]R.~~ **“Employee”** means any person, whether paid or not, who works under the direction of a licensee or lessee or a licensee’s or lessee’s designate selling or serving alcoholic beverages.

~~[Q-]S.~~ **“Fast food establishment”** means an establishment dispensing food for consumption on and off premises that tends to have any of the following characteristics: a menu consisting solely of pre-cooked items or items prepared in advance and heated quickly, placement of orders at a fast serve drive- through window, service of food solely in disposable wrapping or containers, or a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods.

~~[R-]T.~~ **“Growler”** means a clean, refillable, resealable container, including crowlers, that traditionally has a liquid capacity ~~[that]~~ of sixty-four fluid ounces, but does not exceed one gallon, and that is intended and used for the sale of beer, wine, or cider for consumption off-premises.

U. **“Howler”** means a clean, refillable, resealable container, that has a liquid capacity that does not exceed thirty-two fluid ounces.

~~[S-]V.~~ **“Independent contractor”** means a person who has obtained the right to own, teach or otherwise use an approved alcohol server education program.

~~[F-]~~**W.** “Large premises licensee” means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains 20,000 or more square feet of merchandise display space.

~~[U-]~~**IX.** “Legal entity” means a corporation, general partnership, limited partnership, limited liability company, association or other entity, including but not limited to, entities for which registration is required with the New Mexico office of the secretary of state, other than an individual.

~~[V-]~~**Y.** “Licensee” means the holder of any license or permit authorizing the sale of alcoholic beverages issued under the provisions of the act, but does not mean the holder of a server permit.

~~[W-]~~**Z.** “Manufacture” means the process of a licensee using the licensee’s own equipment on the licensed premises to do one of the following:

- (1) for small brewers or winegrowers, or any large manufacturer of wine or beer, the creation of ethyl alcohol, from basic ingredients through a fermentation process;
- (2) for craft distillers, brandy manufacturers and any large manufacturer of distilled spirits, the purification of ethyl alcohol from basic ingredients through a distillation process;
- (3) for rectifiers and wine blenders, the blending or mixing of spirituous liquors with other alcoholic or non-alcoholic liquids, or non-alcoholic substances.

AA. “Member” means:

(1) a person who pays annual membership dues to a holder of a club license pursuant to Section 60-6A-5 NMSA 1978, at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has been voted as a member by the current membership, and has all voting rights and full membership privileges as described in Subsection E of Section 60-3A-3 NMSA 1978;

(2) the adult spouse and the adult children of a member or of a deceased member as defined in Paragraph (1) of Subsection B of 15.10.54.7 NMAC;

(3) a member of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or

(4) a person who pays membership dues and is a member of a class of a club licensed pursuant to Section 60-6A-5 NMSA 1978, but are persons without full voting rights or full membership privileges, so long as such members are provided for in the articles of incorporation, bylaws, charter, constitution or resolution of the board of directors or other appropriate governing body of the entity holding the club license; members described in this paragraph may not purchase, be served or consume alcoholic beverages within the bar or lounge area of the licensed premises, but may purchase, be served or consume alcoholic beverages in other areas of the licensed premises while engaged in activities whose primary purpose is other than the consumption of alcoholic beverages.

~~[X-]~~**BB.** “Primary activity”, “primarily” or “primarily engaged in” means the principal use of a licensed premises or area within a licensed premises at any given time. If more than fifty percent of the annual total gross receipts are derived from the sale of alcoholic beverages for consumption on the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption on the licensed premises. If more than sixty percent of the annual total gross receipts are from the sale of alcoholic beverages for consumption off the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption off the licensed premises.

~~[Y-]~~**CC.** “Principal officer” means an officer of the organization who, regardless of title, has responsibility for implementing the decisions of the organization’s governing body with respect to the liquor license, or for supervising the management, administration, or operation of the organization’s interest in the license. Such officer may include the president, one or more vice-presidents, secretary, or treasurer of the licensee, the manager or managers of a limited liability company, a managing member of a member-managed, LLC or the president, vice-president, secretary or treasurer of any corporation, or the manager or managers of a limited liability company holding a direct or indirect interest in the license, which requires that corporation or limited liability company to be disclosed if that officer or manager has the authority to do any act on behalf of the licensee.

~~[Z-]~~**DD.** “Priority application” means one of the first 10 applications received during any filing period or, if more than 10 are received on the first day of the filing period, the 10 applications randomly selected by the director pursuant to 15.11.27.10 NMAC.

~~[AA-]~~EE. "Private party" means an event open only to invited guests and not open or advertised to the general public in which there is no financial consideration in exchange for alcoholic beverages. "Private party" does not include alcohol industry promotional events or other events with a commercial purpose.

~~[BB-]~~FF. "Public Celebration" means any state fair, county fair, community fiesta, cultural or artistic performance or event, professional athletic competition and events or activities held on an intermittent basis that are open or advertised to the general public.

~~[CC-]~~GG. "Public nuisance" means loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, consumption of alcoholic beverages in the parking lot of the licensed premises, use of weapons on the licensed premises or in the parking lot, lack of adequate security outside of the licensed premises, lack of adequate lighting outside of the licensed premises, vandalism to vehicles or other property, or other disturbances or activities offensive to the average citizen or to the residents of the neighborhood in which the licensed premises are located and failure to comply with all Public Health Orders issued during a Public Health Emergency.

~~[DD-]~~HH. "Restaurant" means any establishment, except a "fast food" establishment, having a New Mexico resident as a proprietor or manager that is held out to the public as a place where ~~[full meals are]~~ food is prepared on-site from basic ingredients and served primarily for on-premises consumption to the general public in consideration of payment; that has a dining room, a commercial kitchen, and the employees necessary for preparing, cooking and serving meals.

II. "Restaurant with beer and wine license" means a restaurant a license.

JJ. "Restaurant with spirits license" means a restaurant b license.

~~[EE-]~~KK. "Restricted area" means an area of a licensed premises that is restricted to persons age 21 and older in accordance with the act and these rules where the primary activity in that area is the sale or consumption of alcoholic beverages.

LL. "Restricted premises" means the premises of any licensee, or area within a licensed premises where the primary activity is the sale of alcoholic beverages by the drink.

~~[FF-]~~MM. "School" means:

- (1) a public or private educational institution accredited as such by the state or federal government;
- (2) a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school or combination thereof; or
- (3) a center for attendance where educational instruction is offered by certified school instructors; a "school" must be located in a zoning area of the local option district that permits schools, but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.

~~[GG-]~~NN. "Securities listed on a national securities exchange" means securities listed or approved for listing on the New York stock exchange or American stock exchange, or designated or approved for designation for inclusion on the national market system by the national association of securities dealers, inc.

~~[HH-]~~OO. "Serve" means to pour, or otherwise personally provide alcoholic beverages to another person.

PP. "Shipping" means the use of a courier by a licensee to transport alcoholic beverages to consumers.

~~[II-]~~OO. "Small brewer" means a person or entity that is engaged in bona fide manufacture of beer, holds a valid New Mexico small brewer license and federal brewer's notice of license to produce malt beverages, demonstrates bona fide brewing operations; owns or controls fully operational brewing equipment such as two or more of the following: fermenting vessels, brew house, and brite or holding tanks with capacity for commercial production, and does not produce more than 200,000 barrels of total product per year.

~~[JJ-]~~RR. "Small premises licensee" means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains less than 20,000 square feet of merchandise display space.

~~[KK-]~~SS. "Split" means a half-bottle of wine or champagne containing not more than 375 ml of wine or champagne.

~~[LL-]~~TT. "Taste" or "tastes" means offering smaller than usual drink sizes of alcoholic beverages to the public at no cost for the sole purpose of promoting the product, in quantities of .5 ounces or less if the product is undiluted spirituous liquors, and 1.5 ounces or less for all other alcoholic beverages.

~~[MM-]~~UU. "Transferable license" means a license that may be assigned, transferred or leased pursuant to Section 60-6A-19 NMSA 1978, provided that the license holder has met all requirements of the act and these rules.

VV. "Unaccompanied minor" means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.

WW. "Unbroken, original package" means the sealed, unopened glass, plastic or aluminum container holding the alcoholic beverage, but does not mean the cardboard or other packaging holding the containers together.

[NN.]XX. "Unrestricted area" means an area of a licensed premises in which minors are allowed to enter unaccompanied by a parent, adult spouse or legal guardian, because the primary activity in that area is not the sale, service or consumption of alcoholic beverages.

[OO.]YY. "Winegrower" means a person or entity that is engaged in bona fide manufacture of wine, holds a valid New Mexico winegrower's license and federal basic permit to manufacture wine, who owns or controls fully operational winemaking equipment with capacity for commercial production.

HISTORY OF 15.10.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 4B-5, Definition Regulation 4B-5 Interpreting and Exemplifying Section 60-4B-5 NMSA 1978 (1981 Repl. Pamp.), filed 03/23/1982.

ABC Regulation No. 4B-5.(B), Definition Regulation 4B-5(B), Interpreting and Exemplifying Section 60-4B-5 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD Regulation 4B-5(B), Definition, filed 09/25/1990.

ABC Regulation No. 6B-10(2), Definition of School" Interpreting and Exemplifying Section 60-6B-10 NMSA 1978, filed 12/16/1983.

ABC Regulation No. 6B-10(B), Definition of School" Regulation 6B-10(B), Interpreting and Exemplifying Section 60-6B-10 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD Regulation 6B-10(B), Definition of School," filed 09/25/1990.

AGD 6B-10(C), Premises Licensed Prior to 1981, filed 09/25/1990.

AGD Regulation 7A-1(C), After Hours, filed 09/25/1990.

ABC Regulation No. 6C-1(3).(A), Public Nuisances Regulation 6C-1(3)(A), Interpreting and Exemplifying Section 60-6C-1(3) NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD 6C-1, Public Nuisances, filed 09/25/1990.

History of Repealed Material:

15 NMAC 10.1.1, Definitions, filed 07/02/1999 - Repealed effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL PART 1 GENERAL PROVISIONS
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 31 PREMISES - GENERAL REQUIREMENTS

15.10.31.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, [~~Alcohol and Gaming~~] Alcoholic Beverage Control Division.
[3/31/97; Recompiled 12/31/01]

15.10.31.2 SCOPE: These [~~regulations~~] rules apply to all licensees under the New Mexico Liquor Control Act.
[3/31/97; Recompiled 12/31/01]

15.10.31.3 STATUTORY AUTHORITY: [~~Sections 9-16-6(D) and 9-16-6(B)(2) NMSA 1978 of the Regulation and Licensing Department Act authorize the superintendent, or the superintendent's designee, to make and adopt such rules and regulations as necessary to carry out the duties of the division [department]. Section 60-3A-7 NMSA 1978 gives the regulation and licensing department authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act.~~] Section 60-3A-10 NMSA 1978, of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.31.4 DURATION: Permanent.
[3/31/97; Recompiled 12/31/01]

15.10.31.5 EFFECTIVE DATE: [~~March 31, 1997, unless a later date is cited at the end of a section or paragraph. Repromulgated and reformatted for New Mexico Administrative Code (NMAC) effective March 31, 1997. Certain paragraphs within this subpart remain unchanged from the following rules: AGD Regulation 3A-2(D), Lighting of Licensed Premises, filed 9/25/90; and AGD Regulation 3A-2(E), Sanitation Requirements, filed 9/25/90.~~] XXX XX, 2021, unless a later date is cited at the end of this section.
[3/31/97; 7/15/99; Recompiled 12/31/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

15.10.31.6 OBJECTIVE: These [~~regulations~~] rules are intended to establish standards for the general operation and maintenance of licensed premises.
[3/31/97; Recompiled 12/31/01]

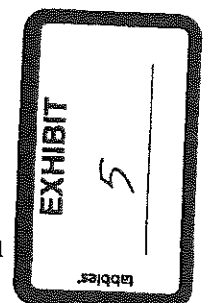
15.10.31.7 DEFINITIONS: Unless otherwise defined in [~~15 NMAC 10-1-1~~] 15.10.2 NMAC, terms used in these [~~regulations~~] rules have the same meanings as set forth in the Liquor Control Act.
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.31.8 LIGHTING OF LICENSED PREMISES: At any licensed premises open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance, age and conduct of all persons on the premises where alcoholic beverages are sold, served or consumed.
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.31.9 SANITATION REQUIREMENTS: All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico, this is to include all requirements set forth in any Public Health Order issued pursuant to Sections 24-1-1 through 24-1-40 NMSA 1978, of the Public Health Act, Sections 12-10A-1 through 12-10A-19 NMSA 1978, of the Public Health Emergency Response Act, and Sections 9-7-1 through 9-7-18 NMSA 1978, of the Department of Health Act and local sanitation ordinances. Failure to comply shall be deemed a violation of this [~~regulation~~] rule.
[3/31/97; Recompiled 12/31/01]

[15.10.31.10] — POSTER REQUIREMENTS: This entire section has been moved and renumbered to 15 NMAC 11.1.1.10 [now 15.11.2.10 NMAC].
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.31 NMAC



HISTORY OF 15.10.31 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 3A-2.(E), Lighting of Licensed Premises Regulation 3A-2.(E), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/85;

AGD 3A-2(D), Lighting of Licensed Premises, filed 9/25/90;

ABC Regulation No. 3A-2.(F), Sanitation Requirements Regulation 3A-2.(F), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/85; and

AGD 3A-2(E), Sanitation Requirements, filed 9/25/90.

History of Repealed Material:

15 NMAC 10.3.1.8.2, Repealed 7/15/99.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 32 PREMISES - LOCATION AND DESCRIPTION OF LICENSED PREMISES

15.10.32.1 ISSUING AGENCY: ~~[The Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.32.1 NMAC - Rp, 15 NMAC 10.3.2.1, 4/25/2017]

15.10.32.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.10.32.2 NMAC - Rp, 15 NMAC 10.3.2.2, 4/25/2017]

15.10.32.3 AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.32.3 NMAC - Rp, 15 NMAC 10.3.2.3, 4/25/2017]

15.10.32.4 DURATION: Permanent.
[15.10.32.4 NMAC - Rp, 15 NMAC 10.3.2.4, 4/25/2017]

15.10.32.5 EFFECTIVE DATE: April 25, 2017, unless a later date is cited at the end of a section.
[15.10.32.5 NMAC - Rp, 15 NMAC 10.3.2.5, 4/25/2017]

15.10.32.6 OBJECTIVE: These rules are intended to establish standards for the location and description of areas identified as licensed premises.
[15.10.32.6 NMAC - Rp, 15 NMAC 10.3.2.6, 4/25/2017]

15.10.32.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.

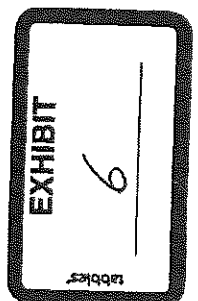
15.10.32.8 LOCATION NEAR CHURCH, SCHOOL OR MILITARY INSTALLATION: All measurements for the purpose of determining the location of a licensed premises in relation to churches or schools ~~[or military installations]~~ shall be the shortest direct line measurement between the actual limits of the real property of the church or school ~~[or military installation]~~ in which there is regularly conducted church services or educational functions ~~[or military troops housed]~~, and the controlled access area of the licensed premises where alcoholic beverages are proposed to be sold. If the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied by a certified report of a registered engineer or duly licensed surveyor.
[15.10.32.8 NMAC - Rp, 15 NMAC 10.3.2.8, 4/25/2017]

15.10.32.9 PREMISES WHERE ALCOHOL WAS SOLD PRIOR TO 1981:

A. For purposes of transfer and issuance of liquor licenses, a location where alcoholic beverages were sold prior to July 1, 1981, is a location that was licensed for the sale of alcoholic beverages by the division prior to July 1, 1981. For purposes of special dispenser's permits, a location where alcoholic beverages were sold prior to July 1, 1981, includes church and school property where alcoholic beverages were traditionally sold prior to July 1, 1981, at events, such as annual church fiestas or school fundraisers, even if the premises were not licensed by the division prior to July 1, 1981.

B. If an applicant seeks to have a location approved as a licensed premises where alcoholic beverages were sold prior to July 1, 1981, and if alcoholic beverages have not been sold on the previously licensed premises for a period of 12 months or more, the applicant has the burden of showing the church or school has not detrimentally relied on the lack of sales or closing of the previously licensed premises. An applicant for a special dispenser's permit on church or school property has the burden of establishing that sales of alcoholic beverages occurred on the church or school property on an annual or other regular basis prior to July 1, 1981.
[15.10.32.9 NMAC - Rp, 15 NMAC 10.3.2.9, 4/25/2017]

15.10.32.10 LICENSED PREMISES ~~[OF GOLF COURSE, VINEYARD, HOTEL, RACETRACK, SKI AREA, OR RESTAURANT]~~ AND CONTROLLED ACCESS AREAS: ~~[Nothing in these rules shall prohibit the licensure of the entire premises, including more than one structure, of the controlled access areas of the grounds~~



of any hotel, golf course, ski area, racetrack or vineyard of a winery, as defined in the act, or any restaurant, identified in Subsection O of Section 60-3A-3 NMSA 1978, when any of these types of licenses are operated by the licensee who profits directly and exclusively from the operation of the license.]

A. Nothing in these rules shall prohibit the licensure of the entire premises, including more than one structure, of the controlled access areas of the grounds of any hotel, golf course, ski area, racetrack, distillery, brewery, or vineyard of a winery, as defined in the act, or any restaurant, identified in Subsection O of Section 60-3A-3 NMSA 1978, when any of these types of licenses are operated by the licensee who profits directly and exclusively from the operation of the license;

B. An accurate description of the licensed premises with the proposed controlled access areas clearly marked, must be filed with the division;

C. The sale, service and consumption of alcoholic beverages is limited to to controlled access areas;

D. Roads are not to be included in controlled access areas, except within golf courses, in which the boundaries of golf cart and pedestrian crossings are clearly marked by permanent marking on the surface of the roads by white or yellow reflective painting or striping material similar to pedestrian crossing markings found on city and state streets and roads; and

E. Parking Lots and fuel filling stations shall not be included in controlled access areas.

[15.10.32.10 NMAC - Rp, 15 NMAC 10.3.2.10, 4/25/2017]

~~[15.10.32.11 — **GOLF COURSE AS LICENSED PREMISES:** Golf courses may be licensed in their entirety subject to the following conditions:~~

~~— A. — an accurate description of the golf course with the proposed controlled access areas clearly marked must be filed with the division;~~

~~— B. — the sale, service and consumption of alcoholic beverages on the golf course is limited to controlled access areas;~~

~~— C. — if roads are included in controlled access areas, the boundaries of golf cart and pedestrian crossings must be clearly marked by permanent marking on the surface of the roads by white or yellow reflective paint or striping material similar to pedestrian crossing markings found on city and state streets and roads.~~

~~[15.10.32.11 NMAC - Rp, 15 NMAC 10.3.2.11, 4/25/2017]~~

15.10.32.12 CHANGE OR EXPANSION OF LICENSED PREMISES: Floor plans that accurately reflect the controlled access areas of a licensee's licensed premises must be kept current by filing an application to change a floor plan within 30 days of a change, and to expand a floor plan by filing an application prior to the expansion, or upon request by the director. If the total square footage of [a] the controlled access area of the licensed premise will increase by more than twenty-five percent pursuant to the floor plan change, the licensee may be required to file an application for change of location on a form approved by the division.

[15.10.32.12 NMAC - Rp, 15 NMAC 10.3.2.13, 4/25/2017]

~~[15.10.32.13 — **OUTDOOR LICENSED PREMISES:** Except as provided in 15.10.32.10 NMAC, licensed premises or portions of a licensed premises that are outdoors must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the licensed premises from the surrounding area. The division may allow exceptions to this requirement for a demonstrated case of undue hardship by a licensee. If an outdoor area is a portion of the licensed premises, it must be connected and contiguous to the indoor portion of the licensed premises through an indoor passageway.~~

~~[15.10.32.13 NMAC - Rp, 15 NMAC 10.3.2.14, 4/25/2017]~~

15.10.32.14 [RESERVED] OUTDOOR CONTROLLED ACCESS AREAS:

A. Controlled access areas of a licensed premises that are outdoors must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the controlled access area from the surrounding area. The division may allow exceptions to this requirement for a demonstrated case of undue hardship by a licensee.

B. If an outdoor area is deemed a controlled access area, it must be connected and contiguous to an indoor controlled access area.

HISTORY OF 15.10.32 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 6B-2.(D), Operation of Licenses on Designated Premises, Interpreting and Exemplifying Section 60-6B-2 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.
AGD 6B-2(C), Operation of Licensed Premises, filed 09/25/1990.
ABC Regulation No. 6B-10.(A), Location Near Church, School, or Military Installation Regulation 6B-10.(A), Interpreting and Exemplifying Section 60-6B-10 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.
AGD 6B-10(A), Location Near Church, School, or Military Installation, filed 09/25/1990.
ABC Regulation No. 6B-12(G)(A), Location of Licensed Premises Regulation 6B-12(G)(A), Interpreting and Exemplifying Section 60-6B-12(G) NMSA 1978 (1981 and 1984 Supp.), filed 12/04/1984.
AGD 6B-12, Location of Licensed Premises, filed 09/25/1990.

History of Repealed Material:

15 NMAC 10.3.2.12 Drive-up Windows, Walk-up Windows, Repealed 7/15/1999.
15 NMAC 10.3.2, Premises - Location and Description of Licensed Premises, filed 03/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 10.3.2, Premises - Location and Description of Licensed Premises (filed 3/14/1997) was replaced by 15.10.32 NMAC, Premises - Location and Description of Licensed Premises, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 33 PREMISES - MINORS ON LICENSED PREMISES

15.10.33.1 ISSUING AGENCY: The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.33.1 NMAC - Rp, 15 10.33.1 NMAC, 4/25/2017]

15.10.33.2 SCOPE: These rules apply to all licensees under the act.
[15.10.33.2 NMAC - Rp, 15 10.33.2 NMAC, 4/25/2017]

15.10.33.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.33.3 NMAC - Rp, 15 10.33.3 NMAC, 4/25/2017]

15.10.33.4 DURATION: Permanent.
[15.10.33.4 NMAC - Rp, 15 10.33.4 NMAC, 4/25/2017]

15.10.33.5 EFFECTIVE DATE: April 25, 2017, unless a later date is cited at the end of a section.
[15.10.33.5 NMAC - Rp, 15 10.33.5 NMAC, 4/25/2017]

15.10.33.6 OBJECTIVE: These rules are intended to classify the types of licensed premises or areas of licensed premises where minors may be present.
[15.10.33.6 NMAC - Rp, 15 10.33.6 NMAC, 4/25/2017]

15.10.33.7 DEFINITIONS: ~~[The following definitions shall apply to this part:~~
~~A. "Restricted premises" means the premises of any licensee, or area within a licensed premises, where the primary activity of the licensee is the sale of alcoholic beverages by the drink.~~
~~B. "Unaccompanied minor" means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.]~~ Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.
[15.10.33.7 NMAC - Rp, 15 10.33.7 NMAC, 4/25/2017]

15.10.33.8 MINORS ON LICENSED PREMISES:

A. A licensee shall not allow an unaccompanied minor on restricted premises.

B. If a licensee chooses to allow minors on the licensed premises for any reason except a bona fide emergency, the licensee must, in an annual application filed with the division, designate the licensed premises as either entirely a restricted area, entirely an unrestricted area, or both restricted and unrestricted areas, showing such designations on a correct floor plan of the licensed premises.

(1) The designations shall be approved or disapproved by the division. The applicant shall also indicate the nature and extent of security that will be provided to control restricted areas.

(2) If the licensed premises are designated as both restricted and unrestricted areas, and the division approves the designations, restricted areas of the licensed premises must be clearly posted and marked so that they are unmistakable from unrestricted areas.

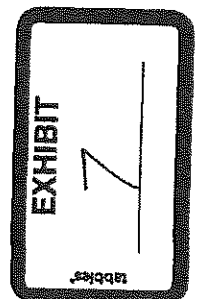
C. A licensee who chooses to allow minors on the licensed premises must:

(1) ensure that no minor is sold or served, purchases, possesses or consumes an alcoholic beverage on the premises; and

(2) post in restricted areas of the licensed premises conspicuous signs that state that "minors are not permitted in this area, unless accompanied by a parent, adult spouse or legal guardian".

D. A licensee shall maintain the plans, public notices and access restrictions required by this rule, and shall properly designate restricted areas on its licensed premises. Failure to do so shall be a violation of this rule.

E. The director shall consider all violations of this rule by a licensee which occurred within the preceding five years of a pending application, and may consider any corrective measure adopted by the licensee, to determine whether to grant or deny an application for minors on licensed premises.
[15.10.33.8 NMAC - Rp, 15 10.33.8 NMAC, 4/25/2017]



15.10.33.9 EMPLOYMENT OF MINORS:

A. No person may employ a minor to participate in the sale or service of alcoholic beverages, or to supervise other employees with respect to the sale or service of alcoholic beverages, except as provided in this section.

B. In accordance with Subsection B of Section 60-7B-11 NMSA 1978, a holder of a dispenser's, restaurant or club license that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, may employ minors 19 years of age or older to sell or serve alcoholic beverages, except that a person younger than 21 years of age shall not be employed as a bartender. Otherwise, no person may employ a minor to participate in the sale or service of alcoholic beverages, except as provided below.

C. A holder of a restaurant, dispenser's, or club license, or a special dispenser's permit, may allow minors to enter a restricted area to remove and dispose of alcoholic beverage containers in the course of their employment as bus persons provided that such employees remain in the restricted area no longer than necessary to carry out those duties.

D. A holder of a wholesaler's, retailer's, or manufacturer's license, or a holder of a dispenser's license who sells by the package, may employ minors to stock and handle alcoholic beverages in unopened containers on or around the licensed premises if an adult 21 years of age or older is on duty directly supervising such activities.

E. A licensee may permit the following minors to enter and remain in a restricted area of a licensed premise during the course of their employment or official duties if the minors are at least 18 years of age:

- (1) professional musicians, disc jockeys or other entertainers engaged in their professional capacities, or sound or lighting technicians actively engaged in support of professional musicians, disc jockeys, or other entertainers;
- (2) persons performing janitorial services, but only when the licensed premises are closed;
- (3) employees of amusement device companies for the purpose of installing, maintaining, repairing or removing any lawful amusement device or vending machine; and
- (4) security and law enforcement officers.

[15.10.33.9 NMAC - Rp, 15 10.33.9 NMAC, 4/25/2017]

15.10.33.10 NO SALE, SERVICE, POSSESSION OR CONSUMPTION PERMITTED: Under no circumstances, may minors purchase, be served, possess or consume alcoholic beverages on a licensed premises, and nothing in these rules, including provisions permitting minors on licensed premises, shall be construed as permitting the sale or service to, or possession or consumption of any alcoholic beverage by, a minor on a licensed premises.

[15.10.33.10 NMAC - Rp, 15 10.33.11 NMAC, 4/25/2017]

15.10.33.11 DEFENSE TO SALE TO A MINOR: If the licensee can establish all of the following, it shall be a valid defense to the administrative charge of a sale to a minor:

A. the purchaser falsely represented his or her age by producing, at the time of the alleged illegal sale, a photo identification card which appears to have been issued by a federal, state, county or municipal government, or sub department or agency thereof, and which shows the purchaser to be 21 years of age or older; and

B. the purchaser appeared to be 21 years of age or older; and

C. the seller reasonably relied on the false identification presented and on the purchaser's appearance, thereby believing the purchaser to be 21 years of age or older.

[15.10.33.11 NMAC - Rp, 15 10.33.12 NMAC, 4/25/2017]

15.10.33.12 [RESERVED] MINORS PROHIBITED FROM PARTICIPATING IN THE DELIVERY OF ALCOHOLIC BEVERAGES:

A. Licensees are prohibited from allowing minors to participate in the delivery of alcoholic beverages.

B. A minor participates in the delivery of alcoholic beverages when:

(1) a minor loads the alcoholic beverages into the delivery vehicle; or

(2) a minor is the driver, or passenger, of a vehicle being used to deliver alcoholic beverages

to consumers.

HISTORY OF 15.10.33 NMAC:

Pre-NMAC History: None.

History of Repealed Material: 15 NMAC 10.3.3.10, Teen Events, repealed 7/15/1999.
15.10.33 NMAC, Premises - Minors on Licensed Premises, filed 03/30/2006 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 10.3.3, Premises - Minors on Licensed Premises (filed 3/14/1997) was renumbered, amended, and reformatted to 15.10.33 NMAC, Premises - Minors on Licensed Premises, effective 04/14/2006.
15.10.33 NMAC, Premises - Minors on Licensed Premises (filed 3/30/2006) was replaced by 15.10.33 NMAC, Premises - Minors on Licensed Premises, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 51 SALES - RESTRICTIONS ON SALES

15.10.51.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, [Alcohol and Gaming] Alcoholic Beverage Control Division.
[15.10.51.1 NMAC - Rp, 15 10.51.1 NMAC, 4/25/2017]

15.10.51.2 SCOPE: These regulations apply to all licensees and applicants for licensure under the act.
[15.10.51.2 NMAC - Rp, 15 10.51.2 NMAC, 4/25/2017]

15.10.51.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.51.3 NMAC - Rp, 15 10.51.3 NMAC, 4/25/2017]

15.10.51.4 DURATION: Permanent
[15.10.51.4 NMAC - Rp, 15 10.51.4 NMAC, 4/25/2017]

15.10.51.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.10.51.5 NMAC - Rp, 15 10.51.5 NMAC, 4/25/2017]

15.10.51.6 OBJECTIVE: This rule is intended to establish standards by which licensees may sell and serve alcoholic beverages under the act.
[15.10.51.6 NMAC - Rp, 15 10.51.6 NMAC, 4/25/2017]

15.10.51.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act:
[15.10.51.7 NMAC - Rp, 15 10.51.7 NMAC, 4/25/2017]

15.10.51.8 SALES FROM LICENSED PREMISES ONLY: Licensees shall sell, offer to sell, and serve alcoholic beverages for promotional or otherwise commercial purposes only from the controlled access area of a licensed premises approved by the director, including premises licensed through special event permits pursuant to 15.11.25 NMAC.
[15.10.51.8 NMAC - Rp, 15 10.51.8 NMAC, 4/25/2017]

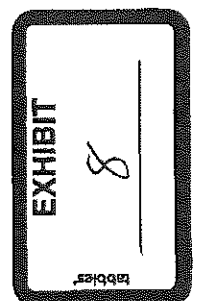
15.10.51.9 OPEN CONTAINER RESTRICTIONS:

- A. No one shall provide a person with an open container of an alcoholic beverage for consumption off the licensed premises or permit removal of an open container from the licensed premises.
- B. No person shall remove an open container of an alcoholic beverage from a licensed premise.
- C. All alcoholic beverages sold by package, including growlers, must be consumed off-premises.
- D. Nothing in this rule shall prohibit a dispenser or restaurant licensee from allowing the removal of a partially consumed bottle of wine from the premises pursuant to Section 60-3A-12 NMSA 1978.
- E. A licensee may permit a customer to remove a growler from the licensed premises, provided that the licensee cleans the growler before filling it, re-seals the growler, and provides a sales receipt to the customer.

[15.10.51.9 NMAC - Rp, 15 10.51.9 NMAC, 4/25/2017]

15.10.51.10 AFTER HOURS SALES OR SERVICE OF ALCOHOLIC BEVERAGES:

- A. Licensees may not sell, serve or allow the consumption of alcoholic beverages on the licensed premises except during the hours permitted by the Liquor Control Act.
- ~~B. Nothing herein is intended to prohibit any licensee from opening after 7:00 a.m. on any day when the sale of alcoholic beverages is not prohibited.~~
- ~~C.~~ B. A licensee whose primary business activity on the licensed premises is the sale of alcoholic beverages for consumption on the licensed premises may not open the licensed premises to the public or to club members for any purpose or business after the lawful established closing times provided for in the Liquor Control Act, unless permitted by the director in writing.



[15.10.51.10 NMAC - Rp, 15 10.51.10 NMAC, 4/25/2017]

15.10.51.11 SALES TO INTOXICATED PERSONS:

A. No licensee shall sell, serve, deliver, procure or aid in the procurement of alcoholic beverages to an intoxicated person if the licensee knows or has reason to know that the person is obviously intoxicated. In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on breath or blood test taken not more than one and one-half hour or ninety minutes after sale, service, delivery or consumption of alcoholic beverages shall be presumptive evidence that the person was intoxicated at the time of the last sale.

For purposes of this rule, a "sale" shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person, or when the alcoholic beverage is delivered to the intoxicated person's address for delivery, when applicable.

B. The following practices are prohibited on a licensed premises:

- (1) games or contests that involve drinking alcoholic beverages or the awarding of alcoholic beverage drinks as prizes;
- (2) the sale or delivery to a person of an unlimited number of alcoholic beverage drinks during any set period of time for a fixed price;
- (3) the sale or delivery of two or more alcoholic ~~beverage drinks~~ beverages for the price of one;
- (4) the sale or delivery of alcoholic beverages ~~by the drink~~ for less than half the usual, customary, or established price for ~~a drink of that type on the licensed premises~~ that alcoholic beverage;
- (5) the sale or delivery of alcoholic beverages ~~by the drink~~ for less than cost;
- (6) the advertising of the practices prohibited by this regulation; or
- (7) the sale or service of a bottle of spirits for on-premises consumption.

C. The two drink rule:

- (1) No licensee shall serve or otherwise allow any person to have more than two unconsumed, opened alcoholic beverage drinks on a licensed premises at any one time.
- (2) Examples of Paragraph (1) of Subsection C of 15.10.51.11 NMAC, include but are not limited to, the following:
 - (a) a licensee shall not sell, serve or allow any person to have at any one time a beer flight that exceeds the equivalent total volume of two drinks;
 - (b) a licensee shall not sell, serve, or allow any person to have at any one time a wine flight that exceeds the equivalent total volume of two drinks; and
 - (c) a licensee shall not sell, serve or allow any person to have at any one time a spiritous liquor flight that exceeds the equivalent total volume of two drinks.

D. Nothing contained in this regulation shall prohibit a licensee from:

- (1) including one alcoholic beverage drink per person as part of a meal package when approved by the director in writing;
- (2) selling wine by the bottle or carafe ~~[-or beer in a pitcher,]~~ when sold with a meal;
- (3) selling wine by the bottle or carafe, or beer in a pitcher, to more than one person;
- (4) offering free tastes;
- (5) offering free alcoholic beverage drinks to registered guests in its hotel when approved by the director in writing;
- (6) utilizing a "free drink coupon" which is limited to one drink per day per patron or giving a patron a free drink as a gesture of good will or friendship; free drinks as a gesture of good will or friendship may not be advertised and may not be given at any established interval or based on the purchases by the customer; or
- (7) offering to customers product promotions such as sweepstakes, rebates on non-alcoholic beverage items, or goods that are not or do not include alcoholic beverages.

[15.10.51.11 NMAC - Rp, 15 10.51.11 NMAC, 4/25/2017]

15.10.51.12 "BYOB" EXCEPTION: PRIVATE PARTIES ON LICENSED PREMISES: No person or entity may bring alcoholic beverages, previously purchased, onto a licensed premises or onto any public premises, or consume alcoholic beverages purchased by package on a licensed premises, except as provided in this section.

A. A licensee may allow a private party at which the host provides his own alcoholic beverages to be held on the licensed premises.

B. If the host provides his own alcoholic beverages, no alcoholic beverages may be sold to any guest at the private party by the host, the licensee, or anyone else. The alcoholic beverages must be served to the guests by persons who hold valid current server permits.

C. If the private party is held during hours that the licensed premises is open to the public, the area where the private party is to be held must be closed to the public and security provided to prevent persons without invitations from entering.

D. Private parties must be held on days and at times during which the licensee is authorized to sell or serve alcoholic beverages.

E. A licensee may receive alcoholic beverages donated by a licensed New Mexico wholesaler to the host of the private party and may serve the donated alcoholic beverages at a private party if the wholesaler provides the licensee with an invoice for the donated alcoholic beverages.

[15.10.51.12 NMAC - Rp, 15.10.51.12 NMAC, 4/25/2017]

15.10.51.13 ALCOHOL SERVICE BY EMPLOYEES ONLY:

A. All alcoholic beverages sold or served to members of the public pursuant to a liquor license must be sold or served by a person who has a valid alcohol server permit and is an employee or independent contractor of the licensee.

B. Except as provided in this sub-section, self-service of alcoholic beverages is not permitted in an establishment licensed to sell alcohol:

(1) A person may self-serve beer from a pitcher that has been previously served to that person if in compliance with Subsection D of 15.10.51.11 NMAC, above.

(2) A person may self-serve wine from a bottle or carafe that has been previously served to that person if in compliance with Subsection D of 15.10.51.11 NMAC, above.

C. Devices that allow a non-employee in a licensed premises to self-serve themselves an alcoholic beverage are prohibited, except that nothing in this paragraph shall prevent the otherwise lawful sale or service of alcoholic beverages from a "mini-bar" in a "hotel" as defined in Subsection N of 60-3A-3 NMSA 1978.

D. No licensee, agent, lessee, contractor or employee of the licensee shall consume alcoholic beverages while on duty or be present on the licensed premises with the following exceptions:

(1) owners, employees, contractors, licensed wholesalers and licensed retailers may drink alcoholic beverages for product training and evaluation purposes, but must not become impaired;

(2) entertainers who contract with a licensed establishment and are not involved in the sale or service of alcoholic beverages may consume alcoholic beverages; and

(3) the licensee, lessee, or an owner or operator may consume alcoholic beverages provided that such consumption does not result in impairment.

[15.10.51.13 NMAC; N, 4/25/2017]

15.10.51.14 GAMBLING ON LICENSED PREMISES:

A. An entity holding a valid license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 NMSA 1978.

~~B. Except as noted in Subsection A of 15.10.51.14 NMAC, any licensee may only conduct commercial gambling on what is otherwise a licensed premises if the licensee either:~~

~~(1) temporarily suspends the license for the entire premises, or~~

~~(2) temporarily suspends the portion of the licensed premises on which the gambling will occur, subject to the following conditions:~~

~~(a) gambling may be conducted in areas of the licensed premises that are physically segregated from areas in which alcoholic beverages are being sold, served, or consumed. The areas must be separated by walls or other physical obstructions limiting movement of customers between the areas;~~

~~(b) no alcohol may be sold, served, or consumed within the physical area in which gambling is being conducted;~~

~~(c) appropriate signs must be posted within the areas in which gambling is being conducted advising customers that alcoholic beverages may not be sold, served, or consumed within those areas; and~~

~~(d) customers are prohibited from participating in gambling in areas in which alcoholic beverages are being sold, served, or consumed.~~

~~C. Nothing in this rule shall be construed to authorize any forms of gambling within any licensed premises other than as specifically provided herein and in the act.~~

~~D. Any temporary suspension described in Subsection B of 15.51.14 NMAC, must be requested by application provided by the division, and approved in writing by the division prior to the date of the suspension. [15.10.51.14 NMAC; N,4/25/2017]~~

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.

15.10.51.16 SALES OF ALCOHOLIC BEVERAGES TO MOTOR VEHICLES PROHIBITED: An entity holding a valid license issued under the act shall not sell, serve, or deliver alcoholic beverages to a customer in a motor vehicle through a drive-up window, curbside pickup, or other means in which the customer remains in the motor vehicle during the transfer of the alcoholic beverage.

HISTORY OF 15.10.51 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:
ABC Regulation No. 6A-2 through 6A-5, Sales from Designated Premises Only--Delivery Service Regulation No. 6A-2 through 6A-5, Interpreting and Exemplifying Section 60-6A-2 through 60-6A-5 NMSA 1978 (1981 and 1984 Supp.), filed 3/26/1985;
AGD 6A-2, Sales from Licensed Premises Only, filed 9/25/1990;
ABC Regulation No. 6A-7.(A), Shipping Invoices Regulation 6A-7.(A) Interpreting and Exemplifying Section 60-6A-7 NMSA 1978 (1981 and 1984 Supp.), filed 11/4/1985;
AGD Regulation 6A-7, Shipping Invoices, filed 9/25/1990;
AGD Regulation 7A-1(C), After Hours, filed 9/25/1990;
ABC Regulation No. 7A-16.(A), Sales to Intoxicated Persons Regulation 7A-16(A), Interpreting and Exemplifying Section 60-7A-16 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; and
AGD 7A-16, Sales to Intoxicated Persons, filed 9/25/1990.

History of Repealed Material:

AGD Regulation 6A-7, Shipping Invoices (filed 9/25/1990) repealed 3/31/1997.
15.10.51 NMAC, Sales - Restrictions on Sales, filed 09/15/2006 - Repealed effective 4/25/2017.

Other History:

AGD 6A-2, Sales from Licensed Premises Only (filed 9/25/1990); AGD 6A-7, Shipping Invoices (filed 9/25/1990); AGD-7A-1(C) (filed 9/25/1990); AGD-7A-16, Sales to Intoxiated Persons (filed 9/25/1990); and AGD-7B-6, Defense to Sale to Minor (filed 9/25/1990) were all renumbered, reformatted, amended, and replaced by 15 NMAC 10.5.1, Restrictions on Sales, effective 3/31/1997.
15 NMAC 10.5.1, Restrictions on Sales (filed 3/14/1997) was renumbered, reformatted, amended and replaced by 15.10.51 NMAC, Restrictions on Sales, effective 10/15/2006.
15.10.51 NMAC, Sales - Restrictions on Sales (filed 9/15/2006) was replaced by 15.10.51 NMAC Sales - Restrictions on Sales, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 52 SEGREGATED ALCOHOL SALES

15.10.52.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, [~~Alcohol and Gaming~~] Alcoholic Beverage Control Division.
[15.10.52.1 NMAC - Rp, 15 NMAC 10.5.2.1, 4/25/2017]

15.10.52.2 SCOPE: These rules apply to all licensees under the act.
[15.10.52.2 NMAC - Rp, 15 NMAC 10.5.2.2, 4/25/2017]

15.10.52.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.52.3 NMAC - Rp, 15 NMAC 10.5.2.3, 4/25/2017]

15.10.52.4 DURATION: Permanent.
[15.10.52.4 NMAC - Rp, 15 NMAC 10.5.2.4, 4/25/2017]

15.10.52.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.10.52.5 NMAC - Rp, 15 NMAC 10.5.2.5, 4/25/2017]

15.10.52.6 OBJECTIVE: These rules are intended to comply with Section 60-6B-19 NMSA 1978 of the act by creating procedures and requirements for segregated alcohol sales applicable to two different classes of licensed premises based on the size of the establishment.
[15.10.52.6 NMAC - Rp, 15 NMAC 10.5.2.6, 4/25/2017]

15.10.52.7 DEFINITIONS: [**RESERVED**].
[15.10.52.7 NMAC - Rp, 15 NMAC 10.5.2.7, 4/25/2017]

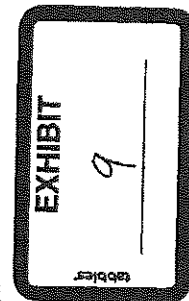
15.10.52.8 LARGE PREMISES LICENSEES:

A. Large premises licensees must consolidate all alcoholic beverages in an alcoholic beverage display area located within a clearly designated and marked area of the controlled access area of the licensed premises. Growler sales for beer and cider may be located in a separate, clearly designated and marked display area from other alcoholic beverage sales. Both the storage area and the area where growlers will be filled must be designated. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed or stored in small quantities in no more than two locations outside the designated alcoholic beverage display area provided that all display areas can be roped off, chained off, or covered during non-alcoholic sale hours or days. Signs saying "liquor department - no one under 21 unless accompanied by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area. Licensees must file floor plans with the division for approval showing the consolidated and segregated areas where alcoholic beverages, including growler sales, are displayed within the licensed premises.

B. An employee who is at least 21 years of age and has a valid alcohol server permit shall be responsible for the overall supervision of both the receiving and sale of alcoholic beverages, including supervision of the alcoholic beverage display area. The licensee shall designate employees within the licensed premises to serve in this capacity as part of their job description, and shall ensure that such a designated employee is on duty on the licensed premises during alcoholic beverage sale hours.

C. Small displays of chips, snacks, or similar items may be displayed for sale in the alcoholic beverage display area so long as those items are also available in other parts of the licensed premises outside the alcoholic beverage display area. Except for such small displays, displays of food or other merchandise that would require shoppers to enter the alcoholic beverage display area for food or other merchandise are not permitted.
[15.10.52.8 NMAC - Rp, 15 NMAC 10.5.2.8, 4/25/2017]

15.10.52.9 SMALL PREMISES LICENSEES: Small premises licensees must use diligent, good faith efforts to consolidate alcoholic beverages within a clearly designated and marked alcoholic beverage display area of the controlled access area of the licensed premises. Signs saying "liquor area - no one under 21 unless accompanied



by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed outside the alcoholic beverage display area provided that all display areas can be roped off, chained off or covered during non-alcoholic sale hours or days.
[15.10.52.9 NMAC - Rp, 15 NMAC 10.5.2.9, 4/25/2017]

15.10.52.10 SIGNS FOR DAYS WHEN SALES NOT PERMITTED: [RESERVED]
[15.10.52.10 NMAC - Rp, 15 NMAC 10.5.2.10, 4/25/2017]

HISTORY OF 15.10.52:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
AGD Regulation 6B-19, Segregated Alcohol Sales, filed 12/20/93.

History of Repealed Material:

15 NMAC 10.52, Segregated Alcohol Sales, filed 03/14/1997 - Repealed effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 53 SALES - WHOLESALERS

15.10.53.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, [~~Alcohol and Gaming~~] Alcoholic Beverage Control Division.
[15.10.53.1 NMAC - Rp, 15 NMAC 10.5.3.1, 4/25/2017]

15.10.53.2 SCOPE: These rules apply to all licensees under the act.
[15.10.53.2 NMAC - Rp, 15 NMAC 10.5.3.2, 4/25/2017]

15.10.53.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.53.3 NMAC - Rp, 15 NMAC 10.5.3.3, 4/25/2017]

15.10.53.4 DURATION: Permanent.
[15.10.53.4 NMAC - Rp, 15 NMAC 10.5.3.4, 4/25/2017]

15.10.53.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.10.53.5 NMAC - Rp, 15 NMAC 10.5.3.5, 4/25/2017]

15.10.53.6 OBJECTIVE: This part is intended to establish reporting, sales, credit, and other requirements applicable to persons licensed as wholesalers under the act.
[15.10.53.6 NMAC - Rp, 15 NMAC 10.5.3.6, 4/25/2017]

15.10.53.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.10.53.7 NMAC - Rp, 15 NMAC 10.5.3.7, 4/25/2017]

15.10.53.8 PAYMENT, REFUND AND EXCHANGE:

A. If any invoice for alcoholic beverages sold to any licensee remains unpaid for more than 30 days the wholesaler may not sell alcoholic beverages to that licensee except on a cash basis.

B. Cash means a cash payment, a check, or electronic funds transfer, however, if a licensee tenders a check for a sale required to be cash under this regulation and that check is dishonored, the wholesaler may not accept any further checks from that licensee for sales required to be cash under this rule for a period of three months from the date the check is dishonored. Wholesalers who accept checks in payment for alcoholic beverages must present the checks for payment in the normal course of business.

C. A wholesaler may not use a promissory note or other similar obligation from a licensee as a device to avoid the credit prohibition set forth in the act and this rule. As long as a promissory note, or other similar obligation, remains outstanding for alcoholic beverages, the licensee must pay in cash.

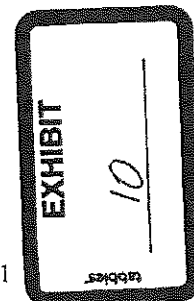
D. Limitations on product returns:

1. Wholesalers are permitted to accept a return of alcohol beverages for ordinary and usual commercial reasons.

2. Ordinary and usual commercial reasons for returns include defective products, broken or short filled containers caused by error or omission of the manufacturer or the wholesaler or agent of the wholesaler, errors in products delivered, discontinued products, manufacturer's product change, manufacturer quality standards, lawful exercise of creditor claims to secured inventory, and unsold and unopened event inventory when a special event permit was obtained from the division. Ordinary and usual commercial reasons for return do not include overstock of inventory, slow inventory sales, breakage or other damage by the retailer or limited and seasonal demand inventory.

3. Wholesalers are permitted to provide account credit, product exchange, or return of merchandise that is damaged, at or near spoilage, or otherwise unfit for consumption.

E. A wholesaler may share information with other wholesalers regarding any unpaid invoices described in A, above, limited to the identity of the licensee, and the amount due and duration of the unpaid invoices.



[15.10.53.8 NMAC - Rp, 15 NMAC 10.5.3.8, 4/25/2017]

15.10.53.9 DONATIONS AND DISCOUNTS OF ALCOHOLIC BEVERAGES:

A. A licensed New Mexico wholesaler may donate alcoholic beverages or sell alcoholic beverages at a discount to licensees if the purpose of the donation or discount is not to induce the licensee to purchase alcoholic beverages from that wholesaler to the exclusion of another wholesaler. The licensee may sell or give the donated or discounted alcoholic beverages to members of the public, or may give the donated or discounted alcoholic beverages away, in accordance with the provisions of the act and these rules. Donations or discounts allowable under this subsection shall be limited as follows:

- (1) no free samples may be provided for items currently provided to the licensee by the wholesaler; and
- (2) no more than one bottle not to exceed 750 milliliters of wine or spirits, or one case of beer may be provided as a free sample per item.

B. A licensed New Mexico wholesaler may donate alcoholic beverages to a non-licensee for an event, including charity and non-profit purposes, but the non-licensee may not sell the donated alcoholic beverages under any circumstances. Any unopened alcoholic beverages not consumed at the event may be returned to the wholesaler or kept for personal use by the non-licensee, but may not be sold under any circumstances.

C. Any delivery of donated or discounted alcoholic beverages by a licensed New Mexico wholesaler must be accompanied by an invoice indicating the licensee's name, d/b/a name, liquor license number, the amount and type of alcoholic beverages delivered, the market value of the delivered alcoholic beverages, the place where the alcoholic beverages were delivered, and the date. The invoice must show a sum due of zero for donated alcoholic beverages or the discounted amount of the purchase.

[15.10.53.9 NMAC - Rp, 15 NMAC 10.5.3.9, 4/25/2017]

15.10.53.10 COMMERCIAL COERCION AND BRIBERY: ~~[The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 of the Act. That Section shall be interpreted consistent with the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.]~~

~~A. The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 of the Act.~~

~~B. The Director shall enforce the prohibitions against unlawful inducements as set forth in Section 60-8A-1.1 of the Act.~~

~~C. Sections 60-8A-1 and 60-8A-1.1 of the Act shall incorporate the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.~~

~~(1) Wholesalers and manufacturers shall not provide money or any other thing of substantial value to a retailer, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand of alcoholic beverage.~~

~~(2) Retailers, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, shall not receive or ask for money or any other thing of substantial value from a wholesaler or manufacturer, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand or kind of alcoholic beverage.~~

~~(3) Things are of substantial value when it has a value greater than three hundred dollars.~~

~~(4) Generally, product displays, point of sale advertising materials, temporary signage valued at three hundred dollars or less are permissible.~~

~~(5) Fixtures, capital improvements and equipment, including refrigeration units, keg coolers, and permanent signage are not permissible unless there is a written contract to buy or lease the item, at fair market value between the retailer, restaurant, club, governmental, or any other type of dispensing licensee and the wholesaler or manufacturer.~~

[15.10.53.10 NMAC; N, 4/25/2017]

HISTORY OF 15.10.53 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
AGD Regulation 7A-9, Extension of Credit by Wholesalers, filed 9/25/1990.

History of Repealed Material: [RESERVED]
15 NMAC 10.5.3, Sales - Wholesalers, filed 03/14/1997 - Repealed effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 54 SALES - CLUBS

15.10.54.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.54.1 NMAC - Rp, 15 NMAC 10.5.4.1, 4/25/2017]

15.10.54.2 SCOPE: These rules apply to all club licensees under the act.
[15.10.54.2 NMAC - Rp, 15 NMAC 10.5.4.2, 4/25/2017]

15.10.54.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.54.3 NMAC - Rp, 15 NMAC 10.5.4.3, 4/25/2017]

15.10.54.4 DURATION: Permanent
[15.10.54.4 NMAC - Rp, 15 NMAC 10.5.4.4, 4/25/2017]

15.10.54.5 EFFECTIVE DATE: [~~April 25, 2017~~], unless a later date is cited at the end of a section.
[15.10.54.5 NMAC - Rp, 15 NMAC 10.5.4.5, 4/25/2017]

15.10.54.6 OBJECTIVE: This part is intended to establish additional standards by which club licensees may sell and serve alcoholic beverages under the act.
[15.10.54.6 NMAC - Rp, 15 NMAC 10.5.4.6, 4/25/2017]

15.10.54.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act[~~, except that the following definitions apply to this part:~~

~~A. "Bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility.~~

~~B. "Member" means:~~

~~(1) a person who pays annual membership dues to a holder of a club license pursuant to Section 60-6A-5 NMSA 1978, at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has been voted as a member by the current membership, and has all voting rights and full membership privileges as described in Subsection E of Section 60-3A-3 NMSA 1978;~~

~~(2) the adult spouse and the adult children of a member or of a deceased member as defined in Paragraph (1) of Subsection B of 15.10.54.7 NMAC;~~

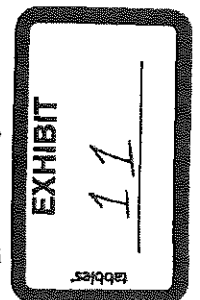
~~(3) a member of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or~~

~~(4) a person who pays membership dues and is a member of a class of a club licensed pursuant to Section 60-6A-5 NMSA 1978, but are persons without full voting rights or full membership privileges, so long as such members are provided for in the articles of incorporation, bylaws, charter, constitution or resolution of the board of directors or other appropriate governing body of the entity holding the club license; members described in this paragraph may not purchase, be served or consume alcoholic beverages within the bar or lounge area of the licensed premises, but may purchase, be served or consume alcoholic beverages in other areas of the licensed premises while engaged in activities whose primary purpose is other than the consumption of alcoholic beverages].~~

[15.10.54.7 NMAC - Rp, 15 NMAC 10.5.4.7, 4/25/2017]

15.10.54.8 SALES LIMITED TO MEMBERS AND GUESTS:

A. Whenever a member invites one or more bona fide guests, as defined by Subsection A of 15.10.54.7 NMAC onto a club's licensed premises, the club shall be responsible for identifying each bona fide guest and the club member responsible for such guest by maintaining a sign in sheet identifying the guest and the member, including the member identification number. The club should be able to produce the sign in sheet upon request by



the director or the special investigations unit of the department of public safety or other peace officer within the scope of their jurisdiction. Members may not be stationed at the door signing in people who were not previously invited as their guests.

B. A member who has invited bona fide guests to use club facilities shall be responsible at all times while the guests are on the club premises. Except as otherwise permitted by law, no person other than the club members, bona fide guests, and club employees shall be allowed on any part of the licensed premises where alcoholic beverages are being sold, served, or consumed under the club license.

[15.10.54.8 NMAC - Rp, 15 NMAC 10.5.4.8, 4/25/2017]

15.10.54.9 GAMES OF CHANCE:

A. An entity holding a valid club license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 of the Act.

~~**B.** Except as noted in A, above, any club licensee may only conduct commercial gambling or other games of chance on what is otherwise a licensed premises if the licensee either:~~

~~(1) temporarily suspends the license for the entire premises, or
(2) temporarily suspends the portion of the licensed premises on which the games of chance will occur, subject to the following conditions:~~

~~(a) games of chance may be conducted in areas of the licensed premises that are physically segregated from areas in which alcoholic beverages are being sold, served, or consumed. The areas must be separated by walls or other physical obstructions limiting movement of members and their guests between the areas; and~~

~~(b) no alcohol may be sold, served, or consumed within the physical area in which games of chance are being conducted; and~~

~~(c) appropriate signs must be posted within the areas in which games of chance are being conducted advising members and their guests that alcoholic beverages may not be sold, served, or consumed within those areas; and~~

~~(d) members and their guests are prohibited from participating in games of chance in areas in which alcoholic beverages are being sold, served, or consumed.~~

~~**C.** Nothing in this rule shall be construed to authorize any forms of gambling within any licensed premises other than as specifically provided herein and in the act.~~

~~**D.** Any temporary suspension described in Subsection B of 15.10.54.9 NMAC, above, must be requested by application provided by the division, and approved in writing by the division prior to the date of the suspension.]~~

B. Nothing within this section shall be deemed to allow for commercial gambling, as defined by Subsection C of Section 60-7A-19 of the Act.

[15.10.54.9 NMAC - Rp, 15 NMAC 10.5.4.9, 4/25/2017]

15.10.54.10 FUND RAISING EVENTS: A club may allow its facilities, including its licensed premises, to be used by another non-profit organization [~~twice~~ four times] in a calendar year for a fund raising event that is open to the public if the club submits an application on the form provided by the division not less than 10 days before the date of the proposed event and receives written approval from the division for the event.

[15.10.54.10 NMAC - Rp, 15 NMAC 10.5.4.10, 4/25/2017]

15.10.54.11 ADVERTISING FOR SPECIAL EVENTS:

A. A club may advertise a special event for the purposes of soliciting new club members or to notify existing members. Any advertisement, either printed, electronic or otherwise, must clearly state that the event is restricted to members of the club and their bona fide guests. If soliciting new members, the advertisement must state "to become a member, please contact" and provide contact information of a club member.

B. Examples of special events include, but are not limited to, musical and other artistic performances, speaking engagements, and promotions by commercial entities.

C. Special events that also constitute "fund raising events" pursuant to Section 10, above, are not subject to this advertising rule.

D. Any advertising described in Subsection A of 15.10.54.11 NMAC shall not include references to specific drinks or prices of drinks.

[15.10.54.11 NMAC - Rp, 15 NMAC 10.5.4.11, 4/25/2017]

15.10.54.12 CHANGE IN OFFICERS: A club must report a change in officers within 30 days of an election being held on an application prescribed by the director, including but not limited to, submission of fingerprints, personal affidavits, meeting minutes from the election and a copy of the club's filing with the New Mexico secretary of state that lists its current officers.

[15.10.54.12 NMAC - Rp, 15 NMAC 10.5.4.12, 4/25/2017]

15.10.54.13 LICENSE RENEWAL REQUIREMENT: In addition to the other requirements provided by law, as part of its annual renewal application, and upon request by the director, a club must furnish proof of its number of members by providing either:

- A. a roster of its current members which includes the name, address and phone number of each member; or
- B. a sworn statement by either a certified public accountant or an attorney, duly licensed in the state, attesting that during the preceeding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations; or
- C. a sworn statement by an officer of the statewide or national non-profit organization associated with the club attesting that during the preceeding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations.

[15.10.54.13 NMAC - Rp, 15 NMAC 10.5.4.13, 4/25/2017]

HISTORY OF 15.10.54 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 7A-13(B)(2)(A), Penalties for Violation of Section 60-7A-13(B)(2), Sales by Clubs, Interpreting and Exemplifying Section 60-7A-13(B)(2) NMSA 1978 (1981 and 1985 Supp.), filed 10/29/1985; ABC 7A-13(B)(2)(A), Penalties for Violation of Section 60-7A-13(B)(2) NMSA 1978, led 2/13/1986; and AGD Regulation 7A-13, Sales by Clubs, filed 9/25/1990.

History of Repealed Material:

15 NMAC 10.5.4, Sales Clubs, filed 7/21/1999 - Repealed effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES LICENSING
PART 55 INTERNET SALES

15.10.55.1 ISSUING AGENCY: The ~~[division]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.1.55.1 NMAC - N, 4/25/2017]

15.10.55.2 SCOPE: These rules apply to all retailers, and to dispensers authorized to sell alcoholic beverages in unbroken packages and all licensees allowed to sell alcoholic beverages through delivery, under the act.
[15.1.55.2 NMAC - N, 4/25/2017]

15.10.55.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.1.55.3 NMAC - N, 4/25/2017]

15.10.55.4 DURATION: Permanent.
[15.1.55.4 NMAC - N, 4/25/2017]

15.10.55.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.1.55.5 NMAC - N, 4/25/2017]

15.10.55.6 OBJECTIVE: These rules are intended to regulate purchasing cooperatives authorized pursuant to the act.
[15.1.55.6 NMAC - N, 4/25/2017]

15.10.55.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.
[15.1.55.7 NMAC - N, 4/25/2017]

15.10.55.8 THIRD-PARTY, INTERNET SALES [GENERALLY PROHIBITED]:

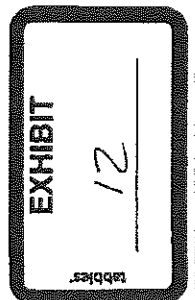
A. Except as provided in this section, no licensee may accept or fulfill any offer for the sale of any alcoholic beverages to New Mexico residents through a third-party internet web site for shipping alcoholic beverages to customers.

B. The holder of a New Mexico winegrower's license that also holds a direct wine shipment permit may sell and ship wine through an internet website to residents of New Mexico. Through a website of a third-party intermediary, and regardless of whether the transaction is administered by the licensee or the licensee's agent, the holder of a New Mexico winegrower's license may sell wines of the winegrower's own production, or wine produced by another New Mexico winegrower, but not any other alcohol, to:

- (1) a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license;
- (2) a New Mexico winegrower's agent;
- (3) a New Mexico resident;
- (4) a resident in any other state or foreign jurisdiction, as authorized by that jurisdiction; and
- (5) the holder of a license in any other state or foreign jurisdiction issued under the authority of that jurisdiction that authorizes the purchase of wine.

C. The holder of a direct wine shipment permit that is a person licensed in a state other than New Mexico that holds a winery license in that state may sell and ship wines that are otherwise in accordance with B, above, to the extent not prohibited by the laws of that state.

D. All third-party internet sales described in this part are subject to the restrictions on direct wine shipment permits as provided by Sections 60-6A-11.1 and Subsection F of Section 60-7A-3 NMSA 1978 of the act.
[15.1.55.8 NMAC - N, 4/25/2017]



15.10.55.9 USE OF INTERNET WEBSITE AND APPLICATION BASED PLATFORMS FOR DELIVERY SALES:

A. Licensees issued an alcoholic beverage delivery permit may sell alcoholic beverages, allowed by their license type, through an internet website or application to customers.

B. The internet website or application platform may be provided by a third-party intermediary, for use by the licensee, in accordance with the act.

HISTORY OF 15.1.61 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 61 CITATIONS - FINES AND PENALTIES

15.10.61.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.61.1 NMAC - Rp, 15 10.61.1 NMAC, 4/25/2017]

15.10.61.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.10.61.2 NMAC - Rp, 15 10.61.2 NMAC, 4/25/2017]

15.10.61.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.61.3 NMAC - Rp, 15 10.61.3 NMAC, 4/25/2017]

15.10.61.4 DURATION: Permanent.
[15.10.61.4 NMAC - Rp, 15 10.61.4 NMAC, 4/25/2017]

15.10.61.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.10.61.5 NMAC - Rp, 15 10.61.5 NMAC, 4/25/2017]

15.10.61.6 OBJECTIVE: This rule is intended to comply with Subsection M of Section 60-6C-4 NMSA 1978 which requires the director to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director. It is also intended to establish violation codes for consistent tracking within the division.
[15.10.61.6 NMAC - Rp, 15 10.61.6 NMAC, 4/25/2017]

15.10.61.7 DEFINITIONS: [~~The following definition applies to this part: "Unbroken, original package" means the sealed, unopened glass, plastic or aluminum container holding the alcohol, but does not mean the cardboard or other packaging holding the containers together~~] Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.
[15.10.61.7 NMAC - Rp, 15 10.61.7 NMAC, 4/25/2017]

15.10.61.8 SCHEDULE OF PENALTIES:

A. Any portion of the fines or penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case and where warranted by the evidence and the interests of public health, safety and welfare.

B. Violations involving sales to minors or intoxicated persons by licensee:

Code	Description
90	Sale to intoxicated person
105	Sale to a minor

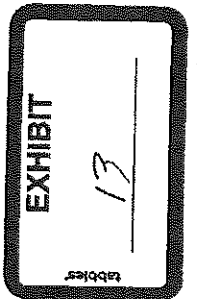
(1) The first offense within a 12 month period will result in a fine ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) and suspension of all alcohol sales for a minimum of one business day.

(2) The second offense within a 12 month period will result in a fine ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) and suspension of all alcohol sales for seven business days or possible revocation of the license if the licensee's citation history shows a pattern warranting revocation.

(3) Three or more offenses within a 12 month period shall result in a fine of ten thousand dollars (\$10,000) and revocation of the liquor license. The director may allow a reasonable period of time for the licensee to sell the license in lieu of revocation, provided that the licensee places the license into voluntary suspension until the date of sale or revocation.

(4) Any combination of three offenses involving sales to minors or sales to intoxicated persons occurring within a 12 month period shall result in a fine of ten thousand dollars (\$10,000) and revocation of the liquor license.

C. Violations involving sales to minors or intoxicated persons by server:



Code	Description
313	Sale to minor or to an intoxicated person
(1)	the first offense may result in a fine up to \$500, up to a 30-day suspension, or both;
(2)	the second offense may result in a fine up to \$500, up to a one-year suspension, or both;
(3)	the third offense may result in a fine of up to \$500, a suspension of greater than one year,

or revocation.

D. Violations involving licensing issues: Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines within the ranges shown below. Penalties may also include suspension or revocation of the liquor license.

Code	Description	Fine
117	more than one entity profiting	two thousand dollars (\$2,000) to ten thousand dollars (\$10,000)
118	unauthorized entity profiting or operating	one thousand five hundred dollars (\$1,500) to ten thousand dollars (\$10,000)
119	failure to report change of ownership or structure	two hundred fifty dollars (\$250) to three thousand dollars (\$3,000)
135	failure to renew license	five hundred dollars (\$500) to three thousand dollars (\$3,000)
205	unauthorized transfer of a liquor license	three thousand dollars (\$3,000) to ten thousand dollars (\$10,000)
300	persons prohibited from holding a license	three thousand dollars (\$3,000) to ten thousand dollars (\$10,000)

E. Illegal sale, delivery or possession of alcoholic beverages: Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to ten thousand dollars (\$10,000). Penalties may also include suspension or revocation of the liquor license.

Code	Description
160	sale/possession - illegal

F. Public nuisance violations:

Code	Description
125	public nuisance

(1) Penalties imposed for public nuisance violations will be determined depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines and penalties shown below.

(2) The first offense will result in a fine of two thousand dollars (\$2000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the division notifies the licensee, or the citation may be referred to a formal hearing.

(3) Failure to correct the violations as agreed will result in an additional fine of three thousand dollars (\$3,000) and immediate suspension of the license until the corrections are completed.

(4) The second offense within a 24-month period will result in a fine of four thousand dollars (\$4000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the department notifies the licensee, or the citation may be referred to a formal hearing. After the plan of correction is agreed to, the license will be immediately suspended until completion of the corrections.

(5) The third offense in a 36-month period will result in revocation of the license.

G. Violations involving commercial gambling: Penalties imposed for commercial gambling violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or

in part, will include the administrative fines shown below. Penalties may also include suspension or revocation of the liquor license.

Code Description
40 commercial gambling

- (1) The first offense will result in a fine of three thousand dollars (\$3,000).
- (2) The second offense will result in a fine of four thousand dollars (\$4,000).
- (3) The third offense will result in a fine of five thousand dollars (\$5,000).
- (4) Four or more offenses will result in a fine of ten thousand dollars (\$10,000).

H. Violations involving club sales provision: Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to five thousand dollars (\$5,000). Penalties may also include suspension or revocation of the liquor license.

Code Description
35 liquor sales to non-members
37 other violations of club sales restrictions

I. Violations of a tasting permit:

Code Description
36 tasting permit

- (1) For a first violation, a fine no greater than one thousand dollars (\$1,000) or a suspension of the tasting permit for a period of two months, or both;
- (2) For a second violation within a year of the first violation, a fine no greater than two thousand dollars (\$2,000) or a suspension of the tasting permit for a period of six months, or both; and
- (3) For a third violation within a year of the first violation, a citation against the master license, a fine no greater than five thousand dollars (\$5,000), and a suspension of the tasting permit for one year.

J. Violation for Illegal Extension of Credit by Wholesalers: Any wholesaler that extends credit for the sale of alcoholic beverages for any period more than thirty days shall be subject to a fine of ten thousand dollars (\$10,000) for each violation. Additional violations within a year of the first violation may also result in suspension or revocation of the license.

Code Description
38 credit extension

K. Violations involving other licensing, sales and service matter: Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to five thousand dollars (\$5,000). Penalties may also include suspension or revocation of the liquor license.

Code	Description
1	unauthorized package sale
[2	unauthorized sunday sale by drink]
3	unattended alcoholic beverages
27	purchase from other than a wholesaler
28	alcohol server training program - failure to complete
29	alcohol server training certification - failure to renew
45	removal of open container from licensed premises
66	violation of restaurant license restriction
80	employing an underage person
87	dispenser, drink or price violation
107	minor in possession/consuming
110	unaccompanied minor in restricted area of premises
120	operating hours - improper or illegal
145	unauthorized sale by the drink
146	filling of bottles
155	sale from other than [designated] controlled access area of licensed premises
157	change of floor plan without approval
180	special dispenser's, private celebration or public celebration permit violation

185	unauthorized sunday sale package
195	failure to obtain sunday sales permit
215	violation of wholesaler license restriction
301	obstruction of the administration of the liquor control act
302	private party violation
320	employee drinking on duty
321	segregated sales violation

L. **Miscellaneous violations of the liquor control act or regulations:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from two hundred fifty dollars (\$250) to three thousand dollars (\$3,000). Penalties may also include suspension or revocation of the liquor license.

Code	Description
5	advertising - illegal
10	agency responsibility/authority
25	failure to engage in business
26	failure to suspend license
50	unauthorized display of copy/facsimile of license
100	improper lighting
116	unauthorized change of dba name
175	sanitation violation
303	beer keg labeling violation
304	unauthorized change of corporate name
314	required documents on licensed premises
323	violation of a bed and breakfast rule

M. **Other violations not specifically listed:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and may include administrative fines up to ten thousand dollars (\$10,000) and suspension or revocation of the liquor license.

Code	Description
999	miscellaneous

N. **Violations involving providers:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines up to five hundred dollars (\$500).

Code	Description
305	failure to notify of sale, right to own, teach, or use of program to any person
306	providing false information regarding certified program completion
307	failure to conduct the program as certified by the division
308	filing an application for certification of a provider, instructor, or program with false information
310	failure to comply with provisions of alcohol server education article or rules promulgated thereunder

O. **Violations of the alcohol server education article involving licensees:** Penalties imposed for the following violations will be as listed below unless enhanced or suspended in whole or in part and depend upon the facts and circumstances of each case.

Code	Description
316	Employing a person without a server permit up to five hundred dollars (\$500)
317	failure to maintain copies of server permits on the licensed premises: twenty dollars (\$20) per permit
318	failure to produce a copy of an employee's server permit: twenty dollars (\$20) per permit
319	Permitting a person with a suspended or revoked permit to serve alcoholic beverages: up to five hundred dollars (\$500)

P. **Suspension of alcoholic beverage sales:**

(1) When suspension of alcoholic beverage sales is a penalty for violation of the Liquor Control Act, suspension will be addressed as follows:

(a) for a one-day suspension, the licensee will be required to suspend alcohol sales on the same day of the week that the violation occurred, except that if the violation occurred earlier than 3:00 a.m.,

then the licensee will be required to suspend alcohol sales on the day of the week immediately prior to the day that the violation occurred;

(b) for a suspension of more than one day, the licensee will be required to suspend alcohol sales for consecutive days, beginning on the same day of the week that the violation occurred, except that if the violation occurred earlier than 3:00 a.m., then the licensee will be required to suspend alcohol sales beginning on the day of the week immediately prior to the day that the violation occurred.

(2) If the penalty for a violation is suspension, no fine is payable in lieu of suspension.

(3) Signs provided by the division must be posted on all cash registers and entrances to the restricted area on days that alcohol sales are suspended because of violations of the act.

[15.10.61.8 NMAC - Rp, 15 10.61.8 NMAC, 4/25/2017; A, 5/30/2017]

15.10.61.9 ENHANCEMENT OF SCHEDULED PENALTIES: Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.

[15.10.61.9 NMAC - Rp, 15 10.61.9 NMAC, 4/25/2017]

15.10.61.10 ENHANCEMENT OF SCHEDULED PENALTIES FOR VIOLATIONS INVOLVING THE USE OF ALTERNATIVE FORMS OF ALCOHOL: In recognition of the heightened public policy concerns regarding the greater potential for abuse and greater need for deterrence, whenever a violation identified in this part involves the sale, service or consumption of alternative forms of alcohol, including but not limited to powdered, vaporized or freeze-dried alcohol, the penalty otherwise set forth in this part shall be enhanced up to the maximum allowed by the act.

[15.10.61.1 NMAC - N, 4/25/2017]

15.10.61.11 COMPROMISE:

A. Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such violation. An informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state.

B. When a citation is issued at the licensed premises, a copy of the citation may be provided to the licensee, or the resident agent, or given to an employee who indicates he is in charge, or, if no such employee is in charge, to any employee. Providing an employee with the citation shall be considered the same as giving it to the licensee. Citations may be mailed to the licensee.

C. A copy of the citation shall be filed in the division.

D. The fines and suspension imposed shall not exceed those which could be imposed after hearing.

E. Subject to 15.10.61.10 NMAC, any portion of the fine or penalties imposed may be suspended.

[15.10.61.11 NMAC - Rp, 15 10.61.10 NMAC, 4/25/2017]

HISTORY OF 15.1.61 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under:

ABC Regulation 6C-9, Penalty Compromise Regulation 6C-9, Interpreting and Exemplifying Section 60-6C-9 NMSA 1978, filed 8/13/1982;

ABC Regulation No. 6C-9, Penalty Compromise Regulation 6C-9, Interpreting and Exemplifying Section 60-6C-9 NMSA 1978, filed 4/19/1984;

ABC Regulation No. 6C-9(A), Penalty Compromise Regulation 6C-9(A), Interpreting and Exemplifying Section 60-6C-9 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD Regulation 6C-9, Compromise, filed 9/25/1990;

ABC Regulation No. 6C-1(3). (A), Public Nuisances Regulation 6C-1(3).(A), Interpreting and Exemplifying Section 60-6C-1(3) NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD 6C-1, Public Nuisances, filed 9/25/1990.

History of Repealed Material:

15.10.61 NMAC, Citation - Fines and Penalties, filed 9/15/2006 - Repealed effective 4/25/2017.

Other History:

AGD 6C-1, Public Nuisances (filed 9/25/1990) and AGD Regulation 6C-9, Compromise (filed 9/25/1990) were both renumbered, reformatted, amended and replaced by 15 NMAC 10.6.1, Citations - Fines and Penalties, effective 3/31/1997.

15 NMAC 10.6.1, Citations - Fines and Penalties, filed 3/14/1997 was renumbered, reformatted, amended and replaced by 15.10.61 NMAC, Citation - Fines and Penalties, effective 10/15/2006.

15.10.61 NMAC, Citations - Fines and Penalties (filed 9/15/2006) was replaced by 15.10.61 NMAC, Citation - Fines and Penalties, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 70 OPERATION AND PROFITING BY AUTHORIZED PERSONS AND ALTERNATING PROPRIETORSHIPS

15.10.70.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.70.1 NMAC - Rp, 15 NMAC 10.7.1, 4/25/2017]

15.10.70.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.10.70.2 NMAC - Rp, 15 NMAC 10.7.2, 4/25/2017]

15.10.70.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.70.3 NMAC - Rp, 15 NMAC 10.7.3, 4/25/2017]

15.10.70.4 DURATION: Permanent.
[15.10.70.4 NMAC - Rp, 15 NMAC 10.7.4, 4/25/2017]

15.10.70.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.10.70.5 NMAC - Rp, 15 NMAC 10.7.5, 4/25/2017]

15.10.70.6 OBJECTIVE: This rule is intended to establish standards by which licensees may sell alcoholic beverages under the act.
[15.10.70.6 NMAC - Rp, 15 NMAC 10.7.6, 4/25/2017]

15.10.70.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these regulations have the same meanings as set forth in the act.
[15.10.70.7 NMAC - Rp, 15 NMAC 10.7.7, 4/25/2017]

15.10.70.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:

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 [approved operator], or the employees of a third-party delivery licensee contracted with for delivery purposes.

(2) Sales of alcoholic beverages by [~~an approved operator~~] a licensee or lessee may not be combined with any sales of another person or entity that is not [~~an approved operator~~] the licensee or lessee. Nothing in this section shall prohibit the a licensee and a third-party delivery licensee from contracting for the delivery of alcoholic beverages to consumers.

B. Only [~~the~~] an approved operator shall directly profit from the sale of alcoholic beverages sold pursuant to a license. A person directly profits from the sale of alcoholic beverages in violation of this rule when any person other than [~~the~~] an approved operator receives any portion of the profits earned, or receipts, from the sale of alcoholic beverages, except for:

(1) the payment of rent for the licensed premises based in whole or in part on a percentage of the licensee's gross sales;

(2) the payment to employees of incentive compensation based upon a percentage of gross sales;

(3) revenues received by an affiliate of the licensee from the sale of products other than alcoholic beverages on the licensed premises;

(4) revenues split by a liquor licensee and its lessee pursuant to a hotel management agreement approved by the division, provided that operational control of the licensed premises remain at all times with the lessee and the split of revenue is reasonable; [~~or~~]

(5) such other reasonable splitting of revenues specifically approved by the director, who may require additional disclosures and sworn statements as condition for such approval; or



(6) such agreements reviewed and approved by the division in regards to licensees and third-party delivery licensees contracting for delivery services to consumers.

C. Except as provided in this part, it is a violation of the act for any licensee to divide, split, or in any way share the right to sell alcoholic beverages, with any person not named as a licensee on the license.

D. Upon 30 days' written notice, a licensee shall demonstrate compliance with this rule. Failure to demonstrate compliance will result in initiation of proceedings against the licensee by the director, pursuant to Section 60-6C-1 NMSA 1978 et seq. Evidence of compliance will be provided as follows:

(1) proof that all employees are paid by the approved operator or that the employees are providing such services as bona fide volunteers, consisting of copies of canceled paychecks or equivalent documents for the most recent three-month period; and

(2) proof that receipts of the licensed business are deposited directly into a bank account in the sole name of the approved operator, consisting of copies of bank records showing deposits and the name of the approved operator and signatories on the account; and

(3) proof of operation by the licensee or lessee, consisting of copies of all real estate lease agreements, concession agreements, management agreements, contracts for delivery or contracts of any kind to which the licensee or lessee is a party with other persons for operation or profit-sharing in the operation; and

(4) proof that receipts of the business are not shared with non-licensed parties, consisting of copies of all canceled checks for the most recent three-month period with explanations of payments to persons other than suppliers, the approved operator, or employees of the approved operator.

[15.10.70.8 NMAC - Rp, 15 NMAC 10.7.8, 4/25/2017]

15.10.70.9 EMPLOYMENT BY MULTIPLE LICENSEES:

A. No person shall receive valuable consideration from a manufacturer or wholesaler for services performed while working as an employee, contractor, or other agent for a holder of a retailer, dispenser, restaurant or club license.

B. Any person receiving valuable consideration as described in Subsection A of 15.10.70.9 NMAC or any person who knowingly provides such consideration, shall be in violation of these rules and subject to fines and penalties as provided in these rules. Such violations may also be considered by the division in the granting of applications pursuant to Subsection C of 15.11.21.15 NMAC, and the renewal of licenses pursuant to Paragraph (2) of Subsection B of 15.11.22.8 NMAC.

[15.10.70.9 NMAC - N, 4/25/2017]

15.10.70.10 ALTERNATING PROPRIETORSHIPS:

A. An "alternating proprietorship" is an arrangement in which two or more entities may alternate using a licensed premises, equipment and employees to manufacture alcoholic beverages. Alternating proprietorships allow existing, duly licensed New Mexico winegrowers, small brewers and craft distillers to use excess capacity and provide opportunity to begin on a small scale, without investing in premises and equipment.

B. Each licensee participating in an alternating proprietorship must separately manufacture alcoholic beverages, whereby each licensee's product must be separate and identifiable from the product of any other parties to the alternating proprietorship, including prior to fermentation, during fermentation, during cellar storage, and as finished product after production and before removal from the premises.

C. An alternating proprietorship may only occur between licensees of the same license type.

D. Filing of written agreement:

(1) Any bona fide alternating proprietorship between one or more duly licensed craft distillers, winegrowers or small brewers shall be documented through a written agreement signed by each licensee or its resident agent.

(2) The agreement shall quantify the extent to which the licensed premises, employees and equipment may be used by each duly-licensed licensee.

(3) All parties to the agreement shall furnish a true and correct copy to the division.

E. All alternating proprietorships must be approved in advance by the Division: Any determination pursuant to this section shall be interpreted consistent with the United State Code of Federal Regulations at Part 27, Section 19.693, Part 27, Section 25.52, and with all relevant United States alcohol and tobacco tax and trade bureau industry circulars.

F. All alternating proprietorships must be approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau prior to final approval by the division.

G. A small brewer, winegrower, or craft distiller license whose production plan wholly relies upon an alternating proprietorship shall not be entitled to any off-site premises as otherwise provided by the act.
[15.10.70.10 NMAC - N, 4/25/2017]

HISTORY OF 15.10.70 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 2 REQUIRED DOCUMENTS ON LICENSED PREMISES

15.11.2.1 ISSUING AGENCY: The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.2.1 NMAC - Rp, 15 NMAC 11.1.1.1, 4/25/2017]

15.11.2.2 SCOPE: This rule applies to all licensees and applicants for licensure under the act.
[15.11.2.2 NMAC - Rp, 15 NMAC 11.1.1.2, 4/25/2017]

15.11.2.3 AUTHORITY: Sections 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.2.3 NMAC - Rp, 15 NMAC 11.1.1.3, 4/25/2017]

15.11.2.4 DURATION: Permanent.
[15.11.2.4 NMAC - Rp, 15 NMAC 11.1.1.4, 4/25/2017]

15.11.2.5 EFFECTIVE DATE: ~~[April 25, 2017]~~ XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.2.5 NMAC - Rp, 15 NMAC 11.1.1.5, 4/25/2017]

15.11.2.6 OBJECTIVE: This rule is intended to establish requirements for licensees' display of all required documents pursuant to the act, and other information that shall be kept on all licensed premises to comply with the provisions of the act and its accompanying rules.
[15.11.2.6 NMAC - Rp, 15 NMAC 11.1.1.6, 4/25/2017]

15.11.2.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.
[15.11.2.7 NMAC - Rp, 15 NMAC 11.1.1.7, 4/25/2017]

15.11.2.8 DISPLAY OF LICENSE: The current liquor license shall be prominently displayed within the licensed premises so that it is in full public view at all times. A copy or scanned image or facsimile of the license may be displayed only for 30 days or until the original license is received by the licensee, whichever occurs first, provided that the copy or scanned image or facsimile is of the original, current and duly issued license.
[15.11.2.8 NMAC - Rp, 15 NMAC 11.1.1.8, 4/25/2017]

15.11.2.9 POSTERS:

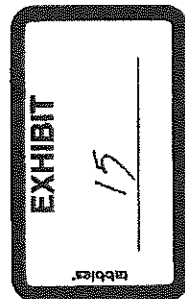
A. Licensees that sell alcoholic beverages directly to the public shall display the following posters in full public view within the licensed premises. The director will prescribe the forms and sizes of the posters except that the licensee may make the poster larger than what is prescribed. The director will make copies available to all licensees:

- (1) posters giving notice that the law prohibits the carrying of any operative firearm on a licensed premises, except where the licensed premises is subject to the concealed carry exception, the licensee may display a poster giving notice of the concealed carry exception, as long as the poster also gives notice that the law prohibits all other operative firearms on the licensed premises;
- (2) posters warning of the dangers of drinking alcoholic beverages during pregnancy; and
- (3) posters identifying all restricted areas of the licensed premises in which minors are prohibited, unless accompanied by a parent, adult spouse or legal guardian, except that such posters are not required for premises licensed as a restaurant serving beer and wine[~~and~~

~~(4) posters warning of the dangers of, and penalties for, driving while intoxicated].~~

B. Licensees may, with the director's prior approval, develop and use posters of their own design that contain the same information required in this sections. Any such posters shall be valid only if bearing the director's stamp of approval.

[15.11.2.9 NMAC - Rp, 15 NMAC 11.1.1.10, 4/25/2017]



15.11.2.10 FLOOR PLAN: All licensees and their employees shall have access on the licensed premises to a hard copy of the current floor plan approved by the division.
[15.11.2.10 NMAC - N, 4/25/2017]

15.11.2.11 STATUTES AND RULES: All licensees and their employees shall have access on the licensed premises to either a hard or electronic copy of the most current versions of the act and the rules promulgated thereunder. [Access to a computer larger than a cellular phone with internet capacity shall constitute compliance with this section.]
[15.11.2.11 NMAC - Rp, 15 NMAC 11.1.1.11, 4/25/2017]

15.11.2.12 INVOICES: All licensees shall keep on the licensed premises copies of all invoices received in the preceding two years from all suppliers of all inventory on the licensed premises. A licensee may maintain true and correct electronic copies of original invoices but shall make all documents or electronic copies immediately available and open for inspection during all usual business hours upon request of the division, the special investigations unit of the department of public safety or the taxation and revenue department.
[15.11.2.12 NMAC - Rp, 15 NMAC 11.1.1.12, 4/25/2017]

~~**15.11.2.13 SIGNS FOR DAYS WHEN SALES NOT PERMITTED:** All licensees will clearly mark alcoholic beverage display areas with signs that prominently read "no package alcoholic beverage sales permitted on Sunday" if the licensee does not have a Sunday sales permit or if Sunday package sales are not permitted in that local option district, or "no package alcoholic beverage sales permitted on Christmas Day" on the appropriate days.~~
~~[15.11.2.13 NMAC - Rp, 15 NMAC 11.1.1.13, 4/25/2017]]~~

15.11.2.14 SERVER CERTIFICATIONS: For all server certifications required pursuant to Section 60-6E-6 NMSA 1978 of the act, all licensees shall keep a current list of all such certifications, including server number and expiration date, available at the licensed premises in either hard or electronic copy to be made available upon request. In the event that proof of such server certification is only available as a temporary, written document, such temporary proof shall be available at the licensed premises in either a hard copy or as a scanned electronic copy to be made available upon request. The licensee or lessee, not any server, is responsible for compliance with this section.
[15.11.2.14 NMAC - N, 4/25/2017]

15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES: A licensee holding an alcoholic beverage delivery permit, or a third-party delivery license, must cause all delivery employees to have on their person, during delivery, the following:

- A. The original, or an electronic or physical copy, of the permittees alcoholic beverage delivery permit;
- B. A physical or electronic copy of the delivery personnel's server certification;
- C. A physical copy of the receipt printout accompanying all alcoholic beverages out for delivery; and
- D. Documentation, to be saved for a period of six months, containing the following information:
 - (1). The identification and age information for the customer who ordered and paid for the alcoholic beverages;
 - (2). The address alcoholic beverages are to be delivered to;
 - (3). The quantity and type of alcoholic beverage being delivered; and
 - (4). The time of alcoholic beverage delivery.

HISTORY OF 15.11.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this subpart was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 3A-2(C), Display of License Regulation 3A-2(C), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD Regulation 3A-2(C), Display of License, filed 9/25/1990;
ABC Regulation No. 3A-2(C), Display of License Regulation 3A-2(C), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD Regulation 3A-2(C), Display of License, filed 9/25/1990;

AGD Regulation 4B-5(A), Forms, filed 9/25/1990;
ABC Regulation No. 3A-2.(H), Firearm Poster Requirement Regulation 3A-2.(H), Interpreting and Exemplifying
Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD 3A-2(F), Firearm Poster Requirement, filed 9/25/1990; and
AGD Regulation 6B-2(A), License Application, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.1.1, Required Documents On Licensed Premises, filed 7/2/1999 - Repealed effective 4/25/2017.

Other History:

15 NMAC 11.1.1, Required Documents On Licensed Premises, filed 7/2/1999 was replaced by 15.11.2 NMAC,
Required Documents On Licensed Premises, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 20 LICENSES AND PERMITS – ALCOHOLIC BEVERAGE DELIVERY

15.11.20.1 ISSUING AGENCY: The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

15.11.20.2 SCOPE: These rules apply to all licensees under the New Mexico Liquor Control Act.

15.11.20.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

15.11.20.4 DURATION: Permanent.

15.11.20.5 EFFECTIVE DATE: XXX XX, 2021, unless a later date is cited at the end of a section.

15.11.20.6 OBJECTIVE: This rule is intended to establish standard procedures for obtaining and operating alcoholic beverage delivery permits and third-party alcohol delivery licenses.

15.11.20.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.

15.11.20.8 ALCOHOLIC BEVERAGE DELIVERY PERMIT: An alcoholic beverage delivery permit may be issued, at the discretion of the director, to the holder of a retailer's, dispenser's, craft distiller's, winegrower's, small brewer's, restaurant a, or restaurant b license upon submission of an application to the division.

A. For purposes of this section dispenser's licenses shall include dispenser's, inter-local dispenser's, canopy, and lottery licenses.

(1) Those licenses that no longer have package sales capabilities, for consumption off of the licensed premises, to be limited in alcoholic beverage quantities established in 15.11.20.10(B) and 15.11.20.10(C) NMAC.

(2) Nothing within these rules allows licensees to allow for to go sales of alcoholic beverages for consumption off of the licensed premises, if the license does not allow for package sales.

B. The holder of an alcoholic beverage delivery permit may do the following:

(1) Deliver alcoholic beverages only in unbroken packages or sealed growlers;

(2) Deliver alcoholic beverages only within the local option district and geographical boundaries of the county the licensee is located;

(3) Deliver alcoholic beverages only during the hours allowed by the Act, based on the license type; and

(4) Contract for the delivery of alcoholic beverages with the holder of a third-party delivery license issued in accordance with the act.

C. The holder of an alcoholic beverage delivery permit:

(1) Shall receive payment for alcoholic beverages only at the licensed premises of the licensee personally, telephonically, electronically, via website or application, or other internet platform;

(2) Shall not change the price charged for an alcoholic beverage because it was purchased for delivery, provided they may charge a separate delivery fee disclosed at the time of the purchase;

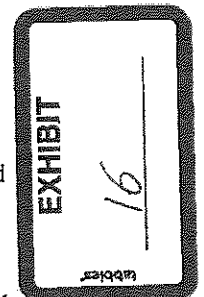
(3) Shall not deliver an alcoholic beverage to a business, a commercial establishment, a college or university, or a school campus;

(4) Shall obtain valid proof of the delivery recipient's identity and age and keep records of such in accordance with 15.11.2.15 NMAC;

(5) Shall not deliver alcoholic beverages to intoxicated persons or to anyone unable to demonstrate that they are 21 years of age or older; and

(6) Shall have only alcoholic beverages that have been purchased for delivery, in their vehicle, while transporting alcoholic beverages for delivery.

D. If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.



E. Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent these rules.

15.11.20.9 DELIVERY RESTRICTIONS AND REQUIREMENTS IN CLASS A COUNTIES:

A. The division shall follow the county classifications established by the local government division of the department of finance and administration.

B. Licensees otherwise qualified to be issued an alcoholic beverage delivery permit, with an indoor retail space greater than 10,000 square feet, located in a class A county shall:

(1) Use an identification verification system approved by the division. The system must have the capabilities to establish identification of the purchaser was checked and scanned for each delivery and store such informatio;

(2) Only sell for delivery beer and wine.

(3) Provide to the division proof of liquor liability endorsement in the amount of five million dollars (\$5,000,000) or greater; and

(4) Only utilize employees of the licensee for purposes of delivery of alcoholic beverages.

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 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 these rules.

15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE:

A. A person may be issued a third-party alcohol delivery license upon submission of a completed application or renewal application to the division, on a form to be prescribed by the director. Applications and renewal applications must be accompanied by:

(1) Documentation of delivery employees state issued server permits;

(2) Proof of general liability insurance coverage, providing coverage for employees and independent contractors of applicant, in an amount of one million dollars (\$1,000,000) or greater, per occurrence;

(3) Proof of applicant being authorized to do business in the state; and

(4) Copies of all contracts between applicant and licensees holding alcoholiv beverage delivery permits.

B. The holder of a third-party alcohol delivery license may:

(1) Contract with licensees issued an alcholic beverage delivery permit for the purpose of delivering alcoholic beverages to customers;

(2) Deliver alcoholic beverages, in accordance with the act and these rules, from a licensed premises of a licensee to customers.

(3) Have in their possession only alcoholic beverages purchased by a customer and received from a licensee's stock.

C. If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.

D. A third-party alcohol delivery licensee shall not:

(1) Share in the profits of the sale of alcholic beverages with a license;

(2) Buy, hold or deliver alcoholic beverages under its own license; or

(3) Assist licensees in the delivery of alcoholic beverages in violation of these rules.

HISTORY OF 15.11.20 NMAC:

History of Repealed Material:

NMAC History:

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 21 LICENSES AND PERMITS - APPLICATIONS

15.11.21.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.21.1 NMAC - Rp, 15 NMAC 11.2.1.1, 4/25/2017]

15.11.21.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.11.21.2 NMAC - Rp, 15 NMAC 11.2.1.2, 4/25/2017]

15.11.21.3 STATUTORY AUTHORITY: Sections 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.21.3 NMAC - Rp, 15 NMAC 11.2.1.3, 4/25/2017]

15.11.21.4 DURATION: Permanent.
[15.11.21.4 NMAC - Rp, 15 NMAC 11.2.1.4, 4/25/2017]

15.11.21.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.21.5 NMAC - Rp, 15 NMAC 11.2.1.5, 4/25/2017]

15.11.21.6 OBJECTIVE: This rule is intended to establish general standards for the application and issuance of licenses under the act.
[15.11.21.6 NMAC - Rp, 15 NMAC 11.2.1.6, 4/25/2017]

15.11.21.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.
[15.11.21.7 NMAC - Rp, 15 NMAC 11.2.1.7, 4/25/2017]

15.11.21.8 LICENSE APPLICATION:

A. The director is authorized to prescribe all forms called for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.

B. All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown.

C. All applications for liquor licenses shall be made on the forms prescribed by the director whether filed electronically, by mail or in person.

D. All substantially complete applications received shall be date and time stamped by the division. Applications that are not substantially complete will not be processed and returned to the applicant with a notice of all deficiencies.

[15.11.21.8 NMAC - Rp, 15 NMAC 11.2.1.8, 4/25/2017]

15.11.21.9 RESIDENT AGENT DESIGNATION:

A. Except for sole proprietors, every licensee shall designate a "resident agent" to accept service of all orders and notices of the division. The resident agent must have:

- (1) no conviction for:
 - (a) any felony in any jurisdiction, or
 - (b) two convictions for violations of the act within any twelve-month period;
- (2) limited power of attorney and authority to bind the applicant to matters related to liquor sales and operations;
- (3) authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and
- (4) residency in the state of New Mexico.



B. To designate a resident agent, a licensee shall file, with the division, an application on division forms. The designation of resident agent may be terminated upon written notification to the department by either the licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent. Any application filed more than 10 days from the date of termination of the resident agent shall be accompanied by an additional fee as set forth at 15.11.26.9 NMAC.

C. A licensee may designate as many resident agents as it deems necessary for the operation of the business.

D. The application fee for designation of each resident agent shall be as set forth at 15.11.26.9 NMAC.

E. The designation of a resident agent shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.
[15.11.21.9 NMAC - Rp, 15 NMAC 11.2.1.9, 4/25/2017]

15.11.21.10 DISCLOSURE OF OWNERSHIP:

A. Applicants must fully disclose all ownership interest in the liquor license, as required by Subsection A of Section 60-6B-2 NMSA, upon application for a liquor license, or for transfer of ownership of a liquor license, or for change in structure, or for lease of a license, by filing an application on forms prescribed by the director.

B. The following shall be fully disclosed in writing to the division:

(1) if the licensee is a corporation or limited liability company, the principal officers, directors, and each stockholder known to the corporation as owning more than ten percent of the stock in the corporation, or the manager or members owning more than ten percent of the membership interests in the limited liability company;

(2) if the licensee is a trust, the trustee and any persons entitled to receive regular and substantial distributions of principal and income or benefit from the trust. The director may request a copy of the trust agreement for review, but need not make the trust agreement part of the application;

(3) if the licensee is an association, all principal officers, and directors;

(4) if the licensee is a subsidiary, all principal officers, directors and stockholders of the parent; however, in the case of a publicly traded corporation, only the names and addresses of those stockholders known to the corporation to own ten percent or more of such securities need be disclosed;

(5) if the licensee is a partnership or joint venture, all of the general partners, limited partners or joint venturers entitled to ten percent or more of the profits earned or other income paid by the partnership;

(6) if the parent company, general partner, limited partner or joint venturer of any licensee is itself a corporation, limited liability company, trust, association, subsidiary, partnership or joint venture, then all of the information required shall be disclosed for the entity as if it were itself a licensee, so that full disclosure of ultimate ownership is achieved;

(7) if one person owns interests in a corporation, limited liability company, partnership, trust, joint venture or as an individual, in any combination, that add up to ten percent or more of the total ownership of the license; and

(8) The director may require disclosure of additional information to assure full disclosure of the applicant's structure and financial responsibility, including structure and financial arrangements enabling actual control and profiting by ineligible persons or entities.

C. The director may determine that any or all of the documents required in Subsection B of 15.11.21.10 NMAC are confidential, and shall be returned to the applicant after sufficient division review and not made a part of the application file. The application file shall note such determinations.

D. Percent ownership in stock of a corporation or other entity shall be determined based on the percent ownership in the total amount of stock that has been issued, excluding treasury stock issued to the corporation or other entity.

E. If any person or entity holding an office or an interest in the license that is required to be disclosed has been convicted of a felony in any jurisdiction, it shall be disclosed.

F. If there is a change in any of the information required to be disclosed by statute or these rules, the licensee shall provide the necessary information to the division within 30 days of the change unless earlier disclosure or approval is required by the act or these rules.

[15.11.21.10 NMAC - Rp, 15 NMAC 11.2.1.10, 4/25/2017]

15.11.21.11 FINGERPRINTS:

A. Applicants shall provide fingerprints in compliance with Subsection B of Section 60-6B-2 NMSA 1978.

B. Unless otherwise determined by the director, a licensee is not required to submit new fingerprints when an application is filed for any of the following reasons:

- (1) to add a licensee's spouse to the license; however, the spouse must submit fingerprints;
- (2) when a husband and wife are the licensees, to transfer the ownership interest of a deceased licensee to his or her surviving spouse; however, if any part of the interest of the deceased spouse goes to any person other than the surviving spouse, that person must submit fingerprints; or
- (3) by a licensee with no prior arrest record to obtain an ownership interest in an additional license or to lease another license.

C. Fingerprints shall be taken:

- (1) under the supervision of, and certified by a New Mexico state police officer, a county sheriff or a municipal chief of police, or, if a nonresident, under the supervision and certification of comparable officers in the applicant's state of residence; or
- (2) in the discretion of the division, by a private agency qualified to take and certify fingerprints, provided the private agency submits to the division written authorization from any of the agencies referenced in Paragraph (1) of Subsection C of 15.11.21.11 NMAC.

D. Any applicant required to submit fingerprints must separately submit a completed personal data affidavit page of the application for liquor license, current within one year from the date the application is submitted.

E. If the applicant is a publicly traded corporation, no fingerprints or affidavits shall be required, and no further disclosure shall be required beyond the requirements of Subsection B of 15.11.21.10 NMAC.

F. Where each applicant required to be fingerprinted by these rules submits a sworn and notarized affidavit stating that he or she has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for 90 days may be issued if the applicant satisfies all other application requirements.

G. An applicant who files a false affidavit shall be denied a license, and any false affidavit is grounds for revocation of a license.

[15.11.21.11 NMAC - Rp, 15 NMAC 11.2.1.11, 4/25/2017]

15.11.21.12 LICENSED PREMISES:

A. The applicant shall provide the division with proof of the applicant's right to sole occupancy of the real property or the portion of the real property where the proposed license is to be operated in the form of a valid lease, deed, management agreement, or an equivalent legal document in the name of the applicant. All documents submitted must be fully executed and dated.

B. Upon request, the applicant shall provide the division with proof of the current owner of record for the real property or portion thereof.

C. Floor plans for the controlled access area within the licensed premises must be provided showing the entrances and exits, kitchen, storage, sale, service and consumption areas. All areas must be clearly labeled on 8 and ½ by 11 inch paper, either hand-drawn or professionally rendered.

D. Floor plans must show:

- (1) every level of the controlled access area of a licensed premises including the square footage for the [~~premises~~] controlled access area of the licensed premises as a whole, and separately for each level and for any patio;
- (2) all clearly labeled areas where alcoholic beverages are sold, served or consumed;
- (3) an exterior footprint of the licensed premises, including any patios, fences, walls, and dimensions;
- (4) if the applicant is a hotel whose entire establishment will be the licensed premises, floor plans must be submitted for each floor where public rooms in which alcoholic beverages will be sold, served or consumed are located, clearly designating the public rooms;
- (5) the interior and exterior premises through photographic pictures, if requested by the director; and
- (6) orientation of the premises relative to the nearest streets and to at least one cardinal direction.

E. In the event that the premises are proposed for a structure to be built, the applicant shall provide sufficient architectural plans that reflect the exact location and layout of the [~~structure to be built~~] structures and patios to serve as the controlled access area of the licensed premises.

[15.11.21.12 NMAC - Rp, 15 NMAC 11.2.1.12, 4/25/2017]

15.11.21.13 LEASES OF LIQUOR LICENSES:

A. A person who operates a liquor license under a lease agreement with the licensee must be a licensed "agent lessee". The agent lessee compensates the licensee for use of the license and is entitled to all profits, and is responsible for all losses, from the operation of the license.

B. To designate an agent lessee there shall be filed with the division such fees, forms, documents and information as are required by the division. The lease agreement must contain provisions that the license is leased in its entirety.

C. The designation of an agent lessee shall not require posting of the licensed premises or a hearing by the state or local governing body, if the license to be leased is located at the latest approved licensed premises for the license.

D. The designation of agent lessee may be terminated by mutual written agreement between the parties, by court order or in accordance with terms of the lease agreement.

E. The division will not approve the designation of any person as agent lessee who does not possess the same qualifications required of persons to obtain a license under the act.

F. An application fee of two hundred fifty dollars (\$250) will be paid for each designation of agent lessee.

G. The designation of an agent lessee shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.

H. A lease of a license will not be approved when the licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act issued more than three months prior to the date of the lease application are unresolved at the time of filing the lease application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

[15.11.21.13 NMAC - Rp, 15 NMAC 11.2.1.13 4/25/2017]

15.11.21.14 COMPLIANCE WITH FEDERAL LAW

Applicants, including but not limited to, applicants to either manufacture or sell alcohol as a wholesaler, must submit proof of compliance with all applicable federal laws pertaining to liquor licensure, including, but not limited to, all necessary permits approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau.

[15.11.21.14 NMAC - N, 4/25/2017]

15.11.21.15 GROUNDS FOR DENIAL OF LICENSES: The director may deny any application on any of the following grounds:

A. failure to satisfy any of the applicable requirements of this part upon final review;

B. any fraudulent statement or evidence submitted in connection with an application;

C. upon finding that prior violations demonstrate a pattern or practice of violations contrary to public health and safety and the purposes of the act;

D. if granting of an application would result in a person holding a ten percent or more interest in a license when such person would not satisfy the requirements of Section 60-6B-1 NMSA 1978;

E. if granting the application is contrary to the public health, safety, or morals; or

F. if the application does not include all completed pages of the required form, all necessary fees, corporate documents, conveyance instruments, fingerprint cards, zoning clearances, and affidavits regarding distances from a church or school that will require waivers from the local governing body and waivers.

[15.11.21.15 NMAC - N, 4/25/2017; A, 5/30/2017]

HISTORY OF 15.11.21 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 3A-2.(A), Agency Responsibility of License Regulation 3A-2.(A), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981 and 1984 Supp.), filed 1/18/1985;

AGD 3A-2(A), Agency Responsibility of License, filed 9/25/1990;

ABC Regulation No. 6B-2.(C), Completion of Application Regulation 6B-2.(C), Interpreting and Exemplifying Section 60-6B-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD 6B-2(B), Completion of Application, filed 9/25/90; AGD 6B-2(F), Disclosure of Ownership, filed 9/25/1990; AGD 4B-5(A), Forms, filed 9/25/1990.

History of Repealed Material:

AGD Regulation 6B-2(D), Random Drawing, filed with the State Records Center and Archives on 9/25/1990, has been repealed.

15 NMAC 11.2.1, Licenses and Permits - Applications, filed 3/14/1997 - Repealed effective 4/25/2017.

Other History:

15 NMAC, 11.2.1, Licenses and Permits - Applications, filed 3/14/1997 was replaced by 15.11.21 NMAC, Licenses and Permits - Applications, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 22 LICENSES AND PERMITS - RENEWAL AND SUSPENSION

15.11.22.1 ISSUING AGENCY: The ~~[division]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.22.1 NMAC - Rp, 15 NMAC 11.2.2.1, 4/25/2017]

15.11.22.2 SCOPE: These rules apply to all licensees under the act.

[15.11.22.2 NMAC - Rp, 15 NMAC 11.2.2.2, 4/25/2017]

15.11.22.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.22.3 NMAC - Rp, 15 NMAC 11.2.2.3, 4/25/2017]

15.11.22.4 DURATION: Permanent.

[15.11.22.4 NMAC - Rp, 15 NMAC 11.2.2.4, 4/25/2017]

15.11.22.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.

[15.11.22.5 NMAC - Rp, 15 NMAC 11.2.2.5, 4/25/2017]

15.11.22.6 OBJECTIVE: These rules are intended to establish standards for the renewal and suspension of licenses issued under the act.

[15.11.22.6 NMAC - Rp, 15 NMAC 11.2.2.6, 4/25/2017]

15.11.22.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

[15.11.22.7 NMAC - Rp, 15 NMAC 11.2.2.7, 4/25/2017]

15.11.22.8 RENEWAL OF LICENSE:

A. A complete renewal application, including a current and accurate list of servers and the payment of all applicable fees for renewal, shall be filed with the division as follows:

(1) Retailer's, dispenser's and direct ship license renewal applications must be postmarked or filed in person with the division on or before April 1 of each year.

(2) Wholesaler's, manufacturer's, restaurant and club license renewal applications must be postmarked or filed in person with the division on or before August 1 of each year.

(3) Non-resident licenses and common carrier registrations must be postmarked or filed in person with the division on or before April 1 every third year.

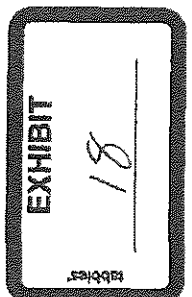
(4) All other licenses, including but not limited to, limited wine and beer wholesaler's, wine bottler's, public service, governmental, winegrower's, wine blender's, brandy manufacturer's, wine exporter's, small brewer's, beer bottler's, craft distiller, third-party delivery and wine wholesaler's license renewal applications must be postmarked or filed in person with the division on or before December 1 of each year that the license is up for renewal.

B. A renewed license will not be issued in the situations listed in Paragraphs (1) through (6), below:

(1) The licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license.

(2) If citations for violations of the act issued more than three months prior to the filing date for renewal applications are unresolved at the time of filing the renewal application, unless the licensee and the division are involved in a formal administrative or judicial resolution process; in such event, the division shall issue a temporary license until the citation is fully adjudicated.

(3) For non-resident licensees and every wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler, failure to file duplicate invoices with the division that satisfy the requirements of Subsection D of Section 60-6A-7 NMSA 1978. The director may waive this renewal condition. To



facilitate compliance, the division shall maintain an electronic mail address identified on a website maintained by the division where licensees may file such invoices.

(4) For non-resident licensees, failure to file certificates of label approval as required under federal law. The director may waive this renewal condition. To verify compliance, division staff may conduct regular searches of certificates filed with private entities that maintain databases searchable via the internet.

(5) any material false statement or concealment of any material facts on the renewal application, or

(6) any other good cause, as determined by the director based upon substantial evidence.

C. All licensees who fail to renew their licenses or who are not issued a renewed license shall suspend all alcoholic beverage operations until such time as a renewed license is issued and displayed on the licensed premises. A temporary suspension must be obtained if the license ceases to operate for more than 10 consecutive days.

D. A license that is in litigation or bankruptcy at the time of renewal shall be renewed in the same manner as other licenses. Licenses shall be renewed in the name of the licensee shown on division records, regardless of who pays the renewal fee.

E. Any licensee that fails to apply for renewal of its license as required by the act and this rule will be subject to the fines and penalties set forth in 15.10.61 NMAC.

F. The licensee shall provide the division with a current floor plan of the licensed premises for approval pursuant to Subsection D of 15.11.21.12 NMAC within 30 days of the director's request.
[15.11.22.8 NMAC - Rp, 15 NMAC 11.2.2.8, 4/25/2017]

15.11.22.9 LATE RENEWAL OF LICENSE:

A. Any licensee who fails to submit a properly completed renewal application, including all applicable fees, by the renewal deadline must pay a late renewal fee in the amount of three hundred fifty dollars (\$350) plus ten dollars (\$10) per day for each additional day the renewal application is late.

B. The division may waive late fees if the licensee shows good cause for not filing a timely renewal application, taking into consideration hardship to the licensee, and whether the licensee filed a late renewal application the preceding five years. Except for licenses transferable under the act, including retailer and dispenser licenses, any license not renewed shall be subject to cancellation and shall not be reinstated, unless the renewal application is filed with the division within 12 months of the expiration date of the license. All applicable filing fees, taxes charged against the license, and other fees owed to the state of New Mexico must be paid and all citations must be resolved prior to a license being reinstated, unless the licensee and the division are involved in a formal administrative or judicial resolution process. A licensee who fails to get its license reinstated following expiration may apply for a new license by filing an application with the division.
[15.11.22.9 NMAC - Rp, 15 NMAC 11.2.2.9, 4/25/2017]

15.11.22.10 SUSPENSION:

A. Upon application to the division, licenses may be temporarily suspended from operation as provided in the act for up to one year at a time.

B. All applications for a temporary suspension from the operation of the liquor license, together with a filing fee of twenty dollars (\$20), must be filed with the division upon the cessation of business for more than 10 consecutive days. Any application for suspension filed after the license has ceased operation for more than 10 days or after the expiration of a prior approved suspension, shall pay an additional flat fee of fifty dollars (\$50).

C. No licensee shall resume operations prior to the date granted by the director as the ending day of suspension, without prior written notice.

D. A temporary suspension may be extended beyond one year upon separate application of the licensee at the discretion of the director if good cause is shown.

E. A license that is temporarily suspended under this subpart shall be considered to be engaged in business for the duration of such suspension for purposes of Section 60-6B-7, NMSA 1978.

F. A license in suspension remains subject to all renewal requirements.
[15.11.22.10 NMAC - Rp, 15 NMAC 11.2.2.10, 4/25/2017]

HISTORY OF 15.11.22 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 6B-5(A), Renewals of Licenses Regulation 6B-5(A), Interpreting and Exemplifying Section 60-6B-5 NMSA 1978 (1981-1984 Supp.), filed 11/4-1985;
ABC Regulation No. 6B-5(B), Renewal of Licenses Subject to Litigation Regulation 6B-5(B), Interpreting and Exemplifying Section 60-6B-5 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD Regulation 6B-5, Renewals of Licenses, filed 9/25/1990; and
AGD Regulation 6B-7, Temporary Suspension, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.2, Licenses and Permits - Renewal and Suspension, filed 3/4/1997 - Repealed effective 4/25/2017.

Other History:

15 NMAC 11.2.2, Licenses - Permits - Renewal and Suspension, filed 3/14/1997 was replaced by 15.11.22 NMAC, Licenses - Permits - Renewal and Suspension, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 23 LICENSES AND PERMITS – CHANGE IN LICENSEE

15.11.23.1 ISSUING AGENCY: The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.23.1 NMAC - Rp, 15 NMAC 11.2.3.1, 4/25/2017]

15.11.23.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act, and to persons who obtain possession of a liquor license through death, foreclosure or bankruptcy.
[15.11.23.2 NMAC - Rp, 15 NMAC 11.2.3.2, 4/25/2017]

15.11.23.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.23.3 NMAC - Rp, 15 NMAC 11.2.3.3, 4/25/2017]

15.11.23.4 DURATION: Permanent.
[15.11.23.4 NMAC - Rp, 15 NMAC 11.2.3.4, 4/25/2017]

15.11.23.5 EFFECTIVE DATE: ~~[April 25, 2017]~~ XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.23.5 NMAC - Rp, 15 NMAC 11.2.3.5, 4/25/2017]

15.11.23.6 OBJECTIVE: This rule is intended to establish criteria and procedures for reporting changes in ownership, structure, or name of a licensee, including changes or transfers resulting from death, foreclosure or bankruptcy of a licensee, and transfers within a local option district.
[15.11.23.6 NMAC - Rp, 15 NMAC 11.2.3.6, 4/25/2017]

15.11.23.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule has the same meanings as set forth in the act.
[15.11.23.7 NMAC - Rp, 15 NMAC 11.2.3.7, 4/25/2017]

15.11.23.8 CHANGE OF OWNERSHIP:

A. All licensees must notify the division of any reportable change of ownership of the licensee or agent lessee by filing an application for change in ownership with the division, together with the filing fee shown on the fee schedule of these rules. The division shall determine whether the reportable change of ownership requires an application for change in ownership or an application for change in structure.

B. A reportable change of ownership in a transferrable license arises when any of the following events occurs since the last application was filed with the division:

(1) if the licensee is a corporation: when a total of ten percent or more of its stock is transferred, when an existing stockholder previously not disclosed, pursuant to Section 60-6B-2 of the act, now holds ten percent or more stock in licensee or when there is a merger or consolidation of the licensee with another entity;

(2) if the licensee is a limited liability company: when ten percent or more of the membership interests are transferred, when an existing member previously not disclosed, pursuant to Section 60-6B-2 of the act, now holds ten percent or more of the membership interest in licensee or when there is a merger or consolidation of the licensee with another entity;

(3) if the licensee is a general partnership: when there is any change or removal of any general partners;

(4) if the licensee is a limited partnership: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;

(5) if the licensee is a trust: when there is any change in the trustees or beneficiaries; or

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest



through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

[15.11.23.8 NMAC - Rp, 15 NMAC 11.2.3.8, 4/25/2017]

15.11.23.9 REPORTABLE CHANGE IN STRUCTURE:

A. All licensees must notify the division of reportable changes in the structure of the licensee by filing an application with the division, together with the filing fee shown on the fee schedule of these rules.

B. A change in structure arises when the persons or entities with ultimate ownership interests in a license do not change, but the means by which they exercise control will change. A reportable change in structure is limited to any of the following events:

(1) any change of manager;

(2) any change in a principal officer or directors of a licensee that is a corporation or limited liability company;

(3) any change in the legal entity under which the licensee operates, for example, an individual licensee changing to a corporation which is wholly-owned by the same licensee or between corporate entities wholly owned by the same licensee;

(4) any change in general partners, or in limited partners who already own ten percent or more, of a partnership;

(5) any change in ownership between the shareholders who continue to own ten percent or more of any corporate entity;

(6) a change in subsidiary ownership within the same parent company; [øø]

(7) any change in the trustee or beneficiary of a trust who has control over trust property and income or receives substantial and regular distributions from the trust; or

(8) a manager, principal officer or director, shareholders or partners appoint a power of attorney in relation to the license.

C. A reportable change of structure required by this section does not require a hearing by the division or by the local governing body. A reportable change of structure may require compliance with Section 60-6B-2 of the act.

D. The division must be notified within 30 days of a reportable change in structure by filing application for change of structure and providing all documents and information the division deems necessary to ensure full disclosure and qualification of all persons and entities.

[15.11.23.9 NMAC - N, 4/25/2017]

15.11.23.10 PROHIBITED CHANGES IN OWNERSHIP OR STRUCTURE:

A. A person may not hold a ten percent or more interest in a license when such person would not satisfy the requirements of Sections 60-6B-1 or 60-6B-1.1 NMSA 1978.

B. A noncitizen may hold an interest in a license, subject to other qualifications provided in the act and these rules, unless the director determines that holding such interest in a license would be contrary to the public health, safety and morals of the state, or any community therein.

C. This rule does not authorize the transfer of any stock or other ownership interest of any licensee whose license is not otherwise transferable under the provisions of the act.

D. The director, upon notification of any change in ownership or structure, may require any entity or person who has obtained an interest in any license, or other entity, to complete and provide all documents and information the director deems necessary to ensure full disclosure and qualification of all persons and entities.

E. No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application.

[15.11.23.10 NMAC - N, 4/25/2017]

15.11.23.11 CORPORATION NAME CHANGE; BUSINESS NAME CHANGE:

A. A licensee that is a corporation that changes the name of the corporation must file a written notification with the division, together with a fee of fifty dollars (\$50). The licensee must also file with the division a copy of the certificate of the amended articles of incorporation issued by the state in which the corporation was formed reflecting the name change. The name change must also be registered with the state of New Mexico.

B. Any licensee that changes the doing business name under which it operates a liquor license must file an application for change of DBA ("doing business as") name with the division together with the application filing fee.

C. If the division deems the name change acceptable, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued.

D. Upon receipt of the license reflecting the new name, the licensee shall return the old license to the division.

[15.11.23.11 NMAC - Rp, 15 NMAC 11.2.3.9, 4/25/2017]

15.11.23.12 TRANSFER OR CHANGE OF OWNERSHIP UPON DEATH, FORECLOSURE, OR BANKRUPTCY:

A. Dispenser's licenses and retailer's licenses may be transferred as personal property upon attachment, execution, repossession by a secured party or lien holder, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee.

B. Any receiver, trustee, conservator, personal representative, special master or other person who obtains control over a license, shall notify the division within 30 days of his or her appointment by filing an application including fees and providing the division with all relevant documents relating to the appointment, which may include but not be limited to, death certificates, wills, and court orders.

C. The division will presume that such person or entity will intend to operate said license if the license is not placed into voluntary suspension pursuant to Section 60-6B-7 NMSA 1978 within 30 days of the event that resulted in possession, except in cases where the person or entity is:

- (1) a special master appointed by a court; or
- (2) a financial institution.

D. Any subsequent transfer by a person who obtains possession of a license because of circumstances described in this section shall be subject to all provisions of the act relating to the transfer of licenses.

E. No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application.

[15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.10, 4/25/2017]

15.11.23.13 SERVER REPORTS: Licensees must submit reports quarterly to the department listing all servers employed by the licensee in the previous quarter.

[15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.11, 4/25/2017]

HISTORY OF 15.11.23 NMAC:

Pre-NMAC History: The material in this subpart was derived from that previously filed with the State Records Center and Archives under:

AGD Regulation 6B-6(A), Change of Ownership of Corporate License, filed 9/25/1990;
AGD Regulation 6B-6(B), Change of Ownership of Limited Partnership, filed 9/25/1990;
AGD Regulation 6B-6(C), Change of Ownership, filed 9/25/1990; and
AGD Regulation 6B-6(D), Corporation Name Change, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.3, Licenses And Permits - Change in Licensee, filed 3/14/1997 - Repealed effective 4/25/2017.

Other History:

15 NMAC 11.2.3, Licenses And Permits - Change in Licensee, filed 3/14/1997 was replaced by 15.11.23 NMAC, Licenses And Permits - Change in Licensee, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 24 LICENSES AND PERMITS - RESTAURANT LICENSE

15.11.24.1 ISSUING AGENCY: The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.24.1 NMAC - Rp, 15 NMAC 11.2.4.1, 4/25/2017]

15.11.24.2 SCOPE: These rules apply to all restaurant licensees and applicants for restaurant licensure under the act.
[15.11.24.2 NMAC - Rp, 15 NMAC 11.2.4.2, 4/25/2017]

15.11.24.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.24.3 NMAC - Rp, 15 NMAC 11.2.4.3, 4/25/2017]

15.11.24.4 DURATION: Permanent.
[15.11.24.4 NMAC - Rp, 15 NMAC 11.2.4.4, 4/25/2017]

15.11.24.5 EFFECTIVE DATE: ~~[April 25, 2017]~~ XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.24.5 NMAC - Rp, 15 NMAC 11.2.4.5, 4/25/2017]

15.11.24.6 OBJECTIVE: These rules are intended to establish additional standards applicable to persons obtaining restaurant licenses under the act.
[15.11.24.6 NMAC - Rp, 15 NMAC 11.2.4.6, 4/25/2017]

15.11.24.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.11.24.7 NMAC - Rp, 15 NMAC 11.2.4.7, 4/25/2017]

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.

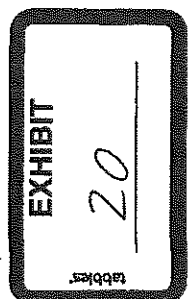
C. [A] All restaurant [licensee is] licensees are prohibited from serving alcoholic beverages after the restaurant ceases the sale of food or 11:00 p.m., whichever is earlier.

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 spirituous 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.
[15.11.24.8 NMAC - N, 4/25/2017]

15.11.24.9 APPLICATION FOR ALL RESTAURANT LICENSE TYPES: An applicant for [a] any restaurant license shall satisfy the director that the applicant is a restaurant as defined in these rules and its primary purpose is not the sale or service of alcohol, by submitting the following:



A. Documentation showing that the applicant holds a valid food service establishment permit, and has a dining room and a kitchen for preparation of food for on premises consumption. Documentation shall include photos of kitchen equipment.

B. A menu showing that the food items available are not fast foods, consistent with the definition of a restaurant as defined in these rules. The menu must contain entrees that are available during all usual and customary hours of operation, and identify the hours of operation.

C. A detailed floor plan and photos of the proposed licensed premises that depicts and labels all areas of the restaurant including, but not limited to the kitchen, dining, storage and patio areas. Outdoor patios must be enclosed by a fence or wall to physically separate the outdoor portion of the ~~[licensed premises]~~ controlled access area from the surrounding area. The enclosure must enclose the majority of the outdoor patio, but may have a small opening or a gate to allow patrons to enter and exit, unless the director finds good cause to require the patio to be completely enclosed or to waive this requirement subject to any necessary restrictions where the outdoor patio areas are sited within a licensed premise comprised of areas and facilities, provided that the totality of the controlled access area of the licensed premise is physically or otherwise appropriately separated from the surrounding areas. The enclosure for an outdoor area does not have to be permanent, but the enclosure must be erected any time alcoholic beverages are being served to patrons seated in the outdoor patio.

D. 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; and.

E. All areas of the licensed premises must have food service as the primary commercial purpose.
[15.11.24.9 NMAC - N, 4/25/2017]

15.11.24.10 REQUIREMENTS FOR RENEWAL:

A. In addition to any applicable requirements in 15.11.21 NMAC, the director shall condition renewal of [a] restaurant license upon a requirement that at least sixty percent of the preceding year's gross receipts were derived from the sale of food and submission of documentation to that effect.

B. For annual renewal, a licensee shall submit a signed, notarized affidavit showing the total gross receipts, the gross receipts from the sale of food and the gross receipts from the sale of alcoholic beverages.

C. The director may require additional documentation, including, but not limited to, sales invoices and filings with the New Mexico taxation and revenue department, and may inspect the financial records of the licensee that relate to the operation of the restaurant.

[15.11.24.10 NMAC - N, 4/25/2017]

HISTORY OF 15.11.24 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 6A-4, Restaurant License Regulation 6A-4, Interpreting and Exemplifying Section 60-6A-4 NMSA 1978 (1981 Supp.), filed 12/3/1981;

ABC Regulation No. 6A-4(A), Restaurant License Regulation 6A-4(A), Interpreting and Exemplifying Section 60-6A-4 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; and

AGD 6A-4, Restaurant License, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.4 Licenses And Permits - Restaurant License, filed 3/14/1997 - Repealed effective 4/25/2017.

Other History:

15 NMAC 11.2.4, Licenses And Permits – Restaurant License, filed 3/14/1997 was replaced by 15.11.24 NMAC, Licenses And Permits – Restaurant License, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 25 LICENSES AND PERMITS - SPECIAL DISPENSER AND PUBLIC CELEBRATION
PERMITS

15.11.25.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.25.1 NMAC - Rp, 15 NMAC 11.2.5.1, 4/25/2017]

15.11.25.2 SCOPE: These rules apply to all licensees under the New Mexico Liquor Control Act.
[15.11.25.2 NMAC - Rp, 15 NMAC 11.2.5.2, 4/25/2017]

15.11.25.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.25.3 NMAC - Rp, 15 NMAC 11.2.5.3, 4/25/2017]

15.11.25.4 DURATION: Permanent.
[15.11.25.4 NMAC - Rp, 15 NMAC 11.2.5.4, 4/25/2017]

15.11.25.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.25.5 NMAC - Rp, 15 NMAC 11.2.5.5, 4/25/2017]

15.11.25.6 OBJECTIVE: This rule is intended to establish standard procedures for obtaining and operating special dispensers' permits and public or private celebration permits.
[15.11.25.6 NMAC - Rp, 15 NMAC 11.2.5.6, 4/25/2017; A, 5/30/2017]

15.11.25.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.
[15.11.25.7 NMAC - Rp, 15 NMAC 11.2.5.7, 4/25/2017]

15.11.25.8 SPECIAL DISPENSER'S PERMIT:

A. A special dispenser's permit may be issued, at the discretion of the director, to the holder of a dispenser's, rural dispenser's, interlocal dispenser's, lottery, or canopy license which is not in suspension for any reason on application submitted to the division at least ten days prior to the event.

(1) Permits for applications received less than ten days prior to June 30, for events to be held after July 1, will not be issued until after July 1 to ensure that the license has been renewed.

(2) Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

(3) All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

(4) No permit shall be issued for more than twelve hours on any single day.

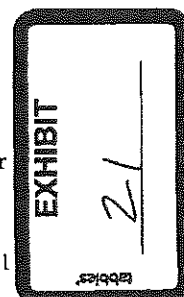
B. For an event in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted, the application is limited to sales and service of beer and wine, and must be accompanied by a grant of concession from the body in charge of the public celebration or catered event after a resolution by the local option district pursuant to Section 60-6A-12 NMSA 1978.

C. The application for a special dispenser's permit must be accompanied by written permission from the governing body of the local option district where the public or private event is held.

D. The application must contain a floor plan of the location of the celebration or event that is compliant with Subsections C and D of 15.11.21.12 NMAC.

E. Special dispenser's permits will not be issued for more than three consecutive days, unless the director shall find good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than twelve hours on a single day.

F. The application shall contain a statement of the number of people expected to consume alcoholic beverages and the number, placement and assigned duties of security personnel to ensure compliance with the liquor



control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

G. The licensee must be the holder of a valid dispenser's, rural dispenser's, interlocal dispenser's, lottery, or canopy license, and authorized to sell or serve alcoholic beverages in the local option district where the public or private event to be catered is to be held.

H. No alcoholic beverages shall be sold or served in unbroken packages or for consumption off the area authorized by the special dispenser's permit.

I. Special dispenser's permits shall not be issued for an existing licensed premises unless the license on the licensed premises is in voluntary suspension or the director is satisfied the portion of the licensed premises covered by the special dispenser's permit can be separated to clearly identify and provide for two separate operations.

J. Special dispenser's permits shall not be issued to the holder of a rural dispenser's license for a function or event which is located within 10 miles of another licensed premises.

K. A copy of the approved special dispenser's permit and the posters required by 15 11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises, together with a current list of servers.

[15.11.25.8 NMAC - Rp, 15 NMAC 11.2.5.8, 4/25/2017]

15.11.25.9 [RESERVED] SMALL MANUFACTURER'S PRIVATE CELEBRATION PERMITS:

A. A small brewer, winegrower or craft distiller may apply for a private celebration permit for a private event, in which the organizers of the event wish for alcoholic beverages to be sold, served, and consumed by guests, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

(1) Permits for applications received less than seven days prior to February 28th for events to held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

(2) Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

(3) All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

B. The application for a private celebration permit must be accompanied by written permission from the governing body of the local option district where the private celebration is held.

C. The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit photographs or electronic images of the proposed location.

D. Private celebration permits will not be issued for more than three consecutive days, unless the director shall find good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

E. The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

F. Private celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

H. A copy of the private celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

I. A small brewer, winegrower, or craft distiller may sell the beer, wine, and spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

J. Private celebration permits are not subject to any Sunday sales restrictions in the local option district where the celebration is to be held.

K. Outdoor areas to be permitted pursuant to this section shall satisfy the requirements of 15.10.32.13 NMAC.

15.11.25.10 SMALL MANUFACTURER'S PUBLIC CELEBRATION PERMITS:

A. A small brewer, winegrower or craft distiller may apply for a public celebration permit for any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

(1) permits for applications received less than seven days prior to February 28th for events to be held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

(2) Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

(3) All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

B. The application for a public celebration permit must be accompanied by written permission from the governing body of the local option district where the public celebration is held.

C. The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit photographs or electronic images of the proposed location.

D. Public celebration permits will not be issued for more than three consecutive days, unless the director shall find good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

E. The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

F. Public celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

H. A copy of the public celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

I. ~~[A small brewer or winegrower may sell the beer and wine of other small brewers and winegrowers pursuant to a permit issued under this section.] A small brewer, winegrower, or craft distiller may sell the beer, wine, and spirituous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.~~

J. Public celebration permits are not subject to any Sunday sales restrictions in the local option district where the celebration is to be held.

K. Outdoor areas to be permitted pursuant to this section shall satisfy the requirements of 15.10.32.13 NMAC.

[15.11.25.10 NMAC - N, 4/25/2017]

15.11.25.11 COMPLIANCE WITH DOCUMENTS REQUIRED ON PREMISES: All premises subject to any permit issued pursuant to this part shall comply with the requirements of 15.11.2 NMAC as if the premises is a licensed premises.

[15.11.25.11 NMAC - N, 4/25/2017]

HISTORY OF 15.11.25 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 6A-12(A), Special Dispenser's Permit Regulation 6A-12(A), Interpreting and Exemplifying Section 60-6A-12 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD 6A-12, Special Dispenser's Permit, filed 9/25/1990; and

AGD 7A-1(B), Sunday Sales Permit, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.5, Licenses and Permits - Special Dispenser and Sunday Sales Permits, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 11.2.5, Licenses and Permits - Special Dispenser and Sunday Sales Permits (filed 3/14/1997) was replaced by 15.11.25 NMAC, Licenses and Permits - Special Dispenser and Sunday Sales Permits, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 26 LICENSES AND PERMITS - FEES

15.11.26.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.26.1 NMAC - Rp, 15 NMAC 11.2.6.1, 4/25/2017]

15.11.26.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.
[15.11.26.2 NMAC - Rp, 15 NMAC 11.2.6.2, 4/25/2017]

15.11.26.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.26.3 NMAC - Rp, 15 NMAC 11.2.6.3, 4/25/2017]

15.11.26.4 DURATION: Permanent.
[15.11.26.4 NMAC - Rp, 15 NMAC 11.2.6.4, 4/25/2017]

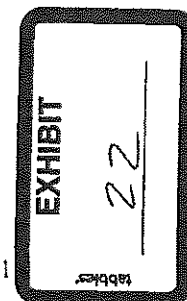
15.11.26.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.26.5 NMAC - Rp, 15 NMAC 11.2.6.5, 4/25/2017]

15.11.26.6 OBJECTIVE: This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.
[15.11.26.6 NMAC - Rp, 15 NMAC 11.2.6.6, 4/25/2017]

15.11.26.7 DEFINITIONS: [**RESERVED**]
[15.11.26.7 NMAC - Rp, 15 NMAC 11.2.6.7, 4/25/2017]

15.11.26.8 ANNUAL FEES: Every application for the issuance or renewal of the following licenses shall be accompanied by an annual fee in the following specified amounts:

- A. manufacturer's license as a distiller, except a brandy manufacturer: \$3,000;
- B. manufacturer's license as a brewer: \$3,000;
- C. manufacturer's license as a rectifier: \$1,050;
- D. wholesaler's license to sell all alcoholic beverages for resale only: \$2,500;
- E. wholesaler's license to sell spirituous liquors and wine for resale only: \$1,750;
- F. wholesaler's license to sell spirituous liquors for resale only: \$1,500;
- G. wholesaler's license to sell beer and wine for resale only: \$1,500;
- H. wholesaler's license to sell beer for resale only: \$1,000;
- I. wholesaler's license to sell wine for resale only: \$750;
- J. retailer's license: \$1,300;
- K. dispenser's license: \$1,300;
- L. canopy license: \$1,300;
- M. restaurant a license: \$1,050;
- N. restaurant b license: \$10,000;
- [N-]O. club license, for clubs with more than 250 members: \$1,250; and for clubs with 250 members or fewer: \$250;
- [O-]P. wine bottler's license to sell to wholesalers only: \$500;
- [P-]Q. public service license: \$1,250;
- [Q-]R. non-resident licenses, for a total billing to New Mexico wholesalers, in excess of:
 - (1) \$3,000,000 annually: \$10,500;
 - (2) \$1,000,000 annually: \$5,250;
 - (3) \$500,000 annually: \$3,750;
 - (4) \$200,000 annually: \$2,700;
 - (5) \$100,000 annually: \$1,800;
 - (6) \$50,000 annually: \$900; and



- (7) \$1 annually: \$300.
- ~~[R.]S.~~ limited wine wholesaler's license, for persons with sales of 5,000 gallons of wine per year or less: \$25.00; and for persons with sales in excess of 5,000 gallons of wine per year: \$100; and
- ~~[S.]T.~~ beer bottler's license: \$200;
- ~~[T.]U.~~ brandy manufacturer's license: \$750;
- ~~[U.]V.~~ small brewer's license: \$750;
- ~~[V.]W.~~ winegrower's license, computed on the basis of total annual wine produced or blended:
- (1) less than 5,000 gallons per year: \$25;
 - (2) between 5,000 and 100,000 gallons per year: \$100;
 - (3) over 100,000 gallons per year: \$250.
- ~~[W.]X.~~ wine blender's license: \$750;
- ~~[X.]Y.~~ wine exporter's license: \$500;
- ~~[Y.]Z.~~ direct wine shipment permit: \$50, only required if the applicant does not hold a separate winegrower's license;
- ~~[Z.]AA.~~ bed and breakfast dispensing license: \$100;
- ~~[AA.]BB.~~ small brewer's off-premises permit: \$200 for each off-premises location;
- ~~[BB.]CC.~~ craft distiller's license: \$750;
- ~~[CC.]DD.~~ craft distiller's off-premises permit: \$200 for each off-premises location;
- ~~[DD.]EE.~~ winegrower's off-premises permit: \$200 for each off-premises location; and
- ~~[EE.]FF.~~ limited winegrower's or small brewer's wholesaler's license:
- (1) in excess of 5,000 gallons: \$100;
 - (2) 5,000 gallons or less: \$25.
- GG. third-party alcohol delivery license: \$1,000;
- HH. alcoholic beverage delivery permit: \$300.
- II. New Mexico spirituous liquors permit: \$500.

[15.11.26.8 NMAC - Rp, 15 NMAC 11.2.6.8, 4/25/2017]

15.11.26.9 MISCELLANEOUS FEE SCHEDULE: In addition to the fees set forth in the act, the following fees apply:

type of service	fee
application for licensure	\$200;
renewal of license - late fee	\$350 plus \$10 for each additional day late;
change or expansion of licensed premises	\$75;
designation of agent lessee	\$250;
designation of resident agent (per agent)	\$50;
new resident agent - late fee	\$100;
transfer of ownership	\$200 for first license, plus \$10 for each additional license;
change of structure	\$200 for first license, plus \$10 for each additional license;
corporate name change; change in DBA	\$50;
temporary suspension of license	\$20;
temporary suspension of license - late application	\$50;
certification of alcohol server training program and annual renewal of program;	\$350 per provider, plus \$100 per instructor
renewal late fee for certification of alcohol server provider, instructor or program;	\$10 per day
full license listing- electronic format	\$100;
paper or electronic copies of documents	0.25 cents per page.

[15.11.26.9 NMAC - N, 4/25/2017]

15.11.26.10 EVENT PERMITS: the following are permit fees per each event:

- A. special dispenser's permit for public celebrations, \$50;
- B. special dispenser's permit for catering an off-premises function, \$25;
- C. craft distiller's public or private celebration permit, \$10;
- D. winegrower's public or private celebration permit, \$10; and
- E. small brewer's public or private celebration permit, \$10.

[15.11.26.10 NMAC - N, 4/25/2017]

15.11.26.11 ANNUAL TASTING PERMIT: for Dispenser's, retailer's, resident manufacturer's, non-resident manufacturer's, wholesaler's, or winegrower license, \$100.

[15.11.26.11 NMAC - N, 4/25/2017]

15.11.26.12 PRORATION OF FEES:

A. License fees for new licenses issued after the beginning of the license year shall be prorated.
B. Dispenser, retailer, restaurant a, restaurant b, club, and public service license fees shall be prorated as follows:

(1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

(2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

(3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

(4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

C. License fees for all new licenses not provided for in Subsection B of 15.11.26.12 NMAC, except Non-resident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

D. Non-resident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for Non-resident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Non-resident licenses and common carrier registrations issued at any time during the:

(1) first license year must pay the full amount of the three-year license fee;

(2) second license year must pay two-thirds of the three-year license fee; and

(3) third license year must pay one-third of the three-year license fee.

[15.11.26.12 NMAC - N, 4/25/2017]

HISTORY OF 15.11.26 NMAC: [RESERVED]

History of Repealed Material:

15 NMAC 11.2.6, Licenses and Permits - Fees, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 11.2.6, Licenses and Permits - Fees (filed 3/14/1997) was replaced by 15.11.26 NMAC, Licenses and Permits - Fees, effective 4/25/2017.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 27 LICENSES AND PERMITS - INTER-LOCAL OPTION DISTRICT TRANSFERS

15.11.27.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.27.1 NMAC - Rp, 15 NMAC 11.2.7.1, 4/25/2017]

15.11.27.2 SCOPE: These rules apply to all licensees and applicants for inter-local option district transfers under the act.
[15.11.27.2 NMAC - Rp, 15 NMAC 11.2.7.2, 4/25/2017]

15.11.27.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.27.3 NMAC - Rp, 15 NMAC 11.2.7.3, 4/25/2017]

15.11.27.4 DURATION: Permanent.
[15.11.27.4 NMAC - Rp, 15 NMAC 11.2.7.4, 4/25/2017]

15.11.27.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.27.5 NMAC - Rp, 15 NMAC 11.2.7.5, 4/25/2017]

15.11.27.6 OBJECTIVE: These rules are intended to establish procedures for filing and processing applications for inter-local option district transfers, applicable to dispenser, and retailer licenses.
[15.11.27.6 NMAC - Rp, 15 NMAC 11.2.7.6, 4/25/2017]

15.11.27.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.
[15.11.27.7 NMAC - Rp, 15 NMAC 11.2.7.7, 4/25/2017]

15.11.27.8 GENERAL APPLICATION REQUIREMENTS: An application for an inter-local option district transfer shall satisfy the general requirements for applications set forth at 15.11.21 NMAC, as applicable, in addition to the requirements set forth in this part.
[15.11.27.8 NMAC - N, 4/25/2017]

15.11.27.9 FILING PERIOD:

A. The filing period for determining priority of inter-local option district transfers is beginning at 8:00 a.m. on October 1, and ending at 12:00 p.m. on December 31, or upon receipt by the division of the 10th priority application, whichever is later.

B. In the event that the division receives more than ten applications within a single calendar year for a single inter-local option district, such transfers will be accepted by the division only during the filing period each year for the next calendar year's transfers.

C. Any application received before 8:00 a.m. on October 1 will be returned with a letter requesting that the applicant resubmit the application during the appropriate filing period.

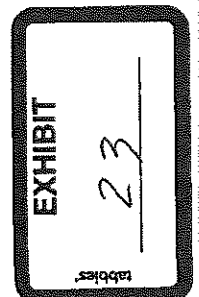
D. Any application received after the end of the filing period will be considered untimely and will be returned to the applicant.

[15.11.27.9 NMAC - Rp, 15 NMAC 11.2.7.8, 4/25/2017]

15.11.27.10 PRIORITY:

A. All substantially complete applications submitted on October 1 after 8:00 a.m. and before 5:00 p.m., regardless of the time submitted, will be considered to have been received at the same time on that date. If more than 10 applications are received on that date, priority applications will be determined by random selection by the director without reference to the contents of the application.

B. Remaining applications submitted on October 1, if more than one, will be selected for processing by random selection if one or more of the priority applications selected is withdrawn or disapproved.



[15.11.27.10 NMAC - Rp, 15 NMAC 11.2.7.9, 4/25/2017]

15.11.27.11 APPLICATION PROCESSING:

A. All substantially complete applications received shall be date and time stamped by the division. Applications that are not substantially complete will not be processed and returned to the applicant with a notice of all deficiencies.

B. When the division receives more than ten applications within a single local option district, only priority applications will be processed for transfer during any calendar year.

C. Other substantially complete applications received beyond the priority applications will be date and time stamped and a record kept of their receipt. To avoid having to deposit the filing fees, the division will photocopy the applications and return them to the applicants with letters advising how many applications are being processed before theirs and that they will be notified if and when their applications will be considered. Those applications will be given first consideration if any of the priority applications are withdrawn or disapproved. Applications not considered or approved for one calendar year's transfers may not be resubmitted until the filing period for the next calendar year.

[15.11.27.11 NMAC - Rp, 15 NMAC 11.2.7.10, 4/25/2017]

15.11.27.12 AMENDMENTS: All applications will be processed based on the information originally submitted. If an application is substantially changed at the request of the applicant, the application may be considered by the division to have been withdrawn. Any application considered by the division to be withdrawn must be resubmitted as required by this rule and will lose any priority for processing it may have received when first filed. If there is a substantial change made to an application after it has been approved or disapproved by the local option district at hearing, including but not limited to a change in transferee, a change of ten percent or more in stock ownership, a change in the named transferee, a change in an officer or director, any change in location, a substantial change to the floor plan or any other terms and conditions deemed substantial by the director, the director may require the amended application be resubmitted to the local option district for approval.

[15.11.27.12 NMAC - Rp, 15 NMAC 11.2.7.11, 4/25/2017]

15.11.27.13 PROHIBITED TRANSFERS:

A. This rule does not authorize the transfer of any stock or other ownership interest of any licensee whose license is not otherwise transferable under the provisions of the act.

B. The director, upon notification of any change in ownership or structure, may require any entity or person who has obtained an interest in any license, or other entity, to complete an application and provide all documents and information the director deems necessary to ensure full disclosure and qualification of all persons and entities.

C. No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

[15.11.27.13 NMAC - N, 4/25/2017]

HISTORY OF 15.11.27 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 28 LICENSES AND PERMITS - BED AND BREAKFAST LICENSE

15.11.28.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division
[15.11.28.1 NMAC - N, 4/25/2017]

15.11.28.2 SCOPE: These rules apply to all special bed and breakfast dispensing licensees and applicants for special bed and breakfast dispensing licensure under the act.
[15.11.28.2 NMAC - N, 4/25/2017]

15.11.28.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.28.3 NMAC - N, 4/25/2017]

15.11.28.4 DURATION: Permanent.
[15.11.28.4 NMAC - N, 4/25/2017]

15.11.28.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021 unless a later date is cited at the end of a section.
[15.11.28.5 NMAC - N, 4/25/2017]

15.11.28.6 OBJECTIVE: These rules are intended to establish standards and guidelines applicable to persons obtaining special bed and breakfast dispensing licenses under the act.
[15.11.28.6 NMAC - N, 4/25/2017]

15.11.28.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.11.28.7 NMAC - N, 4/25/2017]

15.11.28.8 BED AND BREAKFAST LICENSE: The owner or operator of a bed and breakfast, as defined in 15.10.2 NMAC, may apply for and receive a special bed and breakfast dispensing license.

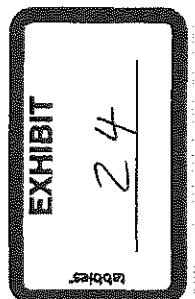
A. Service of beer and wine is permitted in common areas only in conjunction with the service of food. Service of up to two 12-ounce servings of beer or two six-ounce servings of wine per 24 hours of lodging is allowed to each registered guest over 21 years of age.

B. Unless otherwise provided in this rule, service of alcohol shall be in accordance with the provisions of the act and division rules.
[15.11.28.8 NMAC - N, 4/25/2017]

15.11.28.9 APPLICATION REQUIREMENTS FOR BED AND BREAKFAST LICENSE: Before a special bed and breakfast dispensing license may be issued, an application shall be submitted to the division and shall contain the following fees and documentation:

- A.** the application fee of \$100.00, which shall not be pro-rated;
 - B.** a completed application on the form prescribed by the division, signed by the applicant and notarized; and
 - C.** proof that applicant meets the definition of "bed and breakfast" contained in 15.10.2 NMAC, requiring applicant to be a business establishment that offers temporary lodging with meals included and has a guest capacity of 20 or fewer persons.
- [15.11.28.9 NMAC - N, 4/25/2017]

HISTORY OF 15.11.28 NMAC: [RESERVED]



TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 29 LICENSES AND PERMITS - TASTING PERMITS

15.11.29.1 ISSUING AGENCY: The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.29.1 NMAC - N, 4/25/2017]

15.11.29.2 SCOPE: These rules apply to licensed dispenser, retailer, resident manufacturer, non-resident manufacturer, wholesaler or winegrower license holders applying for a tasting permit under the act.
[15.11.29.2 NMAC - N, 4/25/2017]

15.11.29.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. Section 60-3A-33 authorizes the division to issue tasting permits.
[15.11.29.3 NMAC - N, 4/25/2017]

15.11.29.4 DURATION: Permanent.
[15.11.29.4 NMAC - N, 4/25/2017]

15.11.29.5 EFFECTIVE DATE: ~~[April 25, 2017]~~ XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.29.5 NMAC - N, 4/25/2017]

15.11.29.6 OBJECTIVE: These rules are intended to establish standards applicable to persons obtaining tasting permits under the act.
[15.11.29.6 NMAC - N, 4/25/2017]

15.11.29.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.11.29.7 NMAC - N, 4/25/2017]

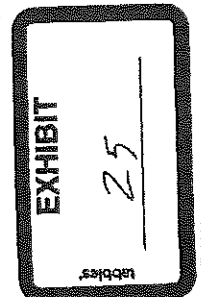
15.11.29.8 TASTING PERMIT, GENERAL PROVISIONS: A licensed dispenser, retailer, resident manufacturer, wholesaler, winegrower, non-resident manufacturer or an agent or lessee of any such licensed entity may apply for and receive a tasting permit on a licensed premises that sells alcoholic beverages directly to the public and shall adhere to the following limitations of the permit:

- A. The liquid volume of all pours of alcoholic beverages must be no larger than a taste.
- B. All tastes must be given free of charge.
- C. All tastes must be poured by the permit holder, or an employee, agent or contractor of the licensee, with a valid server certification. Any such employee, agent or contractor must be directly paid by the licensee holding the tasting permit, not through a third party.
- D. The permit holder, and its employees, agents or contractors may not sell any alcoholic beverages while operating the tasting permit.
- E. The licensee shall notify the division in writing or via email at least 48 hours prior to conducting any tasting event, disclosing the date, time and location of the tasting event.

~~[F. Issuance of tasting permits are subject to local option district elections regarding Sunday sales by the drink, and will not issue on any Sunday where sales by the drink are not allowed by the local option district.]~~
[15.11.29.8 NMAC - N, 4/25/2017]

15.11.29.9 APPLICATION REQUIREMENTS FOR AN ANNUAL TASTING PERMIT: Before an annual tasting permit may be issued, an application shall be submitted to the director for approval, shall be signed by the licensee, and shall contain the following fees and documentation:

- A. money order or check for the annual fee in the amount of \$100.00; and
- B. a completed, signed application on the form prescribed by the director for:
 - (1) a non-resident licensee, by a person authorized to legally bind the licensee, or



(2) for all other licensees, a person fingerprinted in connection with their interest in the licensee pursuant to Subsection B of Section 60-6B-2 NMSA 1978.
[15.11.29.9 NMAC - N, 4/25/2017]

15.11.29.10 NO TASTING PERMIT ON SAME PREMISES REQUIRED FOR LICENSES ALLOWING SALES BY THE DRINK: Nothing in this part requires a holder of a license for sales of alcoholic beverages by the drink to obtain any additional permit to offer tastes in the controlled access area on their own licensed premises, except that any service of free alcoholic beverages shall comply with Subsection C of 15.10.51.11 NMAC regarding free drinks.
[15.11.29.10 NMAC - N, 4/25/2017]

HISTORY OF 15.11.29 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 30 PURCHASING COOPERATIVES

15.11.30.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.30.1 NMAC - N, 4/25/2017]

15.11.30.2 SCOPE: These rules apply to all retailers, and to dispensers authorized to sell alcoholic beverages in unbroken packages, under the act.
[15.11.30.2 NMAC - N, 4/25/2017]

15.11.30.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.30.3 NMAC - N, 4/25/2017]

15.11.30.4 DURATION: Permanent.
[15.11.30.4 NMAC - N, 4/25/2017]

15.11.30.5 EFFECTIVE DATE: [~~April 25, 2017~~] XXX XX, 2021, unless a later date is cited at the end of a section.
[15.11.30.5 NMAC - N, 4/25/2017]

15.11.30.6 OBJECTIVE: These rules are intended to regulate purchasing cooperatives authorized pursuant to the act.
[15.11.30.6 NMAC - N, 4/25/2017]

15.11.30.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.11.30.7 NMAC - N, 4/25/2017]

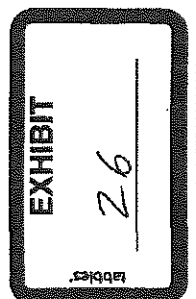
15.11.30.8 COOPERATIVE AGREEMENT REGISTRATION REQUIREMENTS:

A. Any number of retailers, or dispensers licensed to sell alcoholic beverages by package, may pool their purchases of alcoholic beverages from a wholesaler, and may also collectively advertise the purchase of alcoholic beverages, provided such cooperative purchases and advertising are pursuant to a written and fully executed cooperative agreement filed with the division.

B. The cooperative agreement to be filed with the division shall include the following:

- (1) a list of all members of the cooperative attached as a schedule to the agreement, identifying the license number for each member, to be updated in accordance with 15.11.30.10 NMAC;
- (2) separate invoicing of all purchases made by each member pursuant to the agreement and pursuant to Section 60-8A-3 NMSA 1978 of the act;
- (3) separate delivery of all purchases to each member's licensed premises pursuant to the agreement;
- (4) if the agreement provides for the employment of any employees by the cooperative, such employee may not have a financial interest in, or receive financial compensation from, any individual member;
- (5) a provision that, with a minimum of notice of 30 days, the cooperative may cancel the membership of any member;
- (6) no prohibition against any member joining any other trade organization or entity, except, at the option of the cooperative, a prohibition against joining other purchasing cooperatives authorized by the act;
- (7) a provision that any member may withdraw from the cooperative with a minimum of 30-day notice without penalty for such withdrawal;
- (8) no prohibition on any member from selling any product at an otherwise lawful price; and
- (9) a provision that any advertising purchased by the cooperative shall either identify all members equally in the advertisement, or identify the name of the cooperative only.

[15.11.30.8 NMAC - N, 4/25/2017]



15.11.30.9 CORPORATE ENTITIES PERMITTED: The members of a purchasing cooperative may organize and conduct business personally or through any corporate structure allowable under state law.
[15.11.30.9 NMAC - N, 4/25/2017]

15.12.30.10 DIVISION RECORDS: The division shall maintain, through its website, a list of the names of all cooperatives that have complied with the requirements of this part. A copy of the cooperative agreement for each listed cooperative shall be available from the division upon request. Each cooperative may, at its discretion, submit an updated schedule of its members, but shall submit an updated copy of its cooperative agreement in the event of any material change to the agreement.
[15.11.30.10 NMAC - N, 4/25/2017]

HISTORY OF 15.11.30 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 31 ALCOHOL SERVER TRAINING - CERTIFICATION

15.11.31.1 ISSUING AGENCY: The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.11.31.1 NMAC - Rp, 15 NMAC 11.3.1.1, 4/25/2017]

15.11.31.2 SCOPE: This rule applies to all act licensees, lessees, servers, and alcohol server training providers and instructors.
[15.11.31.2 NMAC - Rp, 15 NMAC 11.3.1.2, 4/25/2017]

15.11.31.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.31.3 NMAC - Rp, 15 NMAC 11.3.1.3, 4/25/2017]

15.11.31.4 DURATION: Permanent.
[15.11.31.4 NMAC - Rp, 15 NMAC 11.3.1.4, 4/25/2017]

15.11.31.5 EFFECTIVE DATE: [~~April 25, 2017,~~] XXX XX, 2021 unless a later date is cited at the end of a section.
[15.11.31.5 NMAC - Rp, 15 NMAC 11.3.1.5, 4/25/2017]

15.11.31.6 OBJECTIVE: This rule is intended to establish standards and procedures for training persons employed in the alcoholic beverage service industry to enhance their professionalism and to reduce the incidence of alcohol-related problems statewide, and to comply with the provisions of the act and the alcohol server education article of the act.
[15.11.31.6 NMAC - Rp, 15 NMAC 11.3.1.6, 4/25/2017]

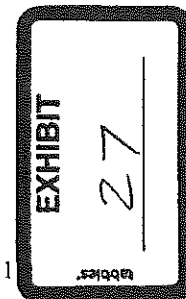
15.11.31.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act and the alcohol server education act:

- A. **“Applicant”** means a person or entity applying to the division for certification as a provider, instructor or program.
- B. **“Approved test”** means a test proctored by a live instructor or a test administered on-line that has been approved by the division and incorporates at least 20 questions from a list of questions provided by the division. An approved test that is proctored by a live instructor must be graded by the instructor.
- C. **“Certified program”** means an on-line or classroom program that is certified by the division.
- D. **“Classroom program”** means a program certified by the division in accordance with these rules that is administered, at least in part by a live instructor and may or may not include the use of a computer.
- E. **“Classroom hour”** means 50 minutes of instruction time and 10 minutes of break time.
- F. **“On-line program”** means a program certified by the division in accordance with these rules that is designed to be administered via the internet, including the exam, without the presence of a live instructor.
- G. **“Personal identifier”** means a person’s social security number or, if a person does not have a social security number, the person’s individual taxpayer identifier number.
- H. **“Proctored test”** means a test administered and supervised by a live instructor.
- I. **“Server permit”** means an unexpired permit issued by the division to a person who has met all the requirements to become a server as required by these rules.
- J. **“Student”** means an applicant for a server permit that participates in a certified program.

[15.11.31.7 NMAC - Rp, 15 NMAC 11.3.1.7, 4/25/2017]

15.11.31.8 SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:

A. **Server permit required.** Every licensee or lessee who is directly involved in sale, delivery or service of alcoholic beverages, and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed premises, or participate in the delivery of alcoholic beverages unless that person first obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.



B. Server permit issuance. Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

C. Providers' duty to inform the division of student's satisfactory completion. Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the director a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the director on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

D. Division will distribute permits. The division will prepare and distribute the server permits to the student within 120 days of satisfactory completion of a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

E. Temporary Server Permits. Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the director, upon satisfactory completion of the program by student. Temporary server permits are valid for 120 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit he/she may obtain one from the provider.

F. Replacement server permits. Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form of a cashier's check or money order. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

G. 19 and 20 year olds. Pursuant to Subsection B of 60-7B-11 NMSA 1978, a person between the ages of 19 years and 21 years old may only serve alcohol in a restaurant. A provider may offer its program to a student between the ages of 19 years and 21 years old, provided that the student is given notice that the server permit will only allow the student to serve in a restaurant and that he or she will not be eligible to participate in the delivery of alcoholic beverages, serve in a bar or retail location, or in a restaurant as a bartender, even with a server permit, until he or she reaches the age of 21 years.

[15.11.31.8 NMAC - Rp, 15 NMAC 11.3.1.8, 4/25/2017]

15.11.31.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

A. Certification required: Any person seeking certification as a provider, instructor or program must submit an application to the director for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

B. Applications for providers and programs:

(1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for providers, a surety bond from a surety company authorized to transact business in New Mexico, or other evidence of financial responsibility, covering all instructors in the amount of five thousand dollars (\$5,000). Any independent contractor who obtains the right to own, teach or otherwise use a program, but is not covered under the provider's surety bond, will be required to obtain certification as a provider, including posting a surety bond as required in the alcohol server education article or providing other evidence of financial responsibility. The surety bond shall be continuous, shall name the division as payee, and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records;

(c) for in-classroom providers and instructors, the physical addresses of each location where the program will be offered and the dates when the program will be offered. A maximum of 40 students per class or the maximum occupant load permitted by the state or local fire marshal, whichever is less, will be permitted;

(d) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(e) fees that will be charged to take the program;

(f) for providers a copy of applicant's business license;

(g) for providers a copy of applicant's tax registration certificate;

(h) a form, prescribed by the director, authorizing a background check for all providers and instructors. Persons convicted of a felony or crimes of moral turpitude may not be certified as providers or instructors at the discretion of the director. Additional documentation regarding disposition of any charges may be requested by the director prior to approval of any application for certification;

(i) application fees in the amount of three hundred fifty dollars (\$350) per provider and one hundred dollars (\$100) per instructor; in instances where the applicant is applying to be both a provider and instructor, i.e. the provider and instructor are the same person, only the three hundred fifty (\$350) application fee is required to be paid; and

(j) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in Subsection D of 15.11.31.9 NMAC and 15.11.31.10 NMAC, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half (4 ½) classroom hours or the equivalent for on-line programs;

(c) a copy of applicant's business license;

(d) a copy of applicant's tax registration certificate;

(e) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the director, and in a format approved by the director;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the director that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the director that students cannot fast-forward or skip through the course materials.

(f) any other reasonably relevant information as may be required by the director;

C. **Completeness check:** When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

D. Standards for certification: An application for certification may be granted if the standards identified in this section are met.

(1) **Providers and instructors:** In reviewing applications for certification as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of alcoholic beverages;

(c) the results of the background check;

(d) whether applicant is 21 years of age or older;

(e) whether applicant has ever been found guilty of or admitted guilt to a violation of the liquor control act;

(f) whether applicant intends to teach a program certified by the state of New Mexico in accordance with these rules;

(g) any other reliable and relevant information, as determined by the director.

(2) **Programs:** In reviewing applications for certification as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in Subsection B of 60-6E-5 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of alcohol for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes photos and examples of bars, restaurants, convenience stores and other retail settings, including self-checkout, to ensure a balance in preparing servers to sell alcohol for consumption both on-premise and off-premise;

(f) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(g) whether the program is reviewed and revised annually to ensure current comprehensive training;

(h) whether the program is interactive and includes real life instructional examples;

(i) for on-line programs whether it is easy to navigate and user-friendly; and

(j) any other reliable and relevant information, as determined by the director.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server certification at all times when providing instruction.

E. Expiration of certification: Provider, instructor and program certificates expire on December 31 each year.

F. Renewal: Renewal applications for provider, instructor and program certifications must be submitted no later than November 30 of each year. Renewal applications must include renewal fees in the amount of three hundred and fifty dollars (\$350) per provider, one hundred dollars (\$100) per instructor. Late renewal applications will be subject to a late fee of thirty dollars (\$30) per day.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

- G. Pro-rated fees:** The initial certification fee for providers, programs and instructors will be prorated, as follows:
- (1) certification obtained before April 1 of any year will be subject to the full amount of the annual certification fee;
 - (2) certification obtained on or after April 1 and before July 1 will be subject to three-fourths of the annual fee;
 - (3) certification obtained on or after July 1 and before October 1 will be subject to one-half of the annual fee; and
 - (4) certification obtained on or after October 1 will be subject to one-fourth the annual fee.
- H. Transferability:** Provider, instructor and program certifications are non-transferrable.
- I. Probation, suspension or revocation:** The director may place a provider or instructor on probation if the director has a reasonable belief that the provider or instructor is not in compliance with one or more of the requirements of the statutes or division rules. The director shall send a notice of probation to the provider, instructor or both specifying the provisions with which the provider or instructor is not in compliance along with an order to show cause why the provider or instructor certification should not be suspended. If the provider or instructor fails to show cause why his or her certification should not be suspended, the director may suspend the provider or instructor certification for a reasonable period of time. The director shall determine the period of probation or suspension depending upon the number and nature of the violations. If the provider or instructor is placed on probation, the director shall review the provider or instructor's operations periodically during the probationary period. At anytime, a provider or instructor that is placed on probation or suspension may request a hearing. The director may only revoke a provider or instructor certification for cause after a hearing.
- J. Cancellation:** A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.
[15.11.31.9 NMAC - Rp, 15 NMAC 11.3.1.9, 4/25/2017]

15.11.31.10 ADMINISTRATION OF CERTIFIED SERVER TRAINING PROGRAM:

- A. Providers' responsibility in administering a certified program:** It is the responsibility of providers to ensure that they and any instructors employed by them are teaching a certified program.
- B. Course materials:** Providers shall ensure that each student is provided complete course materials at the beginning of each certified program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.
- C. Prior approval required:** Providers must obtain prior approval from the director before changing the required content of a certified program.
- D. Proctored tests:** Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.
- E. On-line tests:** On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the director to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.
- F. ADA compliance:** Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable accommodation for instructional and learning purposes to the extent required by law.
- G. Administration of on-line programs:** Providers who administer an on-line program without the presence of a live instructor must ensure the following:
- (1) a secure login process is in place to confirm the identity of the person taking the course;
 - (2) students may not be allowed to fast-forward through the instruction portion of the course;

(3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;

(4) no advertisements appear during course instruction; and

(5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[15.11.31.10 NMAC - Rp, 15 NMAC 11.3.1.10, 4/25/2017]

15.11.31.11 SURETY BOND; EVIDENCE OF FINANCIAL RESPONSIBILITY: The purpose of the surety bond is to ensure that the provider's students will be reimbursed for fees paid for the program if the provider or instructor fails to conduct the program to completion.

[15.11.31.11 NMAC - Rp, 15 NMAC 11.3.1.12, 4/25/2017]

15.11.31.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS: The director may fine or decertify any program, or refuse to renew certification, when the director determines that:

A. a provider, instructor or an agent, knowingly provided false information to the director, advisory committee or division with regard to completion of a certified program by any person;

B. a provider, instructor or an agent, failed to conduct the program as certified by the division;

C. any person filing an application with the division for certification of a provider, instructor or program knowingly submitted false information to the director, advisory committee or division;

D. a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

E. a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[15.11.31.12 NMAC - Rp, 15 NMAC 11.3.1.13, 4/25/2017]

15.11.31.13 [RESERVED]

HISTORY OF 15.11.31 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

15 NMAC 11.3.1.7.1 - Repealed 7/15/1999

15 NMAC 11.3.1.7.2 - Repealed 7/15/1999

15 NMAC 11.3.1.7.4 - Repealed 7/15/1999

15 NMAC 11.3.1.7.6 - Repealed 7/15/1999

15 NMAC 11.3.1.7.7 - Repealed 7/15/1999

15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification (filed 3/14/1997) was replaced by 15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification, effective 4/25/2017.

Antonio Maestas on July 26, 2021 at 2:58 pm

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.

Please change 19 to 18 as it relates to the minimum age of the server. Thank you.

-Rep. Antonio Maestas

Pat Block on July 26, 2021 at 2:53 pm

To whom it may concern,

My name is Pat Block, and today I am providing input on behalf of the 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.

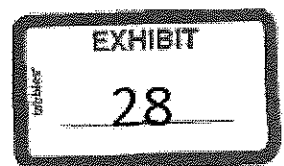
We support the language permitting the sales of items in which 10 containers of three fluid ounces or less are packaged together by the manufacture and meant for sale as a single unit. We would suggest examining the proposed language in this to ensure you intend to use the word "manufacture", and not "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/manufacture language).

Thank you,

Pat Block

(505) 699-9812



Alana Harris on July 26, 2021 at 1:57 pm

Andrew Vallejos, Esq.
Director
Alcoholic Beverage Control Division
P.O. Box 25101
Santa Fe, New Mexico 87504
Re: Comment on Proposed Rules
Director Vallejos:

Thank you very much for taking public comment on the Proposed Rules necessary to successfully implement the changes in HB 255. We respectfully offering the following feedback:

Chapter 10 Part 2

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.

Chapter 10 Part 2

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.

Chapter 11 Part 20

15.11.20.8

B.

(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.

15.11.20.10

C.

(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.

15.11.2.15

D.

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?

Thank you again for your time and consideration. We realize that your department is working hard every day to ensure the safe consumption of alcohol in New Mexico, and we appreciate your efforts.

Chris Chant on July 26, 2021 at 9:38 am

Chris Chant -Comment on Proposed Regulation (Outdoor Controlled Access Areas)
Chris Chant Comment



RECEIVED
JUL 23 2021
ALBUQUERQUE BEVERAGE CONTROL

Andrew Vallejos, Esq.
Alcoholic Beverage Control Division
P.O. Box 25110
Santa Fe, New Mexico 87504

Re: Comment on Proposed Regulation (Outdoor Controlled Access Areas)

Dear Mr. Vallejos:

This letter contains the comments of Steel Bender Brewery, LLC to proposed regulation 15.10.32.14 (Outdoor Controlled Access Areas).

Licensed Premises We currently operate two wine grower licenses and two small brewer licenses and one wholesaler license on our property in 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 these 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 in the 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 contained to one of the licensed buildings needs to be eliminated. The recent amendment to the Liquor Control Act states that all areas of the property are part of the licensed premises. There is no longer a requirement that serving areas be separated 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 across 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 have never had any problems or issues as a result of the path that customers take to enter our establishment.

Definition of Cider The recent changes to the Liquor Control Act amended the definition of cider. The regulations need to include those changes. (apples and pears extract of fruit and up to eight and one-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 growlers 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 recreation of history or common practice which has no legal consequences? If so, it is confusing and unnecessary.

Local option district limitation This is not in the Liquor Control Act. We are located in the Village of Los Ranchos and would not be able to deliver 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 don't think that third party delivery services or even licensees will know exactly where the boundaries of each local option district are.

Thank you for your consideration.

Chris Chant
Steel Bender Brewery
8305 2nd Street NW
Albuquerque, New Mexico 87114

RECEIVED
JUL 23 2021
ALBUQUERQUE BEVERAGE CONTROL

Robert Houston & Anna Jones on July 24, 2021 at 1:45 pm

Please see the attached document for Comments on behalf of 505 Spirits
Comments on proposed rules

We have concerns about the following items in the proposed rules:

- 1) Rule Restricting Delivery by County & Local Option District**
- 2) Rule Restricting Delivery for Restaurants/Omission of 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:

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.

Thank you for your time and attention to our concerns,
Anna Jones & Robert Houston
505 Spirits

Linda L. Aikin on July 24, 2021 at 10:33 am

Subject: My Regulation Comments

Please see attached. I found this email in my outbox this morning. Not sure why it didn't go.

Linda L. Aikin

530B Harkle Road

Santa Fe, NM 87505

(505) 982-6224

fax 992-8378

Linda Aikin Regulation Comments

LINDA L. AIKIN
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July 23, 2021

Andrew Vallejos, Esq.
Director
Alcoholic Beverage Control Division
P.O. Box 25101
Santa Fe, New Mexico 87504

Re: Comment on Proposed Regulations

Dear Mr. Vallejos:

These are my comments to the regulations.

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 approved as the owner and lessee of the license. Could you please insert "or lessee" in 15.10.70.8 (A) (1) and (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 liquor sales as part of a percentage of all hotel income. This would be real progress for hotels 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.)

Andrew Vallejos, Esq.
July 23, 2021

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.

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 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 provision 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.

Controlled Access Areas and Segregated Sales. The sign required in the segregated sales area regulation makes no practical sense in a convenience store or a 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 a minor from 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.

Andrew Vallejos, Esq.
July 23, 2021

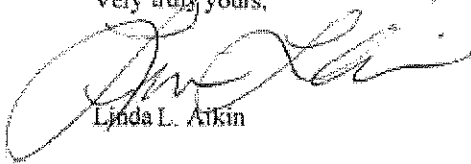
When the segregated area concept was first proposed by Hess Yntema (former ABQ city councilor), he complained that liquor should not be sold on the same aisle as items like diapers. The segregated liquor area regulation goes a little further than needed to shield and protect individuals from seeing alcoholic beverages.

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.

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 Ranchos, Rio Communities, etc. Also, no one other than zoning or planning employees of an LOD know where the boundaries of LODs are.

Thank you for your consideration.

Very truly yours,



Linda L. Aikin

ANTHONY (T.J.) J. TRUJILLO on July 23, 2021 at 8:33 pm

Ms. Griego,

Please see the attached comments on behalf of the New Mexico Alcohol Alliance.

Thanks,

ANTHONY (T.J.) J. TRUJILLO

Sr. Vice President, Government Affairs

C 505.231.0504

505 DON GASPAR AVE.

SANTA FE, NM 87501

STRATEGIES360.COM

ANTHONY (T.J.) J. TRUJILLO NMAA – Comments on Draft Rules (Final)

July 23, 2021

VIA ELECTRONIC MAIL

Desirae Griego
Alcoholic Beverage Control Division
Regulation and Licensing Department
2550 Cerrillos Road
Santa Fe, NM. 87504
Desirae.Griego@state.nm.us

RE: Written Comments on Proposed Rules

Dear Ms. Griego:

The New Mexico Alcohol Alliance (hereinafter, "NMAA"), by and through their attorney of record as set forth below, hereby submits written comments on the proposed rules set forth as 15.10.2, 15.10.31, 15.10.32, 15.10.33, 15.10.51, 15.10.52, 15.10.53, 15.10.54, 15.10.55, 15.10.61, 15.10.70, 15.11.2, 15.11.20, 15.11.21, 15.11.22, 15.11.23, 15.11.24, 15.11.25, 15.11.26, 15.11.27, 15.11.28, 15.11.29, 15.11.30, and 15.11.31 NMAC. NMAA maintains that the written comments set forth below are in compliance with the Notice of Proposed Rulemaking set forth in the New Mexico Register, Volume XXXIII, Issue 12 on June 22, 2021. Accordingly, NMAA hereby provides the following written comments in red font below the applicable rule provisions, and suggested changes to the proposed rules are set forth in red font using strikethrough and underline format:

I. PROPOSED CHANGES TO AND COMMENTS ON 15.11.24.8

The NMAA proposes the addition of a new paragraph G to 15.11.24.8 for the reasons set forth herein:

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 spirituous 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.

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.

II. 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
- (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.

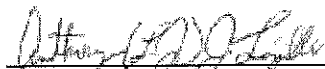
D. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

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 one-size-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.

III. CONCLUSION

For the reasons set forth above, NMAA respectfully requests that the Alcoholic Beverage Control Division consider the proposed changes to the draft rules and the written comments set forth above. NMAA further reserves the right to change or supplement its comments based upon new information or evidence presented during the hearing or during any continuation of this rulemaking. Finally, NMAA greatly appreciates the Division's efforts putting the draft rules together for public consideration.

Respectfully submitted,



Anthony (T.J.) J. Trujillo
Trujillo Law Group
5 Bisbee Court, Suite 109-324
Santa Fe, NM. 87508
(505) 231-0504
ajt@trujillolawgroup.com

Maurice P. Bonal on July 23, 2021 at 7:38 pm

1. 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.”

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...

Anjana Shah on July 23, 2021 at 6:46 pm
comment attached from Anjana Shah
Anjana Shah Lakshmi Group LLC

Lakshmi Group LLC
DBA IC Foodmart
7900 4t St NW
Los Ranchos Village, NM 87114

07/23/2021

To Whom It may Concern:

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 devalue liquor licenses that currently liquor stores own or lease to run their business. It will also hurt businesses like ours that rely on sale of alcohol.

I request ABC not to approve bars at restaurants with A & B licenses.

Thanks,

Anjana Shah

IC Foodmart

Liquor License # 1373

505-362-0303

Anjana Shah on July 23, 2021 at 6:45 pm

Comment Attached

Anjana Shah Lakshmi Group LLC

Lakshmi Group LLC

DBA IC Foodmart

7900 4t St NW

Los Ranchos Village, NM 87114

07/23/2021

To Whom It may Concern:

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 devalue 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.

Thanks,

Anjana Shah

IC Foodmart

Liquor License # 1373

505-362-0303

Alex Mooney on July 23, 2021 at 3:49 pm

Dear Ms. Griego,
Please find attached DoorDash, Inc.'s comments in response to the ABCD's proposed rules affecting alcohol delivery.

Best regards,
Alex
Alex Mooney
Legislative Policy Advisor
DoorDash.com
202-321-8186
Alex Mooney DoorDash NM Comment Letter – Google Docs



July 23, 2021

New Mexico Regulation and Licensing Department
Alcoholic Beverage Control Division
Attn: Desirae Griego (Desirae.Griego@state.nm.us)
2550 Central Road
Santa Fe, NM 87504

Re: Public Comment in Response to Notice of Proposed Rulemaking Regarding Third-Party Alcohol Delivery

Dear Ms. Griego,

Pursuant to the Notice of Proposed Rulemaking regarding NM Admin. Code 15.10.2 et seq., DoorDash Inc. ("DoorDash") respectfully submits the following comments for the Alcoholic Beverage Control Division's ("ABCD") review and consideration.

DoorDash's mission is to grow and empower local economies. We do this by offering transformational access to our customers: consumers, merchants and Drivers. Accordingly, we have a vested interest in the ABCD's proposed rulemaking related to third-party alcohol delivery and online ordering.

I. We support N.M. Admin. Code 15.10.55.B, "Use of Internet Website and Application Based Platforms for Delivery Sales."

As an initial matter, DoorDash strongly supports proposed regulation N.M. Admin. Code 15.10.55.B, "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.B(A)-(B) will directly benefit local economies and residents. As such, we encourage adoption of N.M. Admin. Code 15.10.55.B as proposed.

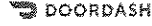
II. We request clarification regarding a third-party alcohol delivery licensee's ability to hold a retail liquor license.

Currently, proposed regulation N.M. Admin. Code 15.10.20.1(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 15.10.20.1(D)(2) prohibits a third-party alcohol delivery licensee from selling alcohol under the third-party alcohol delivery license, and we do not 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 15.10.20.1(D)(2):

Revised: 15.10.20.1(D)(2)
A third-party alcohol delivery licensee shall not:
(a) Buy, hold or deliver alcoholic beverages under its own license;



A third-party alcohol delivery licensee shall not: ... (2) Buy, hold or deliver alcoholic beverages under its own license. Adding to this section shall prohibit a third-party alcohol delivery licensee from holding a retail liquor license.

We appreciate the ABCD's efforts to establish a responsible alcohol beverage delivery system in New Mexico, and we are eager to work with the ABCD on this and other important issues. Thank you for your consideration of the above comments. Please do not hesitate to contact us with any questions.

Sincerely,

Laura Curtis
Senior Manager, Government Relations-West
DoorDash, Inc.

Revised: 15.10.20.1(D)(2)
A third-party alcohol delivery licensee shall not:
(a) Buy, hold or deliver alcoholic beverages under its own license;

Rajiv P Shah on July 23, 2021 at 2:48 pm
Downtown Liquor & Foodmart
1900 4t St NW, Albuquerque, NM 87102
07/23/2021

To Whom It may Concern:

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 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 devalue 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.

Thanks,

Rajiv P Shah

Downtown Liquor & Foodmart

505-307-3409

Rajiv Shah downtown liquor & foodmart

Downtown Liquor & Foodmart
1900 4t St NW, Albuquerque, NM 87102

07/23/2021

To Whom It may Concern:

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 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 devalue 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.

Thanks,

Rajiv P Shah

Downtown Liquor & Foodmart

505-307-3409

Mark M. Rhodes on July 23, 2021 at 1:12 pm

Good afternoon Desirae:

I've attached some of my comments regarding the recent changes to the Liquor Control Act.

Sincerely,

Mark M. Rhodes

Rhodes & Salmon, P.C.

1801 Lomas Blvd NW

Albuquerque, NM 87104

P: (505) 247-0328

F: (505) 766-9402

Email: mmr@rspcnm.com

Mark M. Rhodes HB255 Thoughts for Rule Making Session

Comments on recent changes to New Mexico Liquor Law

Background:

While the 2021 Legislative Session passed a number of laws which impacted and changed alcohol service in New Mexico, the most sweeping and controversial changes came about with the passage of HB255 into law. My comments are therefore focused on language proposed to implement HB255. The controversial nature of HB255 involved not only WHAT changes were made but also HOW these changes were made. Specifically, many of the most controversial parts of HB255 were made AFTER the bill passed the House and passed through the Senate Committee assigned to review the bill when it reached the Senate floor. The significance of this fact is twofold: 1. NO public comment was allowed on the numerous amendments (ie banning miniatures, restricting sales in McKinley County etc) that arose on the Senate floor and 2. The bill as drafted is incredibly poorly drafted. As a result, the role of ABC in cleaning up the bill through its Regulations and rule making is crucial and not an unimportant, procedural exercise.

SUBSTANTIVE CHANGES AND POTENTIAL PROBLEMS:

HB255 epitomizes the cliché "The road to hell is paved with good intentions". What was apparently launched in other bills later rolled into HB255 was a bill to help out the restaurant industry by finally providing delivery. This is the way the publicity around the bill was originally spun. A simple reading of the bills including HB255 immediately illustrated the fact that this had far greater implications than it was promoted as. To further complicate matters, perennial advocates of liquor reform jumped on the handwagon when the legislation got legs and the bill departed from even the objectives of its original sponsors. While a great deal of press has been devoted to the adverse impact that allowing restaurant licenses with full, albeit New Mexico, spirits will have on full service by the drink licenses which has already proven to be true, there are a number of other problems with HB255 as passed into law. As I suspect that many licensees will weigh in with their personal perspective, I will point out areas that I believe need further thought. I will present my ideas in concept form with an open offer to assist with language if my ideas are deemed to have merit.

1. 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

2.

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 licensee, 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.

3. 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.

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 spirituous liquors(Emphasis added) or one locally produced growler." There are 25.36 ounces of spirituous 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 spirituous 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.

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.

I could go on and on but my objective is to point out that this law has real potential problems and those problems extend far beyond the immediate reduction in full service by the drink liquor licenses.

Respectfully submitted,

Mark Rhodes, Liquor License Lawyer

Laura R. Welch on July 23, 2021 at 1:08 pm

Dear Desirae,
Attached please find comments on Proposed Rulemaking submitted on behalf of our client, Maplebear, Inc. dba Instacart. We appreciate the Division's consideration. Thank you.
Laura R. Welch | Pillsbury Winthrop Shaw Pittman LLP
Paralegal/Legal Secretary
500 Capitol Mall, Suite 1800 | Sacramento, CA 95814-4741
t +1.916.329.4721

laura.welch@pillsburylaw.com | pillsburylaw.com
Laura R. Welch 20210723 – Instacart's Comments to Proposed Rulemaking re Alcohol Delivery 4829-1062-8851 v.1



History Winthrop Shaw Pittman LLP
500 Capitol Mall, Suite 1800 | Sacramento, CA 95814 | tel 916 223-4700 | fax 916 441-2645

Carrie L. Huntington
tel: +1.916.329.4735
carrie.huntington@pillsburylaw.com

July 23, 2021

Via E-Mail Only
New Mexico Regulation and Licensing Department
Alcoholic Beverage Control Division
Attn: Desirae Griego
2550 Cerrillos Road
Santa Fe, NM 87504
desirae.griego@state.nm.us

Re: Instacart's Comments on Proposed Rulemaking Regarding Alcohol Delivery

Dear Ms. Griego:

We represent Maplebear, Inc. dba Instacart ("Instacart"), a California based technology company that enables independent contractors to provide same-day, on-demand grocery delivery services to consumers in multiple cities across the country.¹

This letter addresses the proposed rule changes relating to alcohol delivery as set forth in the Notice of Proposed Rulemaking.

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 15.1070.8(A)(1) provides in pertinent part:

¹ You can access Instacart's website at www.instacart.com.

July 23, 2021
Page 2

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.

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.~~

2. **Section 15.11.2.15(D)(1) DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES and Section 15.11.20.8(C)(4) ALCOHOLIC BEVERAGE DELIVERY PERMIT**

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.*

Similarly, 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.*

3. Section 15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF 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.

4. Section 15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE

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.*

Instacart appreciates the Division's consideration of Instacart's comments and proposed revisions. Please let me know if you have any questions.

Very truly yours,


Carrie L. Birmingham

Matt Dogali on July 23, 2021 at 10:18 am

Dear Desirae,

Please find attached ADSA's comment regarding Liquor Control Act Proposed Rules: 15.10.51.15 Sales of Certain Spiritous Liquors.

Please contact us directly if you have any questions.

-Matt

Matt Dogali | President + CEO

matt@americandistilledspirits.org | 202-999-9776

American Distilled Spirits Alliance

<http://www.americandistilledspirits.org>

Matt Dogali ADSA NM 50 ml Proposed Rules Comments July 2021 Letterhead



July 29, 2021

Desirae Griego
New Mexico Regulation and Licensing Department
Alcoholic Beverage Control Division
2550 Cerrillos Road
Santa Fe, NM 87504
Via email: Desirae.Griego@state.nm.us

RE: Liquor Control Act Proposed Rules: 15.10.51.15 Sales of Certain Spiritous Liquors

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.

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.

Respectfully,

Matt Dogali
President, American Distilled Spirits Alliance

INFO@AMERICANDISTILLEDSPRITS.ORG | 202.670.4616

Kerry Lee on July 23, 2021 at 10:04 am

Dear ABC Committee,

I have the following suggestions/comments/questions for the HB255 rulemaking committee:

- 1) What safeguards will be put in place to prevent a restaurant licensee from acting like and becoming a bar?
- 2) Are 3oz or less liquor containers able to be packed into multiple packs allowing them to be sold in a more than one scenario?
- 3) 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?

Please let me know if you have any questions.

Thanks you,

Kerry Lee

Cynthia L. Sanchez on July 23, 2021 at 9:57 am

Dear ABC Division:

As the rulemaking process for HB255 is underway, I would like to know the following:

- 1) What is the definition of a licensed premise under this rule?
- 2) Under this rule, will a restaurant be allowed to add a bar area under the new definition of licensed premise?
- 3) Can a package liquor store designate an area as a bar under the licensed premise new definition?
- 4) Can packs of miniatures be sold as they are more than 3 ounces?

Cynthia L. Sanchez, Ed. D

GCT LLC

Chief Operation Officer

cyndisanchez512@gmail.com

505-920-2811

Skye Devore on July 23, 2021 at 8:39 am

Please see attached.

[Distiller's Guild Letter to ABC](#)



Andrew Vallejos, Esq.
Director
Alcoholic Beverage Control Division
P.O. Box 25101
Santa Fe, New Mexico 87504

Re: Comment on Proposed Rules

Director Vallejos:

Thank you very much for taking public comment on the Proposed Rules necessary to successfully implement the changes in HB 255. As members of an affected industry we respectfully offer the following feedback:

Chapter 10 Part 2

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. 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 15.11.20.10 C 4 which makes this problematic.

Chapter 10 Part 2

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 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

phone: 505-850-6662



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 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 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.

Chapter 11 Part 20

15.11.20.8

B.

[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 closely situated local option districts such as Los Ranchos, Espanola, Corrales, and Albuquerque/Rio Rancho. Please consider removing this requirement.

15.11.20.10

C.

[4] Lists the types of beverages that Restaurant License holders can deliver. Other licensees don't have the same privilege in 15.11.20.8 B (1) with regards to Howlers or 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.

15.11.2.15

D.

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?

phone: 505-850-6662





Thank you again for your time and consideration. We realize that your department is working hard every day to ensure the safe consumption of alcohol in New Mexico, and we appreciate your efforts.

Regards,

The Member Distilleries of the New Mexico Distillers' Guild

- | | | |
|-----------------------|--------------------|---------------------------|
| Little Toad Creek | Altar Spirits | One Distilling |
| Safe House Distilling | La Reforma | Mother Trail Beverage |
| Still Spirits | Hollow Spirits | Left Turn Distilling |
| Dry Point Distillers | 3 Rivers Brewery | Taylor Garrett |
| Santa Fe Spirits | Glencoe Distilling | Algodones Distillery |
| Red River Brewery | 505 Spirits | Troubled Minds Distilling |

John L. Thompson on July 21, 2021 at 5:13 pm

Good evening,

Please find the attached comments pertaining to the proposed rules for HB255. If I can be of any assistance please do not hesitate to reach out. Thank you for your efforts.

John L. Thompson Comments for Proposed Rules for HB255 (002)

Comments for Proposed Rules for HB255 (2021)

-Page 12, Home Delivery by Minors

15.10.33.12 (RESERVED) MINORS PROHIBITED FROM PARTICIPATING IN THE DELIVERY OF ALCOHOLIC BEVERAGES:

Comments to ABC:

Please consider clarifying language to account for 2019 HB151 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 Commercial Driver's License Act to deliver packaged alcoholic beverages.

-Page 16, Mini's:

15.10.51.15 SALES OF CERTAIN SPIRITOUS LIQUORS:

Comments to ABC:

We would suggest that ABC consider reasonable restrictions allowing for 50ml containers of spirits to be included as a value-added product in 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:



Page 20, Trade Practice Change (HB303):

15.10.52.10 COMMERCIAL COERCION AND BRIBERY:

Comments to ABC:

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@nmsmurf.com]
Sent: Friday, April 14, 2019 11:33 AM
To: Thomas, Michael (at. 431261) [mailto:Michael.Thomas@HATPUNTCO.COM]
Cc: Greg Templeton [mailto:greg.templeton@nmsmurf.com] <greg.templeton@nmsmurf.com>
Subject: RE: Accounts Requesting support for Wine list

Good morning Mike and Greg,
I'm sure you 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 tax that you keep me informed as this rule out should any modification be required. Thank you so much for working together and seeking answers. I hope you are able to get some cover time for the holiday weekend.

MK
Mary Kay Root, Esq.
Director, Alcohol & Gaming Division
New Mexico Regulation & Licensing Department
Tonye Araya Building
2550 Cerrillos Road
Santa Fe, NM 87505
(505) 476-4550

Page 26, Internet Sales:

15.10.55.8 THIRD-PARTY, INTERNET SALES (GENERALLY PROHIBITED):

Comments to ABC:

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.

Restaurant Delivery:

15.11.20.10 DELIVERY RESTRICTIONS AND REQUIREMENTS FOR RESTAURANT LICENSES:

Comments to ABC:

In Section C of 15.11.20.10 it appears that the language conflicts with that of HB255. In Section 4, Subsection 5 of HB255 (Page 8, line 24 & 25 of the Final Version) HB255 authorizes six 12oz containers of pre-packaged wine, beer, cider, or spiritous 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 receives a product with a factory seal, known and listed ingredients, while ensuring that the delivered beverage has a reasonable ABV and that the product ordered and sold is the product that is delivered.

15.10.51.12 "BYOB" EXCEPTION: PRIVATE PARTIES ON LICENSED PREMISES:

Comments to ABC:

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 15.10.51.12 E.

15.10.53.8 PAYMENT, REFUND AND EXCHANGE:

Comments to ABC:

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 buys can be attractive to achieve a 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.

Lillian Grady on July 21, 2021 at 3:07 pm

I am unable to attend the liquor license rulemaking hearing scheduled for 7/26/2021, but 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.

Sincerely

Lillian Grady

Liquor License 2677 Yesterday's Enterprises

Ralph Atencio on July 21, 2021 at 2:32 pm

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.

Teresa Dahl-Bredine on July 21, 2021 at 11:42 am

Subject: Proposed Rules for new alcohol legislation

Good Morning,

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 premise 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 growler of a cocktail containing no more than four and one-half ounces of spirituous liquors, in order to comply with Section 60-6A-4(F)(6), NMSA 1978, of the act. The growlers 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 rules 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.

Thank you.

Sincerely,

Teresa Dahl-Bredine

Little Toad Creek Brewery & Distillery

203 S Mill Road

Silver City, NM 88061

575-654-7357

Teresa Dahl-Bredine
Little Toad Creek Brewery & Distillery
575-654-7357

Greg Templeton on July 16, 2021 at 4:38 pm

Public comment is attached

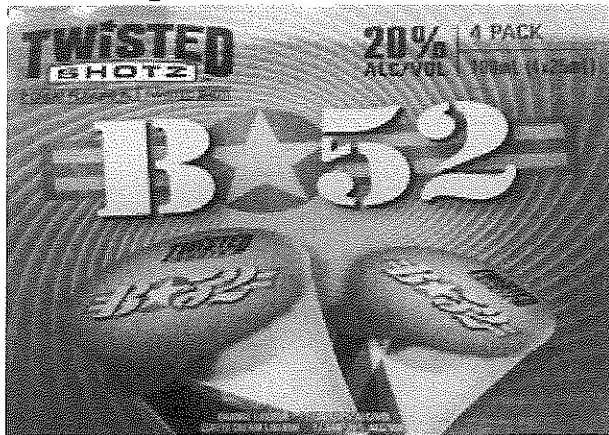
Twisted Shotz 100ml small size Packaging Aproval July 21

-Page 16, Mini's:

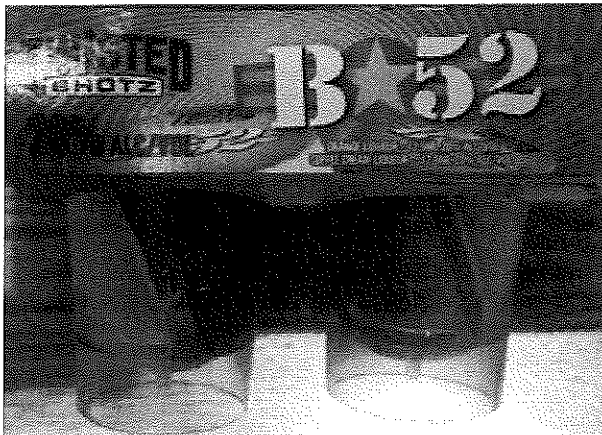
15.10.51.15 SALES OF CERTAIN SPIRITOUS LIQUORS:

I respectfully request a ruling for Twisted Shotz a 4 X 25ml (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.



100ml size - 4 pack



John Masterson on July 9, 2021 at 12:38 pm

I have a 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.

Lynette Vargas on July 9, 2021 at 12:36 pm

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

Dan Musso on July 9, 2021 at 12:35 pm

Hello, I am emailing you in regards to one of the new liquor laws that has recently gone into effect. I am gravely 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.

Jacqueline Flug on July 9, 2021 at 12:33 pm

public comment attached
Jacqueline Flug

Hello Phillip-

I hope you are well. It seems as if your office has been very busy. I just received the proposed rules today and wanted to ask two questions prior to the hearing.

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?

15.10.70.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:

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 [approved operator], at the expense of a third party delivery licensee contracted with for delivery purposes.

(2) Sales of alcoholic beverages by [approved operator] licensee or lessee may not be combined with any sales of another person or entity that is not [an approved operator] licensee or lessee. Nothing in this section shall prohibit the licensee and a third party delivery licensee from contracting for the delivery of alcoholic beverages to consumers.

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?

15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES: A licensee holding an alcoholic beverage delivery permit or a third party delivery licensee, must cause all delivery employees to have on their person, during delivery, the following:

A. The original, or an electronic or physical copy, of the permittee's alcoholic beverage delivery permit;

B. A physical or electronic copy of the delivery program's server certification;

C. A physical copy of the receipt protocol accompanying all alcoholic beverages out for delivery; and

D. Documentation to be saved for a period of six months, comprising the following information:

(1) The identification and age information for the customer who ordered and paid for the alcoholic beverages;

(2) The address alcoholic beverages are to be delivered to;

(3) The quantity and type of alcoholic beverages being delivered; and

(4) The time of alcoholic beverage delivery.

Lastly, if it was more appropriate for me to submit formal comments and to speak at the meeting on the 26th please let me know.

Thank you in advance for your help.

Jacqueline Flug

~
Jacqueline Flug
General Counsel
Drizly | www.drizly.com
917-302-3041

duke klauck on July 9, 2021 at 11:10 am

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.

Carol Wight on July 6, 2021 at 10:24 am

Your references to Restaurant (a) (A) and (b) (B) licenses are significantly different in the rule than in the statute. This may cause confusion.

Tyke Schoser on July 3, 2021 at 2:21 pm

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 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. I would appreciate a slight increase in the allowable alcohol content of a howler to 6 Fl Oz. I think the 3 hour time frame is reasonable.

All other changes I am all about, increased competition without an enormous buy in would be great for both New Mexicans and New Mexican businesses. I appreciate our state legislators being able to come together and make changes where they were desperately needed.