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This is an amendment to 15.10.2 NMAC, Sections 1 and 7, effective 9/28/2021.

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

[15.10.2.1 NMAC - Rp, 15 NMAC 10.1.1.1, 4/25/2017; A, 9/28/2021]

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; and~~

~~(3) the licensee's or lessee's principle officer or an individual appointed to act on the principle officer's behalf.~~

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.] I. "Cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe [fruit] apples or pears that contains not less than one-half of one percent alcohol by volume and not more than [seven] eight and one-half 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 spirited liquors, holds a valid federal license to produce spirited 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, unless written approval has been granted by the division.

[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, and is intended and used for the sale of cocktails containing spirituous liquor.

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

[T.] **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.] **X.** “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:

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(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 or 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.

~~[FF.]~~ LL. **“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.]~~ MM. **“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.]~~ NN. **“Serve”** means to pour, or otherwise personally provide alcoholic beverages to another person.

OO. **“Shipping”** means the use of a registered common carrier by a licensee to transport alcoholic beverages. Shipping does not include delivery of alcoholic beverages.

~~[II.]~~ PP. **“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.]~~ QQ. **“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.]~~ RR. **“Split”** means a half-bottle of wine or champagne containing not more than 375 ml of wine or champagne.

~~[LL.]~~ SS. **“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.]~~ TT. **“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.

UU. **“Unaccompanied minor”** means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.

VV. **“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.]~~ WW. **“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.]~~ XX. **“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.

[15.10.2.7 NMAC - Rp, 15 NMAC 10.1.1.7, 4/25/2017; A, 9/28/2021]

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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, Alcoholic Beverage Control Division.
[15.10.31.1 NMAC - Rp, 15.10.31.1 NMAC, 9/28/2021]

15.10.31.2 SCOPE: These regulations apply to all licensees under the New Mexico Liquor Control Act.
[15.10.31.2 NMAC - Rp, 15.10.31.2 NMAC, 9/28/2021]

15.10.31.3 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.
[15.10.31.3 NMAC - Rp, 15.10.31.3 NMAC, 9/28/2021]

15.10.31.4 DURATION: Permanent.
[15.10.31.4 NMAC - Rp, 15.10.31.4 NMAC, 9/28/2021]

15.10.31.5 EFFECTIVE DATE: September 28, 2021, unless a later date is cited at the end of this section.
[15.10.31.5 NMAC - Rp, 15.10.31.5 NMAC, 9/28/2021]

15.10.31.6 OBJECTIVE: These rules are intended to establish standards for the general operation and maintenance of licensed premises.
[15.10.31.6 NMAC - Rp, 15.10.31.6 NMAC, 9/28/2021]

15.10.31.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.
[15.10.31.7 NMAC - Rp, 15.10.31.7 NMAC, 9/28/2021]

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.
[15.10.31.8 NMAC - Rp, 15.10.31.8 NMAC, 9/28/2021]

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 rule.
[15.10.31.9 NMAC - Rp, 15.10.31.9 NMAC, 9/28/2021]

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.
15.10.31 NMAC - Premises - General Requirements, filed 3/31/1997, recompiled 12/31/2001, was repealed and replaced by 15.10.31 NMAC - Premises - General Requirements, effective 9/28/2021.

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The New Mexico Regulation and Licensing Department – Alcoholic Beverage Control Division has repealed 15.10.31 NMAC - Premises - General Requirements, filed 3/31/1997, recompiled 12/31/2001, and replaced it with 15.10.31 NMAC - Premises - General Requirements, effective 9/28/2021.

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This is an amendment to 15.10.32 NMAC, Sections 1, 8,10, 11, 12, 13, and added a new Section 14, effective 9/28/2021.

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; A, 9/28/2021]

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. A license may be granted for a proposed location if a person has obtained a waiver from a local option district governing body for the proposed location.
[15.10.32.8 NMAC - Rp, 15 NMAC 10.3.2.8, 4/25/2017; A, 9/28/2021]

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 pump stations, unless granted written approval by the division, may not be included in controlled access areas.

F. A licensee may obtain an exception to these requirements with written approval issued by the Division.

[15.10.32.10 NMAC - Rp, 15 NMAC 10.3.2.10, 4/25/2017; A, 9/28/2021]

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.]~~

[RESERVED]

[15.10.32.11 NMAC - Rp, 15 NMAC 10.3.2.11, 4/25/2017; Repealed 9/28/2021]

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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; A, 9/28/2021]

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.] [RESERVED]
[15.10.32.13 NMAC - Rp, 15 NMAC 10.3.2.14, 4/25/2017; Repealed 9/28/2021]

15.10.32.14 [RESERVED] OUTDOOR CONTROLLED ACCESS AREAS: 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 upon written request by a licensee.
[15.10.32.14 NMAC – N, 9/28/2021]

This is an amendment to 15.10.33 NMAC, Sections 1, 7, 9 and 12, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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] 18 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.

F. In accordance with Subsection C of Section 60-7B-10 NMSA 1978, a minor 18 years of age or older who is licensed under the New Mexico Commercial Driver's License Act may, during the scope of their employment by a New Mexico wholesaler, handle alcoholic beverages while in transit to and while on a licensed premises.

[15.10.33.9 NMAC - Rp, 15 10.33.9 NMAC, 4/25/2017; A, 9/28/2021]

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.

[15.10.33.12 NMAC - N, 9/28/2021]

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This is an amendment to 15.10.51 NMAC, Sections 1, 8, 10 through 14 and adding new Sections 15 and 16, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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; A, 9/28/2021]

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 90 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 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;
(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; A, 9/28/2021]

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, the host must be able to provide the licensee with a receipt for the alcohol being served at the event, showing where the alcohol was purchased.
- 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; A, 9/28/2021]

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; A, 9/28/2021]

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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; A, 9/28/2021]

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, except for:

(1) Sales in which 10 containers of three fluid ounces or less are packaged together by the manufacturer and meant for sale as a single unit.

(2) Sales in which a container of three fluid ounces or less are packaged by the manufacturer, as a value-added product, in conjunction with a spirits purchase of 750 milliliters or larger.

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.

C. The division reserves the right to prohibit sales of containers of three fluid ounces or less, of alcoholic beverages with an alcohol by volume of fifteen percent or greater.

[15.10.51.15 NMAC – N, 9/28/2021]

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, unless written approval is granted by the division.

[15.10.51.16 NMAC – N, 9/28/2021]

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This is an amendment to 15.10.52 NMAC, Sections 1, 8 and 9, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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; A, 9/28/2021]

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This is an amendment to 15.10.53 NMAC, Sections 1, 8 and 10, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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 NMSA 1978, of the Act.
- B. The Director shall enforce the prohibitions against unlawful inducements as set forth in Section 60-8A-1.1 NMSA 1978, of the Act.
- C. Sections 60-8A-1 and 60-8A-1.1 NMSA 1978, 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; A, 9/28/2021]

This is an amendment to 15.10.54 NMAC, Sections 1, 7, 9, 10 and 12, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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 NMSA 1978, 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.

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~~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 NMSA 1978, of the Act.
[15.10.54.9 NMAC - Rp, 15 NMAC 10.5.4.9, 4/25/2017; A, 9/28/2021]

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; A, 9/28/2021]

15.10.54.12 CHANGE IN OFFICERS: A club must report a change in officers [~~within 30 days of an election being held~~] at time of renewal 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, as part of the annual renewal application.
[15.10.54.12 NMAC - Rp, 15 NMAC 10.5.4.12, 4/25/2017; A, 9/28/2021]

This is an amendment to 15.10.55 NMAC, Sections 1, 2, 8 and added a new Section 9, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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 Subsection 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; A, 9/28/2021]

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.

[15.1.55.9 NMAC – N, 9/28/2021]

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This is an amendment to 15.10.61 NMAC, Sections 1, 7 and 8, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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)

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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

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(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] <u>controlled access area of licensed premises</u>
157	change of floor plan without approval
180	special dispenser's, <u>private celebration or public celebration permit violation</u>
[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

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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; A, 9/28/2021]

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This is an amendment to 15.10.70 NMAC, Sections 1, 8 and 10, effective 9/28/2021.

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; A, 9/28/2021]

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]~~ completed by the ~~[approved operator]~~ licensee or lessee, or employees of the ~~[approved operator]~~ licensee or lessee, 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 ~~[approved operator]~~ licensee or lessee 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 ~~[approved operator]~~ licensee or lessee 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; A, 9/28/2021]

This is an amendment to 15.11.2 NMAC, Sections 1, 9, 11, 13 and adding new Section 15, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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; A, 9/28/2021]

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.]~~

[RESERVED]

[15.11.2.13 NMAC - Rp, 15 NMAC 11.1.1.13, 4/25/2017; Repealed 9/28/2021]

15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES:

A. 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:

(1) The original, or an electronic or physical copy, of the permittees alcoholic beverage delivery permit;

(2) A physical or electronic copy of the delivery personnel's server certification;

(3) A physical copy of the receipt printout accompanying all alcoholic beverages out for delivery; and

B. A license holding an alcoholic beverage delivery permit, or a third-party delivery license must save for a period of six months, at their licensed establishment, documentation containing the following information:

(1) The name 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.

[15.11.2.15 NMAC – N, 9/28/2021]

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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.
[15.11.20.1 NMAC - N, 9/28/2021]

15.11.20.2 SCOPE: These rules apply to all licensees under the New Mexico Liquor Control Act.
[15.11.20.2 NMAC - N, 9/28/2021]

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.
[15.11.20.3 NMAC - N, 9/28/2021]

15.11.20.4 DURATION: Permanent.
[15.11.20.4 NMAC - N, 9/28/2021]

15.11.20.5 EFFECTIVE DATE: September 14, 2021, unless a later date is cited at the end of a section.
[15.11.20.5 NMAC - N, 9/28/2021]

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.
[15.11.20.6 NMAC - N, 9/28/2021]

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.
[15.11.20.7 NMAC - N, 9/28/2021]

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 Subsection B of 15.11.20.10 NMAC and Subsection C of 15.11.20.10 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 geographical boundaries of the county and the local option district the licensee is located, unless written approval to deliver into an adjoining county has been given by the division;

(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 delivery an alcoholic beverage to a business, a commercial establishment, a college or university, or a school campus;

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(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.
[15.11.20.8 NMAC - N, 9/28/2021]

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.
[15.11.20.9 NMAC - N, 9/28/2021]

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) 750 milliliters of wine;

(2) six 12-ounce containers of prepackaged wine, beer, cider;

(3) three 12-ounce containers of manufacturer canned or bottled ready to drink cocktails containing spiritous liquors with an alcoholic by volume of thirteen percent;

(4) one growler or crowler of product manufactured by a small brewer; or

(5) one howler of a cocktail, mixed by the licensee, containing no more than four and one-half ounces of spiritous liquors, in order to comply with Paragraph (6) of Subsection F of Section 60-6A-4 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.
[15.11.20.10 NMAC - N, 9/28/2021]

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) An examplar copy of a contract to be used between applicant and licensees holding alcoholic beverage delivery permits, with executed contracts to be submitted after execution.

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- B.** The holder of a third-party alcohol delivery license
- (1) Contract with licensees issued an alcoholic 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 alcoholic beverages with a licensee;
 - (2) Buy, hold or deliver alcoholic beverages under a third-party alcohol delivery license; or
 - (3) Assist licensees in the delivery of alcoholic beverages in violation of these rules.
 - (4) Nothing in this section shall preclude a third-party alcohol delivery licensee from holding any other license issued pursuant to the Liquor Control Act.
- [15.11.20.11 NMAC - N, 9/28/2021]

HISTORY OF 15.11.20 NMAC: [RESERVED]

15.11.21.12
7/28/2021 10:58 AM

7/28/2021 3:58 PM

This is an amendment to 15.11.21 NMAC, Sections 1 and 12 effective 9/28/2021.

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; A, 9/28/2021]

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 1/2 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; A, 9/28/2021]

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This is an amendment to 15.11.22 NMAC, Sections 1 and 8 effective 9/28/2021.

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; A, 9/28/2021]

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, 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; A, 9/28/2021]

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This is an amendment to 15.11.23 NMAC, Sections 1, 8 and 9 effective 9/28/2021.

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; A, 9/28/2021]

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, NMSA 1978, 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, NMSA 1978, 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; A, 9/28/2021]

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; [øf]

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

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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, NMSA 1978.

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; A, 9/28/2021]

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2021 SEP -2 PM 4:00

This is an amendment to 15.11.24 NMAC, Sections 1, 8, 9 and 10 effective 9/28/2021.

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; A, 9/28/2021]

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] licenses 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] licenses 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; A, 9/28/2021]

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, 4/25/2017A, 9/28/2021]

15.11.24.10 REQUIREMENTS FOR RENEWAL:

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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; A, 9/28/2021]

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This is an amendment to 15.11.25 NMAC, Sections 1, 6 and 10 and adding new Section 9, effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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 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 finds 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.

G. 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.

H. 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.

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

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

[15.11.25.9 NMAC – N, 9/28/2021]

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;

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(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]~~ finds 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] G. 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] H. ~~[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 spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

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

[K] J. 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; A, 9/28/2021]

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2021 SEP -2 PM 4:01

This is an amendment to 15.11.26 NMAC, Sections 1, 8, 10 and 12 effective 9/28/2021.

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; A, 9/28/2021]

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 A 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;

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- 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; A, 9/28/2021]

- 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; A, 9/28/2021]

- 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; A, 9/28/2021]

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This is an amendment to 15.11.27 NMAC, Section 1, effective 9/28/2021.

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; A, 9/28/2021]

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This is an amendment to 15.11.28 NMAC, Section 1, effective 9/28/2021.

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; A, 9/28/2021]

2021-05-09 09:02

This is an amendment to 15.11.29 NMAC, Sections 1, 8 and 10 effective 9/28/2021.

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; A, 9/28/2021]

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; A, 9/28/2021]

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; A, 9/28/2021]

2021 SEP 28 10:02

This is an amendment to 15.11.30 NMAC, Section 1, effective 9/28/2021.

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; A, 9/28/2021]

This is an amendment to 15.11.31 NMAC, Sections 1 and 8, effective 9/28/2021.

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; A, 9/28/2021]

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] the server 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. 18, 19 and 20 year olds. Pursuant to Subsection B of 60-7B-11 NMSA 1978, a person between the ages of [19] 18 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] 18 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

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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; A, 9/28/2021]