

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

**15.11.24.1        ISSUING AGENCY:** The 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]

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

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

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

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

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

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

**15.11.24.8        LIMITATIONS ON RESTAURANT LICENSE TYPES:** A person holding a restaurant with beer and wine license or a restaurant with spirits license is subject to the following limitations:

**A.** The primary source of revenue for a restaurant holding 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.** All restaurant licensees are prohibited from selling alcoholic beverages for consumption off the licensed premises except as provided by Subsection D of 15.10.51.9 NMAC or, when issued an alcoholic beverage delivery permit, through appropriate delivery methods.

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

**D.** A restaurant with beer and wine license is non-transferable from person to person or from location to location. A restaurant with spirits license is non-transferable from person to person, but may be transferred from location to location within its local option district.

**E.** The sale of alcohol through a restaurant beer and wine license is limited to beer and wine, unless the restaurant a licensee has applied for and been granted a New Mexico spirituous liquors permit. A New Mexico spirituous liquors permit holder may sell beer, wine, and spirits made by a New Mexico craft distiller.

**F.** A restaurant may only purchase alcohol through a duly licensed wholesaler, except that a restaurant licensee that also holds a small brewer's or winegrower's license may be duly licensed as a wholesaler, solely for the purpose of selling beer or wine to the licensee's restaurant that it has manufactured through its own license.

[15.11.24.8 NMAC - N, 4/25/2017; A, 9/28/2021]

**15.11.24.9        APPLICATION FOR ALL RESTAURANT LICENSE TYPES:** An applicant for 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 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:**

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

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

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

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

#### **HISTORY OF 15.11.24 NMAC:**

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

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

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

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

#### **History of Repealed Material:**

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

#### **Other History:**

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