

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING
PART 31 ALCOHOL SERVER TRAINING - CERTIFICATION

15.11.31.1 ISSUING AGENCY: The 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]]

15.11.31.2 SCOPE: This rule applies to all act licensees, lessees, servers, and alcohol server training providers and instructors.
[15.11.31.2 NMAC - Rp, 15 NMAC 11.3.1.2, 4/25/2017]

15.11.31.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.11.31.3 NMAC - Rp, 15 NMAC 11.3.1.3, 4/25/2017]

15.11.31.4 DURATION: Permanent.
[15.11.31.4 NMAC - Rp, 15 NMAC 11.3.1.4, 4/25/2017]

15.11.31.5 EFFECTIVE DATE: April 25, 2017, unless a later date is cited at the end of a section.
[15.11.31.5 NMAC - Rp, 15 NMAC 11.3.1.5, 4/25/2017]

15.11.31.6 OBJECTIVE: This rule is intended to establish standards and procedures for training persons employed in the alcoholic beverage service industry to enhance their professionalism and to reduce the incidence of alcohol-related problems statewide, and to comply with the provisions of the act and the alcohol server education article of the act.
[15.11.31.6 NMAC - Rp, 15 NMAC 11.3.1.6, 4/25/2017]

15.11.31.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act and the alcohol server education act:

- A. “Applicant”** means a person or entity applying to the division for certification as a provider, instructor or program.
 - B. “Approved test”** means a test proctored by a live instructor or a test administered on-line that has been approved by the division and incorporates at least 20 questions from a list of questions provided by the division. An approved test that is proctored by a live instructor must be graded by the instructor.
 - C. “Certified program”** means an on-line or classroom program that is certified by the division.
 - D. “Classroom program”** means a program certified by the division in accordance with these rules that is administered, at least in part by a live instructor and may or may not include the use of a computer.
 - E. “Classroom hour”** means 50 minutes of instruction time and 10 minutes of break time.
 - F. “On-line program”** means a program certified by the division in accordance with these rules that is designed to be administered via the internet, including the exam, without the presence of a live instructor.
 - G. “Personal identifier”** means a person’s social security number or, if a person does not have a social security number, the person’s individual taxpayer identifier number.
 - H. “Proctored test”** means a test administered and supervised by a live instructor.
 - I. “Server permit”** means an unexpired permit issued by the division to a person who has met all the requirements to become a server as required by these rules.
 - J. “Student”** means an applicant for a server permit that participates in a certified program.
- [15.11.31.7 NMAC - Rp, 15 NMAC 11.3.1.7, 4/25/2017]

15.11.31.8 SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:

A. Server permit required. Every licensee or lessee who is directly involved in sale, delivery or service of alcoholic beverages, and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed premises, or participate in the delivery of alcoholic beverages unless that person first obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

B. Server permit issuance. Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

C. Providers' duty to inform the division of student's satisfactory completion. Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the director a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the director on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

D. Division will distribute permits. The division will prepare and distribute the server permits to the student within 120 days of satisfactory completion of a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

E. Temporary Server Permits. Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the director, upon satisfactory completion of the program by student. Temporary server permits are valid for 120 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit 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 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 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 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]

15.11.31.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

A. Certification required: Any person seeking certification as a provider, instructor or program must submit an application to the director for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

B. Applications for providers and programs:

(1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for providers, a surety bond from a surety company authorized to transact business in New Mexico, or other evidence of financial responsibility, covering all instructors in the amount of five thousand dollars (\$5,000). Any independent contractor who obtains the right to own, teach or otherwise use a program, but is not covered under the provider's surety bond, will be required to obtain certification as a provider, including posting a surety bond as required in the alcohol server education article or providing other evidence of financial responsibility. The surety bond shall be continuous, shall name the division as payee, and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records;

(c) for in-classroom providers and instructors, the physical addresses of each location where the program will be offered and the dates when the program will be offered. A maximum of 40 students per class or the maximum occupant load permitted by the state or local fire marshal, whichever is less, will be permitted;

(d) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(e) fees that will be charged to take the program;

(f) for providers a copy of applicant's business license;

(g) for providers a copy of applicant's tax registration certificate;

(h) a form, prescribed by the director, authorizing a background check for all providers and instructors. Persons convicted of a felony or crimes of moral turpitude may not be certified as providers or instructors at the discretion of the director. Additional documentation regarding disposition of any charges may be requested by the director prior to approval of any application for certification;

(i) application fees in the amount of three hundred fifty dollars (\$350) per provider and one hundred dollars (\$100) per instructor; in instances where the applicant is applying to be both a provider and instructor, i.e. the provider and instructor are the same person, only the three hundred fifty (\$350) application fee is required to be paid; and

(j) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in Subsection D of 15.11.31.9 NMAC and 15.11.31.10 NMAC, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half (4 ½) classroom hours or the equivalent for on-line programs;

(c) a copy of applicant's business license;

(d) a copy of applicant's tax registration certificate;

(e) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the director, and in a format approved by the director;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the director that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the director that students cannot fast-forward or skip through the course materials.

(f) any other reasonably relevant information as may be required by the director;

C. Completeness check: When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

D. Standards for certification: An application for certification may be granted if the standards identified in this section are met.

(1) **Providers and instructors:** In reviewing applications for certification as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of alcoholic beverages;

(c) the results of the background check;

(d) whether applicant is 21 years of age or older;

(e) whether applicant has ever been found guilty of or admitted guilt to a violation of the liquor control act;

(f) whether applicant intends to teach a program certified by the state of New Mexico in accordance with these rules;

(g) any other reliable and relevant information, as determined by the director.

(2) **Programs:** In reviewing applications for certification as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in Subsection B of 60-6E-5 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of alcohol for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes photos and examples of bars, restaurants, convenience stores and other retail settings, including self-checkout, to ensure a balance in preparing servers to sell alcohol for consumption both on-premise and off-premise;

(f) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(g) whether the program is reviewed and revised annually to ensure current comprehensive training;

(h) whether the program is interactive and includes real life instructional examples;

(i) for on-line programs whether it is easy to navigate and user-friendly; and

(j) any other reliable and relevant information, as determined by the director.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server certification at all times when providing instruction.

E. Expiration of certification: Provider, instructor and program certificates expire on December 31 each year.

F. Renewal: Renewal applications for provider, instructor and program certifications must be submitted no later than November 30 of each year. Renewal applications must include renewal fees in the amount of three hundred and fifty dollars (\$350) per provider, one hundred dollars (\$100) per instructor. Late renewal applications will be subject to a late fee of thirty dollars (\$30) per day.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

G. Pro-rated fees: The initial certification fee for providers, programs and instructors will be prorated, as follows:

- (1) certification obtained before April 1 of any year will be subject to the full amount of the annual certification fee;
- (2) certification obtained on or after April 1 and before July 1 will be subject to three-fourths of the annual fee;
- (3) certification obtained on or after July 1 and before October 1 will be subject to one-half of the annual fee; and
- (4) certification obtained on or after October 1 will be subject to one-fourth the annual fee.

H. Transferability: Provider, instructor and program certifications are non-transferrable.

I. Probation, suspension or revocation: The director may place a provider or instructor on probation if the director has a reasonable belief that the provider or instructor is not in compliance with one or more of the requirements of the statutes or division rules. The director shall send a notice of probation to the provider, instructor or both specifying the provisions with which the provider or instructor is not in compliance along with an order to show cause why the provider or instructor certification should not be suspended. If the provider or instructor fails to show cause why his or her certification should not be suspended, the director may suspend the provider or instructor certification for a reasonable period of time. The director shall determine the period of probation or suspension depending upon the number and nature of the violations. If the provider or instructor is placed on probation, the director shall review the provider or instructor's operations periodically during the probationary period. At anytime, a provider or instructor that is placed on probation or suspension may request a hearing. The director may only revoke a provider or instructor certification for cause after a hearing.

J. Cancellation: A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.
[15.11.31.9 NMAC - Rp, 15 NMAC 11.3.1.9, 4/25/2017]

15.11.31.10 ADMINISTRATION OF CERTIFIED SERVER TRAINING PROGRAM:

A. Providers' responsibility in administering a certified program: It is the responsibility of providers to ensure that they and any instructors employed by them are teaching a certified program.

B. Course materials: Providers shall ensure that each student is provided complete course materials at the beginning of each certified program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.

C. Prior approval required: Providers must obtain prior approval from the director before changing the required content of a certified program.

D. Proctored tests: Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

E. On-line tests: On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the director to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

F. ADA compliance: Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable accommodation for instructional and learning purposes to the extent required by law.

G. Administration of on-line programs: Providers who administer an on-line program without the presence of a live instructor must ensure the following:

- (1) a secure login process is in place to confirm the identity of the person taking the course;
- (2) students may not be allowed to fast-forward through the instruction portion of the course;

(3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;

(4) no advertisements appear during course instruction; and

(5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[15.11.31.10 NMAC - Rp, 15 NMAC 11.3.1.10, 4/25/2017]

15.11.31.11 SURETY BOND; EVIDENCE OF FINANCIAL RESPONSIBILITY: The purpose of the surety bond is to ensure that the provider's students will be reimbursed for fees paid for the program if the provider or instructor fails to conduct the program to completion.

[15.11.31.11 NMAC - Rp, 15 NMAC 11.3.1.12, 4/25/2017]

15.11.31.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS: The director may fine or decertify any program, or refuse to renew certification, when the director determines that:

A. a provider, instructor or an agent, knowingly provided false information to the director, advisory committee or division with regard to completion of a certified program by any person;

B. a provider, instructor or an agent, failed to conduct the program as certified by the division;

C. any person filing an application with the division for certification of a provider, instructor or program knowingly submitted false information to the director, advisory committee or division;

D. a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

E. a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[15.11.31.12 NMAC - Rp, 15 NMAC 11.3.1.13, 4/25/2017]

15.11.31.13 [RESERVED]

HISTORY OF 15.11.31 NMAC:
Pre-NMAC History: [RESERVED]

History of Repealed Material:
15 NMAC 11.3.1.7.1 - Repealed 7/15/1999
15 NMAC 11.3.1.7.2 - Repealed 7/15/1999
15 NMAC 11.3.1.7.4 - Repealed 7/15/1999
15 NMAC 11.3.1.7.6 - Repealed 7/15/1999
15 NMAC 11.3.1.7.7 - Repealed 7/15/1999
15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:
15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification (filed 3/14/1997) was replaced by 15 NMAC 11.3.1, Alcoholic Beverages Licensing - Alcohol Server Training - Certification, effective 4/25/2017.