

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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New Mexico Register

Volume XXVIII, Issue 8

April 25, 2017

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Notices of Rulemaking and Proposed Rules

GAME AND FISH, DEPARTMENT OF

MEETING AND RULE MAKING NOTICE

On Thursday, May 11, 2017, beginning at 9:00 a.m., at the Community Facility on Airpark Road, Clayton Municipal Airport, Clayton, New Mexico, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: Discussion with Senator Pete Campos; Awards of Excellence and Dedication to Wildlife Management; Presentation to the Commission on Penalty Assessment Violations; Revocations; Reserving Two Elk Licenses for Non-Profit Wish Granting Organization; Final Migratory Bird Rule for 2017-2018 Hunting Seasons; Initiation of Upland Game Rule Development 19.31.5 NMAC for the 2019-2023 Seasons; Draft Rule Amendments to the Aquatic Invasive Species Rule 19.30.14 NMAC; Request to Dispose of Vehicles and Other Assets; Fiscal Year 2018 Initiation of Budget Development; Update on the Construction of Albuquerque Office and the Santa Fe Warehouse Complex; Commission Discussion Regarding Trespass; Draft Rule Presentation of the Commission's Appeal Process 19.30.16 NMAC; and Closed Executive Session.

Copies of proposed rule changes and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader,

amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

HUMAN SERVICE DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PROPOSED RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing the following new NMAC policy: *8.299.400 NMAC, Family Planning Services-Recipient Requirements*, *8.299.500 NMAC, Family Planning Services-Income and Resource Standards*, *8.299.600 NMAC, Family Planning Services-Benefit Description*.

The Department drafted new NMAC policy for the Medicaid family planning category. The new NMAC is necessary to create family planning as a stand-alone category subject to Modified Adjusted Gross Income (MAGI) methodology at 250% of the Federal Poverty Level (FPL) per our state plan.

The register and the proposed rules will be available April 25, 2017 on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rules may be requested by contacting MAD at 505-827-6252.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico May 25, 2017 from 10 a.m. to 11 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on May 25, 2017. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 505-827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

HUMAN SERVICE DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PROPOSED RULEMAKING

The Human Services Department

(the Department), through the Medical Assistance Division (MAD), is proposing to amend 8.311.3 *NMAC, Methods and Standards for Establishing Payment - Inpatient Hospital Services*.

The Department, in complying with the 2016 General Appropriations Act, which directs the Department to reduce reimbursement rates paid to Medicaid providers, implemented several measures in July and August 2016 related to provider reimbursement. Some of these measures required approval from the Centers for Medicare and Medicaid Services (CMS).

One of the measures, approved by CMS effective July 1, 2016, was for the Department to reduce the reimbursement rate found in Section 12 Prospective Payment Methodology for Hospitals, Subsection F Special prospective payment provisions, Paragraph (1) Outlier cases from ninety percent to eighty-five percent of the hospital's standardized cost.

The Department is now amending the state rule to be consistent with the Medicaid State Plan as approved by CMS.

The register and the proposed rule will be available April 25, 2017 on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at 505-827-6252.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico May 25, 2017 from 11 a.m. to 12 p.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human

Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on May 25, 2017. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 505-827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

MILITARY AFFAIRS, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The Department of Military Affairs ("Department") hereby gives notice that the Department will conduct a public hearing at Onate Complex Headquarters Building #10, First Floor, Room 149, 47 Bataan Blvd, Santa Fe, New Mexico 87508-4695, on Thursday, June 1, 2017 from 9:00 a.m. to 10:00 a.m. The purpose of the public hearing will be to obtain input on the proposed repeal of 10.30.2 NMAC, ORDER PRESCRIBING REGULATIONS UNDER THE

CODE OF MILITARY JUSTICE in its entirety.

Interested individuals may provide comments at the public hearing and/or submit written comments to Jeffery Waddell, General Counsel, via email at jeffery.b.waddell@state.nm.us, (fax) 505-471-8231, or directed to Jeffery Waddell, General Counsel, Headquarters Building #10, 47 Bataan Blvd, Santa Fe, New Mexico 87508-4695. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be obtained from Jeffery Waddell at jeffery.b.waddell@state.nm.us or (505) 474-1877.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jeffery Waddell at (505) 474-1877 as soon as possible. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

PUBLIC EDUCATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, May 26, 2017, from 8:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replacement of 6.69.8 NMAC, TEACHER AND SCHOOL LEADER EFFECTIVENESS.

The purpose of this proposed rule change is to adjust the weight of the measures in the Effectiveness

Evaluation Systems in New Mexico's educator evaluation and support system, NMTEACH. With this proposed rule change, the measures include student achievement growth worth thirty-five percent (35%); principal observations (Domains 2 and 3) worth forty percent (40%); and other multiple measures worth twenty-five percent (25%) to include surveys and attendance. Additionally, this rule change includes process implementation for principal observations.

Interested parties may provide comments on the proposed repeal and replacement of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, May 26, 2017, from 12:00 p.m. to 2:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed repeal and replacement of 6.69.2 NMAC, UNSATISFACTORY WORK PERFORMANCE OF CERTIFIED (LICENSED) SCHOOL PERSONNEL.

The purpose of this proposed rule change is to clarify the process and procedures relating to the supervision and correction of unsatisfactory work performance of licensed school personnel prior to the notice of intent to discharge or request to suspend.

Interested parties may provide comments on the proposed repeal and replacement of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Friday, May 26, 2017, from 2:30 p.m. to 4:30 p.m. (MDT). The purpose of the public hearing is to receive public input on the amendment of 6.60.6.9 NMAC, REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES.

The purpose of this proposed rule change is to require that local superintendents consider the effectiveness rating from New Mexico's educator evaluation and support system, NMTEACH, when determining whether a teacher has had successful evaluations. With this rule change, a teacher may submit a local superintendent's determination of successful evaluations in support of an application for advancement. Local superintendent determinations of evaluations will continue to be considered when a teacher applies for renewal of a license.

Interested parties may provide comments on the proposed amendment of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New

Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION,
DEPARTMENT OF**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, May 30, 2017, from 8:30 a.m. to 9:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed amendment to 6.29.1.9 NMAC, PROCEDURAL REQUIREMENTS.

This proposed amendment will require that a training program for

a charter school governing body or for a new board member of the New Mexico School Boards Association will align with all statutory and regulatory requirements.

Interested parties may provide comments on the proposed amendment to this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION,
DEPARTMENT OF**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry

Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, May 30, 2017, from 9:15 a.m. to 9:45 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed amendment of 6.80.4.20, NMAC, GOVERNING BODY TRAINING.

This proposed amendment is necessary so that the Department may adopt a new section of code for charter school governing body training requirements.

Interested parties may provide comments on the proposed amendment of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, May 30, 2017, from 10:00 a.m. to 12:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed new rule of 6.80.5 NMAC, CHARTER SCHOOL GOVERNING BODY REQUIREMENTS.

This proposed rule adoption will move the authority for approving governing body trainers from the New Mexico Coalition of Charter Schools and the New Mexico School Boards Association to the New Mexico Public Education Department. This proposed rule will open the field of eligible providers for governing body training and establish clear expectations regarding content and provider qualifications.

Interested parties may provide comments on the proposed adoption of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments.

Copies of the proposed rules may be accessed through the New Mexico Public Education Department's website under the "Public Notices" link at <http://ped.state.nm.us/ped/PublicNotices.html>, or may be obtained from Jamie Gonzales by

contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC SAFETY DEPARTMENT

NOTICE OF PUBLIC HEARING

The New Mexico Department of Public Safety will hold a public hearing at the Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, NM, 87507, on June 2, 2017 at 1:00 p.m.

The purpose of this public hearing is to receive public comment and input on the proposed new Rule 10.24.1 NMAC *Certification for Search and Rescue Persons* providing a process for certification, maintenance of certification, and decertification for Search and Rescue (SAR) persons. All sections within the rule are new provisions.

Provisions in this new rule include, and are not limited to: definitions for terms involving SAR which are referenced within the new rule; a system of certification for field coordinators, incident command system general staff, and SAR persons or volunteers; maintenance of certification for field coordinators, incident command system general staff, and SAR persons or volunteers; a provision clarifying that the new rule does not prevent the Department of Public Safety from entering into an agreement for Search and Rescue certifications and trainings through an outside certifying entity; provisions for denying, suspending, and

revoking a certification; procedures for requesting an informal meeting regarding a decision to deny, suspend or revoke a certification; provisions for the SAR Review Board's review of a decision to deny, suspend, or revoke a certification, and to make recommendations to the agency administrator prior to the agency administrator making a final decision; and other additions as allowed by applicable law.

Interested persons may comment at the public hearing or submit written statements to the Department c/o Bob Rodgers, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, NM 87504, or by electronic mail to Robert.Rodgers@state.nm.us. All written statements must be received no later than June 2, 2017 at the public hearing. Early submission of written statements is encouraged.

Copies of the proposed rule may be obtained prior to the hearing by contacting Bob Rodgers by telephone at (505) 841-9297 during normal business hours, by email at Robert.Rodgers@state.nm.us, or at the following website: <http://www.dps.state.nm.us> on the home page.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bob Rodgers. The Department of Public Safety requires at least ten calendar days advance notice to provide special accommodations.

REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES AND MANUFACTURED HOUSING DIVISION

PUBLIC RULE HEARING

The Construction Industries Commission will convene a public hearing on proposed changes to amend the New Mexico Administrative Code. Amendments: NMAC 14.10.4 New Mexico

Electrical Code, The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing. The hearing is scheduled as follows: 9:00 a.m., May 31st, 2017 at the New Mexico Regulation and Licensing Department (Toney Anaya Building-Hearing Room 2 on the 2nd Floor), located at 2550 Cerrillos Road, Santa Fe, NM 87504.

Please Note: All persons wishing to participate in the public hearing remotely may do so telephonically dialing into: Dial-in Number: (712) 432-1212, Meeting ID: 788-223-117

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (www.rld.state.nm.us/construction) or by request from the Santa Fe CID Office - Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM 87504. If you cannot attend the hearing, you may send your written comments to: Construction Industries Division P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4702. All comments must be received no later than 5:00 p.m., on May 30th, 2017. All public comments and documentation will be entered into the record for the public rules hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs please notify us as soon as possible. Telephone: 505-490-2984. Email: james.hunt@state.nm.us; Fax No. (505) 476-4702.

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Physical Therapy

Board will hold a rule hearing on Thursday, June 1, 2017. Following the rule hearing the New Mexico Physical Therapy Board will convene a regular board meeting to adopt the rules and take care of regular business.

The rule hearing and board meetings will be held at the Regulations and Licensing Department, 5500 San Antonio Dr. NE Albuquerque, NM 87109 at 12:00 p.m.

The purpose of the rule hearing is to consider adoption of proposed amendments to 16.20.3 NMAC, Licensure by Endorsement.

You can contact the board office located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4622 for copies of the proposed rules that are also available on the New Mexico Physical Therapy board's website: www.RLD.state.nm.us.

In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than May 22, 2017. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the rule hearing or board meeting, but need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

TRANSPORTATION, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold

a public hearing for the purpose of receiving oral and written public comment on proposed amendments to 18.28.3 NMAC - Selection Committee for Qualifications Based Proposals. The purpose of the amendments to the rule are to make certain modifications to the provisions regarding the membership of the professional services selection committee for transportation projects using competitive sealed qualifications based professional services.

The hearing is scheduled on May 31, 2017, from 1:30 p.m. to 3:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Teri Gallegos Hoover, Office of Infrastructure, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5109 to request a copy of the rule. This Notice and the proposed rule, as amended, are also available on NMDOT's website: <http://dot.state.nm.us/content/nmdot/en/public-notice.html>.

The hearing will be held before Rick Padilla, P.E., State Maintenance Manager, NMDOT. Interested persons may also present their views by written statements submitted on or before May 24, 2017, to New Mexico Department of Transportation, Office of Infrastructure, c/o Teri Gallegos Hoover, P.O. Box 1149, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5109.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form, may contact Teri Gallegos Hoover at (505) 827-5109 at least ten (10) days before the hearing.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.63 NMAC, Sections 2, 3, and 11, effective 5/13/2017.

20.11.63.2 SCOPE: 20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through ~~[September 13, 2013]~~ January 23, 2017.

A. Exempt: 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 60, Subpart AAA, *Standards of Performance for New Residential Wood Heaters*.
(2) ~~[Reserved]~~
40 CFR 60, Subpart QQQQ, *Standards of Performance for New Residential Hydronic Heaters and Forced Air Furnaces*.

C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County ~~[Ordinance 94-5, Section 8]~~ Ordinances Section 30-37, and Section 74-2-8 NMSA 1978 shall not apply to 20.11.63 NMAC or the incorporated federal standards. [1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

20.11.63.3 STATUTORY AUTHORITY: 20.11.63 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, ~~[Sections 74-2-4 and]~~ Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County ~~[Ordinance 94-5-Sections 3 and 4]~~ Ordinances Section 30-33; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 ~~[Sections 9-5-1-3 and]~~ Section 9-5-1-4. [1/1/2000; 20.11.63.3 NMAC - Rn, 20 NMAC 11.63.3, 10/1/02; A, 1/1/05; A, 5/13/17]

20.11.63.11 INCORPORATION OF FEDERAL STANDARDS: Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through ~~[September 13, 2013]~~ January 23, 2017, are hereby incorporated into 20.11.63 NMAC. [1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.64 NMAC, Sections 2, 3, 11, and 12, effective 5/13/2017.

20.11.64.2 SCOPE: 20.11.64 NMAC is applicable to all stationary sources of air pollutants located

within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through ~~[September 13, 2013]~~ January 23, 2017.

A. Exempt: 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

B. Exclusions:
(1) 40 CFR 61, Subpart B, *National Emission Standards for Radon Emissions From Underground Uranium Mines*;
(2) 40 CFR 61, Subpart H, *National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities*;
(3) 40 CFR 61, Subpart I, *National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H*;
(4) 40 CFR 61, Subpart K, *National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants*;
(5) 40 CFR 61, Subpart Q, *National Emission Standards for Radon Emissions From Department of Energy Facilities*;
(6) 40 CFR 61, Subpart R, *National Emission Standards for Radon Emissions From Phosphogypsum Stacks*;
(7) 40 CFR 61, Subpart T, *National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings*; and
(8) 40 CFR 61, Subpart W, *National Emission*

Standards for Radon Emissions From Operating Mill Tailings.

C. Variances: The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County [Ordinance 94-5, Section 8] Ordinances Section 30-37 and Section 74-2-8 NMSA 1978 shall not apply to 20.11.64 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

20.11.64.3 STATUTORY AUTHORITY: 20.11.64 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, [Sections 74-2-4 and] Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County [Ordinance 94-5 Sections 3 and 4] Ordinances Section 30-33; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [Sections 9-5-1-3 and] Section 9-5-1-4.

[1/1/2000; 20.11.64.3 NMAC - Rn, 20 NMAC 11.64.3, 10/1/02; A, 1/1/05; A, 5/13/17]

20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61:

Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [September 13, 2013] January 23, 2017, are hereby incorporated into 20.11.64 NMAC. [1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63:

Except as otherwise provided, the National Emissions Standards

for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through [September 13, 2013] January 23, 2017, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

**ALBUQUERQUE -
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

This is an amendment to 20.11.71 NMAC, Sections 2, 3, 6, 7, 8, 13, and 14, effective 5/13/2017.

20.11.71.2 SCOPE:

A. Applicability: 20.11.71 NMAC is applicable to the city of Albuquerque and Bernalillo county.

(1)

Existing municipal solid waste landfills: [Each owner or operator of an existing) municipal solid waste (MSW) landfill is subject to all provisions required by 40 CFR 60.30e through 60.36e Subpart Cc, *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*] as promulgated by the US EPA on March 12, 1996, except as provided for in Subsection B of 20.11.71.14 NMAC. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline (40 CFR 60 Subpart Cc) are not considered a modification or reconstruction and do not subject an existing MSW landfill to the requirements of 40 CFR 60 Subpart WWW.] Except as provided in 20.11.71.14 NMAC, each owner or operator of an existing (active or closed) municipal solid waste landfill is subject to all provisions specified in 40 CFR Part 60, Subpart Cf, *Emission Guidelines and Compliance Times for Municipal Solid Waste*

Landfills, as promulgated by the US EPA on August 29, 2016. Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and do not subject an existing municipal solid waste landfill to the requirements of 40 CFR Part 60 Subpart XXX.

(2) New

municipal solid waste landfills:

In addition to being subject to 20.11.71.13 NMAC new [MSW] municipal solid waste landfills are subject to 40 CFR Part 60, Subpart [WWW] XXX, *Standards of Performance for Municipal Solid Waste Landfills* as incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*.

B. Exempt: 20.11.71

NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.71.2 NMAC - N, 1/1/06; A, 5/13/17]

20.11.71.3 STATUTORY

AUTHORITY: 20.11.71 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, [Sections 74-2-4, 74-2-5C] Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County [Ordinance 94-5 Sections 3 & 4] Ordinances Section 30-33; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [Sections 9-5-1-3 &] Section 9-5-1-4.

[20.11.71.3 NMAC - N, 1/1/06; A, 5/13/17]

20.11.71.6 OBJECTIVE: To

establish requirements for municipal solid waste landfills (MSWLs) in order to control emissions of methane and non-methane organic compounds (NMOC); to create a legally enforceable mechanism to require owners and operators of existing MSWLs to comply with the

provisions of 40 CFR Part 60, Subpart Cf.

[20.11.71.6 NMAC - N, 1/1/06; A, 5/13/17].

20.11.71.7 DEFINITIONS:

[In addition to the definitions in 20.11.71.7 NMAC, the definitions in 20.11.1 NMAC *General Provisions* apply unless there is a conflict between definitions, in which case the definition in 20.11.71 NMAC shall govern.

A. “Commercial solid waste” means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

B. “Design capacity” means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

C. “Division” means the air quality division of the city of Albuquerque environmental health department or its successor agency.

D. “Existing municipal solid waste landfill” or means a MSW landfill meeting **all of** the following conditions:

- (1) has commenced construction, modification, or reconstruction *before* May 30, 1991;
- (2) has not been modified or reconstructed *since* May 30, 1991;
- (3) has accepted waste at any time *since* November 8, 1987, or has additional design capacity available for future waste deposition; and
- (4) is active,

or has additional capacity, or is closed.

E. “Household waste” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

F. “Industrial solid waste” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, 40 CFR Parts 264 and 265. Industrial solid waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. Industrial solid waste does not include mining waste or oil and gas waste.

G. “Megagram” means 1,000,000 grams, or the equivalent of 1.102311 tons.

H. “Modification” means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

I. “Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A MSW landfill may

also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes such as commercial solid waste, non-hazardous sludge, conditionally-exempt small quantity generator waste, and industrial solid waste. Portions of a MSW landfill may be separated by access roads. A MSW landfill may be publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

J. “New municipal solid waste landfill” means a MSW landfill that commenced construction, reconstruction, modification, or began accepting waste on or after May 30, 1991.

K. “NMOC” means non-methane organic compounds, as measured according to the provisions of 40 CFR 60.754. NMOC may include many compounds commonly referred to as VOCs (volatile organic compounds) and HAPs (hazardous air pollutants).

L. “Reconstruction” shall have the same meaning as specified by 40 CFR 60.15.] All definitions found in 40 CFR Part 60, Subpart A apply. All definitions found in 40 CFR Part 60, Subpart XXX apply to new municipal solid waste landfills and all definitions found in 40 CFR Part 60, Subpart Cf apply to existing MSWLs. In addition to the definitions in 20.11.71.7 NMAC, the definitions in 20.11.1 NMAC *General Provisions* apply unless there is a conflict between definitions, in which case the definition in 20.11.71 NMAC shall govern. As used in this part:

A. “Active municipal solid waste landfill” or “active MSWL” means an MSWL in which solid waste is being placed or an MSWL that is planned to accept waste in the future.

B. “Closed municipal solid waste landfill” or “closed MSWL” means an MSWL in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed in 40 CFR 60.7(a)(4). Once a notification of modification

has been filed and additional solid waste is placed in the MSWL, the MSWL is no longer closed.

C. “Existing municipal solid waste landfill” or “existing MSWL” means an active or closed MSWL meeting the following conditions:

(1) has commenced construction, modification, or reconstruction on or before July 17, 2014; and;

(2) has accepted household waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

D. “New municipal solid waste landfill” or “new MSWL” means an MSWL that commenced construction, reconstruction, or modification after July 17, 2014.

[20.11.71.7 NMAC - N, 1/1/06; A, 5/13/17]

20.11.71.8 VARIANCES:

The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County [Ordinance 94-5 Section 4] Ordinances Section 30-37 and Section 74-2-8 NMSA 1978 shall *not* apply to 20.11.71 NMAC or the incorporated federal standards.

[20.11.71.8 NMAC - N, 1/1/06; A, 5/13/17]

20.11.71.13 PERMITTING REQUIREMENTS:

A. Operating permits:

New and existing MSW landfills with design capacities greater than or equal to 2.5 million megagrams or 2.5 million cubic meters are subject to the permitting requirements of 20.11.42 NMAC *Operating Permits*. New and existing MSW landfills with design capacities less than 2.5 million megagrams or 2.5 million cubic meters are not subject to permitting requirements under 20.11.42 NMAC *Operating Permits* unless they are a major source as defined in 20.11.42 NMAC *Operating Permits*.

B. [Authority to Construct] Construction Permits:

Emissions of NMOC from MSW landfills subject to 20.11.71 NMAC shall not be included in applicability determinations that would otherwise be required by 20.11.41 NMAC [Authority to Construct] *Construction Permits* and shall not be subject to the permit requirements of 20.11.41 NMAC.

[20.11.71.13 NMAC - N, 1/1/06; A, 5/13/17]

20.11.71.14 REQUIREMENTS FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS:

A. [Reporting and Compliance:] Except as provided below, reporting and compliance requirements for existing MSW landfills shall be as required by 40 CFR 60 Subpart Cc:

(1) Within 90 days of final US EPA approval of 20.11.71 NMAC, each owner or operator of an existing MSW landfill, shall submit to the division an initial design capacity report as required by 40 CFR 60.757(a)(2) of Subpart WWW:

(2) Within 90 days of final US EPA approval of 20.11.71 NMAC, each owner or operator of an existing MSW landfill, with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters, shall submit to the division an NMOC emission rate report in accordance with 40 CFR 60.757(b)(1) and (2) of Subpart WWW:

(3) Within 30 months of first reporting NMOC emissions of 50 megagrams per year or more, the owner or operator of an existing MSW landfill, with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters, and with an NMOC emission rate greater than or equal to 50 megagrams per year, shall install a gas collection and control system and operate the system as required by 40 CFR 60.752(b) of Subpart WWW:] Except as provided below, requirements for existing (active and closed) MSWLs will be in accordance with 40 CFR Part 60 Subpart Cf.

(1) Existing

active and closed MSWLs will continue to comply with 40CFR Subpart Cc or WWW, as applicable, until the effective date of final EPA approval, as published in the federal register, of a state plan for Albuquerque – Bernalillo County implementing 40 CFR Part 60 Subpart Cf. Upon such EPA approval, existing (active and closed) MSWLs will comply with 40 CFR Part 60 Subpart Cf.

(2) Each owner or operator of an existing (active or closed) MSWL must comply with all provisions in 40 CFR Part 60 Subpart Cf notwithstanding any language therein characterizing provisions of 40 CFR Part 60 Subpart Cf as “guidelines.”

B. [Exceptions:] None:] All reports required in 40 CFR Part 60, Subpart Cf shall be submitted to the department according to the schedules outlined in that subpart and to the administrator of the EPA as required by that subpart. Additional notifications regarding progress toward meeting the final compliance schedule for control system installation and startup shall be submitted to the department as follows:

(1) Contracts for construction of collection and control systems shall be awarded or orders for purchase of components shall be completed no later than six months following submission of the final control plan as required by 40 CFR 60.38f(d);

(2) On-site construction or installation of the collection and control system shall be initiated no later than nine months following submission of the final control plan;

(3) On-site construction or installation of the collection and control system shall be completed no later than 29 months following the submission of an annual NMOC emission rate report showing NMOC emissions equal to or exceeding the emissions threshold in 40 CFR Part 60, Subpart Cf; and

(4) Initial performance testing shall occur no

later than 150 days following the final compliance date in 40 CFR Part 60, Subpart Cf.

C. Exceptions:

Unless otherwise specified in the applicable federal subpart, on a case by case basis and consistent with 40 CFR Part 60.24(f), an existing active or closed MSWL may apply for a less stringent emission standard or longer compliance schedule than those otherwise required by this part, provided that the owner or operator demonstrates to the department:

(1)

Unreasonable cost of control, including, but not limited to, MSWL age, location, or basic design:

(2) Physical

impossibility or impracticability of installing necessary control equipment; or

(3) Other

environmental factors specific to the MSWL that make application of a less stringent standard or final compliance time significantly more reasonable. [20.11.71.14 NMAC - N, 1/1/06; A, 5/13/17]

HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to Section 5 of 8.139.503 NMAC.

8.139.503.5 EFFECTIVE

DATE: [June 1, 2009, unless a later date is cited at the end of a section.]

This pilot program sunsetted effective May 2014.

[8.139.503.5 NMAC - N, 06/01/2009; A, 05/01/2017]

[NMCAP cases that are eligible via the program's parameters remain effective until the end of their three year eligibility. Active NMCAP cases past their three year eligibility via this program will be eligible to apply to receive regular SNAP.]

REGULATION AND LICENSING DEPARTMENT

ALCOHOL AND GAMING DIVISION

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.1.1, Alcoholic Beverages General Provisions - Definitions (filed 07/02/1999) and replace it with 15.10.2 NMAC, Alcoholic Beverages General Provisions - Definitions, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.3.2, Premises - Location and Description of Licensed Premises (filed 03/14/1997) and replace it with 15.10.32 NMAC, Premises - Location and Description of Licensed Premises, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 10.33 NMAC, Premises - Minors on Licensed Premises (filed 03/30/2006) and replace it with 15 10.33 NMAC, Premises - Minors on Licensed Premises, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 10.51 NMAC, Restrictions on Sales (filed 09/15/2006) and replace it with 15 10.51 NMAC, Sales Restrictions on Sales, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.5.2, Segregated Alcohol Sales (filed 03/14/1997) and replace it with 15.10.52 NMAC, Segregated Alcohol Sales, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.5.3, Sales - Wholesalers (filed 02/16/2000) and replace it with 15.10.53 NMAC, Sales - Wholesalers, effective 4/25/2017.

The Alcohol and Gaming Division

approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.5.4, Alcoholic Beverages General Provisions - Sales - Clubs (filed 03/14/1997) and replace it with 15.10.54 NMAC, Alcoholic Beverages General Provisions - Sales - Clubs, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 10.61 NMAC, Citations - Fines and Penalties (filed 9/15/2006) and replace it with 15.10.61 NMAC, Citation - Fines and Penalties, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 10.7 Operation and Profiting by Authorized Persons, (filed 7/2/1999) and replace it with 15.10.70 NMAC, Operation and Profiting by Authorized Persons and Alternating Proprietorships, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.1.1 Required Documents On Licensed Premises, (filed 3/14/1997) and replace it with 15.11.2 NMAC, Required Documents on Licensed Premises, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.1, Licenses and Permits - Applications (filed 3/14/1997) and replace it with 15.11.21 NMAC, Licenses and Permits - Applications, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.2 Licenses and Permits - Renewal and Suspension, (filed 3/14/1997) and replace it with 15.11.22 NMAC, Licenses and Permits - Renewal and Suspension, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.3 Licenses and Permits - Change in

Licensee, (filed 3/14/1997) and replace it with 15.11.23 NMAC, Licenses and Permits - Change in Licensee, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.4 Licenses and Permits - Restaurant License, (filed 3/14/1997) and replace it with 15.11.24 NMAC, Licenses and Permits - Restaurant License, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.5, Licenses and Permits - Special Dispenser and Sunday Sales Permits (filed 03/14/1997) and replace it with 15.11.25 NMAC, Licenses and Permits - Special Dispenser and Public Celebration Permits, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.6, Licenses and Permits - Fees (filed 03/14/1997) and replace it with 15.11.26 NMAC, Licenses and Permits -Fees, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.2.7, Licenses and Permits - Inter Local Option District Transfers (filed 03/14/1997) and replace it with 15.11.27 NMAC, Licenses and Permits - Inter Local Option District Transfers, effective 4/25/2017.

The Alcohol and Gaming Division approved, at its 1/19/2017 hearing, to repeal its rule 15 NMAC 11.3.1 Alcoholic Beverages Licensing - Alcohol Server Training - Certification, (filed 3/14/1997) and replace it with 15.11.31 NMAC, Alcoholic Beverages Licensing - Alcohol Server Training - Certification, effective 4/25/2017.

**REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.10.2.1 ISSUING

AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.

[15.10.2.1 NMAC - Rp, 15 NMAC 10.1.1.1, 4/25/2017]

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

[15.10.2.2 NMAC - Rp, 15 NMAC 10.1.1.2, 4/25/2017]

15.10.2.3 STATUTORY

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

[15.10.2.3 NMAC - Rp, 15 NMAC 10.1.1.3, 4/25/2017]

15.10.2.4 DURATION:

Permanent.

[15.10.2.4 NMAC - Rp, 15 NMAC 10.1.1.4, 4/25/2017]

15.10.2.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.2.5 NMAC - Rp, 15 NMAC 10.1.1.5, 4/25/2017]

15.10.2.6 OBJECTIVE:

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

[15.10.2.6 NMAC - Rp, 15 NMAC 10.1.1.6, 4/25/2017]

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.

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

I. “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. “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. “Controlling shareholders” means persons or entities who own fifty percent or more of the outstanding shares of stock in a corporation.

L. “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. “Craft distiller” means a person or entity that is engaged in bona fide manufacture of spiritous liquors, holds a valid federal license to produce spiritous liquors, and owns or controls fully operational distilling equipment.

N. “Director” means the director of the alcohol and gaming division.

O. “Division” means the alcohol and gaming division of the New Mexico regulation and licensing department.

P. “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. “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. “Growler” means a clean, refillable, resealable container, including crowlers, that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine, or cider for consumption off-premises.

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

T. “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. “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. “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. “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.

X. “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. “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. “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. “Private party” means an event open only to invited guests and not open or advertised to the general public. “Private party” does not include alcohol industry promotional events or other events with a commercial purpose.

BB. “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. “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.

DD. “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 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.

EE. “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. “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. “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. “Serve” means to pour, or otherwise personally provide alcoholic beverages to another person.

II. “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. “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. “Split” means a half-bottle of wine or champagne containing not more than 375 ml of wine or champagne.

LL. “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. “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.

NN. “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. “Winegrower” means 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]

HISTORY OF 15.10.2 NMAC:

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

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

ABC Regulation No. 4B-5.(B), Definition Regulation 4B-5.(B), Interpreting and Exemplifying Section

60-4B-5 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

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

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

ABC Regulation No. 6B-10(B), Definition of School” Regulation 6B-10(B), Interpreting and

Exemplifying Section 60-6B-10 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

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

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

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

ABC Regulation No. 6C-1(3).(A), Public Nuisances Regulation 6C-1(3).

(A), Interpreting and Exemplifying Section 60-6C-1(3) NMSA 1978

(1981-1984 Supp.), filed 11/04/1985.

AGD 6C-1, Public Nuisances, filed

09/25/1990.

History of Repealed Material:

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

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

PART 32 PREMISES - LOCATION AND DESCRIPTION OF LICENSED PREMISES

15.10.32.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.10.32.1 NMAC - Rp, 15 NMAC 10.3.2.1, 4/25/2017]

15.10.32.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act.

[15.10.32.2 NMAC - Rp, 15 NMAC 10.3.2.2, 4/25/2017]

15.10.32.3 AUTHORITY:

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

[15.10.32.3 NMAC - Rp, 15 NMAC 10.3.2.3, 4/25/2017]

15.10.32.4 DURATION:

Permanent.

[15.10.32.4 NMAC - Rp, 15 NMAC 10.3.2.4, 4/25/2017]

15.10.32.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.32.5 NMAC - Rp, 15 NMAC 10.3.2.5, 4/25/2017]

15.10.32.6 OBJECTIVE:

These rules are intended to establish standards for the location and description of areas identified as licensed premises.

[15.10.32.6 NMAC - Rp, 15 NMAC 10.3.2.6, 4/25/2017]

15.10.32.7 DEFINITIONS:

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

15.10.32.8 LOCATION NEAR CHURCH, SCHOOL OR MILITARY INSTALLATION:

All measurements for the purpose of determining the location of a licensed premises in relation to churches, schools or military installations shall be the shortest direct line measurement between the actual limits of the real property of the church, school or military installation in which there is regularly conducted church services, educational functions or military troops housed, and the licensed premises where alcoholic beverages are proposed to be sold. If the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied

by a certified report of a registered engineer or duly licensed surveyor. [15.10.32.8 NMAC - Rp, 15 NMAC 10.3.2.8, 4/25/2017]

15.10.32.9 PREMISES WHERE ALCOHOL WAS SOLD PRIOR TO 1981:

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

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

[15.10.32.9 NMAC - Rp, 15 NMAC 10.3.2.9, 4/25/2017]

15.10.32.10 LICENSED PREMISES OF GOLF COURSE, VINEYARD, HOTEL, RACETRACK, SKI AREA, OR RESTAURANT: 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 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. [15.10.32.10 NMAC - Rp, 15 NMAC 10.3.2.10, 4/25/2017]

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

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

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

C. if roads are included in controlled access areas, the boundaries of golf cart and pedestrian crossings must be clearly marked by permanent marking on the surface of the roads by white or yellow reflective paint or striping material similar to pedestrian crossing markings found on city and state streets and roads. [15.10.32.11 NMAC - Rp, 15 NMAC 10.3.2.11, 4/25/2017]

15.10.32.12 CHANGE OR EXPANSION OF LICENSED PREMISES: Floor plans 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 licensed premise will increase by more than twenty-five percent pursuant to the floor plan change, the licensee may be required to file an application for change of location on a form approved by the division. [15.10.32.12 NMAC - Rp, 15 NMAC 10.3.2.13, 4/25/2017]

15.10.32.13 OUTDOOR LICENSED PREMISES: Except as provided in 15.10.32.10 NMAC, licensed premises or portions of a licensed premises that are outdoors

must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the licensed premises from the surrounding area. The division may allow exceptions to this requirement for a demonstrated case of undue hardship by a licensee. If an outdoor area is a portion of the licensed premises, it must be connected and contiguous to the indoor portion of the licensed premises through an indoor passageway. [15.10.32.13 NMAC - Rp, 15 NMAC 10.3.2.14, 4/25/2017]

15.10.32.14 [RESERVED]

HISTORY OF 15.10.32 NMAC:

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

ABC Regulation No. 6B-2.

(D), Operation of Licenses on Designated Premises, Interpreting and Exemplifying Section 60-6B-2 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD 6B-2(C), Operation of Licensed Premises, filed 09/25/1990.

ABC Regulation No. 6B-10.(A), Location Near Church, School, or Military Installation Regulation 6B-10.(A), Interpreting and Exemplifying Section 60-6B-10 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD 6B-10(A), Location Near Church, School, or Military Installation, filed 09/25/1990.

ABC Regulation No. 6B-12(G) (A), Location of Licensed Premises Regulation 6B-12(G)(A), Interpreting and Exemplifying Section 60-6B-12(G) NMSA 1978 (1981 and 1984 Supp.), filed 12/04/1984.

AGD 6B-12, Location of Licensed Premises, filed 09/25/1990.

History of Repealed Material:

15 NMAC 10.3.2.12 Drive-up Windows, Walk-up Windows, Repealed 7/15/1999.

15 NMAC 10.3.2, Premises - Location and Description of Licensed Premises, filed 03/14/1997 - Repealed effective 4/25/2017.

NMAC History:

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

**REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.10.33.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.
[15.10.33.1 NMAC - Rp, 15 10.33.1 NMAC, 4/25/2017]

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

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

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

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

15.10.33.6 OBJECTIVE:

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

15.10.33.7 DEFINITIONS:

The following definitions shall apply to this part:

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

B. “Unaccompanied minor” means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.
[15.10.33.7 NMAC - Rp, 15 10.33.7 NMAC, 4/25/2017]

**15.10.33.8 MINORS ON
LICENSED PREMISES:**

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

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

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

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

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

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

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

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

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

**15.10.33.9 EMPLOYMENT
OF MINORS:**

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

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

C. A holder of a restaurant, dispenser’s, or club

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

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

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

(1) professional musicians, disc jockeys or other entertainers engaged in their professional capacities, or sound or lighting technicians actively engaged in support of professional musicians, disc jockeys, or other entertainers;

(2) persons performing janitorial services, but only when the licensed premises are closed;

(3) employees of amusement device companies for the purpose of installing, maintaining, repairing or removing any lawful amusement device or vending machine; and

(4) security and law enforcement officers.
[15.10.33.9 NMAC - Rp, 15 10.33.9 NMAC, 4/25/2017]

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

possession or consumption of any alcoholic beverage by, a minor on a licensed premises.

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

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

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

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

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

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

15.10.33.12 [RESERVED]

HISTORY OF 15.10.33 NMAC:
Pre-NMAC History: None.

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

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

15.10.33 NMAC, Premises - Minors on Licensed Premises, effective 4/25/2017.

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

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

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

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

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

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

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

15.10.51.7 DEFINITIONS:

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

[15.10.51.7 NMAC - Rp, 15 10.51.7 NMAC, 4/25/2017]

15.10.51.8 SALES FROM LICENSED PREMISES ONLY:

Licensees shall sell, offer to sell, and serve alcoholic beverages for promotional or otherwise commercial purposes only from a licensed premises approved by the director, including premises licensed through special event permits pursuant to 15.11.25 NMAC.

[15.10.51.8 NMAC - Rp, 15 10.51.8 NMAC, 4/25/2017]

15.10.51.9 OPEN CONTAINER RESTRICTIONS:

A. No one shall provide a person with an open container of an alcoholic beverage for consumption off the licensed premises or permit removal of an open container from the licensed premises.

B. No person shall remove an open container of an alcoholic beverage from a licensed premise.

C. All alcoholic beverages sold by package, including growlers, must be consumed off-premises.

D. Nothing in this rule shall prohibit a dispenser or restaurant licensee from allowing the removal of a partially consumed bottle of wine from the premises pursuant to Section 60-3A-12 NMSA 1978.

E. A licensee may permit a customer to remove a growler from the licensed premises, provided that the licensee cleans the growler before filling it, re-seals the growler, and provides a sales receipt to the customer.

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

15.10.51.10 AFTER HOURS SALES OR SERVICE OF ALCOHOLIC BEVERAGES:

A. Licensees may not sell, serve or allow the consumption

of alcoholic beverages on the licensed premises except during the hours permitted by the Liquor Control Act.

B. Nothing herein is intended to prohibit any licensee from opening after 7:00 a.m. on any day when the sale of alcoholic beverages is not prohibited.

C. A licensee whose primary business activity on the licensed premises is the sale of alcoholic beverages for consumption on the licensed premises may not open the licensed premises to the public or to club members for any purpose or business after the lawful established closing times provided for in the Liquor Control Act, unless permitted by the director in writing.

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

15.10.51.11 SALES TO INTOXICATED PERSONS:

A. No licensee shall sell, serve, procure or aid in the procurement of alcoholic beverages to an intoxicated person if the licensee knows or has reason to know that the person is obviously intoxicated.

In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on breath or blood test taken not more than one and one-half hour or ninety minutes after sale, service 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.

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]

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

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

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

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

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

E. A licensee may receive alcoholic beverages donated

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

[15.10.51.12 NMAC - Rp, 15 10.51.12 NMAC, 4/25/2017]

15.10.51.13 ALCOHOL SERVICE BY EMPLOYEES ONLY:

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

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

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

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

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

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

(1) owners, employees, contractors, licensed wholesalers and licensed retailers may drink alcoholic beverages for product training and evaluation purposes, but

must not become impaired;

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

(3) the licensee, lessee, or an owner or operator may consume alcoholic beverages provided that such consumption does not result in impairment. [15.10.51.13 NMAC; N, 4/25/2017]

15.10.51.14 GAMBLING ON LICENSED PREMISES:

A. An entity holding a valid license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of 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]

HISTORY OF 15.10.51 NMAC:

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

ABC Regulation No. 6A-2 through 6A-5, Sales from Designated Premises Only--Delivery Service Regulation No. 6A-2 through 6A-5, Interpreting and Exemplifying Section 60-6A-2 through 60-6A-5 NMSA 1978 (1981 and 1984 Supp.), filed 3/26/1985;

AGD 6A-2, Sales from Licensed Premises Only, filed 9/25/1990; ABC Regulation No. 6A-7.(A), Shipping Invoices Regulation 6A-7. (A) Interpreting and Exemplifying Section 60-6A-7 NMSA 1978 (1981 and 1984 Supp.), filed 11/4/1985; AGD Regulation 6A-7, Shipping Invoices, filed 9/25/1990; AGD Regulation 7A-1(C), After Hours, filed 9/25/1990; ABC Regulation No. 7A-16. (A), Sales to Intoxicated Persons Regulation 7A-16(A), Interpreting and Exemplifying Section 60-7A-16 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; and AGD 7A-16, Sales to Intoxicated Persons, filed 9/25/1990.

History of Repealed Material:

AGD Regulation 6A-7, Shipping Invoices (filed 9/25/1990) repealed 3/31/1997.

15.10.51 NMAC, Sales - Restrictions on Sales, filed 09/15/2006 - Repealed effective 4/25/2017.

Other History:

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

15 NMAC 10.5.1, Restrictions on Sales (filed 3/14/1997) was renumbered, reformatted, amended and replaced by 15.10.51 NMAC, Restrictions on Sales, effective 10/15/2006.

15.10.51 NMAC, Sales - Restrictions on Sales (filed 9/15/2006) was replaced by 15.10.51 NMAC Sales - Restrictions on Sales, effective 4/25/2017.

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

15.10.52.1 ISSUING

AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.

[15.10.52.1 NMAC - Rp, 15 NMAC 10.5.2.1, 4/25/2017]

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

[15.10.52.2 NMAC - Rp, 15 NMAC 10.5.2.2, 4/25/2017]

**15.10.52.3 STATUTORY
AUTHORITY:** Section 60-3A-10

NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.52.3 NMAC - Rp, 15 NMAC 10.5.2.3, 4/25/2017]

15.10.52.4 DURATION:
Permanent.

[15.10.52.4 NMAC - Rp, 15 NMAC 10.5.2.4, 4/25/2017]

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

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

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

15.10.52.8 LARGE PREMISES LICENSEES:

A. Large premises licensees must consolidate all alcoholic beverages in an alcoholic beverage display area located within a clearly designated and marked area of the licensed premises. Growler sales for beer and cider may be located in a separate, clearly designated and marked display area from other alcoholic beverage sales. Both the storage area and the area where growlers will be filled must be designated. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed or stored in small quantities in no more than two locations outside the designated alcoholic beverage display area provided that all display areas can be roped off, chained off, or covered

during non-alcoholic sale hours or days. Signs saying "liquor department - no one under 21 unless accompanied by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area. Licensees must file floor plans with the division for approval showing the consolidated and segregated areas where alcoholic beverages, including growler sales, are displayed within the licensed premises.

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

C. Small displays of chips, snacks, or similar items may be displayed for sale in the alcoholic beverage display area so long as those items are also available in other parts of the licensed premises outside the alcoholic beverage display area. Except for such small displays, displays of food or other merchandise that would require shoppers to enter the alcoholic beverage display area for food or other merchandise are not permitted.

[15.10.52.8 NMAC - Rp, 15 NMAC 10.5.2.8, 4/25/2017]

15.10.52.9 SMALL PREMISES LICENSEES: Small premises licensees must use diligent, good faith efforts to consolidate alcoholic beverages within a clearly designated and marked alcoholic beverage display area of the licensed premises. Signs saying "liquor area - no one under 21 unless accompanied by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area. Except for table wines and other beverages as

defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed outside the alcoholic beverage display area provided that all display areas can be roped off, chained off or covered during non-alcoholic sale hours or days.

[15.10.52.9 NMAC - Rp, 15 NMAC 10.5.2.9, 4/25/2017]

15.10.52.10 SIGNS FOR DAYS WHEN SALES NOT PERMITTED: [RESERVED]

[15.10.52.10 NMAC - Rp, 15 NMAC 10.5.2.10, 4/25/2017]

HISTORY OF 15.10.52:

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

History of Repealed Material:

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

**REGULATION AND LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.10.53.1 ISSUING

AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.

[15.10.53.1 NMAC - Rp, 15 NMAC 10.5.3.1, 4/25/2017]

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

[15.10.53.2 NMAC - Rp, 15 NMAC 10.5.3.2, 4/25/2017]

15.10.53.3 STATUTORY

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

[15.10.53.3 NMAC - Rp, 15 NMAC 10.5.3.3, 4/25/2017]

15.10.53.4 DURATION:

Permanent.

[15.10.53.4 NMAC - Rp, 15 NMAC 10.5.3.4, 4/25/2017]

15.10.53.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.53.5 NMAC - Rp, 15 NMAC 10.5.3.5, 4/25/2017]

15.10.53.6 OBJECTIVE:

This part is intended to establish reporting, sales, credit, and other requirements applicable to persons licensed as wholesalers under the act.

[15.10.53.6 NMAC - Rp, 15 NMAC 10.5.3.6, 4/25/2017]

15.10.53.7 DEFINITIONS:

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

[15.10.53.7 NMAC - Rp, 15 NMAC 10.5.3.7, 4/25/2017]

15.10.53.8 PAYMENT, REFUND AND EXCHANGE:

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

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

C. A wholesaler may

not use a promissory note or other similar obligation from a licensee as a device to avoid the credit prohibition set forth in the act and this rule.

As long as a promissory note, or other similar obligation, remains outstanding for alcoholic beverages, the licensee must pay in cash.

D. Limitations on product returns:

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

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

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

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

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

15.10.53.9 DONATIONS AND DISCOUNTS OF ALCOHOLIC BEVERAGES:

A. A licensed New Mexico wholesaler may donate alcoholic beverages or sell alcoholic beverages at a discount to licensees

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

(1) no free samples may be provided for items currently provided to the licensee by the wholesaler; and

(2) no more than one bottle not to exceed 750 milliliters of wine or spirits, or one case of beer may be provided as a free sample per item.

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

C. Any delivery of donated or discounted alcoholic beverages by a licensed New Mexico wholesaler must be accompanied by an invoice indicating the licensee's name, d/b/a name, liquor license number, the amount and type of alcoholic beverages delivered, the market value of the delivered alcoholic beverages, the place where the alcoholic beverages were delivered, and the date. The invoice must show a sum due of zero for donated alcoholic beverages or the discounted amount of the purchase. [15.10.53.9 NMAC - Rp, 15 NMAC 10.5.3.9, 4/25/2017]

15.10.53.10 COMMERCIAL COERCION AND BRIBERY: The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 of the Act.

That Section shall be interpreted consistent with the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.

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

HISTORY OF 15.10.53 NMAC:

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

History of Repealed Material: [RESERVED]

15 NMAC 10.5.3, Sales - Wholesalers, filed 03/14/1997 - Repealed effective 4/25/2017.

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

15.10.54.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.10.54.1 NMAC - Rp, 15 NMAC 10.5.4.1, 4/25/2017]

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

[15.10.54.2 NMAC - Rp, 15 NMAC 10.5.4.2, 4/25/2017]

15.10.54.3 STATUTORY

AUTHORITY: Section 60-3A-10 NMSA of the act authorizes the director to make and adopt such rules

as necessary to carry out the duties of the division.

[15.10.54.3 NMAC - Rp, 15 NMAC 10.5.4.3, 4/25/2017]

15.10.54.4 DURATION:

Permanent

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

15.10.54.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.54.5 NMAC - Rp, 15 NMAC 10.5.4.5, 4/25/2017]

15.10.54.6 OBJECTIVE:

This part is intended to establish additional standards by which club licensees may sell and serve alcoholic beverages under the act.

[15.10.54.6 NMAC - Rp, 15 NMAC 10.5.4.6, 4/25/2017]

15.10.54.7 DEFINITIONS:

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

A. "Bona fide guest"

means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility.

B. "Member" means:

(1) a person

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

(2) the adult

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

(3) a member

of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal

identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or

(4) a person

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

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

15.10.54.8 SALES LIMITED TO MEMBERS AND GUESTS:

A. Whenever a

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

The club should be able to produce the sign in sheet upon request by the director or the special investigations unit of the department of public safety or other peace officer within the scope of their jurisdiction. Members may not be stationed at the door signing in people who were not previously invited as their guests.

B. A member who

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

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

15.10.54.9 GAMES OF CHANCE:

A. An entity holding

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

B. Except as noted

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

(1) temporarily

suspends the license for the entire premises, or

(2) temporarily

suspends the portion of the licensed premises on which the games of chance will occur, subject to the following conditions:

(a)

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

(b)

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

(c)

appropriate signs must be posted within the areas in which games of chance are being conducted advising members and their guests that

alcoholic beverages may not be sold, served, or consumed within those areas; and

(d)

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

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

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

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

15.10.54.10 FUND RAISING

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

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

15.10.54.11 ADVERTISING FOR SPECIAL EVENTS:

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

B. Examples of special events include, but are not limited to, musical and other artistic

performances, speaking engagements, and promotions by commercial entities.

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

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

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

15.10.54.12 CHANGE IN

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

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

15.10.54.13 LICENSE

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

A. a roster of its current members which includes the name, address and phone number of each member; or

B. a sworn statement by either a certified public accountant or an attorney, duly licensed in the state, attesting that during the preceding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations; or

C. a sworn statement by an officer of the statewide or national non-profit organization associated with the club attesting that during the preceding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations.

[15.10.54.13 NMAC - Rp, 15 NMAC

10.5.4.13, 4/25/2017]

HISTORY OF 15.10.54 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: ABC Regulation No. 7A-13(B)(2) (A), Penalties for Violation of Section 60-7A-13(B)(2), Sales by Clubs, Interpreting and Exemplifying Section 60-7A-13(B)(2) NMSA 1978 (1981 and 1985 Supp.), filed 10/29/1985; ABC 7A-13(B)(2)(A), Penalties for Violation of Section 60-7A-13(B)(2) NMSA 1978, led 2/13/1986; and AGD Regulation 7A-13, Sales by Clubs, filed 9/25/1990.

History of Repealed Material:

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

**REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.10.55.1 ISSUING

AGENCY: The division.

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

15.10.55.2 SCOPE: These rules apply to all retailers, and to dispensers authorized to sell alcoholic beverages in unbroken packages, under the act.

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

15.10.55.3 STATUTORY

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

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

15.10.55.4 DURATION:

Permanent.

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

15.10.55.5 EFFECTIVE

DATE: April 25, 2017 unless a later date is cited at the end of a section.

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

15.10.55.6 OBJECTIVE:

These rules are intended to regulate purchasing cooperatives authorized pursuant to the act.

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

15.10.55.7 DEFINITIONS:

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

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

15.10.55.8 THIRD-PARTY, INTERNET SALES GENERALLY PROHIBITED:

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

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

(1) a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license;

(2) a New Mexico winegrower's agent;

(3) a New Mexico resident;

(4) a resident in any other state or foreign jurisdiction, as authorized by that jurisdiction; and

(5) the holder of a license in any other state or

foreign jurisdiction issued under the authority of that jurisdiction that authorizes the purchase of wine.

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

D. All third-party internet sales described in this part are subject to the restrictions on direct wine shipment permits as provided by Sections 60-6A-11.1 and Subsection F of Section 60-7A-3 of the act.

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

HISTORY OF 15.1.61 NMAC: [RESERVED]

**REGULATION AND LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.10.61.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.10.61.1 NMAC - Rp, 15 10.61.1 NMAC, 4/25/2017]

15.10.61.2 SCOPE:

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

15.10.61.3 STATUTORY

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

[15.10.61.3 NMAC - Rp, 15 10.61.3

NMAC, 4/25/2017]

15.10.61.4 DURATION:

Permanent.

[15.10.61.4 NMAC - Rp, 15 10.61.4 NMAC, 4/25/2017]

15.10.61.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.61.5 NMAC - Rp, 15 10.61.5 NMAC, 4/25/2017]

15.10.61.6 OBJECTIVE:

This rule is intended to comply with Subsection M of Section 60-6C-4 NMSA 1978 which requires the director to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director. It is also intended to establish violation codes for consistent tracking within the division.

[15.10.61.6 NMAC - Rp, 15 10.61.6 NMAC, 4/25/2017]

15.10.61.7 DEFINITIONS:

The following definition applies to this part: **"Unbroken, original package"** means the sealed, unopened glass, plastic or aluminum container holding the alcohol, but does not mean the cardboard or other packaging holding the containers together.

[15.10.61.7 NMAC - Rp, 15 10.61.7 NMAC, 4/25/2017]

15.10.61.8 SCHEDULE OF PENALTIES:

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

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

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

(1) The first offense within a 12 month period will result in a fine ranging from one

thousand dollars (\$1,000) to two thousand dollars (\$2,000) and suspension of all alcohol sales for a minimum of one business day.

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

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

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

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

Code Description

313 Sale to minor or to an intoxicated person

(1) the first offense may result in a fine up to \$500, up to a 30-day suspension, or both;

(2) the second offense may result in a fine up to \$500, up to a one-year suspension, or both;

(3) the third offense may result in a fine of up to \$500, a suspension of greater than one year, or

revocation.

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

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

E. Illegal sale 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 (\$4,000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the department notifies the licensee, or the citation may be referred to a formal hearing. After the plan of correction is agreed to, the license will be immediately suspended until completion of the corrections.

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

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

Code Description

40 commercial gambling

(1) The first offense will result in a fine of three thousand dollars (\$3,000).

(2) The second offense will result in a fine of four thousand dollars (\$4,000).

(3) The third offense will result in a fine of five thousand dollars (\$5,000).

(4) Four or more offenses will result in a fine of ten thousand dollars (\$10,000).

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

revocation of the liquor license.

Code Description

35 liquor sales to non-members

37 other violations of club sales restrictions

I. Violations of a tasting permit:

Code Description

36 tasting permit

(1) For a first violation, a fine no greater than one thousand dollars (\$1,000) or a suspension of the tasting permit for a period of two months, or both;

(2) For a second violation within a year of the first violation, a fine no greater than two thousand dollars (\$2,000) or a suspension of the tasting permit for a period of six months, or both; and

(3) For a third violation within a year of the first violation, a citation against the master license, a fine no greater than five thousand dollars (\$5,000), and a suspension of the tasting permit for one year.

J. Violation for Illegal Extension of Credit by Wholesalers:

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

Code Description

38 credit extension

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

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

301	obstruction of the administration of the liquor control act
302	private party violation
320	employee drinking on duty
321	segregated sales violation

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

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

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

Code Description

999 miscellaneous

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

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

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

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

P. Suspension of alcoholic beverage sales:

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

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

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

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

(3) Signs provided by the division must be posted on all cash registers and entrances to the restricted area on days that alcohol sales are suspended because of violations of the act.
[15.10.61.8 NMAC - Rp, 15 10.61.8 NMAC, 4/25/2017]

15.10.61.9 ENHANCEMENT OF SCHEDULED PENALTIES:

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

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

15.10.61.10 ENHANCEMENT OF SCHEDULED PENALTIES FOR VIOLATIONS INVOLVING THE USE OF ALTERNATIVE FORMS OF ALCOHOL:

In recognition of the heightened public policy concerns regarding the greater potential for abuse and greater need for deterrence, whenever a violation identified in this part involves the sale, service or consumption of alternative forms of alcohol, including but not limited to powdered,

vaporized or freeze-dried alcohol, the penalty otherwise set forth in this part shall be enhanced up to the maximum allowed by the act.
[15.10.61.1 NMAC - N, 4/25/2017]

15.10.61.11 COMPROMISE:

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

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

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

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

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

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

HISTORY OF 15.1.61 NMAC:

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

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

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

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

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

ABC Regulation No. 6C-1(3). (A), Public Nuisances Regulation 6C-1(3). (A), Interpreting and Exemplifying Section 60-6C-1(3) NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; AGD 6C-1, Public Nuisances, filed 9/25/1990.

History of Repealed Material:

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

Other History:

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

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

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

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

15.10.70.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.10.70.1 NMAC - Rp, 15 NMAC 10.7.1, 4/25/2017]

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

15.10.70.3 STATUTORY

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

[15.10.70.3 NMAC - Rp, 15 NMAC 10.7.3, 4/25/2017]

15.10.70.4 DURATION:

Permanent.

[15.10.70.4 NMAC - Rp, 15 NMAC 10.7.4, 4/25/2017]

15.10.70.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.10.70.5 NMAC - Rp, 15 NMAC 10.7.5, 4/25/2017]

15.10.70.6 OBJECTIVE:

This rule is intended to establish standards by which licensees may sell alcoholic beverages under the act.

[15.10.70.6 NMAC - Rp, 15 NMAC 10.7.6, 4/25/2017]

15.10.70.7 DEFINITIONS:

Unless otherwise defined in 15.10.2 NMAC, terms used in these regulations have the same meanings as set forth in the act.

[15.10.70.7 NMAC - Rp, 15 NMAC 10.7.7, 4/25/2017]

15.10.70.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:

A. No person other than the approved operator or employees of the approved operator, shall sell or serve alcoholic beverages at the licensed premises.

(1) All orders, sales, service, dispensing, and receipt

of payment for alcoholic beverages must be done by the approved operator or employees of the approved operator.

(2) Sales of alcoholic beverages by an approved operator may not be combined with any sales of another person or entity that is not an approved operator.

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

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

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

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

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

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

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, or contracts of any kind to which the licensee or lessee is a party with other persons for operation or profit-sharing in the operation; and

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

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

15.10.70.9 EMPLOYMENT BY MULTIPLE LICENSEES:

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

B. Any person receiving valuable consideration as described in Subsection A of 15.10.70.9 NMAC or any person who knowingly provides such

consideration, shall be in violation of these rules and subject to fines and penalties as provided in these rules. Such violations may also be considered by the division in the granting of applications pursuant to Subsection C of 15.11.21.15 NMAC, and the renewal of licenses pursuant to Paragraph (2) of Subsection B of 15.11.22.8 NMAC.
[15.10.70.9 NMAC - N, 4/25/2017]

15.10.70.10 ALTERNATING PROPRIETORSHIPS:

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

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

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

D. Filing of written agreement:

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

(2) The agreement shall quantify the extent to which the licensed premises, employees and equipment may be

used by each duly-licensed licensee.

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

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

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

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

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

**HISTORY OF 15.10.70 NMAC:
[RESERVED]**

**REGULATION AND LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

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

15.11.2.2 SCOPE: This rule applies to all licensees and applicants for licensure under the act.
[15.11.2.2 NMAC - Rp, 15 NMAC

11.1.1.2, 4/25/2017]

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

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

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

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

15.11.2.7 DEFINITIONS: Unless otherwise defined in 15.10, 2 NMAC, terms used in these rules have the same meanings as set forth in the act.
[15.11.2.7 NMAC - Rp, 15 NMAC 11.1.1.7, 4/25/2017]

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

15.11.2.9 POSTERS:
A. Licensees that sell

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

(1) posters giving notice that the law prohibits the carrying of any operative firearm on a licensed premises, except where the licensed premises is subject to the concealed carry exception, the licensee may display a poster giving notice of the concealed carry exception, as long as the poster also gives notice that the law prohibits all other operative firearms on the licensed premises;

(2) posters warning of the dangers of drinking alcoholic beverages during pregnancy;

(3) posters identifying all restricted areas of the licensed premises in which minors are prohibited, unless accompanied by a parent, adult spouse or legal guardian, except that such posters are not required for premises licensed as a restaurant serving beer and wine; and

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

B. Licensees may, with the director's prior approval, develop and use posters of their own design that contain the same information required in this sections. Any such posters shall be valid only if bearing the director's stamp of approval. [15.11.2.9 NMAC - Rp, 15 NMAC 11.1.1.10, 4/25/2017]

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

15.11.2.11 STATUTES AND RULES: All licensees and their employees shall have access on the licensed premises to either a hard or

electronic copy of the most current versions of the act and the rules promulgated thereunder. Access to a computer larger than a cellular phone with internet capacity shall constitute compliance with this section.

[15.11.2.11 NMAC - Rp, 15 NMAC 11.1.1.11, 4/25/2017]

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

[15.11.2.12 NMAC - Rp, 15 NMAC 11.1.1.12, 4/25/2017]

15.11.2.13 SIGNS FOR DAYS WHEN SALES NOT PERMITTED: All licensees will clearly mark alcoholic beverage display areas with signs that prominently read "no package alcoholic beverage sales permitted on Sunday" if the licensee does not have a Sunday sales permit or if Sunday package sales are not permitted in that local option district, or "no package alcoholic beverage sales permitted on Christmas Day" on the appropriate days.

[15.11.2.13 NMAC - Rp, 15 NMAC 11.1.1.13, 4/25/2017]

15.11.2.14 SERVER CERTIFICATIONS: For all server certifications required pursuant to Section 60-6E-6 NMSA 1978 of the act, all licensees shall keep a current list of all such certifications, including server number and expiration date, available at the licensed premises in either hard or electronic copy to be made available upon request. In the event that proof of such server certification is only available as a temporary, written document, such

temporary proof shall be available at the licensed premises in either a hard copy or as a scanned electronic copy to be made available upon request. The licensee or lessee, not any server, is responsible for compliance with this section.

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

HISTORY OF 15.11.2 NMAC: Pre-NMAC Regulatory Filing History: The material in this subpart was derived from that previously filed with the State Records Center and Archives under: ABC Regulation No. 3A-2(C), Display of License Regulation 3A-2(C), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; AGD Regulation 3A-2(C), Display of License, filed 9/25/1990; ABC Regulation No. 3A-2(C), Display of License Regulation 3A-2(C), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; AGD Regulation 3A-2(C), Display of License, filed 9/25/1990; AGD Regulation 4B-5(A), Forms, filed 9/25/1990; ABC Regulation No. 3A-2.(H), Firearm Poster Requirement Regulation 3A-2.(H), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; AGD 3A-2(F), Firearm Poster Requirement, filed 9/25/1990; and AGD Regulation 6B-2(A), License Application, filed 9/25/1990.

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

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

**REGULATION AND
LICENSING DEPARTMENT**
ALCOHOL AND GAMING
DIVISION

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

15.11.21.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.21.1 NMAC - Rp, 15 NMAC 11.2.1.1, 4/25/2017]

15.11.21.2 SCOPE: These

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

15.11.21.3 STATUTORY

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

[15.11.21.3 NMAC - Rp, 15 NMAC 11.2.1.3, 4/25/2017]

15.11.21.4 DURATION:

Permanent.

[15.11.21.4 NMAC - Rp, 15 NMAC 11.2.1.4, 4/25/2017]

15.11.21.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.11.21.5 NMAC - Rp, 15 NMAC 11.2.1.5, 4/25/2017]

15.11.21.6 OBJECTIVE:

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

15.11.21.7 DEFINITIONS:

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

[15.11.21.7 NMAC - Rp, 15 NMAC

11.2.1.7, 4/25/2017]

**15.11.21.8 LICENSE
APPLICATION:**

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

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

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

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

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

**15.11.21.9 RESIDENT
AGENT DESIGNATION:**

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

1. no conviction for:
a. any felony in any jurisdiction, or
b. two convictions for violations of the act within any twelve-month period;

2. limited power of attorney and authority to bind the applicant to matters related to liquor sales and operations;

3. authority and ability to accept service of all

orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and

4. residency in the state of New Mexico.

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

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

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

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

**15.11.21.10 DISCLOSURE OF
OWNERSHIP:**

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

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

(1) if the licensee is a corporation or limited liability company, the principal officers, directors, and each

stockholder known to the corporation as owning more than ten percent of the stock in the corporation, or the manager or members owning more than ten percent of the membership interests in the limited liability company;

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

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

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

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

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

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

(8) The director may require disclosure of additional information to assure full disclosure of the applicant's structure and financial responsibility, including

structure and financial arrangements enabling actual control and profiting by ineligible persons or entities.

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

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

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

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

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

15.11.21.11 FINGERPRINTS:

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

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

(1) to add a licensee's spouse to the license; however, the spouse must submit fingerprints;

(2) when a husband and wife are the licensees, to transfer the ownership interest of a deceased licensee to his or her surviving spouse; however, if any part of the interest of the deceased spouse goes to any person other than the surviving spouse, that person must

submit fingerprints; or

(3) by a licensee with no prior arrest record to obtain an ownership interest in an additional license or to lease another license.

C. Fingerprints shall be taken:

(1) under the supervision of, and certified by a New Mexico state police officer, a county sheriff or a municipal chief of police, or, if a nonresident, under the supervision and certification of comparable officers in the applicant's state of residence; or

(2) in the discretion of the division, by a private agency qualified to take and certify fingerprints, provided the private agency submits to the division written authorization from any of the agencies referenced in Paragraph (1) of Subsection C of 15.11.21.11 NMAC.

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

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

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

G. An applicant who files a false affidavit shall be denied a license, and any false affidavit is grounds for revocation of a license. [15.11.21.11 NMAC - Rp, 15 NMAC 11.2.1.11, 4/25/2017]

15.11.21.12 LICENSED PREMISES:

A. The applicant shall

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

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

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

D. Floor plans must show:

(1) every level of the licensed premises including the square footage for the 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.

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

15.11.21.13 LEASES OF LIQUOR LICENSES:

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

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

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

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

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

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

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

H. A lease of a license will not be approved when the licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for

which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act issued more than three months prior to the date of the lease application are unresolved at the time of filing the lease application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

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

15.11.21.14 COMPLIANCE WITH FEDERAL LAW

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

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

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

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

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

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

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

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

F. if the application does not include all completed pages of the proscribed form, all necessary fees, corporate documents, conveyance instruments, fingerprint cards, zoning clearances, and

affidavits regarding distances from a church or school that will require waivers from the local governing body and waivers.
[15.11.21.15 NMAC - N, 4/25/2017]

HISTORY OF 15.11.21 NMAC:

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

ABC Regulation No. 3A-2.(A), Agency Responsibility of License Regulation 3A-2.(A), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981 and 1984 Supp.), filed 1/18/1985;
AGD 3A-2(A), Agency Responsibility of License, filed 9/25/1990;
ABC Regulation No. 6B-2.(C), Completion of Application Regulation 6B-2.(C), Interpreting and Exemplifying Section 60-6B-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;
AGD 6B-2(B), Completion of Application, filed 9/25/90; AGD 6B-2(F), Disclosure of Ownership, filed 9/25/1990;
AGD 4B-5(A), Forms, filed 9/25/1990.

History of Repealed Material:

AGD Regulation 6B-2(D), Random Drawing, filed with the State Records Center and Archives on 9/25/1990, has been repealed.
15 NMAC 11.2.1, Licenses and Permits - Applications, filed 3/14/1997 - Repealed effective 4/25/2017.

Other History:

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

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

TITLE 15 GAMBLING AND LIQUOR CONTROL

CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING PART 22 LICENSES AND PERMITS - RENEWAL AND SUSPENSION

15.11.22.1 ISSUING

AGENCY: The division.

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

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

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

15.11.22.3 STATUTORY

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

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

15.11.22.4 DURATION:

Permanent.

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

15.11.22.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

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

15.11.22.6 OBJECTIVE:

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

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

15.11.22.7 DEFINITIONS:

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

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

15.11.22.8 RENEWAL OF LICENSE:

A. A complete renewal application, including a current and accurate list of servers and

the payment of all applicable fees for renewal, shall be filed with the division as follows:

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

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

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

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

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

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

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

(3) For non-resident licensees and every

wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler, failure to file duplicate invoices with the division that satisfy the requirements of Subsection D of Section 60-6A-7 NMSA 1978. The director may waive this renewal condition. To facilitate compliance, the division shall maintain an electronic mail address identified on a website maintained by the division where licensees may file such invoices.

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

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

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

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

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

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

F. The licensee shall provide the division with a current floor plan of the licensed premises for

approval pursuant to Subsection D of 15.11.21.12 NMAC within 30 days of the director's request.
[15.11.22.8 NMAC - Rp, 15 NMAC 11.2.2.8, 4/25/2017]

15.11.22.9 LATE RENEWAL OF LICENSE:

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

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

[15.11.22.9 NMAC - Rp, 15 NMAC 11.2.2.9, 4/25/2017]

15.11.22.10 SUSPENSION:

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

B. All applications for a temporary suspension from the operation of the liquor license, together with a filing fee of twenty

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

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

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

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

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

HISTORY OF 15.11.22 NMAC:

Pre-NMAC Regulatory Filing

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

ABC Regulation No. 6B-5(A), Renewals of Licenses Regulation 6B-5(A), Interpreting and Exemplifying Section 60-6B-5 NMSA 1978 (1981-1984 Supp.), filed 11/4-1985;

ABC Regulation No. 6B-5(B), Renewal of Licenses Subject to Litigation Regulation 6B-5(B), Interpreting and Exemplifying Section 60-6B-5 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD Regulation 6B-5, Renewals of Licenses, filed 9/25/1990; and AGD Regulation 6B-7, Temporary Suspension, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.2, Licenses and Permits - Renewal and Suspension,

filed 3/4/1997 - Repealed effective 4/25/2017.

Other History:

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

**REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

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

15.11.23.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.
[15.11.23.1 NMAC - Rp, 15 NMAC 11.2.3.1, 4/25/2017]

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

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

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

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

11.2.3.5, 4/25/2017]

15.11.23.6 OBJECTIVE:

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

15.11.23.7 DEFINITIONS:

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

**15.11.23.8 CHANGE OF
OWNERSHIP:**

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

B. A reportable change of ownership in a transferable 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 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 or when there is a merger or consolidation of the licensee with another entity;

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

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

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

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

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

**15.11.23.9 REPORTABLE
CHANGE IN STRUCTURE:**

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

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

(1) any change of manager;

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

(3) any change in the legal entity under which the licensee operates, for example, an individual licensee changing to a corporation which is wholly-owned

by the same licensee or between corporate entities wholly owned by the same licensee;

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

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

(6) a change in subsidiary ownership within the same parent company; or

(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.

C. A reportable change of structure required by this section does not require a hearing by the division or by the local governing body.

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

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

15.11.23.10 PROHIBITED CHANGES IN OWNERSHIP OR STRUCTURE:

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

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

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

provisions of the act.

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

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

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

15.11.23.11 CORPORATION NAME CHANGE; BUSINESS NAME CHANGE:

A. A licensee that is a corporation that changes the name of the corporation must file a written notification with the division, together with a fee of fifty dollars (\$50).

The licensee must also file with the division a copy of the certificate of the amended articles of incorporation issued by the state in which the corporation was formed reflecting the name change. The name change must also be registered with the state of New Mexico.

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

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

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

[15.11.23.11 NMAC - Rp, 15 NMAC

11.2.3.9, 4/25/2017]

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

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

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

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

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

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

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

filing the application.

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

15.11.23.13 SERVER

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

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

HISTORY OF 15.11.23 NMAC:

Pre-NMAC History: The material in this subpart was derived from that previously filed with the State Records Center and Archives under: AGD Regulation 6B-6(A), Change of Ownership of Corporate License, filed 9/25/1990; AGD Regulation 6B-6(B), Change of Ownership of Limited Partnership, filed 9/25/1990; AGD Regulation 6B-6(C), Change of Ownership, filed 9/25/1990; and AGD Regulation 6B-6(D), Corporation Name Change, filed 9/25/1990.

History of Repealed Material:

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

Other History:

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

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

15.11.24.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.24.1 NMAC - Rp, 15 NMAC 11.2.4.1, 4/25/2017]

15.11.24.2 SCOPE: These rules apply to all restaurant licensees and applicants for restaurant licensure under the act.

[15.11.24.2 NMAC - Rp, 15 NMAC 11.2.4.2, 4/25/2017]

15.11.24.3 STATUTORY

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

[15.11.24.3 NMAC - Rp, 15 NMAC 11.2.4.3, 4/25/2017]

15.11.24.4 DURATION:

Permanent.

[15.11.24.4 NMAC - Rp, 15 NMAC 11.2.4.4, 4/25/2017]

15.11.24.5 EFFECTIVE

DATE: April 25, 2017, 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: A person holding a restaurant license is subject to the following limitations:

A. The primary source of revenue for a restaurant holding a 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 restaurant licensee is prohibited from selling alcoholic beverages for consumption off the licensed premises except as provided by Subsection D of 15.10.51.9 NMAC.

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

D. A restaurant license is non-transferable from person to person or from location to location.

E. The sale of alcohol through a restaurant license is limited to beer and wine.

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

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

15.11.24.9 APPLICATION FOR RESTAURANT LICENSE:

An applicant for a 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 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 licensed premise is physically or otherwise appropriately separated from the surrounding areas. The enclosure for an outdoor area does not have to be permanent, but the enclosure must be erected any time alcoholic beverages are being served to patrons seated in the outdoor patio.

D. Except for food counters where patrons may sit to order food and drinks, a restaurant may not have any counters dedicated primarily to the display, service, or consumption of alcoholic beverages, with incidental food service; and.

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

15.11.24.10 REQUIREMENTS FOR RENEWAL:

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

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

from the sale of alcoholic beverages.

C. The director may require additional documentation, including, but not limited to, sales invoices and filings with the New Mexico taxation and revenue department, and may inspect the financial records of the licensee that relate to the operation of the restaurant.
[15.11.24.10 NMAC - N, 4/25/2017]

HISTORY OF 15.11.24 NMAC:

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

ABC Regulation No. 6A-4, Restaurant License Regulation 6A-4, Interpreting and Exemplifying Section 60-6A-4 NMSA 1978 (1981 Supp.), filed 12/3/1981;
ABC Regulation No. 6A-4(A), Restaurant License Regulation 6A-4(A), Interpreting and Exemplifying Section 60-6A-4 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; and
AGD 6A-4, Restaurant License, filed 9/25/1990.

History of Repealed Material:

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

Other History:

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

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

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

DISPENSER AND PUBLIC CELEBRATION PERMITS

15.11.25.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.25.1 NMAC - Rp, 15 NMAC 11.2.5.1, 4/25/2017]

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

[15.11.25.2 NMAC - Rp, 15 NMAC 11.2.5.2, 4/25/2017]

15.11.25.3 STATUTORY

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

[15.11.25.3 NMAC - Rp, 15 NMAC 11.2.5.3, 4/25/2017]

15.11.25.4 DURATION:

Permanent.

[15.11.25.4 NMAC - Rp, 15 NMAC 11.2.5.4, 4/25/2017]

15.11.25.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.11.25.5 NMAC - Rp, 15 NMAC 11.2.5.5, 4/25/2017]

15.11.25.6 OBJECTIVE:

This rule is intended to establish standard procedures for obtaining and operating special dispensers' permits and Sunday sales.

[15.11.25.6 NMAC - Rp, 15 NMAC 11.2.5.6, 4/25/2017]

15.11.25.7 DEFINITIONS:

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

[15.11.25.7 NMAC - Rp, 15 NMAC 11.2.5.7, 4/25/2017]

15.11.25.8 SPECIAL DISPENSER'S PERMIT:

A. A special dispenser's permit may be issued, at the discretion of the director, to the holder of a dispenser's, rural

dispenser's, interlocal dispenser's, lottery, or canopy license which is not in suspension for any reason on application submitted to the division at least ten days prior to the event.

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

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

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

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

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

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

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

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

issued for more than twelve hours on a single day.

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

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

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

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

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

K. A copy of the approved special dispenser's permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises, together with a current list of servers. [15.11.25.8 NMAC - Rp, 15 NMAC 11.2.5.8, 4/25/2017]

15.11.25.9 [RESERVED]

15.11.25.10 SMALL MANUFACTURER'S PUBLIC CELEBRATION PERMITS:

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

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

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

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

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

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

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

a single day.

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

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

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

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

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

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

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

15.11.25.11 COMPLIANCE WITH DOCUMENTS REQUIRED ON PREMISES:

All premises subject to any permit issued pursuant to this part shall comply with the requirements of 15.11.2 NMAC as if the premises is a licensed premises.

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

HISTORY OF 15.11.25 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under: ABC Regulation No. 6A-12(A),

Special Dispenser's Permit Regulation 6A-12(A), Interpreting and Exemplifying Section 60-6A-12 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985;

AGD 6A-12, Special Dispenser's Permit, filed 9/25/1990; and AGD 7A-1(B), Sunday Sales Permit, filed 9/25/1990.

History of Repealed Material:

15 NMAC 11.2.5, Licenses and Permits - Special Dispenser and Sunday Sales Permits, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 11.2.5, Licenses and Permits - Special Dispenser and Sunday Sales Permits (filed 3/14/1997) was replaced by 15.11.25 NMAC, Licenses and Permits - Special Dispenser and Sunday Sales Permits, effective 4/25/2017.

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING PART 26 LICENSES AND PERMITS - FEES

15.11.26.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.26.1 NMAC - Rp, 15 NMAC 11.2.6.1, 4/25/2017]

15.11.26.2 SCOPE: These rules apply to all licensees and applicants for licensure under the act. [15.11.26.2 NMAC - Rp, 15 NMAC 11.2.6.2, 4/25/2017]

15.11.26.3 STATUTORY

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

[15.11.26.3 NMAC - Rp, 15 NMAC

11.2.6.3, 4/25/2017]

15.11.26.4 DURATION:

Permanent.

[15.11.26.4 NMAC - Rp, 15 NMAC 11.2.6.4, 4/25/2017]

15.11.26.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.11.26.5 NMAC - Rp, 15 NMAC 11.2.6.5, 4/25/2017]

15.11.26.6 OBJECTIVE:

This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.

[15.11.26.6 NMAC - Rp, 15 NMAC 11.2.6.6, 4/25/2017]

15.11.26.7 DEFINITIONS:

[RESERVED]

[15.11.26.7 NMAC - Rp, 15 NMAC 11.2.6.7, 4/25/2017]

15.11.26.8 ANNUAL FEES:

Every application for the issuance or renewal of the following licenses shall be accompanied by an annual fee in the following specified amounts:

A. manufacturer's license as a distiller, except a brandy manufacturer: \$3,000;

B. manufacturer's license as a brewer: \$3,000;

C. manufacturer's license as a rectifier: \$1,050;

D. wholesaler's license to sell all alcoholic beverages for resale only: \$2,500;

E. wholesaler's license to sell spirituous liquors and wine for resale only: \$1,750;

F. wholesaler's license to sell spirituous liquors for resale only: \$1,500;

G. wholesaler's license to sell beer and wine for resale only: \$1,500;

H. wholesaler's license to sell beer for resale only: \$1,000;

I. wholesaler's license to sell wine for resale only: \$750;

J. retailer's license: \$1,300;

K. dispenser's license: \$1,300;

L. canopy license:

\$1,300;
M. restaurant license: \$1,050;
N. club license, for clubs with more than 250 members: \$1,250; and for clubs with 250 members or fewer: \$250;
O. wine bottler's license to sell to wholesalers only: \$500;
P. public service license: \$1,250;
Q. 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. 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. beer bottler's license: \$200;
T. brandy manufacturer's license: \$750;
U. small brewer's license: \$750;
V. 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. wine blender's license: \$750;
X. wine exporter's license: \$500;
Y. direct wine shipment permit: \$50, only required if the applicant does not hold a separate

winegrower's license;
Z. bed and breakfast dispensing license: \$100;
AA. small brewer's off-premises permit: \$200 for each off-premises location;
BB. craft distiller's license: \$750;
CC. craft distiller's off-premises permit: \$200 for each off-premises location;
DD. winegrower's off-premises permit: \$200 for each off-premises location; and
EE. 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.

[15.11.26.8 NMAC - Rp, 15 NMAC 11.2.6.8, 4/25/2017]

15.11.26.9

MISCELLANEOUS FEE

SCHEDULE: In addition to the fees set forth in the act, the following fees apply:
type of service fee

application for licensure \$200;
 renewal of license - late fee \$350 plus \$10 for each additional day late;
 change or expansion of licensed premises \$75;
 designation of agent lessee \$250;
 designation of resident agent (per agent) \$50;
 new resident agent - late fee \$100;
 transfer of ownership \$200 for first license, plus \$10 for each additional license;
 change of structure \$200 for first license, plus \$10 for each additional license;
 corporate name change; change in DBA \$50;
 temporary suspension of license \$20;
 temporary suspension of license - late application \$50;
 certification of alcohol server training \$350 per provider, plus \$100 per instructor program and annual renewal of program; renewal late fee for certification of alcohol \$10 per day server provider, instructor or program; full license listing- electronic format \$100;

paper or electronic copies of documents 0.25 cents per page.
 [15.11.26.9 NMAC - N, 4/25/2017]

15.11.26.10 EVENT

PERMITS: the following are permit fees per each event:

A. special dispenser's permit for public celebrations, \$50;
B. special dispenser's permit for catering an off-premises function, \$25;
C. craft distiller's public celebration permit, \$10;
D. winegrower's public celebration permit, \$10; and
E. small brewer's public celebration permit, \$10.
 [15.11.26.10 NMAC - N, 4/25/2017]

15.11.26.11 ANNUAL

TASTING PERMIT: for

Dispenser's, retailer's, resident manufacturer's, non-resident manufacturer's, wholesaler's, or winegrower license, \$100.
 [15.11.26.11 NMAC - N, 4/25/2017]

15.11.26.12 PRORATION OF FEES:

A. License fees for new licenses issued after the beginning of the license year shall be prorated.

B. Dispenser, retailer, restaurant, club, and public service license fees shall be prorated as follows:

(1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

(2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

(3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

(4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

C. License fees for all new licenses not provided for in Subsection B of 15.11.26.12 NMAC, except Non-resident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

D. Non-resident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for Non-resident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Non-resident licenses and common carrier registrations issued at any time during the:

(1) first license year must pay the full amount of the three-year license fee;

(2) second license year must pay two-thirds of the three-year license fee; and

(3) third license year must pay one-third of the three-year license fee.

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

HISTORY OF 15.11.26 NMAC:
[RESERVED]

History of Repealed Material:

15 NMAC 11.2.6, Licenses and Permits - Fees, filed 3/14/1997 - Repealed effective 4/25/2017.

NMAC History:

15 NMAC 11.2.6, Licenses and Permits - Fees (filed 3/14/1997) was replaced by 15.11.26 NMAC, Licenses and Permits - Fees, effective 4/25/2017.

**REGULATION AND
LICENSING DEPARTMENT**
ALCOHOL AND GAMING
DIVISION

**TITLE 15 GAMBLING AND
LIQUOR CONTROL**
**CHAPTER 11 ALCOHOLIC
BEVERAGES LICENSING**
**PART 27 LICENSES AND
PERMITS - INTER-LOCAL
OPTION DISTRICT TRANSFERS**

15.11.27.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.27.1 NMAC - Rp, 15 NMAC 11.2.7.1, 4/25/2017]

15.11.27.2 SCOPE: These rules apply to all licensees and applicants for inter-local option district transfers under the act.

[15.11.27.2 NMAC - Rp, 15 NMAC 11.2.7.2, 4/25/2017]

15.11.27.3 STATUTORY

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

[15.11.27.3 NMAC - Rp, 15 NMAC 11.2.7.3, 4/25/2017]

15.11.27.4 DURATION:

Permanent.

[15.11.27.4 NMAC - Rp, 15 NMAC 11.2.7.4, 4/25/2017]

15.11.27.5 EFFECTIVE

DATE: April 25, 2017, unless a later date is cited at the end of a section.

[15.11.27.5 NMAC - Rp, 15 NMAC 11.2.7.5, 4/25/2017]

15.11.27.6 OBJECTIVE:

These rules are intended to establish procedures for filing and processing applications for inter-local option district transfers, applicable to dispenser, and retailer licenses.

[15.11.27.6 NMAC - Rp, 15 NMAC 11.2.7.6, 4/25/2017]

15.11.27.7 DEFINITIONS:

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

[15.11.27.7 NMAC - Rp, 15 NMAC 11.2.7.7, 4/25/2017]

15.11.27.8

GENERAL APPLICATION

REQUIREMENTS: An application for an inter-local option district transfer shall satisfy the general requirements for applications set forth at 15.11.21 NMAC, as applicable, in

addition to the requirements set forth in this part.

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

15.11.27.9 FILING PERIOD:

A. The filing period for determining priority of inter-local option district transfers is beginning at 8:00 a.m. on October 1, and ending at 12:00 p.m. on December 31, or upon receipt by the division of the 10th priority application, whichever is later.

B. In the event that the division receives more than ten applications within a single calendar year for a single inter-local option district, such transfers will be accepted by the division only during the filing period each year for the next calendar year's transfers.

C. Any application received before 8:00 a.m. on October 1 will be returned with a letter requesting that the applicant resubmit the application during the appropriate filing period.

D. Any application received after the end of the filing period will be considered untimely and will be returned to the applicant.
[15.11.27.9 NMAC - Rp, 15 NMAC 11.2.7.8, 4/25/2017]

15.11.27.10 PRIORITY:

A. All substantially complete applications submitted on October 1 after 8:00 a.m. and before 5:00 p.m., regardless of the time submitted, will be considered to have been received at the same time on that date. If more than 10 applications are received on that date, priority applications will be determined by random selection by the director without reference to the contents of the application.

B. Remaining applications submitted on October 1, if more than one, will be selected for processing by random selection if one or more of the priority applications selected is withdrawn or disapproved.
[15.11.27.10 NMAC - Rp, 15 NMAC 11.2.7.9, 4/25/2017]

15.11.27.11 APPLICATION PROCESSING:

A. All substantially

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

B. When the division receives more than ten applications within a single local option district, only priority applications will be processed for transfer during any calendar year.

C. Other substantially complete applications received beyond the priority applications will be date and time stamped and a record kept of their receipt. To avoid having to deposit the filing fees, the division will photocopy the applications and return them to the applicants with letters advising how many applications are being processed before theirs and that they will be notified if and when their applications will be considered. Those applications will be given first consideration if any of the priority applications are withdrawn or disapproved. Applications not considered or approved for one calendar year's transfers may not be resubmitted until the filing period for the next calendar year.

[15.11.27.11 NMAC - Rp, 15 NMAC 11.2.7.10, 4/25/2017]

15.11.27.12 AMENDMENTS:

All applications will be processed based on the information originally submitted. If an application is substantially changed at the request of the applicant, the application may be considered by the division to have been withdrawn. Any application considered by the division to be withdrawn must be resubmitted as required by this rule and will lose any priority for processing it may have received when first filed. If there is a substantial change made to an application after it has been approved or disapproved by the local option district at hearing, including but not limited to a change in transferee, a change of ten percent or more in stock ownership, a change in the named transferee, a change in an officer or

director, any change in location, a substantial change to the floor plan or any other terms and conditions deemed substantial by the director, the director may require the amended application be resubmitted to the local option district for approval.

[15.11.27.12 NMAC - Rp, 15 NMAC 11.2.7.11, 4/25/2017]

15.11.27.13 PROHIBITED TRANSFERS:

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

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

C. No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

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

HISTORY OF 15.11.27 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING PART 28 LICENSES

AND PERMITS - BED AND BREAKFAST LICENSE

15.11.28.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

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

15.11.28.2 SCOPE: These rules apply to all special bed and breakfast dispensing licensees and applicants for special bed and breakfast dispensing licensure under the act.

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

15.11.28.3 STATUTORY

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

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

15.11.28.4 DURATION:

Permanent.

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

15.11.28.5 EFFECTIVE

DATE: April 25, 2017 unless a later date is cited at the end of a section.

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

15.11.28.6 OBJECTIVE:

These rules are intended to establish standards and guidelines applicable to persons obtaining special bed and breakfast dispensing licenses under the act.

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

15.11.28.7 DEFINITIONS:

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

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

15.11.28.8 BED AND

BREAKFAST LICENSE: The owner or operator of a bed and breakfast, as defined in 15.10.2 NMAC, may apply for and receive a special bed and breakfast dispensing license.

A. Service of beer and wine is permitted in common areas only in conjunction with the

service of food. Service of up to two twelve-ounce servings of beer or two six-ounce servings of wine per 24 hours of lodging is allowed to each registered guest over 21 years of age.

B. Unless otherwise provided in this rule, service of alcohol shall be in accordance with the provisions of the act and division rules.
[15.11.28.8 NMAC - N, 4/25/2017]

15.11.28.9 APPLICATION REQUIREMENTS FOR BED AND BREAKFAST LICENSE: Before a special bed and breakfast dispensing license may be issued, an application shall be submitted to the division and shall contain the following fees and documentation:

A. the application fee of \$100.00, which shall not be prorated;

B. a completed application on the form prescribed by the division, signed by the applicant and notarized; and

C. proof that applicant meets the definition of "bed and breakfast" contained in 15.10.2 NMAC, requiring applicant to be a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons.
[15.11.28.9 NMAC - N, 4/25/2017]

HISTORY OF 15.11.28 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT ALCOHOL AND GAMING DIVISION

TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING PART 29 LICENSES AND PERMITS - TASTING PERMITS

15.11.29.1 ISSUING AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.
[15.11.29.1 NMAC - N, 4/25/2017]

15.11.29.2 SCOPE: These rules apply to licensed dispenser, retailer, resident manufacturer, non-resident manufacturer, wholesaler or winegrower license holders applying for a tasting permit under the act.
[15.11.29.2 NMAC - N, 4/25/2017]

15.11.29.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. Section 60-3A-33 authorizes the division to issue tasting permits.
[15.11.29.3 NMAC - N, 4/25/2017]

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

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

15.11.29.6 OBJECTIVE: These rules are intended to establish standards applicable to persons obtaining tasting permits under the act.
[15.11.29.6 NMAC - N, 4/25/2017]

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

15.11.29.8 TASTING PERMIT, GENERAL PROVISIONS: A licensed dispenser, retailer, resident manufacturer, wholesaler, winegrower, non-resident manufacturer or an agent or lessee of any such licensed entity may apply for and receive a tasting permit on a licensed premises that sells alcoholic beverages directly to the public and shall adhere to the following limitations of the permit:

A. The liquid volume of all pours of alcoholic beverages must be no larger than a taste.

B. All tastes must be given free of charge.

C. All tastes must be poured by the permit holder, or an employee, agent or contractor of the licensee, with a valid server certification. Any such employee, agent or contractor must be directly paid by the licensee holding the tasting permit, not through a third party.

D. The permit holder, and its employees, agents or contractors may not sell any alcoholic beverages while operating the tasting permit.

E. The licensee shall notify the division in writing or via email at least 48 hours prior to conducting any tasting event, disclosing the date, time and location of the tasting event.

F. Issuance of tasting permits are subject to local option district elections regarding Sunday sales by the drink, and will not issue on any Sunday where sales by the drink are not allowed by the local option district.
[15.11.29.1 NMAC - N, 4/25/2017]

15.11.29.9 APPLICATION REQUIREMENTS FOR AN ANNUAL TASTING PERMIT: Before an annual tasting permit may be issued, an application shall be submitted to the director for approval, shall be signed by the licensee, and shall contain the following fees and documentation:

A. money order or check for the annual fee in the amount of \$100.00; and

B. a completed, signed application on the form prescribed by the director for:

(1) a non-resident licensee, by a person authorized to legally bind the licensee, or

(2) for all other licensees, a person fingerprinted in connection with their interest in the licensee pursuant to Section 60-6B-2(B) NMSA 1978.
[15.11.29.1 NMAC - N, 4/25/2017]

15.11.29.10 NO TASTING PERMIT ON SAME PREMISES REQUIRED FOR LICENSES

ALLOWING SALES BY THE

DRINK: Nothing in this part requires a holder of a license for sales of alcoholic beverages by the drink to obtain any additional permit to offer tastes 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.
[15.11.29.1 NMAC - N, 4/25/2017]

HISTORY OF 15.11.29 NMAC:
[RESERVED]

**REGULATION AND
LICENSING DEPARTMENT**
ALCOHOL AND GAMING
DIVISION

**TITLE 15 GAMBLING AND
LIQUOR CONTROL**
**CHAPTER 11 ALCOHOLIC
BEVERAGES LICENSING**
**PART 30 PURCHASING
COOPERATIVES**

15.11.30.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.
[15.11.30.1 NMAC - N, 4/25/2017]

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

15.11.30.3 STATUTORY

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

15.11.30.4 DURATION:

Permanent.
[15.11.30.4 NMAC - N, 4/25/2017]

15.11.30.5 EFFECTIVE

DATE: April 25, 2017 unless a later date is cited at the end of a section.
[15.11.30.5 NMAC - N, 4/25/2017]

15.11.30.6 OBJECTIVE:

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

15.11.30.7 DEFINITIONS:

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.
[15.11.30.7 NMAC - N, 4/25/2017]

**15.11.30.8 COOPERATIVE
AGREEMENT REGISTRATION
REQUIREMENTS:**

A. Any number of retailers, or dispensers licensed to sell alcoholic beverages by package, may pool their purchases of alcoholic beverages from a wholesaler, and may also collectively advertise the purchase of alcoholic beverages, provided such cooperative purchases and advertising are pursuant to a written and fully executed cooperative agreement filed with the division.

B. The cooperative agreement to be filed with the division shall include the following:

(1) a list of all members of the cooperative attached as a schedule to the agreement, identifying the license number for each member, to be updated in accordance with 15.11.30.10 NMAC;

(2) separate invoicing of all purchases made by each member pursuant to the agreement and pursuant to Section 60-8A-3 NMSA 1978 of the act;

(3) separate delivery of all purchases to each member's licensed premises pursuant to the agreement;

(4) if the agreement provides for the employment of any employees by the cooperative, such employee may not have a financial interest in, or receive financial compensation from, any individual member;

(5) a provision that, with a minimum of notice of 30 days, the cooperative may cancel the membership of any member;

(6) no prohibition against any member joining any other trade organization

or entity, except, at the option of the cooperative, a prohibition against joining other purchasing cooperatives authorized by the act;

(7) a provision that any member may withdraw from the cooperative with a minimum of 30-day notice without penalty for such withdrawal;

(8) no prohibition on any member from selling any product at an otherwise lawful price; and

(9) a provision that any advertising purchased by the cooperative shall either identify all members equally in the advertisement, or identify the name of the cooperative only.

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

15.11.30.9 CORPORATE

ENTITIES PERMITTED: The members of a purchasing cooperative may organize and conduct business personally or through any corporate structure allowable under state law.
[15.11.30.9 NMAC - N, 4/25/2017]

15.12.30.10 DIVISION

RECORDS: The division shall maintain, through its website, a list of the names of all cooperatives that have complied with the requirements of this part. A copy of the cooperative agreement for each listed cooperative shall be available from the division upon request. Each cooperative may, at its discretion, submit an updated schedule of its members, but shall submit an updated copy of its cooperative agreement in the event of any material change to the agreement.
[15.11.30.10 NMAC - N, 4/25/2017]

HISTORY OF 15.11.30 NMAC:
[RESERVED]

**REGULATION AND
LICENSING DEPARTMENT**
ALCOHOL AND GAMING
DIVISION

**TITLE 15 GAMBLING AND
LIQUOR CONTROL**
**CHAPTER 11 ALCOHOLIC
BEVERAGES LICENSING**

**PART 31 ALCOHOL
SERVER TRAINING -
CERTIFICATION**

15.11.31.1 ISSUING

AGENCY: The Alcohol and Gaming Division of the Department of Regulation and Licensing.

[15.11.31.1 NMAC - Rp, 15 NMAC 11.3.1.1, 4/25/2017]

15.11.31.2 SCOPE: This rule applies to all act licensees, lessees, servers, and alcohol server training providers and instructors.

[15.11.31.2 NMAC - Rp, 15 NMAC 11.3.1.2, 4/25/2017]

15.11.31.3 STATUTORY

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

[15.11.31.3 NMAC - Rp, 15 NMAC 11.3.1.3, 4/25/2017]

15.11.31.4 DURATION:

Permanent.

[15.11.31.4 NMAC - Rp, 15 NMAC 11.3.1.4, 4/25/2017]

15.11.31.5 EFFECTIVE

DATE: April 25, 2017, 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 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 unless that person first obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

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

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

per application. Any incomplete application received by the division shall be returned to the provider for completion.

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

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

F. Replacement server permits. Requests for replacement server permits must

be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form of a cashier's check or money order. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

G. 19 and 20 year old. Pursuant to Subsection B of 60-7B-11 NMSA 1978, a person between the ages of 19 years and 21 years old may only serve alcohol in a restaurant. A provider may offer its program to a student between the ages of 19 years and 21 years old, provided that the student is given notice that the server permit will only allow the student to serve in a restaurant and that he or she will not be eligible to serve in a bar or retail location, or in a restaurant as a bartender, even with a server permit, until he or she reaches the age of 21 years.

[15.11.31.8 NMAC - Rp, 15 NMAC 11.3.1.8, 4/25/2017]

15.11.31.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

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

B. Applications for providers and programs:
(1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s),

including a resume, references and the name of the certified program that applicant intends to administer;

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

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

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

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

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

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

(h) a form, prescribed by the director, authorizing a background check for all providers and instructors. Persons convicted of a felony or crimes of moral turpitude may not be certified as providers or instructors at the discretion of the director. Additional

documentation regarding disposition of any charges may be requested by the director prior to approval of any application for certification;

(i)

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

(j)

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

(2) Programs:

(a)

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

(b)

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

(c) a

copy of applicant's business license;

(d)

a copy of applicant's tax registration certificate;

(e)

for on-line programs:

(i)

a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program,

including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner.

The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the director, and in a format approved by the director;

(ii)

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

(iii)

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

(iv)

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

(f)

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

C. Completeness

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

(1) if the

application is incomplete, the division will contact the applicant for additional information;

(2) if the

application is complete, the division shall review the application.

D. Standards for

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

(1) Providers

and instructors: In reviewing applications for certification as a provider or instructor the division shall consider:

(a)

whether all the information required by these rules has been submitted and

is accurate and valid;

(b)

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

(c)

the results of the background check;

(d)

whether applicant is 21 years of age or older;

(e)

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

(f)

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

(g)

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

(2) Programs:

In reviewing applications for certification as a program the division shall consider:

(a)

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

(b)

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

(c)

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

(d)

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

(e)

whether the program includes photos and examples of bars, restaurants, convenience stores and other retail

settings, including self-checkout, to ensure a balance in preparing servers to sell alcohol for consumption both on-premise and off-premise;

(f)

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

(g)

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

(h)

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

(i)

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

(j)

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

(3) In addition

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

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

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

(1) Renewal

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

(2) Renewal

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

G. Pro-rated fees:

The initial certification fee for providers, programs and instructors will be prorated, as follows:

(1)

certification obtained before April 1 of any year will be subject to the full amount of the annual certification fee;

(2)

certification obtained on or after April 1 and before July 1 will be subject to three-fourths of the annual fee;

(3)

certification obtained on or after July 1 and before October 1 will be subject to one-half of the annual fee; and

(4)

certification obtained on or after October 1 will be subject to one-fourth the annual fee.

H. Transferability:

Provider, instructor and program certifications are non-transferable.

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.

End of Adopted Rules.

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Issue 8	April 13	April 25
Issue 9	April 27	May 16
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