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New Mexico Register

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

Volume XXXII - Issue 4 - February 23, 2021

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The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING

The State of New Mexico through the Oil Conservation Commission (OCC) hereby gives notice that the OCC will hold a public hearing to consider proposed amendments to 19.15.29.6 NMAC and 19.15.29.8 NMAC to prohibit unauthorized spills or releases of oil, gas, produced water, and other oil and gas waste. The public hearing will be held on-line and by telephone on April 1 and 8-9, 2021 and will be continued to the day(s) following April 9, 2021, if not completed.

Purpose of Proposed Rule Amendments. The proposed rule amendments seek to prohibit unauthorized spills or releases of oil, gas, produced water, and other oil and gas waste, placing enforcement of the proposed prohibition within the power of the Oil Conservation Division (OCD).

Summary of Proposed Rule Amendments. The OCC will consider proposed amendments to 19.15.29.6 and 19.15.29.8 NMAC to prohibit the unauthorized release of oil, gas, produced water, and other oil and gas waste, and to provide the OCD with authority to enforce the prohibition.

Legal Authority. The proposed rule amendments are authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, including Section 70-2-6 (authorizing the OCC to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the OCC and OCD), and Section 70-2-12(B)(15), (21), and (22) (specifically authorizing OCD to regulate produced water to protect public health, the environment, and fresh water resources and to regulate the disposition non-domestic wastes). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule Amendments. The full text of the proposed rule amendments is available on the OCD's website, http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/santafeadmin/cf/20201022/21529_10_22_2020_01_36_50.pdf or by contacting the OCC Clerk, Florene Davidson at florene.davidson@state.nm.us.

Written Comments. Any person may submit written comments on the proposed rule amendments no later than April 26, 2021, at 5:00 p.m. by mail, email, or delivery to the OCC Clerk, Florene Davidson, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or florene.davidson@state.nm.us. To deliver written comments to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Scheduling Order. The OCC shall adopt a procedural order, which will be viewable at <http://www.emnrd.state.nm.us/OCD/outreach.html>.

Public Hearing. The OCC will hear public comment and consider adoption of the proposed rule amendments at a public hearing to be held online and by telephone on April 1, 2021 at 9:00 a.m. and April 8-9, 2021, and continued to the following day(s) if not completed. The hearing will be transcribed and recorded. To access the hearing on-line via the Webex platform and by telephone:

Event: OCC Meeting April 1, 2021

Event address for attendees: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=e835db791b966414746e5166f9de9c140>

Event address for panelists: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=e6b9d85a516bbaef5dfea3dd62f1bf274>

Date and time: Thursday, April 1, 2021 9:00 am Mountain Daylight Time (Denver, GMT-06:00)

Event number: 187 621 7254

Event password: upY7phnrb53

Host key: 411050

Panelist numeric password: 199054

Video Address: 1876217254@nmemnrd.webex.com. You can also dial 173.243.2.68 and enter your meeting number.

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

United States Toll

+1-408-418-9388

Show all global call-in numbers

Access code: 187 621 7254

Event: OCC Meeting April 8, 2021

Event address for attendees: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=ef79d182f60e517c745e281cc0b9d6c73>

Event address for panelists: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=edc5cf0006d0c6ea092082d60c57591e4>

Date and time: Thursday, April 8, 2021 9:00 am Mountain Daylight Time (Denver, GMT-06:00)

Event number: 187 600 1792

Event password: aJP5zfbEh85

Host key: 497019

Panelist numeric password: 137128

Video Address: 1876001792@nmemnrd.webex.com. You can also dial 173.243.2.68 and enter your meeting number.

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

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Access code: 187 600 1792

Event: OCC Meeting April 9, 2021

Event address for attendees: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=ea5307b31cd4d5cc30f81d5250fdd5c46>

Event address for panelists: <https://nmemnrd.webex.com/nmemnrd/onstage/g.php?MTID=eab272855b15b285b61eeae09ec3c2042>

Date and time: Friday, April 9, 2021 9:00 am Mountain Daylight Time (Denver, GMT-06:00)

Event number: 187 653 2336

Event password: 7MWv4m6Gk7J

Host key: 112914

Panelist numeric password: 150497

Video Address: 1876532336@nmemnrd.webex.com. You can also dial 173.243.2.68 and enter your meeting number.

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

United States Toll

+1-408-418-9388

Show all global call-in numbers

Access code: 187 653 2336

Proposed Modifications, Technical Testimony, and Cross Examination. A person who intends to propose a modification to the proposed rule amendments, to present technical testimony at the public hearing, or to cross-examine witnesses at the public hearing must file a Pre-Hearing Statement conforming to the requirements of 19.15.3.11(B) NMAC, per OCC's Procedural Order, which can be found at <http://www.emnrd.state.nm.us/OCD/outreach.html>. The Pre-Hearing Statement must be filed by mail, email, or delivery to the OCC Clerk, Florene Davidson, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, florene.davidson@state.nm.us. Six copies of any hard copy filings are required, but multiple copies are not required for electronically-filed documents. To deliver a Pre-Hearing Statement to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door. A person who presents technical testimony at the public hearing will be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements. Pre-Hearing Statements, including the exhibits that a party plans to offer as evidence at the hearing, may be viewed at <http://www.emnrd.state.nm.us/OCD/ocdonline.html>.

Oral Comments. A person who did not file a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the public hearing. A person who wants to present non-technical testimony or make an unsworn

statement at the public hearing must inform the hearing examiner. A person who presents non-technical testimony will be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements. A person may offer exhibits at the public hearing if the exhibits are relevant to the proposed rule amendments and the person files the original exhibit and five copies conforming to the requirements of 19.15.3.12(C) NMAC prior the end of the public hearing. A person may file exhibits by mail, email, or delivery to the OCC Clerk, Florene Davidson, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, florene.davidson@state.nm.us. To deliver exhibits to the OCC Clerk, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Deliberations. The OCC shall not begin deliberations in this matter until the public comment period expires on April 26, 2021, as required by Section 14-4-5(B) NMSA.

Persons with Disabilities. A person with a disability who needs a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service, such as a summary or other accessible form of document, to attend or participate in the public hearing, must contact the OCC Clerk, Florene Davidson, at (505) 476-3458 or florene.davidson@state.nm.us, or through the New Mexico Relay Network at 1-800-659-1779, no later than March 8, 2021.

Technical Information. The following technical information was consulted for the proposed rule amendments:

Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States available online at: www.epa.gov/hfstudy.

OSTEOPATHIC MEDICINE, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The NM Board of Osteopathic Medicine will hold a rule hearing on Friday, April 9, 2021, at 9:00 a.m. Following the rule hearing, the NM Board of Osteopathic Medicine will convene a board meeting where it may adopt the rule changes and will take care of regular business. The rule hearing and board meeting will be held via Cisco Webex Meetings. Please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ed45ae6a9031ea01d04c0ccf89cddea83>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 187 846 3338

The purpose of the rule hearing is to consider proposed amendments to the following rule:

16.17.2 NMAC – Application for Licensure, Qualifications and Fees

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: http://www.rld.state.nm.us/boards/OsteopathicMedicine_Rules_and_Laws.aspx or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator, via electronic mail at: Osteo.Board@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, April 8, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at: http://www.rld.state.nm.us/boards/OsteopathicMedicine_Rules_and_Laws.aspx. Persons

will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at http://www.rld.state.nm.us/boards/OsteopathicMedicine_Members_and_Meetings.aspx. Copies of the rules or the agenda may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roberta Perea, Board Administrator (505) 476-4622.

Statutory Authority: The Osteopathic Medicine Act, NMSA 1978, Sections 61-10-1 through 61-10-22, among other provisions, specifically authorizes the Board to “adopt and promulgate in accordance with the Uniform Licensing Act and the State Rules Act all rules for the implementation and enforcement of the Osteopathic Medicine Act.” NMSA 1978 § 61-10-5.

Purpose of the Proposed Rules: The proposed rules are intended to bring the definition of a post-graduate license up to date by reflecting existing training programs, to specify the annual renewal fee for a telemedicine license, and to change the examination requirements for a postgraduate training license due to the COVID pandemic making certain exams unavailable.

Summary of Proposed Changes:

16.17.2.3 NMAC – Statutory Authority:

The amendment to this section is to add a reference to the statutory authority for telemedicine license fees.

16.17.2.7 – Definitions:

The amendment to this section is

to remove “AACOM” from the definition of a post-graduate license as AACOM no longer administers training programs.

16.17.2.8 – Fees:

The amendment to this section is to add an annual renewal fee of \$100 for a telemedicine license.

16.17.2.15 – Postgraduate Training License:

The amendment to this section is to remove passage of step 2 of the USMLE or COMLEX-USA exam as a prerequisite for postgraduate training licensure. The step 2 exam was suspended in May of last year due to the COVID pandemic. It would take up to 12-18 months to bring back a revitalized Step 2 exam.

**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.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an Amendment to 8.15.2 NMAC, Sections 7 through 21, effective 3/1/2021.

8.15.2.7 DEFINITIONS:

A. **“Attending a job training or educational program”** means actively participating in [a job] an in-person or online job training or educational program.

B. **“At-risk child care”** means a program for families at-risk [~~of child protective services involvement~~] as determined by the department.

C. **“CACFP”** means the child and adult care food program, administered by the children, youth and families department.

D. **“Child with a disability or special needs”** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

~~E. **“Child support enforcement division”** means the child support enforcement program administered by New Mexico’s human services department, which collects child support from non-custodial parents.]~~

E. **“Client”** means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

F. **“Closure”** means the client’s child care case is closed with the department.

G. **“Co-payment”** means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.

H. **“Demonstration of incapacity”** means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician’s/ medical professional’s/treatment provider’s letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

~~H.] I. **“Department”** means the New Mexico children, youth and families department (CYFD).~~

~~I.] J. **“Earned income”** means income received as gross wages from employment or as profit from self-employment.~~

K. **“Fluctuation of earnings”** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1) average family earnings over a period of time (e.g., 12 months); or

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

~~I.] L. **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:~~

(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

M. **“Household”** means the household as defined below in Paragraph (1) of Subsection C. of 8.15.2.11 NMAC.

N. **“Household income”** means household income as defined below in Paragraph (3) of Subsection C. of 8.15.2.11 NMAC.

[K:] Q. “Incidental money” means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

[L:] P. “Infant, toddler, preschool, school age” means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (1) infant: zero - 23 months;
- (2) toddler: 24 -35 months;
- (3) preschool: three to five year olds; and
- (4) school age: six year olds and older.

[M:] Q. “Job training and educational program” means participation in a short or long term educational or training program, including online programs [which provides] that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

[N:] R. “National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national accrediting bodies that are approved by CYFD:

- (a) the association of Christian schools international (ACSI);
- (b) the council on accreditation (COA)

for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

(e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(f) the national association of family child care (NAFCC); or

(g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

[O:] S. “Non-temporary change in activity” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section [EE] HH below.

[P:] T. “Non-traditional hours of care” means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

[Q:] U. “Open case” means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

[R:] V. “Overpayment” means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

[S:] ——— “Child Protective services (CPS) child care” means child care services for children placed

in the custody of the child protective services of the department.]

[T:] W. “Provider types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) **“In-home”** care means care provided in the child’s own home.

(2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

(7) **“Friend, family, or neighbor (FFN)”** means care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In the case of a public health emergency, the department may extend the temporary status.

[U:] X. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

~~[V:] Y.~~ **“Registration/ educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

~~Z.~~ **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

~~[W:] AA.~~ **“SNAP”** means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

~~BB.~~ **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

~~[X:] CC.~~ **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

~~[Y:] DD.~~ **“Suspension”** means ~~[that the child care case remains eligible, but benefits are not paid to the provider]~~ the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

~~[Z:] EE.~~ **“TANF”** means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

~~[AA:] FF.~~ **“Teen parent”** means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

~~[BB:] GG.~~ **“Termination”** means the client’s child care case will be closed due to cause.

~~[CC:] HH.~~ **“Temporary change of activity”** means one of the following events that does not exceed three months:

(1) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

(2) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(3) student holiday or break for a parent or legal guardian participating in training or education;

(4) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(5) cessation of work or attendance at a training or education program less than ~~[90 days]~~ three months.

~~[DD:] II.~~ **“Underpayment”** means a payment made by the department for services provided which did not fully reimburse the client or provider.

~~[EE:] JJ.~~ **“Unearned income”** means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, ~~[and]~~ grants and other income which does not meet the definition of earned income.

~~[FF:] KK.~~ **“Working”** means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements. [8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021]

8.15.2.8 TYPES OF CHILD CARE: These policies apply to child care assistance benefits provided to eligible children for the

following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

B. licensed child care programs administered by tribal entities;

C. licensed child care programs administered by church or religious organizations;

D. in-home care;

E. licensed child care centers;

F. registered family childcare homes;

G. licensed family and group childcare homes;

H. licensed out of school time programs; ~~[and]~~

I. licensed programs operated by employers for their employees; and

~~J.~~ FFN.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.9 PRIORITIES FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payment, are considered priority one clients.

(1) Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant’s inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual’s home or work site;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth [&] and families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with [the human services department (HSD)] HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.

B. Priority one A: **[RESERVED]**

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two

clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: **[RESERVED]**

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

~~[G.] Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.]~~

~~[H.] **G.** [At-risk child care] Priority five: In addition to these priorities, the department pays for at-risk [protective services] child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021]~~

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility ~~[in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission~~

of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation]:

(1) a completed signed application form;

(2) ~~[current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support] documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;~~

~~(3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;~~

~~[(3)] (4) school schedule or verification of educational activity, if applicable;~~

~~(5) demonstration of incapacity for parent or legal guardian, if applicable;~~

~~[(4)] (6) verification of birth for all applicant's household children;~~

~~(7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;~~

~~[(5)] proof of unearned income;~~

~~[(6)] (8) [proof] documentation of New Mexico [home address] residency; and~~

~~[(7)] (9) [CYFD] department approved provider.~~

B. The department may approve a client to submit their initial application by fax, email, electronic submission, or

mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

~~[B.]~~ **C.** Assistance is provided effective the first day of the month of application if all of the following apply:

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and

(3) the ~~[eligible]~~ provider is eligible to be paid ~~[was providing care from the first day of the month forward]~~.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial ~~[eligibility]~~ determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian's request.

(2) ~~[Eligibility for CPS and a at]~~ At-risk child care may be granted for less than

12 months as determined by the department.

~~(3)~~ **(3)** Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

~~(3)~~ **(4)** The client will remain eligible if a temporary change of activity occurs.

~~(4)~~ **(5)** If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, ~~[and]~~ legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit ~~[- and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children].~~ Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working,

training, medical or other treatment, or military service.

~~(2)~~ **(2)** ~~[Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/ guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal]~~ Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, in this situation are required to qualify for child care assistance as per [Paragraph (4)] Paragraph (3) below and, upon qualification, have the required co-payment waived.

~~(3)~~ **(3)** ~~Adult dependent children: 18-year-old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.]~~

~~(4)~~ **(3)** Household income: ~~[Income eligibility for benefits is determined by the number of members in the household and the total countable gross earned and unearned income. Eligibility determinations will take into account irregular fluctuations of earnings to income based on the client's individual circumstances.]~~ The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

~~(5)~~ **(4)** Family assets: A family's assets may not exceed one million dollars.

~~(6)~~ **(5)** Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; ~~child support payments;~~ alimony payments; veterans administration (VA) payments except VA payments ~~for educational purposes and disability~~ that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; ~~union payments; unemployment or~~ workman's compensation; railroad retirement benefits; pensions; ~~TANF benefits, including diversion payments;~~ royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; ~~work study income;~~ overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

~~(7)~~ **(6)** Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of ~~a~~ household ~~dependent~~ dependents ~~child who is under 18 and in school~~; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care

payments; adoption subsidies; ~~VA payments for educational purposes and disability;~~ loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or ~~Americorp~~ AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

~~(8)~~ **(7)** Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current ~~proof~~ documentation of income for ~~all members of the household~~ biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. ~~Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.~~ A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the

child care assistance supervisor, at which point services may be reduced or discontinued.

(8)

Calculating income:

(a)

Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

(b)

Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

(i)

Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

(ii)

Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

(iii)

Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv)

Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship and eligible immigration status: Any child receiving child care assistance

must be a citizen or legal resident of the United States; or a qualified [alien] immigrant as [determined by applicable federal laws] defined by the United States department of health and human services, administration for children and families, office of child care. [If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.]

F. Age requirement:

Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for [CPS or] at-risk child care.

~~[G. Failure to use authorized child care: If authorized child care has not been used for five consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, payment may discontinue to the provider and the client will remain eligible for the remainder of their eligibility period. The provider or the client shall notify the department within three business days after the fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a notice to the client stating when the client's placement will be closed and shall simultaneously issue a notice to the provider stating when the last date of payment will be made. Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.~~

~~**H.** Change in Provider:~~

~~If the parent or guardian changes providers, the provider shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.]~~

~~**G.** Special supervision:~~

~~Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.~~

~~**H.** Children enrolled~~

~~in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.~~

~~**I.** Work/education~~

~~requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities.~~

~~Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. [Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year.] The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.~~

~~**J.** Periods of absences:~~

~~A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or guardian who remains in the home~~

~~must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, or military service.~~

~~**K.** Special supervision:~~

~~Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, under an IEP or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.~~

~~**L.** Children enrolled~~

~~in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.]~~

~~[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]~~

8.15.2.12 RECERTIFICATION:

Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide [proof] documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B. of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12

NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.13 CLIENT

RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments:

Co-payments are paid by all clients receiving child care assistance benefits, except for [~~EPS child care,~~] at-risk child care and qualified grandparents or legal guardians [~~as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC.~~]. [~~In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency.~~] Co-payments are determined by income and household size. The co-payment schedule is published yearly at [~~https://cyfd.org/child-care-services~~] <https://www.nmeccd.org/child-care-assistance/>. [~~In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.~~]

B. Co-payments

described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for [~~calculating~~] determining the co-payment amount based on the co-payment schedule for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The

first child is identified as the child requiring the most hours of child care.

(2) Each

additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. Each child's co-

payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time

care will be based on one hundred percent of the base co-payment;

(2) part time

1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2

care will be based on fifty percent of the base co-payment; and

(4) part time

3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-

payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for

a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers:

Parents or legal guardians who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent or legal guardian who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent or legal guardian.

G. Notification of

changes: [~~Clients must notify the department of changes that affect~~

~~the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change.~~

~~Clients who do not comply with this requirement may be sanctioned.]~~

Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client

must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client

who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(3) If the client

has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(4) Clients

who do not comply with this requirement may be sanctioned.

~~[H. — Required~~

~~application with New Mexico human services department's child support enforcement division (CSED):~~

~~(1) — When~~

~~one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.~~

~~(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.~~

~~(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:~~

~~(a) there is possible physical or emotional harm to the child, parent or guardian;~~

~~(b) the child was conceived as a result of incest or rape;~~

~~(c) legal proceedings for adoption of the child are pending before a court; or~~

~~(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.~~

~~(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.~~

~~(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.]~~

[8.15.2.13 NMAC - Rp, 8.15.2.13

NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13 G NMAC.

C. A case will be closed if the following conditions apply:

(1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;

(2) income in excess of two hundred and fifty percent federal poverty level [or eighty-five percent state median income, whichever is greater];

(3) moving out of state;

(4) failing to recertify at the end of approved eligibility period;

(5) at the option of the client;

(6) being disqualified from participation in the program; or

(7) failure to use authorized child care.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.15 PROVIDER

REQUIREMENTS: Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

~~[B.]~~ **C.** Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care placement agreement.

~~[C.]~~ **D.** [Child care providers must notify the department within three business days after the fifth day of non-attendance if the child is disenrolled or is absent for five consecutive scheduled days. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection G of 8.15.2.11 NMAC] Notification of changes: Child care providers must notify the department

if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

~~(D.)~~ **E.** Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions ~~[or suspension of the child care assistance agreement]~~.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations,

the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

~~(E.)~~ **F.** Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another CYFD approved provider.

~~(F.)~~ **G.** Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program. [8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

~~(A.)~~ **A.** ~~The department will initiate mid-certification communication with the client to provide outreach and consumer education with a case management approach and coordination of services to support families.]~~

~~(B.)~~ **A.** The department pays child care providers who provide child care services to department clients in a timely manner.

~~(C.)~~ **B.** Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

~~(D.)~~ **C.** Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required

documentation from the client.

~~(E.)~~ **D.** Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

~~(F.)~~ **E.** Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.

~~(G.)~~ **F.** Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

~~(H.)~~ **G.** The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents or legal guardians and providers.

~~(I.)~~ **H.** The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly

basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following [describes] circumstances under which the department may close placements or discontinue payment [~~when placements may be closed and payment discontinued~~] at a time other than the end of the month:

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. [~~Upon a change of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at~~

~~risk, as determined by a substantiated complaint against the child care facility.]~~ Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

C. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

D. The amount of the payment is based upon the age of the child and average number of hours

per week needed per child during the certification period. The number of hours of care needed is determined with the parent or legal guardian at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care placement agreement covering the certification period.

E. The department pays for care based upon the following units of service:

Continued Next Page

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes, and in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee’s national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

N. If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

O. The department may conduct provider [or] , parent, or legal guardian, audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

P. Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021]

8.15.2.18 UNDER PAYMENTS: If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within ~~90 calendar days~~ three months of the occurrence of alleged underpayment.
[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.
[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.20 FRAUD: The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility

is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full.
[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.21 SANCTIONS: ~~[If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions]~~ Sanctions may be imposed according to the severity of the infraction as determined by the department ~~[and]~~ as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

B. [Providers] The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child ~~[is not]~~ has not been in attendance for ~~[five]~~ 14 consecutive calendar days ~~[- scheduled days will have the payment recoupment process initiated].~~

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.

E. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. ~~[The department assists the provider in collecting the co-payment only if the co-payment has been in arrears 30 calendar days or less.]~~
[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021]

GAMING CONTROL, BOARD OF

The New Mexico Gaming Control Board approved the repeal of 15.4.1 NMAC, Bingo and Raffles - General Provisions (filed 3/27/2013) and replaced it with 15.4.1 NMAC, Bingo and Raffles - General Provisions (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.2 NMAC, Bingo and Raffles - Application for Licensure (filed 3/27/2013) and replaced it with 15.4.2 NMAC, Bingo and Raffles - Application for Licensure (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.3 NMAC, Bingo and Raffles - License and Staff Permit Renewals (filed 3/27/2013) and replaced it with 15.4.3 NMAC, Bingo and Raffles - License and Staff Permit Renewals (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.4 NMAC, Bingo and Raffles - Licensed Premises (filed 3/27/2013) and replaced it with 15.4.4 NMAC, Bingo

and Raffles - Licensed Premises (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.5 NMAC, Bingo and Raffles - Operating Procedure Standards (filed 3/27/2013) and replaced it with 15.4.5 NMAC, Bingo and Raffles - Operating Procedure Standards (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.6 NMAC, Bingo and Raffles - Equipment; Bingo, Raffle, Pull-Tabs (filed 3/27/2013) and replaced it with 15.4.6 NMAC, Bingo and Raffles - Equipment; Bingo, Raffle, Pull-Tabs (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo (filed 3/27/2013) and replaced it with 15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.8 NMAC, Bingo and Raffles - Conduct of Raffle (filed 3/27/2013) and replaced it with 15.4.8 NMAC, Bingo and Raffles - Conduct of Raffle (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.9 NMAC, Bingo and Raffles - Conduct of Pull-Tabs (filed 3/27/2013) and replaced it with 15.4.9 NMAC, Bingo and Raffles - Conduct of Pull-Tabs (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.10 NMAC, Bingo and Raffles - Accounting Requirements (filed 3/27/2013) and replaced it with 15.4.10 NMAC, Bingo and Raffles - Accounting Requirements (adopted

on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.11 NMAC, Bingo and Raffles - Variance Procedures (filed 3/27/2013) and replaced it with 15.4.11 NMAC, Bingo and Raffles - Variance Procedures (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.12 NMAC, Bingo and Raffles - Enforcement Proceedings (filed 3/27/2013) and replaced it with 15.4.12 NMAC, Bingo and Raffles - Enforcement Proceedings (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.13 NMAC, Bingo and Raffles - License or Staff Permit Revocation (filed 3/27/2013) and replaced it with 15.4.13 NMAC, Bingo and Raffles - License or Staff Permit Revocation (adopted on 1/28/2021), effective 2/23/2021.

The New Mexico Gaming Control Board approved the repeal of 15.4.14 NMAC, Bingo and Raffles - Administrative Appeal (filed 3/27/2013) and replaced it with 15.4.14 NMAC, Bingo and Raffles - Administrative Appeal (adopted on 1/28/2021), effective 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 1 GENERAL
PROVISIONS**

15.4.1.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[15.4.1.1 NMAC - Rp, 15.4.1.1 NMAC, 2/23/2021]

15.4.1.2 SCOPE: This rule applies to all persons subject to

regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.
[15.4.1.2 NMAC - Rp, 15.4.1.2 NMAC, 2/23/2021]

15.4.1.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection G of Section 60-2F-6 NMSA 1978 authorizes the board to make rules to hold, conduct and operate all games of chance held in the state except those exempt under the New Mexico Bingo and Raffle Act.
[15.4.1.3 NMAC - Rp, 15.4.1.3 NMAC, 2/23/2021]

15.4.1.4 DURATION: Permanent.
[15.4.1.4 NMAC - Rp, 15.4.1.4 NMAC, 2/23/2021]

15.4.1.5 EFFECTIVE DATE: February 23, 2021 unless a later date is cited at the end of a section.
[15.4.1.5 NMAC - Rp, 15.4.1.5 NMAC, 2/23/2021]

15.4.1.6 OBJECTIVE: This rule establishes definitions of terms used in this chapter, clarifies the role of the New Mexico gaming control board in promulgating regulations and establishes the scope and severability of such rules.
[15.4.1.6 NMAC - Rp, 15.4.1.6 NMAC, 2/23/2021]

15.4.1.7 DEFINITIONS: Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the New Mexico Bingo and Raffle Act. The definitions set forth below shall be applicable to all parts of this chapter.

**A. Definitions
beginning with A:
(1)**

“Accountant” means a game accountant as defined in the act who further is an individual licensed by the board and designated by the bingo manager to fulfill duties relating to

accounting procedures and reporting including filing of all board required quarterly reports and associated obligations, on behalf of the licensee.

(2) **“Act”**

means the New Mexico Bingo and Raffle Act.

(3) **“Agent”**

means any member or employee of the New Mexico gaming control board or any other person authorized to act on the board’s behalf.

(4)

“Appellant” means a person aggrieved by an action of the New Mexico gaming control board, who files a request for hearing before the board.

(5)

“Appellee” means the New Mexico gaming control board, its agents or its representatives.

(6)

“Applicant” means a person who has applied for a license or approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the act.

(7)

“Approved record” means those records required by the act, or regulations promulgated there under which shall be maintained on forms prescribed or approved by the New Mexico gaming control board.

(8) **“Alternate**

bingo manager” means an assistant to the bingo manager permitted by the board who assumes overall responsibility for supervising and managing the operation of games of chance in the bingo manager’s absence. The alternate bingo manager derives their authority from the licensed bingo manager. If an organization does not have a licensed bingo manager, they cannot conduct games of chance.

(9) **“Audit”**

means an examination of an applicant’s or licensee’s accounting records, financial situation, and business practices to determine compliance with, state law, or rules adopted by the New Mexico gaming control board.

(10)

“Auxiliary” means an organization that has a qualified affiliation with

a licensee in accordance with a national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary organization.

B. Definitions

beginning with B:

(1) **“Bingo”**

means a game of chance in which each player has one or more bingo cards printed with different numbers on which to place markers when the respective numbers are drawn and announced by a bingo caller. Bingo also includes those games of chance that do not contain an instant win component but contain numbers that must be exposed by the player and the winning combination is exposed by the draw of a bingo ball or by some other approved specific event. The approved specific event must consist of a method of randomly selecting numbers that correspond to the numbers printed by the manufacturer.

(2) **“Bingo**

caller” means the individual who, in the game of bingo, draws and announces numbers.

(3) **“Bingo**

employee” as defined in the act, means a person, paid or volunteer, connected directly with a game of chance but does not include nongaming personnel such as bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages; secretarial or janitorial personnel; or stage, sound and light technicians. All bingo employees shall be permittees.

(4) **“Bingo**

manager” means the person responsible for overseeing bingo and pull-tab activities conducted pursuant to a bingo license.

(5) **“Bingo**

operating account” means an independent operating bank account established for bingo operations only for which all gross receipts and proceeds shall be maintained separately from licensee’s general operating accounts.

(6) **“Bingo**

tax” means the excise tax imposed pursuant to Section 60-2F-21 NMSA 1978.

(7) **“Bingo**

winning combination” means numbers which have been announced by the bingo caller, and a player has covered the predetermined arrangement and declares bingo, after which the pattern on the winning card is independently verified by a bingo employee.

(8) **“Board”**

means the gaming control board or its designee.

C. Definitions

beginning with C:

(1) **“Change**

fund” means the cash used for making change.

(2)

“Charitable purposes” means activities that promote, directly or indirectly, the well-being of the public at large or that benefit of an indefinite number of persons in the state.

(3)

“Completed application” means that the application has been entirely filled in, the appropriate fee is attached, additional documentation requested is provided and signatures with proper notary are included.

(4) **“Credit**

report” means a credit report generated by any of the three major credit agencies in the United States, which are equifax, experian and transunion.

D. Definitions

beginning with D:

(1) **“Deal”**

means a predetermined pool of pull-tabs with the same serial number and a predetermined number of winners.

(2) **“Direct**

relative” means the individual’s spouse or spousal equivalent, parent, mother-in-law, father-in-law, brother-in-law, sister-in-law, brother, sister, child or stepchild.

(3) **“Door-**

prize” means a promotional drawing where no additional consideration is charged for the chance to play.

E. Definitions

beginning with E:

(1)

“Electronic transfer” means transactions initiated through a financial institution which include

ATM transactions, direct deposits, withdrawals or point-of-sale transactions.

(2)

“**Employee**” means a person, paid or volunteer, who works in the service of the licensee, bingo or pull tab operation or works for the qualified organization.

(3)

“**Enforcement action**” means an action by the board or its agents that limits, conditions, suspends or revokes a license or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing.

(4)

“**Executive director**” means the chief administrative officer appointed by the board.

(5)

“**Extra cards**” means other cards sold at the door during a bingo occasion along with the master card. These cards are controlled by a separate color or size and serial number from the master card. This does not include special cards.

F. Definitions

beginning with F:

(1) “**Fee**”

includes all license, approval, investigative costs, taxes and fines imposed by the board or its agents.

(2) “**Fine**”

means any monetary penalty assessed by the board or its agents for a violation of the act after an administrative hearing has been held or as negotiated between the board or its agents and the applicant or licensee in settlement proceedings.

G. Definitions

beginning with G:

(1) “**Game of chance**”

means an event in which payment for participation is required, a winner or winners are identified by an act of fate and prizes are awarded to the winners.

(2) “**Gross receipts**”

means proceeds received by a bingo licensee from the sale of bingo cards, raffle tickets or pull-tab tickets, the sale of rights in any manner connected with participation in a game of chance or the right to

participate in a game of chance, including any admission fee or charge, the sale of playing materials, and all other miscellaneous receipts.

H. Definitions

beginning with H:

(1) “**Hard cards**” means a reusable bingo card.

(2) “**House**

rules” means rules established by each licensee for items not covered by the act, or regulations promulgated under the act or other provisions of law.

(3) “**Hybrid**

game” means a game of chance using pull-tabs as defined in the act which have both instant and non-instant winnings. The non-instant winnings are selected by drawing using a bingo blower or a seal card provided by the manufacturer of the game. This type of pull-tab game may be referred to as an “event game” or “side game.” Hybrid game pull-tabs may only be sold during a bingo occasion. Instant winnings must be announced by the bingo caller during the same occasion in which a hybrid game pull-tab deal is sold

I. Definitions

beginning with I: [RESERVED]

J. Definitions

beginning with J: [RESERVED]

K. Definitions

beginning with K: [RESERVED]

L. Definitions

beginning with L: “**Licensed premises**” means the area that has been approved to conduct games of chance.

M. Definitions

beginning with M:

(1) “**Master board**”

means the tray with five rows and 15 columns that holds bingo balls removed from the hopper in spaces specifically designated for each ball. This is the official score board for a bingo game.

(2) “**Master card**”

means the main bingo card in use for the occasion that each player is required to have in their possession to play bingo. This is sometimes referred to as the door or admission card. This card is usually controlled by using only one color or size card.

N. Definitions

beginning with N: [RESERVED]

O. Definitions

beginning with O: [RESERVED]

P. Definitions

beginning with P:

(1) “**Person**”

means a legal entity or individual.

(2)

“**Petitioner**” means the board or the board’s representative.

(3)

“**Premises**” means the land together with all buildings, improvements and personal property located on the land, either leased or owned by the licensee.

(4)

“**Promotional games**” means all bingo games, raffle tickets and pull-tabs that are awarded as a door prize, bingo prize, pull-tab prize or a free or reduced priced game, offered to any player for any reason.

(5) “**Pull-**

tab dispenser” means a mechanical or electromechanical device that dispenses pull-tabs or reads a bar-code printed on the exterior of the pull-tab and displays the win or loss status of the pull-tab on a video display.

Q. Definitions

beginning with Q: [RESERVED]

R. Definitions

beginning with R:

(1) “**Records**”

mean inventory records, bank records, accounting records, receipts, invoices, deposits, employee logs, payroll, taxes, bingo and occasion documentation, and any other document that is required under the current rules and the act.

(2)

“**Respondent**” means a licensee or person to which an approval has been granted and who is the subject of a complaint issued by the board or its agents.

(3) “**Retail**

value” means the price set by a licensee to participate in a game of chance.

S. Definitions

beginning with S:

(1) “**Special**

card” means a bingo card used for

a specific game or games which is controlled by a separate color, serial number and manufacturer's identification number. Special cards are additional bingo cards sold separately that entitle purchasers to participate in bingo games that cannot be played on either a master card or an extra card.

(2) **"Staff permit badge"** means a hard plastic card issued by the board or its agents with the licensee's name, expiration date and photograph.

(3) **"State"** means the state of New Mexico.

T. Definitions
beginning with T: [RESERVED]

U. Definitions
beginning with U: [RESERVED]

V. Definitions
beginning with V:

(1) **"Variance"** means a temporary exemption from a specific part or subpart of Title 15, Chapter 4, not to exceed the date of renewal of a license.

(2) **"Vendor"** means distributors and manufacturers of "equipment" as defined in the act.

W. Definitions
beginning with W: "Willfully" means knowingly or purposefully.

X. Definitions
beginning with X: [RESERVED]

Y. Definitions
beginning with Y: [RESERVED]

Z. Definitions
beginning with Z: [RESERVED]
[15.4.1.7 NMAC - Rp, 15.4.1.7 NMAC, 2/23/2021]

15.4.1.8 ADOPTION, AMENDMENT AND REPEAL: The New Mexico gaming control board is authorized to adopt regulations pursuant to the New Mexico Bingo and Raffle Act, Sections 60-2F-1 through 60-2F-26 NMSA 1978. From time to time as the board deems necessary, the board will adopt, amend and repeal such regulations, consistent with the policy, objectives, and purposes of the New Mexico Bingo and Raffle Act.
[15.4.1.8 NMAC - Rp, 15.4.1.8 NMAC, 2/23/2021]

15.4.1.9 CONSTRUCTION: Nothing contained in Title 15, Chapter 4 will be construed so as to conflict with any provision of the New Mexico Bingo and Raffle Act or any other applicable statute.
[15.4.1.9 NMAC - Rp, 15.4.1.9 NMAC, 2/23/2021]

15.4.1.10 SEVERABILITY: The sections and subsections of the parts in Chapter 4 of Title 15 promulgated by the board are deemed severable. If any section or subsection is found invalid, unconstitutional, or otherwise contrary to the laws of New Mexico by opinion of a court of competent jurisdiction or by legislative enactment, the opinion or enactment will invalidate only that particular section or subsection. All other provisions of Title 15, Chapter 4 will remain in full force and effect.
[15.4.1.10 NMAC - Rp, 15.4.1.10 NMAC, 2/23/2021]

15.4.1.11 TELEPHONE CONFERENCES:
A. In all cases where it is possible, board members shall attend public meetings of the board in person.

B. A member of the board may participate in a meeting of the board by means of a conference telephone when it is difficult or impossible for the member to attend the meeting in person, provided:

(1) each member participating by conference telephone can be and is identified when speaking;

(2) all participants in the telephone conference are able to hear each other at the same time; and

(3) members of the public who are attending the meeting are able to hear any member of the board who speaks during the meeting.

C. Whenever circumstances justifying participation by telephone conference arise, the board member requiring the telephone conference shall notify board staff as early in advance of the meeting as

possible so that arrangements can be made to set up and operate necessary conference telephone equipment.
[15.4.1.11 NMAC - Rp, 15.4.1.11 NMAC, 2/23/2021]

15.4.1.12 RETENTION OF RECORDS: Licensee shall maintain and keep safe the books and records necessary to substantiate the particulars of all reports submitted to the board or required by the act or this title for a period of three years at the licensee's administrative office.

[15.4.1.12 NMAC - Rp, 15.4.1.12 NMAC, 2/23/2021]

15.4.1.13 CONFIDENTIAL RECORDS: All tax identification and financial account identification numbers for an applicant, licensee or permittee submitted to the board shall be confidential and not be subject to any disclosure under the Inspection of Public Records Act.

[15.4.1.13 NMAC - Rp, 15.4.1.13 NMAC, 2/23/2021]

HISTORY OF 15.4.1 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: ABC Regulation No. 2B-3, Definition of Bingo and Raffle Terms, Relating to Section 60-2B-3 NMSA 1978, filed 12/22/1982. Regulation No. 2B-3, Definition of Bingo and Raffle Terms, filed 3/21/1984.

History of Repealed Material:
15.4.1 NMAC, Bingo and Raffles - General Provisions, filed 9/16/2005 - Repealed, effective 4/15/2013.
15.4.1 NMAC, Bingo and Raffles - General Provisions, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other History:
15.4.1 NMAC, Bingo and Raffles - General Provisions, filed 9/16/2005 replaced 15.4.1 NMAC, Bingo and Raffles - General Provisions, effective 4/15/2013.
15.4.1 NMAC, Bingo and Raffles - General Provisions, filed 3/27/2013 replaced 15.4.1 NMAC, Bingo and

Raffles - General Provisions, effective 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND
LIQUOR CONTROL
CHAPTER 4 BINGO AND
RAFFLES
PART 2 APPLICATION
FOR LICENSURE**

15.4.2.1 ISSUING
AGENCY: New Mexico Gaming Control Board.
[15.4.2.1 NMAC - Rp, 15.4.2.1 NMAC, 2/23/2021]

15.4.2.2 SCOPE: This rule applies to all licensees or applicants for licensure, or other approval under the New Mexico Bingo and Raffle Act.
[15.4.2.2 NMAC - Rp, 15.4.2.2 NMAC, 2/23/2021]

15.4.2.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections I, J, K and L of Section 60-2F-6 NMSA 1978 authorize the board to adopt regulations concerning licensure for persons involved in the conducting of games of chance.
[15.4.2.3 NMAC - Rp, 15.4.2.3 NMAC, 2/23/2021]

15.4.2.4 DURATION: Permanent.
[15.4.2.4 NMAC - Rp, 15.4.2.4 NMAC, 2/23/2021]

15.4.2.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.
[15.4.2.5 NMAC - Rp, 15.4.2.5 NMAC, 2/23/2021]

15.4.2.6 OBJECTIVE: This rule establishes standards and requirements for licensure and other approvals under the New Mexico Bingo and Raffle Act.

[15.4.2.6 NMAC - Rp, 15.4.2.6 NMAC, 2/23/2021]

15.4.2.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.
[15.4.2.7 NMAC - Rp, 15.4.2.7 NMAC, 2/23/2021]

15.4.2.8 NATURE OF LICENSE AND APPLICATION REQUEST:

A. Any license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

B. Any application for a license or other approval submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

C. Any application for license or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

D. By applying for and obtaining any license or other approval from the board, the applicant agrees to abide by all provisions of the act, the regulations promulgated pursuant to the act and all other applicable laws and regulations.

E. By applying for a license or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.4.2.8 NMAC - Rp, 15.4.2.8 NMAC, 2/23/2021]

15.4.2.9 LICENSE CLASSIFICATIONS:

A. Licenses include:
(1)

manufacturer's license, which authorizes the approved licensee to manufacture, produce, or sell to licensed distributors or licensed qualified organizations, any equipment or supplies for the conduct of games of chance in the state or for sale outside the state in accordance with the act and board rules;

(2)

distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any equipment or supplies for the conduct of games of chance in the state or outside the state in accordance with the act and board rules; and

(3) and bingo

and raffle operator's license, which authorizes a qualified organization to acquire equipment and supplies for the conduct of games of chance and to conduct games of chance on the licensed premises.

B. Other approvals include:

(1) staff

permit, which authorizes the participation of the holder in the conduct of games of chance; staff permit for bingo caller, bingo manager, alternate bingo manager, accountant, all bingo employees, and any other position deemed necessary by the board;

(2) approval

and classification of games of chance as either bingo, raffle, or pull-tabs; and

(3) approval

to amend a license to show a change in the name and address of the permittees of the licensee under whom the games of chance shall be held. Should there be any change to the permittees listed on the license; the licensee shall be responsible for submitting the proper documentation within 10 days.

[15.4.2.9 NMAC - Rp, 15.4.2.9 NMAC, 2/23/2021]

15.4.2.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:

A. Every application, statement, and notice required to be filed under the act or this rule shall be submitted on forms prescribed by the board and shall contain such information and documents as specified.

B. The applicant shall file with the application all requested information requested by the board. The application requires full disclosure of all information requested therein. The failure to provide all required and requested information may result in denial or delay in consideration of the application.

C. Upon request of the board or its agents, the applicant shall provide any additional information. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 15 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless the applicant can show good cause.

D. All information required to be included in a renewal application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information submitted to the board in the renewal application, the applicant shall file, within five days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

E. The application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

F. At the board's discretion an applicant may be required to submit to a background investigation.

G. Neither the state, the board, or any agency with which the board contracts to conduct background investigations, or the

employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

H. The applicant shall cooperate fully with the board and its agents with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

I. The board may deny the application of any applicant that refuses or fails to provide any information requested by the board or its agents, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determines is necessary to evaluate the qualifications for a suitability of the applicant.

J. All new applications submitted to the board shall be completed within 30 days of the initial submission of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

K. An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board shall establish the new filing date of the application with respect to the time requirements for action on the application.

L. An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become

effective on the date determined by the board.

M. An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board.

[15.4.2.10 NMAC - Rp, 15.4.3.10 NMAC, 2/23/2021]

15.4.2.11 REQUIREMENTS FOR DISCLOSURE IN

APPLICATION; CONTENTS OF APPLICATION: The applicant for a bingo and raffle operator's license shall submit with the application a proposed plan for the conduct of games of chance. Failure to include any of the following shall constitute an incomplete application. The plan shall include the following:

A. a physical address where games of chance will be conducted, mailing and physical address of the administrative office where all documentation for games of chance are kept;

B. a floor plan;

C. a copy of the applicant's current charter, articles of incorporation, or bylaws;

D. a list of the organization's current official roster of active and auxiliary members;

E. proof of organization's tax exempt status, if applicable;

F. if conducting pull-tab dispenser sales without concurrent bingo events, applicants that are not a veterans' or fraternal organization, shall include proof of IRS 501 (c)(3) tax exempt status;

G. if a charitable organization, documentation of the preceding four quarters or the last calendar year's activities in furtherance of a charitable purpose. Activities in furtherance of a charitable purpose include:

(1) services provided directly by the organization for a charitable purpose;

(2) monetary donations to other charitable organizations;

(3) goods donated to individuals and

organizations for a charitable purpose, substantiated by the names of the recipients, description of items donated and receipts for any items purchased by the organization prior to donation;

(4) a charitable contribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the qualified organization's national organization and the distribution is used for charitable purposes.

H. evidence of good standing with the public regulation commission, parent organization, and the attorney general's office if applicable;

I. a description of all games of chance that the licensee will conduct for each approved occasion including:

(1) the order in which games will be played;

(2) the patterns needed to win;

(3) whether the prize payout is based on sales or attendance; and

(4) the price of each type of bingo card(s) offered for sale.

J. a payout schedule of the games of chance; if the applicant chooses to award prizes contingent on the number of patrons who play, separate payout schedules shall be submitted to the board in addition to announcing and posting the time of the attendance count; the attendance count shall be conducted 10 minutes prior to the start of each occasion; only schedules submitted to the board shall be used to pay prizes; issuance of the license constitutes approval of the payout schedule;

K. if checks will be used as an optional payout for prizes;

L. the days and times of each occasion where games of chance are held;

M. the house rules;

N. the name, address of the in-state financial institution where a bingo operating account has been

established and into which all gross receipts from games of chance will be deposited;

O. bank signature card with all signatures and names of authorized signors on the bingo operating account; any changes to signatories on the bingo operating account, including additions and deletions, require notification to the board within three days;

P. a copy of any contract to lease the licensed premises or bingo equipment from a lessor or distributor; and

Q. any other information requested by the board or its agents.

[15.4.2.11 NMAC - Rp, 15.4.9.11 NMAC, 2/23/2021]

15.4.2.12 APPLICATION FOR STAFF PERMIT:

A. An organization with a bingo and raffle license shall designate only one bingo manager and one bingo accountant responsible for completion of the bingo and raffle activity reports, but may designate up to three alternate bingo managers.

B. Applicants shall submit:

(1) completed staff permit application;

(2) application fee;

(3) signed and notarized authorization for a background investigation;

(4) self disclosure form;

(5) the applicant's fingerprints and photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of a certified identification technician or a certified law enforcement officer;

(6) certificate of completion for training provided by the board or its agents if required by the board; and

(7) the applicant's credit report dated within the 30 days prior to submission of the applicant's signed application to the board.

C. Applicant shall not have a warrant for their arrest in any jurisdiction.

D. Each applicant shall submit a current photograph with each initial and renewal application. The photographs shall have been taken no earlier than three months before the date the application is filed.

E. A staff permit badge issued to a bingo employee shall indicate the permittee's name, staff permit number, and expiration date.

F. A staff permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished the requested information for a staff permit to the board.

G. Applicants or permittees who intend to utilize their approval at a licensed venue not currently designated on the initial application shall submit notice to the board in writing prior to beginning new employment. Additionally this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.

H. An initial application shall be reviewed, granted or denied and responded to by the board's staff within 60 days of receipt of completed application.

I. All permits are valid for three years from the date of issuance.

J. Bingo managers and alternate bingo managers may work at other licensed organizations but shall be active members in good standing with each of the licensed organization. [15.4.2.12 NMAC - Rp, 15.4.2.12 NMAC, 2/23/2021]

15.4.2.13 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:

A. A person shall apply for and obtain a manufacturer's or distributor's license prior to engaging in the manufacture or distribution of equipment or supplies used in the conduct of games of chance.

B. Applicants shall submit a form prescribed by the board to include the vendor's name, address, contact information, federal and state tax identification numbers, evidence of good standing with the public regulation commission, all license numbers required to conduct business in New Mexico and a list of licensees with whom the applicant intends to conduct business.

C. Licenses shall be renewed every three years. Any change of vendor information shall be reported in writing to the licensing division within 10 days of change.

D. Applications for manufacturer's or distributor's licenses shall be made, processed, and determined in the same manner as applications for other licenses as set forth in the act and this rule.

[15.4.2.13 NMAC – Rp, 15.4.2.13 NMAC, 2/23/2021]

15.4.2.14 APPLICATION FEES:

A. The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

(1) manufacturer's license, \$200;

(2) distributor's license, \$200;

(3) bingo and raffle operator's license, \$200;

(4) bingo managers, alternate bingo managers and accountants staff permits, \$50; and

(5) all other bingo employee staff permits, \$25.

C. In addition to any nonrefundable license or approval fee paid, all bingo, raffle, and pull tab operators, manufacturers, and distributors shall pay supplementary investigative fees and costs, if any.

D. The board may refuse to take final action on any

application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall not file any other application with the board until all such fees and costs are paid in full.

E. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board shall discontinue investigation and processing of the application and shall issue a final, written order denying the application.

F. The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

G. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

[15.4.2.14 NMAC - Rp, 15.4.2.14 NMAC, 2/23/2021]

15.4.2.15 CONDITIONS OF APPROVAL OF APPLICATION:

The approval of any application is subject to the following conditions and constitutes the following agreements by the licensee:

A. the licensee shall at all times make its bingo establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement;

B. the licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an account or preparer of the report, or any entity in which the licensee has a direct or indirect controlling interest; upon request of

the board or its agents, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or its agents to examine such documents;

C. with respect to new license applications, the licensee shall commence the activity approved by the board within 90 days after the date of approval by the board on the application; failure to commence the approved activity voids the board's approval, and the licensee shall file a new application; the board, in its discretion, may waive the requirements of a new application; the licensee shall make written application for waiver to the board within thirty days of the date the board's action on the original application becomes void; and

D. the licensee shall be responsible for all registration, taxation, and licensing costs imposed by the act or other state law.

[15.4.2.15 NMAC - Rp, 15.4.2.15 NMAC, 2/23/2021]

15.4.2.16 GROUNDS FOR DENIAL OF APPLICATION:

A. The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including the background investigation;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any administrative gaming offense in any jurisdiction;

(4) entry of a civil judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable

character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to satisfy any requirement for application or to timely respond to any request by the board or its agents for additional information;

(9) permanent suspension, revocation, denial or other limiting action on any bingo license issued by any jurisdiction; or
 (10) approval of the application would otherwise be contrary to New Mexico law or public policy.

B. The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on bingo, raffle or pull-tab activities permitted under the license, administrative fines, or such other terms as the board requires.
 [15.4.2.16 NMAC – Rp, 15.4.2.16 NMAC, 2/23/2021]

15.4.2.17 RESTRICTION FOR REAPPLYING: Any applicant whose application has been denied or whose license has been suspended or revoked shall not reapply for licensing or approval by the board for the period of one year.
 [15.4.2.17 NMAC – Rp, 15.4.2.17 NMAC, 2/23/2021]

HISTORY OF 15.4.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of

alcohol and beverage control under: ABC Regulation No. 2B-8(B), Game Manager and Employees, Relating to Section 60-2B-8(B), filed 12/22/1982.
 Regulation No. 2B-8(B), Game Manager and Bingo Game Controls, filed 3/29/84.
 ABC Regulation No. 2B-8(F), Inspection of Premises, Records, Machines and Devices, Relating to Section 60-2B-8(F) NMSA 1978, filed 12/22/1982.
 Regulation No. 2B-8(F), Inspection of Premises, Records, Machines and Devices, Relating to Section 60-2B-8(F) NMSA 1978, filed 3/21/1984.
 ABC Regulation No. 2B-8(O), Conduct During Bingo Games, Relating to Section 60-2B-8(O), filed 12/22/1982.
 Regulation No. 2B-8(O), Conduct During Bingo Games, filed 3/21/1984.
 ABC Regulation No. 2B-8(Q), Disclosure of Prizes, Relating to Section 60-2B-8(Q), filed 12/22/1982.
 Regulation No. 2B-8(Q), Disclosure of Prizes, Relating to Section 60-2B-8(Q), filed 3/21/1984.
 ABC Regulation No. 2B-8(S), Sale of Bingo Cards, Relating to Section 60-2B-8(S), filed 12/22/1982.
 Regulation No, 2B-8(S), Sale of Bingo Cards, Relating to Section 60-2B-8(S), filed 3/21/1984.
 ABC Regulation No. 2B-9(F), Security Guard or Personnel Relating to Section 60-2B-9(F), filed 12/22/1982.
 Regulation No. 2B-9(F), Security Personnel, filed 3/29/1984.
 Regulation No. 2B-8(K), Times of Occasions, Relating to Section 60-2B-8(K), filed 3/21/1984.
 Regulation No. 2B-8(R), Verification of Numbers Drawn, Relating to Section 60-2B-8 (R), filed 3/21/1984.

History of Repealed Material:
 15.4.2 NMAC, Bingo Controls, filed 9/16/2005 - Repealed, effective 4/15/2013.
 15.4.2 NMAC, Bingo Controls, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other: 15.4.2 NMAC, Bingo

Controls, filed 9/16/2005 replaced by 15.4.2 NMAC, Bingo Controls, effective 4/15/2013.
 15.4.2 NMAC, Bingo Controls, filed 3/27/2013 replaced by 15.4.2 NMAC, Bingo Controls, effective 2/23/2021.

**GAMING CONTROL,
 BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
 CHAPTER 4 BINGO AND RAFFLES
 PART 3 LICENSE AND STAFF PERMIT RENEWAL**

15.4.3.1 ISSUING AGENCY: New Mexico Gaming Control Board.
 [15.4.3.1 NMAC - Rp, 15.4.3.1 NMAC, 2/23/2021]

15.4.3.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.
 [15.4.3.2 NMAC - Rp, 15.4.3.2 NMAC, 2/23/2021]

15.4.3.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections I, J, K and L of Section 60-2F-6 NMSA 1978 authorize the board to adopt regulations concerning licensure for persons involved in the conducting of games of chance.
 [15.4.3.3 NMAC - Rp, 15.4.3.3 NMAC, 2/23/2021]

15.4.3.4 DURATION: Permanent.
 [15.4.3.4 NMAC - Rp, 15.4.3.4 NMAC, 2/23/2021]

15.4.3.5 EFFECTIVE DATE: March 23, 2021, unless a later date is cited at the end of a section.
 [15.4.3.5 NMAC - Rp, 15.4.3.5 NMAC, 2/23/2021]

15.4.3.6 OBJECTIVE:
 This rule establishes standards for the periodic renewal of licenses issued under the New Mexico Bingo and Raffle Act.
 [15.4.3.6 NMAC - Rp, 15.4.3.6 NMAC, 2/23/2021]

15.4.3.7 DEFINITIONS:
 See 15.4.1.7 NMAC for applicable definitions.
 [15.4.3.7 NMAC - Rp, 15.4.3.7 NMAC, 2/23/2021]

15.4.3.8 NATURE OF LICENSE AND RENEWAL APPLICATION REQUEST:

A. Any renewed license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

B. Any application for a renewed license or other approval submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

C. Any renewal application for license or other approval from the board will constitute a request to the board for a decision on the applicant’s general suitability, character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

D. By applying for and obtaining any renewed license or other approval from the board, the applicant agrees to abide by all provisions of the act, the regulations promulgated pursuant to the act and all other applicable laws.

E. By applying for a renewed license or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in

or relating to any application to the board.
 [15.4.8. NMAC - Rp, 15.4.3.8 NMAC, 2/23/2021]

15.4.3.9 RENEWAL APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:

A. All licenses shall expire on the third anniversary date of the original issuance and will be subject to renewal on an anniversary date basis. Every renewal application, statement, and notice required to be filed under the act or this rule shall be submitted on forms prescribed by the board and shall contain such information and documents as specified.

B. The applicant shall file with the renewal application all requested information requested by the board or its agents not less than 60 days prior to the expiration date. The renewal application requires full disclosure of all information requested therein. The failure to provide all required and requested information may result in grounds for denial or suspension of approval.

C. Upon request of the board or its agents, the applicant shall provide any additional information. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 15 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the renewal application unless good cause is shown.

D. All information required to be included in a renewal application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information submitted to the board in the renewal application, the applicant shall file, within five days of the change, a written amendment disclosing all facts necessary to adequately inform the

board of the change in circumstances before the board takes the requested action.

E. The renewal application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

F. At the board’s discretion an applicant may be required to submit to a background investigation.

G. Neither the state, the board, or any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

H. The applicant shall cooperate fully with the board and its agents with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

I. The board shall deny the renewal application of any applicant that refuses or fails to provide any information requested by the board or its agents, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determine is necessary to evaluate the qualifications for a suitability of the applicant.

J. All renewal applications shall be completed by the applicant within 15 days of submission. Failure to complete the renewal application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

K. An applicant may amend the application at any time

prior to final action by the board. The date of receipt of the amendment by the board or its agents shall establish the new filing date of the renewal application with respect to the time requirements for action on the application.

L. An amendment to a renewal application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

M. An applicant may file a written request for withdrawal of the renewal application at any time prior to final action on the application by the board.
[15.4.3.9 NMAC - Rp, 15.4.3.9 NMAC, 2/23/2021]

15.4.3.10 REQUIREMENTS FOR DISCLOSURE IN RENEWAL OF LICENSE ISSUED; CONTENTS OF RENEWAL APPLICATION: The renewal of a bingo and raffle operator’s license shall be filed with the board not less than 60 days prior to the expiration date. The licensee shall submit with the renewal application a proposed plan for the conduct of all games of chance. The plan shall include all of the requirements set forth in Section 15.4.2.11 NMAC.
[15.4.3.10 NMAC - Rp, 15.4.3.10 NMAC, 2/23/2021]

15.4.3.11 DENIAL OR DELAY IN LICENSURE:

A. The board may deny or delay an application for renewal if:

- (1) the applicant is delinquent in the payment of any installment of the bingo tax or of any other fees, fines, costs, or penalties imposed by the state;
- (2) the application is incomplete;
- (3) the quarterly reports are not current; or
- (4) other reasons deemed necessary by the board.

B. If the application is not properly verified or not fully, accurately and truthfully complete, any existing license may be suspended until the default has been corrected. A \$100 fee shall be assessed.

C. The renewal application acceptance date shall not alter the anniversary date. Should the license be issued after the anniversary date as a result of a late or incomplete application, the licensee shall expire on the original anniversary date.
[15.4.3.11 NMAC - Rp, 15.4.3.11 NMAC, 2/23/2021]

15.4.3.12 RENEWAL OF STAFF PERMIT ISSUED: Staff permits issued by the act expire three years from the date of issuance of the permit and are subject to renewal in accordance to the act and this rule. A complete application for renewal of the staff permit shall be filed with the board at least 10 days prior to the date of expiration. The renewal application shall be submitted on forms prescribed by the board.

A. Applicants shall submit:

- (1) a completed staff permit renewal application;
- (2) application fee;
- (3) signed and notarized authorization for a background investigation;
- (4) self disclosure form;
- (5) the applicant’s fingerprints and photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of a certified identification technician or a certified law enforcement officer; and
- (6) the applicant’s credit report dated within the 30 days prior to submission of the applicant’s signed application to the board.

B. Permittees shall not have a warrant for their arrest in any jurisdiction.

C. Permittees shall

submit a current photograph with each renewal application. The photographs shall have been taken no earlier than three months before the renewal application is filed.

D. Permittees who intend to use their staff permit at a licensed venue not currently designated on the initial or previous renewal applications shall submit notice to the board in writing prior to beginning new employment. Additionally, this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.
[15.4.3.12 NMAC - Rp, 15.4.3.12 NMAC, 2/23/2021]

15.4.3.13 RENEWAL FEES:

A. Renewal fees are as follows:

- (1) manufacturer, \$200;
- (2) distributor, \$200;
- (3) bingo operator, \$200;
- (4) bingo managers, alternate bingo managers and accountants staff permits, \$50; and
- (5) all other bingo employee staff permits, \$25

B. Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant’s check is returned due to insufficient funds.
[15.4.3.13 NMAC - Rp, 15.4.3.13 NMAC, 2/23/2021]

15.4.3.14 LATE RENEWAL OF LICENSE:

A. The board may, in its discretion, accept and process a renewal application filed after the deadline established in Subsection B of 15.4.3.9 NMAC. Any such application, however, shall be subject to a late renewal fee of \$100 dollars with an additional fee of \$10 per day up to 30 days.

B. If the licensee fails to renew within the required amount of time, any application received up to one year after the expiration date may be considered a renewal application. All applicable late fees shall be paid upon submission of the renewal application. Upon showing of good cause, the applicant may submit an initial application and have any late fees waived.
[15.4.3.14 NMAC - Rp, 15.4.3.14 NMAC, 2/23/2021]

15.4.3.15 LATE RENEWAL OF A STAFF PERMIT: If the permittee fails to submit a completed application and fee within the required amount of time, a \$50 late fee shall be assessed.
[15.4.3.15 NMAC - Rp, 15.4.3.15 NMAC, 2/23/2021]

15.4.3.16 MANDATORY CESSATION OF BINGO, RAFFLE AND PULL-TAB ACTIVITY: No licensee shall engage in any games of chance unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the act and this rule shall cease the games of chance authorized by the license on the date the license expires. Any person engaging in any games of chance without a renewed license may be subject to criminal sanctions.
[15.4.3.16 NMAC - Rp, 15.4.3.16 NMAC, 2/23/2021]

HISTORY OF 15.4.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: ABC Regulation No. 2B-4, Responsibility to Post and Have in its Possession Certain Materials, Relating to Section 60-2B-4, filed 12/22/1982). Regulation No. 2B-4, Responsibility to Post and Have in its Possession Certain Materials, filed 3/21/1984. Regulation No. 2B-5, Location of Games, Relating to Section 60-2B-5, filed 3/21/1984. ABC Regulation No. 2B-7, Display of

Licensee's Name, Relating to Section 60-2B-7, filed 12/22/1982. Regulation No. 2B-7, Display of Licensee's Name, Relating to Section 60-2B-7, filed 3/21/1984.

History of Repealed Material:
15.4.3 NMAC, Bingo Licenses, filed 9/16/2005 - Repealed, effective 4/15/2013.
15.4.3 NMAC, Bingo Licenses, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other:
15.4.3 NMAC, Bingo Licenses, filed 9/16/2005, replaced by 15.4.3 NMAC, Bingo Licenses, effective 4/15/2013.
15.4.3 NMAC, Bingo Licenses, filed 3/27/2013, replaced by 15.4.3 NMAC, Bingo Licenses, effective 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 4 LICENSED PREMISES**

15.4.4.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[15.4.4.1 NMAC - Rp, 15.4.4.1 NMAC, 2/23/2021]

15.4.4.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.
[15.4.4.2 NMAC - Rp, 15.4.4.2 NMAC, 2/23/2021]

15.4.4.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo

and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.
[15.4.4.3 NMAC - Rp, 15.4.4.3 NMAC, 2/23/2021]

15.4.4.4 DURATION: Permanent.
[15.4.4.4 NMAC - Rp, 15.4.4.4 NMAC, 2/23/2021]

15.4.4.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.
[15.4.4.5 NMAC - Rp, 15.4.4.5 NMAC, 2/23/2021]

15.4.4.6 OBJECTIVE: This rule establishes standards and requirements for premises on which licensed games of bingo, raffle and pull-tabs are operated by a licensee pursuant to the New Mexico Bingo and Raffle Act.
[15.4.4.6 NMAC - Rp, 15.4.4.6 NMAC, 2/23/2021]

15.4.4.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.
[15.4.4.7 NMAC - Rp, 15.4.4.7 NMAC, 2/23/2021]

15.4.4.8 SUITABILITY OF PREMISES: The licensed premises shall meet the requirements of the act and regulations promulgated under the act.

A. The proposed licensed premises shall comply with all zoning ordinance of the city or county and fire safety, health or building codes.

B. A licensee shall maintain a secure storage area on the licensed premises for funds, bingo cards, pull-tabs and raffle tickets.
[15.4.4.8 NMAC - Rp, 15.4.4.8 NMAC, 2/23/2021]

15.4.4.9 AREA OF LICENSED PREMISES; RESTRICTIONS:

A. The licensed

premises shall be clearly marked and no games of chance shall be permitted outside of the licensed premises.

B. No bingo operator’s license shall encompass more than one licensed premise.

C. Licensees allowing use of their licensed premise by a non-licensed organization, as defined in Subsection Y of Section 60-2F-4 1978 and Paragraph (2) of Subsection A of Section 60-2F-26 NMSA 1978, in the conduct of bingo or raffle shall submit forms prescribed by the board.

D. Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises shall furnish the following information to the board within 30 days of the effective date of the lease:

- (1) the lessor’s name and address;
- (2) copy of the lease;
- (3) statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and
- (4) any other information requested by the board.

E. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application.

F. The licensee shall furnish to the board complete information pertaining to any change in any premises lease within 30 days after the effective date of such change.

G. No licensee shall conduct any activity authorized under the act, if the lease, rent, contract, or any other arrangements under which the right to use the premises requires rental or other payment to another, based on a percentage of receipts or profits derived from such licensed activities.

H. No rental or lease agreement for real or personal property shall be in excess of fair market value, which shall be the responsibility of the licensee to demonstrate to the board or its agents upon request.

I. All rental and lease

agreements shall be subject to prior approval by the board or its agents to ensure compliance with all applicable laws, rules and regulations.

[15.4.4.9 NMAC - Rp, 15.4.4.9 NMAC, 2/23/2021]

15.4.4.10 CHANGE OF LOCATION:

A. A licensee’s licensed premise may be amended from the location shown on the physical license and listed in the original application with written notification to the board. The notification shall include the information required by the licensing division and payment of a nonrefundable fee of \$100.

B. Failure of the licensee to obtain the board’s prior approval of the relocation of the license as issued under the act may result in administrative action including but not limited to suspension, revocation, and fines to the licensee and bingo manager. [15.4.4.10 NMAC - Rp, 15.4.4.10 NMAC, 2/23/2021]

HISTORY OF 15.4.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: ABC Regulation No. 2B-9, Crimes Requiring Police Report Relating to Section 60-2B-9 NMSA 1978, filed 12/22/1982.

Regulation No. 2B-9, Expenses and Reporting Relating to Section 60-2B-9 NMSA 1978, filed 3/29/1984.

ABC Regulation No. 2B-9(A) Bingo Games Records Relating to Section 60-2B-9(A) NMSA 1978, filed 12/22/1982.

Regulation No. 2B-9(A), Records - Bingo Games, filed 3/21/1984.

ABC Regulation No. 2B-4A(2), Inspection of Suppliers Records, Relating to Section 60-2B-4A(2) NMSA 1978 filed 2/11/1983.

History of Repealed Material:

15.4.4 NMAC, Bingo Reporting, filed 9/16/2005 - Repealed, effective 4/15/2013.

15.4.4 NMAC, Bingo Reporting,

filed 3/27/2013 - Repealed, effective 2/23/2021.

Other:

15.4.4 NMAC, Bingo Reporting, filed 9/16/2005, Replaced by 15.4.4 NMAC, Bingo Reporting, effective 4/15/2013.

15.4.4 NMAC, Bingo Reporting, filed 3/27/2013, Replaced by 15.4.4 NMAC, Bingo Reporting, effective 2/23/2021.

GAMING CONTROL, BOARD OF

TITLE 15 GAMBLING AND LIQUOR CONTROL

CHAPTER 4 BINGO AND RAFFLES

PART 5 OPERATING PROCEDURE STANDARDS

15.4.5.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.5.1 NMAC - Rp, 15.4.5.1 NMAC, 2/23/2021]

15.4.5.2 SCOPE:

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.5.2 NMAC - Rp, 15.4.5.2 NMAC, 2/23/2021]

15.4.5.3 STATUTORY

AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections G and H of Section 60-2F-6 NMSA 1978 authorize the board to adopt rules to hold, conduct and operate all games of chance held in the state except those exempt under the New Mexico Bingo and Raffle Act, implement the act, and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.5.3 NMAC - Rp, 15.4.5.3 NMAC, 2/23/2021]

15.4.5.4 DURATION:

Permanent.
[15.4.5.4 NMAC - Rp, 15.4.5.4 NMAC, 2/23/2021]

15.4.5.5 EFFECTIVE

DATE: February 23, 2021, unless a later date is cited at the end of a section.
[15.4.5.5 NMAC - Rp, 15.4.5.5 NMAC, 2/23/2021]

15.4.5.6 OBJECTIVE:

This rule establishes requirements for operating procedures of bingo operator licensees.
[15.4.5.6 NMAC - Rp, 15.4.5.6 NMAC, 2/23/2021]

15.4.5.7 DEFINITIONS:

See 15.4.17 NMAC for applicable definitions.
[15.4.5.7 NMAC - Rp, 15.4.5.7 NMAC, 2/23/2021]

15.4.5.8 GENERAL

DUTIES:

A. It is the responsibility of every licensee to be informed of the content of the act, rules promulgated under the act, and all amendments to either, and any board prescribed training, if applicable. Lack of knowledge of the act, rules, or amendments thereto shall not be an excuse or defense for any violations.

B. A licensee shall maintain all records required by the board in accordance with rules and as required by law.

C. A licensee shall provide immediate access to all records and premises of the licensee for inspection at the request of the board or its agents and all law enforcement agencies.

D. A licensee shall keep current all payments and obligations to the licensing authority, suppliers and distributors of gaming equipment, lessors of premises, and tax payments to the taxation and revenue department.

E. A licensee shall not extend credit to a player to play in any game of chance.

F. A licensee shall

not enter into any agreement with providers of equipment or services, including lessors of premises, which imposes restrictions on the licensee with respect to the use of net proceeds.

G. A licensee shall not purchase goods or services for which the cost exceeds fair market value, which shall be the responsibility of the licensee to demonstrate to the board or its agents upon request.

H. A licensee shall obtain bingo, raffle and pull-tab supplies and all associated equipment only from a licensed distributor, manufacturer or operator.

I. A licensee shall employ methods that safeguard all bingo, raffle and pull-tab assets.
[15.4.5.8 NMAC - Rp, 15.4.5.8 NMAC, 2/23/2021]

15.4.5.9 METHODS OF OPERATION:

A. All licensed premises shall be operated in a manner consistent with the act, and the rules promulgated there under.

B. All licensees shall conduct all games of chance in a manner that does not pose a threat to the public health, safety and welfare of the citizens of New Mexico or reflect adversely on the security or integrity of charitable gaming.

C. It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy. Willful or persistent use of methods of operation deemed unsuitable, or failure of the licensee to use suitable methods, shall constitute grounds for revocation of the license and imposition of a fine or other disciplinary action by the board.

D. Licensees shall maintain singular control of the conduct of games of chance within their bingo operation, and at no point shall engage with, facilitate, employ or allow a commercial lessor, the owner of a premises and all parties who lease or sublease a premises to the bingo licensee for the conduct of games of chance, to participate in the conduct of any game of chance

or bingo occasion regulated by the New Mexico Bingo and Raffle Act. Prohibited acts under this Subsection D include, but are not limited to, the managing, operating, promoting, advertising or administering of a game of chance or any arrangement for payments to a lessor, owner or any other party that is based on a licensee's revenue from games of chance.

E. No person having a financial interest in a licensed distributor or manufacturer, including a spouse, first degree relative, employee or agent of a licensed distributor or manufacturer, shall operate, manage, conduct, advise or assist in the operating, managing, conducting, promoting or administering of any game of chance, except that a distributor or manufacturer may advertise or promote bingo events free of charge on behalf of licensed bingo operators at no cost as an in-kind donation. For purposes of this subsection, the term "assist" shall include, but is not limited to, the payment of any expense of a licensed organization, whether such payment is by loan or otherwise.

[15.4.5.9 NMAC - Rp, 15.4.5.9 NMAC, 2/23/2021]

15.4.5.10 UNSUITABLE METHODS OF OPERATION:

Any activity by any licensee or employee that is contrary to the health, safety, morals, or welfare of the public, shall be deemed an unsuitable method of operation. Without limitation, the following shall be determined to be unsuitable methods of operation:

A. directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

B. employing any person required to hold a staff permit who has been denied a staff permit, or who has failed to or refused to apply for a staff permit;

C. failing to comply with all federal, state and local laws and regulations governing the operations of games of chance, including without limitation the payment of all fees and taxes;

D. denying the board or its agents or other authorized persons access to a licensed premise or records;

E. misrepresentation of any material fact or information to the board or its agents;

F. obstructing or impeding the activities of the board or its agents;

G. conducting or permitting the conduct, knowingly or unknowingly, of any game of chance other than that allowed pursuant to the act;

H. knowingly or unknowingly permitting the conduct of games of chance by any other entity at a location or premises at the time, regardless of the division or separation of rooms within the building, hall, or enclosure;

I. failing to require employees to wear staff permits;

J. employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license;

K. failing to immediately award prize(s) to winning patrons;

L. failing to adhere to and enforce house rules; and

M. allowing any of its members operating any licensed activity to directly or indirectly in the course of such operations;

(1) employ any device, scheme or artifice to defraud or deceive;

(2) make any untrue or misleading statement; or

(3) engage in any act, practice or course of operation that would operate as a fraud or deceit upon any person; and

N. otherwise failing to conduct games of chance in accordance with the act or this chapter.

[15.4.5.10 NMAC - Rp, 15.4.5.10 NMAC, 2/23/2021]

15.4.5.11 REPORTS OF VIOLATIONS:

A. Any licensee or permittee shall immediately notify the board’s enforcement division by telephone and in writing of the discovery of any violation or suspected violation of the act or rules promulgated under the act, or of any other local, state or federal law on the licensed premises or related to the licensed operation.

B. Each licensee shall immediately by telephone and in writing report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any game of chance offered for play, or used for any other gaming purpose within the state by such licensee. Any investigation conducted under this subsection shall be considered confidential except that the board may, in its sole discretion, take whatever steps it deems necessary or appropriate to address or mitigate cheating, including distributing a warning about cheating to other state licensees or other licensing jurisdictions.

[15.4.5.11 NMAC - Rp, 15.4.5.11 NMAC, 2/23/2021]

15.4.5.12 PAYMENT OF WINNINGS:

A. All prizes shall be paid from the licensee’s bingo operating account.

B. All gross receipts collected during the occasion shall be deposited into the bingo operating account. Prize payouts from gross receipts collected during an occasion is prohibited.

C. Upon determining a winner, the licensee shall remove any merchandise prize won immediately from display and it shall be tendered to the winner. Cash or checks issued for prizes shall be awarded immediately. Checks issued for prizes from the bingo operating account shall be consecutively numbered, signed by two authorized representatives of the licensee and made payable to a person, and the nature of the payment shall be noted on the face of the check.

D. Licensees offering any merchandise as a prize shall have documented proof of ownership of said item, free from any and all liens, mortgages and encumbrances prior to the sale of any bingo cards, raffle tickets or pull-tabs. This documented evidence of ownership shall be made available to the either the board or any law enforcement agency upon demand.

[15.4.5.12 NMAC - Rp, 15.4.5.12 NMAC, 2/23/2021]

15.4.5.13 PATRON COMPLAINTS AND DISPUTES:

A. Unresolved patron complaints shall be reported to the board’s enforcement division by telephone and in writing on a form prescribed by the board within 72 hours.

B. In the event an unresolved dispute arises with a patron concerning payment of alleged winnings, the licensee shall provide the patron with a patron dispute form at the time of the dispute, and the licensee and patron shall each complete a separate patron dispute form immediately. Within 72 hours of the dispute, the licensee and patron shall separately submit a copy of the patron dispute form to the enforcement division. The form may be submitted by facsimile, electronic mail, or U.S. mail.

[15.4.5.13 NMAC - Rp, 15.4.5.13 NMAC, 2/23/2021]

15.4.5.14 POSSESSION AND VERIFICATION OF STAFF PERMITS:

A. Every permittee shall wear a valid staff permit badge that is easily visible at all times when engaged in the conduct of games of chance.

B. Refusal or failure to wear the staff permit badge as required in this rule shall be grounds for disciplinary action.

C. If a permittee’s badge is lost or stolen, the permittee shall notify the board immediately and purchase a replacement badge.

D. The permittee shall wear a temporary badge provided by

the board in place of the lost or stolen badge until a replacement badge is received.

[15.4.5.14 NMAC - Rp, 15.4.5.14 NMAC, 2/23/2021]

15.4.5.15 EMPLOYEE CONDUCT:

A. No employee may accept any type of gift, percentage of winnings, money or a thing of value from any player or any person associated with a player in exchange for influencing the outcome of a game of chance.

B. No bingo employee shall play any game of chance during the same bingo occasion in which they have worked as a bingo employee for any length of time.

C. There shall be no private exchange of information between the caller and any other person which identifies numbers drawn or suggests numbers to be drawn as part of a game of chance, verbally or by any other method, prior to the verification of winning numbers.

[15.4.5.15 NMAC - Rp, 15.4.5.15 NMAC, 2/23/2021]

15.4.5.16 SECURITY:

A. Licensees shall implement and maintain security measures that shall ensure safe and honest operation of the bingo establishment.

B. The licensee shall identify paid security personnel, if any, by badge or uniform while games of chance are being conducted. These personnel shall not be permitted by the licensee to play or to participate in the conduct of games of chance.

[15.4.5.16 NMAC - Rp, 15.4.5.16 NMAC, 2/23/2021]

15.4.5.17 HOUSE RULES:

A. A licensee shall establish house rules applicable to the conduct of games of chance as long as the rules do not conflict with the act or this title. Before any licensee enacts, adopts or modifies any house rules, the rules shall be submitted to the board for approval.

B. A copy of the

house rules shall be in the licensee's possession at all times and made available to any person on request.

C. Houses rules shall be posted inside and near all entrances to the licensed premise.

D. Postings shall have at the top "house rules" in a minimum 24 point non-cursive font followed by the rules in a 14 point non-cursive font.

E. At a minimum house rules shall address the following:

(1) last number called, required or not;

(2) temporary suspension of bingo occasion or game;

(3) explanation of tiered payouts and if refunds are or are not given;

(4) how "bingo" is signaled and who must receive the signal to stop the game;

(5) multiple prize awards;

(6) condition under which a winning pull-tab will be paid;

(7) check cashing policy;

(8) age requirements;

(9) smoking;

(10) reserving seats;

(11) promotional games;

(12) tipping;

(13) procedures and forms required to be completed by the patron and licensee in the event of a patron dispute or complaint.

[15.4.5.17 NMAC - Rp, 15.4.5.17 NMAC, 2/23/2021]

15.4.5.18 FORMS: The board may prescribe all forms called for or required by the act or this chapter, and all filings with the board shall be accompanied by such affidavits, documents, and other supporting data as the board requires.

[15.4.5.18 NMAC - Rp, 15.4.5.18 NMAC, 2/23/2021]

15.4.5.19 RESPONSIBILITY TO POST AND HAVE IN ITS POSSESSION CERTAIN MATERIAL:

A. A copy of the Bingo & Raffle Act and Title 15, Chapter 4 of the NMAC in their entirety shall be present during the conduct of all games of chance and made available to any patron upon request.

B. The licensee shall post a notice in a minimum 24 point non-cursive font in two or more conspicuous places stating that copies of the act and rules promulgated thereunder and the house rules may be obtained from the bingo manager for any player to read.

[15.4.5.19 NMAC - Rp, 15.4.5.19 NMAC, 2/23/2021]

15.4.5.20 DISPLAY OF LICENSEE'S NAME:

A. Licensees shall clearly display the name of the organization holding a bingo game in an area adjacent to the caller. The name shall be in letters at least six inches high.

B. The name displayed shall be the name of the organization licensed to conduct the bingo game followed by the word "bingo" or "raffle".

C. The licensee shall not assume or display any other trade or fictitious name.

D. If the premises are rented or used by more than one organization, the organization playing at that time and date will display its license.

[15.4.5.20 NMAC - Rp, 15.4.5.20 NMAC, 2/23/2021]

15.4.5.21 INSPECTION OF PREMISES, RECORDS, MACHINES AND DEVICES:

A. An agent of the board may enter a licensee's premises without advance notice. During bingo occasions, a space shall be left behind players and between tables to allow the agent to walk down each row of tables and inspect bingo cards in play.

B. An agent may perform all or any of the following:

(1) count all monies received during the operation

of the licensed activities in the premises, inspect income received by the licensee and inspect records of prizes paid out;

(2) examine and copy any records of the licensee;

(3) examine all pieces of equipment or parts thereof, or devices of any nature which are being used to conduct the licensed activities and to require the licensee to dismantle equipment, if necessary, except during operation of a game; and

(4) perform other inspections as the agent deems necessary to ensure compliance with the act or rules.

[15.4.5.21 NMAC - Rp, 15.4.5.21 NMAC, 2/23/2021]

15.4.5.22 DISCLOSURE OF PRIZES DURING GAMES OF CHANCE:

A. The licensee shall clearly and audibly disclose full information before each game concerning the number of prizes to be awarded, whether the prizes are awarded in cash, check, or merchandise, and the cash value and the method by which such prizes may be awarded, including the cost of playing.

B. Prizes or prize money offered shall be communicated to all players 30 minutes prior to the start of a game and cannot be altered thereafter.

[15.4.5.22 NMAC - Rp, 15.4.5.22 NMAC, 2/23/2021]

15.4.5.23 DOOR PRIZES:

The value of a door prize shall not exceed \$1,000.

[15.4.5.23 NMAC - Rp, 15.4.5.23 NMAC, 2/23/2021]

15.4.5.24 PROMOTIONAL GAMES OF CHANCE: Free and discounted games of chance may be awarded to players when:

A. house rules describe how these games of chance are awarded;

B. no employee or members of employee's household are permitted to participate;

C. method of award is equitable and non-discriminatory;

D. the following information is collected, recorded and retained per occasion in accordance with the records retention requirements;

(1) name, address and phone number of players receiving the promotional game;

(2) the date and occasion the promotional game was played; and

(3) the retail value of the promotional game;

E. all promotional games awarded are subject to the bingo tax; and

F. licensee shall compute the bingo tax using the retail value of a non-promotional game and not the free or reduced price.

[15.4.5.24 NMAC - Rp, 15.4.5.24 NMAC, 2/23/2021]

15.4.5.25 EMPLOYEE TERMINATION; SURRENDER AND CANCELLATION STAFF PERMIT:

A. A permittee who is not employed by at least one licensee shall surrender their staff permit badge to the board within 10 days.

B. Licensee shall notify the board, in writing, of a permittee termination within three days.

C. A staff permit expires if the permittee is not employed in a permitted position for a period greater than 90 days.

D. Licensee shall notify the board, in writing when a permittee is not employed in a permitted position for a period greater than 90 days.

[15.4.5.25 NMAC - Rp, 15.4.5.25 NMAC, 2/23/2021]

15.4.5.26 TEMPORARY CESSATION OF GAMES OF CHANCE:

A. The licensee shall contact the board in writing prior to the cessation of one or more bingo occasions or cessation of pull-tab dispenser operations. In the event there is an emergency and prior notice

cannot be given, the licensee shall advise the board no later than the next business day.

B. If bingo operations cannot resume on the next scheduled occasion, or pull-tab dispenser operations cannot resume by the next scheduled day, the licensee shall notify the board in writing and include the dates and times of the occasions or cessation of dispenser operations and the reason for the closure.

C. If the cessation of bingo occasions or pull-tab dispenser operations exceeds 30 days, the licensee shall notify the board in writing and include the length of the cessation, the reason for cessation, and the date regular operations will resume. The licensee shall provide updated notifications to the board every 30 days thereafter until such time as bingo occasions or pull-tab dispenser operations resume.

D. Any bingo operator licensee that ceases games of chance for more than 90 consecutive days and has not requested and received authorization from the board to do so, shall surrender its bingo operator's license to the board. The board may suspend or revoke the bingo operator's license, absent good cause shown for cessation of operation exceeding 90 consecutive days. [15.4.5.26 NMAC - Rp, 15.4.5.26 NMAC, 2/23/2021]

15.4.5.27 CESSATION OF GAMES OF CHANCE; SURRENDER AND CANCELLATION OF LICENSE:

A. The licensees shall notify the taxation and revenue department of cessation of bingo and raffle activities in writing.

B. The licensee seeking to cease operations shall submit a form prescribed by the board to include the licensee's name, license number and the names of all permittees with badge numbers, and the type of property/venue to the board's licensing division no later than 10 days from the final occasion.

C. The licensee shall surrender all licenses issued by the board to the board's licensing division

no later than 10 days from the final occasion.

D. The licensee may sell or donate any equipment only to licensed operators or distributors.

E. The licensee shall sell or donate unopened pull-tab deals only to licensed operators or distributors.

F. The licensee may sell or donate unopened packages of bingo cards only to licensed operators or distributors.

G. All reporting requirements apply to the final quarterly report.

H. The licensee shall submit the final quarterly bingo and raffle activity reports on the prescribed quarterly report forms no later than 45 days from the final occasion conducted.

I. All monies in the bingo operating account shall be fully distributed and checks cleared no later than the 45 days from the last occasion. The bingo operating account balance should be zero. Proof of a zero balance in the bingo operating account and the closing of that account shall be sent to the board.

J. The ceasing of bingo activities does not relieve the bingo operator licensee of its obligations to pay any tax, fees or costs due or to submit any report or information required as a result of engaging in games of chance.

K. The board may take disciplinary action against any licensee that ceases games of chance without notice to the board, including revoking the license, imposing a fine, or both.

[15.4.5.27 NMAC - Rp, 15.4.5.27 NMAC, 2/23/2021]

**HISTORY OF 15.4.5 NMAC:
[RESERVED]**

History of Repealed Material:

15.4.5 NMAC, Bingo and Raffles - Operating Procedure Standards, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other History:

15.4.5 NMAC, Bingo and Raffles -

Operating Procedure Standards, filed 3/27/2013 replaced 15.4.5 NMAC, Bingo and Raffles - Operating Procedure Standards, effective 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 6 EQUIPMENT;
BINGO, RAFFLE, PULL-TABS**

15.4.6.1 ISSUING AGENCY: New Mexico Gaming Control Board.

[15.4.6.1 NMAC - Rp, 15.4.6.1 NMAC, 2/23/2021]

15.4.6.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.6.2 NMAC - Rp, 15.4.6.2 NMAC, 2/23/2021]

15.4.6.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.6.3 NMAC - Rp, 15.4.6.3 NMAC, 2/23/2021]

15.4.6.4 DURATION: Permanent.

[15.4.6.4 NMAC - Rp, 15.4.6.4 NMAC, 2/23/2021]

15.4.6.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.6.5 NMAC - Rp, 15.4.6.5 NMAC, 2/23/2021]

15.4.6.6 OBJECTIVE: This rule establishes standards for the evaluation, testing, approval, modification, maintenance, and disposition of bingo, raffle and pull-tab equipment.

[15.4.6.6 NMAC - Rp, 15.4.6.6 NMAC, 2/23/2021]

15.4.6.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.

[15.4.6.7 NMAC - Rp, 15.4.6.7 NMAC, 2/23/2021]

15.4.6.8 BINGO EQUIPMENT:

A. Authorized equipment and cards, including all bingo related items used in the conduct of bingo, shall be maintained in good repair and sound working condition. The board or its agents may order that any equipment, cards or related items immediately be repaired or replaced, if after examination, they are found to be defective.

B. All 75 balls of equal weight and diameter shall be present for bingo games and free of creases, holes or other damage.

C. The master board is the only official scorer. A lighted display board may be used, but it is not official.

D. Disposable bingo cards shall be used in all bingo games.

E. Each pack of bingo cards sold wholesale shall be consecutively numbered from the first card to the last and each card shall contain, on its face, both its individual consecutive serial number and the identification number assigned by the manufacturer.

F. Hard cards are prohibited.

G. If a wholesale of bingo cards to a non-licensee in the amount of \$100 or greater is conducted then the seller shall report to the board the buyer's name, address and phone number within three business days.

H. When bingo equipment is sold to a non-licensee the seller shall report the buyer's name, address and phone number to the board within three business days.

I. When a wholesale of bingo cards to a licensee is conducted the seller shall record and maintain an itemized invoice and the buyer's organization's name, license number and contact information. [15.4.6.8 NMAC - Rp, 15.4.6.8 NMAC, 2/23/2021]

15.4.6.9 RAFFLE TICKETS:

A. Raffle ticket requirements:

- (1) all tickets sold in any raffle shall have the state license number, the word "raffle" and the date, time, and place of drawing printed on each ticket;
- (2) all tickets shall be consecutively numbered;
- (3) all major cash or merchandise prizes conspicuously printed on the ticket;
- (4) the cost of each ticket shall be printed on the front of each ticket; and
- (5) with the exception of a split raffle, the expiration date by which a prize must be claimed shall be printed on each ticket.

B. If the ticket holder is required to be present at the drawing to be eligible for the prize, a statement setting forth this condition shall be conspicuously printed on each ticket and on all promotional material concerning the raffle.

C. When a prize exceeds \$75,000 the licensee shall submit a valid copy of a raffle ticket to the board prior to selling any tickets. [15.4.6.9 NMAC - Rp, 15.4.6.9 NMAC, 2/23/2021]

15.4.6.10 PULL-TAB EQUIPMENT:

A. No licensee shall permit the display or operation of any pull-tabs which may have in any manner been marked, defaced, tampered with or otherwise placed in

a condition, or operated in a manner which may deceive the public.

B. Electronic and video pull-tab machines are prohibited.

C. Pull-tab dispensers shall be maintained in good repair and sound working condition.

D. All pull-tabs in a deal shall be sold at the same price.

E. A deal shall not exceed 25,000 tickets.

F. The seller or lessor of pull-tab dispensers shall report to the board the sale or lease of the device prior to the delivery or placement of the device on a licensed premise.

G. Deals intended for use in a pull-tab dispenser comprised of multiple rolls shall have all rolls indistinguishable from every roll in the deal.

H. The bingo operator licensee shall keep a dispenser access entry log inside the main cabinet access area of each pull-tab dispenser. Every person who gains entry into any internal space of a dispenser shall sign the access entry log, indicate the date and time of entry and list all areas inspected, repaired or serviced. The bingo operator licensee shall retain the dispenser log for a period of three years and shall make the dispenser log available to the board or its authorized agents upon request.

I. A pull-tab dispenser leased by more than one licensee shall not be used by another licensee unless and until the licensee has removed its pull-tab deals from play prior to use by the next licensee.

J. The keys to pull-tab dispensers must be on the premises and in the possession and control of the bingo licensee.

K. The board or its agents may examine and inspect any individual pull-tab dispenser and shall have immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

L. All pull-tabs in any one column or sleeve of the dispenser must be of the same deal.

M. No licensee may display, use or otherwise furnish a

dispenser which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

[15.4.6.10 NMAC - Rp, 15.4.6.10 NMAC, 2/23/2021]

15.4.6.11 DISALLOWANCE OF BINGO, RAFFLE AND PULL-TAB EQUIPMENT:

A. The board may disallow the use of bingo, raffle or pull-tab equipment when in the interest of the public.

B. If the board or its agents discover any problem with a pull-tab dispenser that affects the security or integrity of the game, the board may direct the manufacturer, distributor or the bingo licensee to cease the sale, lease or use of the dispenser.

C. The board shall advise the manufacturer or distributor of the disallowed equipment of the date on which use of the disallowed equipment shall cease.

D. The board shall advise the licensees or applicants of the date on which the use of the disallowed equipment shall cease.

E. A licensee shall cease using the disallowed equipment by the date established by the board.

F. Licensee shall obtain written approval from the board prior to making any equipment modifications that may affect the outcome of a game of chance.

[15.4.6.11 NMAC - Rp, 15.4.6.11 NMAC, 2/23/2021]

15.4.6.12 LOSS, THEFT, MECHANICAL FAILURE, INOPERATION, DESTRUCTION OR MALFUNCTION:

The bingo manager shall report to the enforcement division each instance that a pull-tab dispenser with or without video display of the paper pull-tab gaming piece, in play malfunctions and each instance when play is disrupted or ceases operation regardless of the reason or length of time of disruption or malfunction or whether or not there is a monetary loss.

[15.4.6.12 NMAC - Rp, 15.4.6.12 NMAC, 2/23/2021]

HISTORY OF 15.4.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: Regulation No. 2B-4(F), Penalties for Violations of Bingo & Raffle Act or Regulations, Interpreting and Exemplifying Subsection F of Section 60-2B-4 NMSA 1978, filed 3/21/1984.

History of Repealed Material:

15.4.6 NMAC, Bingo - Penalties, filed 9/16/2005, Repealed, effective 4/15/2013.

15.4.6 NMAC, Bingo - Equipment; Bingo, Raffle, Pull-Tabs, filed 3/27/2013 Repealed effective 2/23/2021.

Other History:

15.4.6 NMAC, Bingo - Penalties, filed 9/16/2005 replaced by 15.4.6 NMAC, Bingo - Equipment; Bingo, Raffle, Pull-Tabs effective 4/15/2013.

15.4.6 NMAC, Bingo - Equipment; Bingo, Raffle, Pull-Tabs, filed 3/27/2013 replaced by 15.4.6 NMAC, Bingo - Equipment; Bingo, Raffle, Pull-Tabs, filed 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND
LIQUOR CONTROL
CHAPTER 4 BINGO AND
RAFFLES
PART 7 CONDUCT OF
BINGO**

15.4.7.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.7.1 NMAC - Rp, 15.4.7.1 NMAC, 2/23/2021]

15.4.7.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control

board.

[15.4.7.2 NMAC - Rp, 15.4.7.2 NMAC, 2/23/2021]

15.4.7.3 STATUTORY

AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.7.3 NMAC - Rp, 15.4.7.3 NMAC, 2/23/2021]

15.4.7.4 DURATION:

Permanent.

[15.4.7.4 NMAC - Rp, 15.4.7.4 NMAC, 2/23/2021]

15.4.7.5 EFFECTIVE

DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.7.5 NMAC - Rp, 15.4.7.5 NMAC, 2/23/2021]

15.4.7.6 OBJECTIVE:

This rule establishes the conduct of bingo authorized by the New Mexico Bingo and Raffle Act.

[15.4.7.6 NMAC - Rp, 15.4.7.6 NMAC, 2/23/2021]

15.4.7.7 DEFINITIONS:

See 15.4.1.7 NMAC for applicable definitions.

[15.4.7.7 NMAC - Rp, 15.4.7.7 NMAC, 2/23/2021]

15.4.7.8 BINGO GAME

CONTROLS: The bingo manager shall establish the following controls at all bingo games:

A. disposable bingo cards shall be used in all bingo games and adhere to the following specifications:

(1) each set of disposable cards used shall have a serial number and the identification number assigned by the manufacturer;

and

(2) each disposable card/packet sold shall have a specific retail value, which has been reported to the board or its agents, and clearly posted;

B. the bingo caller shall be furnished, prior to starting each game the manufacturer's identification number and the serial numbers of all cards offered for sale for that particular game and shall announce to the players the range of numbers of the cards that are valid for that game; upon a player having completed a bingo winning combination and the player declaring "bingo," the caller shall require a bingo employee on the floor to verify the bingo winning combination and to read off the manufacturer's identification number and serial number of each winning card; payment shall not be made unless both numbers were among those offered for sale for that game; and

C. one or more licensed individuals shall be assigned the duty of making prize payouts. Payouts shall not be paid from gross receipts collected during an occasion. [15.4.7.8 NMAC - Rp, 15.4.2.8 NMAC, 2/23/2021]

15.4.7.9 BINGO OPERATIONS:

A. The bingo manager, or in the absence of the bingo manager, an alternate bingo manager, shall be present on the premises continuously during the games and for a period of at least 30 minutes after the last game.

B. Licensees shall purchase pre-numbered paper cards from a licensed distributor or manufacturer.

C. Start up and close out of an occasion shall be conducted in the following manner:

(1) a payout schedule of all bingo games, which requires prior approval by the board or its agents, shall be posted 30 minutes prior to the start of an occasion,

(2) when an organization has been licensed to use

a multi-tiered payout schedule:

(a) all tiers shall be posted 30 minutes prior to the occasion; and

(b) the tier to be used shall be announced 10 minutes prior to the occasion;

(3) prior to the start of the game, all bingo prizes, prize money, or checks shall be on the licensed premises; in the event check payments are to be issued for the payment of prizes, there shall be sufficient funds in the bingo operating account at the beginning of the bingo occasion;

(4) at the close out of each occasion, the bingo manager shall count all gross receipts to include all cash, checks, debit card receipts, and promotional, discounted or free games at the full price; and shall record all gross receipts and prepare and sign a bank deposit slip that reflects the final deposit; the deposit slip shall have the licensee's name and license number on it;

(5) a second bingo employee shall immediately count and verify the gross receipts and cosign the bank deposit slip;

(6) cash, coin, checks, and debit card receipts shall be temporarily stored in a secured area until a deposit is made; a secured area includes a locked vault on the licensed premises or the deposit drop box; in the event that nonrelated funds are kept in the same locked vault, bingo, raffle and pull tab funds shall be kept in a separate locked bank bag inside the vault; under no circumstances shall funds be kept at a location other than the licensed premise;

(7) if the licensee conducts two or more bingo occasions and chooses not to close out at the end of each occasion, then all gross receipts for each game of chance shall be kept separate for each occasion, secured in a locked vault and reconciled at the close of the last occasion or no later than the following business day; and

(8) the bingo manager and one other bingo employee shall ensure proper separate

and accurate reporting of each of the occasions to include separate deposit slips that reflect separate gross receipts from each occasion.

D. Paper cards shall be used for all bingo games.

E. No bingo occasion shall begin prior to 9:00 a.m. or later than midnight.

[15.4.7.9 NMAC - Rp, 15.4.2.9 NMAC, 2/23/2021]

15.4.7.10 SALE OF BINGO CARDS:

A. Sale and use of bingo cards:

(1) bingo cards shall not be sold on credit or purchased with credit cards;

(2) a debit card issued by a banking institution or credit union may be used as a means of payment;

(3) each licensee that accepts payment by debit card must maintain records to substantiate all transactions;

(4) all debit card transactions must be reported on the quarterly reports covering the time period in which the transactions occurred;

(2) all sales of bingo cards shall take place upon the premises and at the time of that bingo occasion;

(3) no bingo cards shall be set aside or reserved for any person;

(4) if a master card or admittance card is required in order to play bingo, then no extra cards will be sold to a player who has not purchased a master or admittance card;

(5) all bingo cards other than promotional cards shall be sold at a set price; the price of each type of card shall remain fixed and may only be altered by requested amendment of the license subject to approval by the board or its agents, and shall be posted; and

(6) if each person playing bingo is required to purchase a master card and is allowed to play extra cards in the same game, then the prize to be awarded on

the master card and the extra cards shall be posted by the licensee at the beginning of each game.

B. No bingo cards sold for use in an occasion shall be valid for use in another occasion.

C. If bingo cards are being sold for an occasion immediately following the current occasion and both occasions are scheduled for the same day, the sales and deposits for each occasion shall be kept separate.

D. Any shortage calculated from sales for an occasion shall not be deducted from the gross receipts.

[15.4.7.10 NMAC - Rp, 15.4.2.10 NMAC, 2/23/2021]

15.4.7.11 CONDUCT DURING BINGO GAMES:

A. The caller shall:

(1) announce whether last ball called is or is not required;

(2) remove and hold only one ball at a time from the blower;

(3) call all letters and numbers clearly twice to all players present during the occasion;

(4) immediately following the calling of each number in a bingo game, the caller shall turn the portion of the ball, which shows the number and the letter to the players in the game so they may know that the proper number has been called;

(5) upon discovering that a number has been called incorrectly:

(a) the game shall immediately stop;

(b) the caller shall announce "an error has been made, I am reading the correct number, please correct your card"; and

(c) then correct the board and continue with the game.

(6) not return a ball to any part of the blower until the conclusion of the game.

B. Each bingo game will be closed with the following procedure:

- (1) the game shall be stopped after the winning combination has been signaled by a player;
- (2) only the balls called are in play;
- (3) a ball in the caller's hand, on a monitor, or otherwise segregated from other balls will not be called or placed into play; this ball will be held by the caller until the bingo winning combination has been verified;
- (4) if it is a bingo winning combination the ball is returned to the machine and the game is over;
- (5) if a game is stopped for a bingo declaration which proves not to be valid, the caller will then call the ball being held at the time the game was stopped;
- (6) the bingo employee on the floor shall place the bingo card to be checked as a winner in front of at least one other player, with that player being given an opportunity to confirm that the bingo declared is a valid bingo winning combination by watching the card as the numbers are called;
- (7) the caller shall require the bingo employee on the floor checking the bingo combination to read off the manufacturer's identification number and serial number of each winning card;
- (8) the bingo employee on the floor shall announce the numbers of the bingo winning combination to the bingo caller who shall confirm using the master board, or, in case of a "cover-all" bingo, the caller shall call the numbers that have not been called using the master board; and
- (9) the bingo caller shall then ask the players, "are there any other bingos?" If no one answers, the caller shall announce, "this game is completed".

C. The caller cannot verify the winning bingo numbers on the floor. Another bingo employee

shall call the player's declared bingo numbers to the caller for verification.

D. In a bingo game where only a specific number of numbered balls will be called, that number shall be announced by the caller prior to the removal of the first ball from the blower. Prior to the last ball being removed from the blower the caller will announce "last ball".

E. When conducting a "winner take all" bingo game, the bingo manager shall ensure that:

- (1) the caller announces the number of cards sold and the prize amount prior to the beginning the game;
- (2) a record of the game is compiled containing:
 - (a) the number of cards sold;
 - (b) the date and time the game was conducted;
 - (c) if the prize value is equal to or exceeds \$600, the winner(s) contact information;
 - (d) copies of any required tax reporting documents; and
 - (e) this record is retained in accordance with the 15.4.1.12 NMAC; and
 - (f) the aggregate amount of all prizes offered or given in all bingo games played in a single occasion shall not exceed \$2,500, exclusive of pull-tabs, raffles and door prizes.

F. In the event of a power outage, with the approval of the majority of players the caller may continue by removing bingo balls from the hopper manually.
[15.4.7.11 NMAC - Rp, 15.4.2.11 NMAC, 2/23/2021]

15.4.7.12 RECORD OF NUMBERS DRAWN: A written record shall be compiled and retained by the licensee for a period of 60 days of all bingo numbers, in the order the numbers are called, when the bingo game payoff is \$600 or more.
[15.4.7.12 NMAC - Rp, 15.4.2.12 NMAC, 2/23/2021]

HISTORY OF 15.4.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: ABC Regulation No. 2B-9(E), Agreement Based Upon Percentage of Receipts Prohibited, Relating to Section 60-2B-9(E) NMSA 1978, filed 12/22/1982. Regulation No. 2B-9(E), Agreement Based Upon Percentage of Receipts Prohibited, filed 3/29/1984. Regulation No. 2B-6, Documentation Regarding Rented Premises, Relating to Section 60-2B-6 NMSA 1978, filed 5/14/1984.

History of Repealed Material:

15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, filed 9/16/2005 - Repealed, effective 3/27/2013.
15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other History:

15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, filed 9/16/2005 replaced by 15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, effective 3/27/2013.
15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, filed 3/27/2013 replaced by 15.4.7 NMAC, Bingo and Raffles - Conduct of Bingo, effective 2/23/2021.

GAMING CONTROL, BOARD OF

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 8 CONDUCT OF RAFFLE

15.4.8.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[15.4.8.1 NMAC - Rp, 15.4.8.1 NMAC, 2/23/2021]

15.4.8.2 SCOPE: This rule applies to all persons subject to

regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.8.2 NMAC - Rp, 15.4.8.2 NMAC, 2/23/2021]

15.4.8.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.8.3 NMAC - Rp, 15.4.8.3 NMAC, 2/23/2021]

15.4.8.4 DURATION: Permanent.

[15.4.8.4 NMAC - Rp, 15.4.8.4 NMAC, 2/23/2021]

15.4.8.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.8.5 NMAC - Rp, 15.4.8.5 NMAC, 2/23/2021]

15.4.8.6 OBJECTIVE: This rule establishes standards for the conduct of raffle authorized by the New Mexico Bingo and Raffle Act.

[15.4.8.6 NMAC - Rp, 15.4.8.6 NMAC, 2/23/2021]

15.4.8.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.

[15.4.8.7 NMAC - Rp, 15.4.8.7 NMAC, 2/23/2021]

15.4.8.8 RAFFLE CONTROLS:

A. A licensee shall maintain a valid copy of a raffle ticket for each raffle conducted.

B. All proceeds including donations and gifts shall be reported as gross receipts under the act.

C. Each raffle ticket and all promotional material concerning the raffle, shall conspicuously state whether or not the ticket holder is required to be present at the raffle drawing in order to win prizes.

D. Raffle tickets shall not be discounted and must be sold for the same price.

[15.4.8.8 NMAC - Rp, 15.4.8.8 NMAC, 2/23/2021]

15.4.8.9 RAFFLE OPERATIONS:

A. All raffle tickets sold shall have a representation (stub) in the container prior to the start of the draw. No unsold raffle tickets shall have a representation (stub) in the container.

B. The drawing shall be open to all ticket holders.

C. The rules of the drawing shall be conspicuously posted in the immediate area of the device from which the draw occurs and will identify what a winning draw is.

D. When more than one prize is to be awarded the prize shall be announced immediately preceding the drawing of each winning ticket.

E. Prize substitutions are not allowed.

[15.4.8.9 NMAC - Rp, 15.4.8.9 NMAC, 2/23/2021]

15.4.8.10 SPLIT RAFFLE:

A. If a split is other than fifty-fifty, the winner's share shall be the first value of the expression.

B. All tickets sales and the drawing of the winner(s) shall occur at the same location on the same day.

C. There shall be a period of sufficient duration between the last ticket sold and the drawing so that the number of tickets sold and the prize(s) can be determined and announced.

D. The number of chances sold and the prize(s) shall be announced prior to the drawing of the winner(s).

[15.4.8.10 NMAC - Rp, 15.4.8.10 NMAC, 2/23/2021]

15.4.8.11 \$75,000 OR MORE RAFFLES: Licensee shall meet all the conditions described in 15.4.8.9 NMAC and the following requirements:

A. shall notify the board on a form prescribed by the board 10 days prior to any public notice; and

B. shall report to board on a form prescribed by the board within three days of drawing the winner(s) name, address and phone number.

[15.4.8.11 NMAC - Rp, 15.4.8.11 NMAC, 2/23/2021]

15.4.8.12 PAYMENT OF WINNINGS:

A. Prizes shall be tendered in accordance with the specifications on the raffle ticket.

B. In the event that the winner does not accept a prize and:

(1) is present at the drawing a second drawing shall be made; or

(2) is not required to be and is not present at the drawing:

(a) the licensee shall obtain a written and signed letter declining the prize;

(b) the licensee shall notify the board; and

(c) the licensee may dispose of the prize in a manner they deem appropriate.

C. The organization shall not discard any of the sold tickets until all prizes have been accepted.

[15.4.8.12 NMAC - Rp, 15.4.8.12 NMAC, 2/23/2021]

15.4.8.13 RAFFLE RECORDS TO BE KEPT: The following records shall be maintained:

A. the number of tickets available at the beginning of the event, if limited;

B. the number of tickets sold;

C. the date ticket sales began and ended;
 D. the date and time the drawing was conducted;
 E. the winner(s) contact information; and
 F. any required IRS reporting documents.
 [15.4.8.13 NMAC - Rp, 15.4.8.13 NMAC, 2/23/2021]

HISTORY OF 15.4.8 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by department of alcohol and beverage control under: Regulation No. 2B-8 Raffles, Relating to Section 60-2B-8 NMSA 1978, filed 3/21/1984.

History of Repealed Material:
 15.4.8 NMAC, Raffle Tickets, filed 9/16/2005 - Repealed, effective 4/15/2013.
 15.4.8 NMAC, Raffle Tickets, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other:
 15.4.8 NMAC, Raffle Tickets, filed 9/16/2005, Replaced by 15.4.8 NMAC, Raffle Tickets, effective 4/15/2013.
 15.4.8 NMAC, Raffle Tickets, filed 3/27/2013, Replaced by 15.4.8 NMAC, Raffle Tickets, effective 2/23/2021.

**GAMING CONTROL,
 BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
 CHAPTER 4 BINGO AND RAFFLES
 PART 9 CONDUCT OF PULL-TABS**

15.4.9.1 ISSUING AGENCY: New Mexico Gaming Control Board.
 [15.4.9.1 NMAC - Rp, 15.4.9.1 NMAC, 2/23/2021]

15.4.9.2 SCOPE: This rule applies to all persons subject to

regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.
 [15.4.9.2 NMAC - Rp, 15.4.9.2 NMAC, 2/23/2021]

15.4.9.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.
 [15.4.9.3 NMAC - Rp, 15.4.9.3 NMAC, 2/23/2021]

15.4.9.4 DURATION: Permanent.
 [15.4.9.4 NMAC - Rp, 15.4.9.4 NMAC, 2/23/2021]

15.4.9.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.
 [15.4.9.5 NMAC - Rp, 15.4.9.5 NMAC, 2/23/2021]

15.4.9.6 OBJECTIVE: This rule establishes the conduct of pull-tabs authorized by the New Mexico Bingo and Raffle Act.
 [15.4.9.6 NMAC - Rp, 15.4.9.6 NMAC, 2/23/2021]

15.4.9.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.
 [15.4.9.7 NMAC - Rp, 15.4.9.7 NMAC, 2/23/2021]

15.4.9.8 PULL-TAB GAME CONTROLS:
A. A licensee shall not share a deal with any other licensee.
B. A licensee may simultaneously operate separate deals at the same location and may operate the same deal at different location on the licensed premises.

C. A deal shall not be combined with any other deals when doing so creates the appearance of a new or more complete deal.

D. A deal shall not be divided and sold in different locations or at different times when doing so creates the appearance of a greater than actual number of winning pieces.

E. Second chance games, in which non-winning pull-tabs are entered into a drawing, shall adhere to 15.4.8 NMAC.

F. A pay out schedule for each deal shall be posted in the immediate area where the pull-tabs from that deal are being sold and shall contain:

- (1) the serial number;
- (2) the size;
- (3) the predetermined number of winners; and
- (4) the prize amounts of the winners.

G. Sales, play and payment of prizes shall be conducted only on the licensed premise.

H. Prior to the purchase of a deal, seller shall disclose to the buyer in writing the following information:

- (1) the serial number;
- (2) the total number of pull-tabs;
- (3) the predetermined number of winning pull-tabs; and
- (4) the predetermined payout percentages.

I. A permittee, operator, or licensee shall not sell pull-tabs to an on-duty bingo employee, a member-in-charge, an alternate member-in-charge, or any person who has knowledge of pull-tab game winnings pertaining to the deal being currently sold or access to accounting records thereto.

J. A permittee, operator, or licensee shall verify and retain a written record of the identity of any individual redeeming winning pull-tabs with a value of \$600 or more.
 [15.4.9.8 NMAC - Rp, 15.4.9.10 NMAC, 2/23/2021]

HISTORY OF 15.4.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives by regulation and licensing department, alcohol and gaming division under:

AGD 94-1, Emergency Regulations Governing the Conduct of Pull Tabs Game of Chance, filed 1/3/1995.

History of Repealed Material:

15.4.9 NMAC, Pull Tabs, filed 9/16/2005 - Repealed, effective 4/15/2013.

15.4.9 NMAC, Pull Tabs, filed 3/27/2013 - Repealed, effective 2/23/2021.

Other:

15.4.9 NMAC, Pull Tabs, filed 9/16/2005, Replaced by 15.4.9 NMAC, Pull Tabs, effective 4/15/2013.

15.4.9 NMAC, Pull Tabs, filed 3/27/2013, Replaced by 15.4.9 NMAC, Pull Tabs, effective 2/23/2021.

**GAMING CONTROL,
BOARD OF**

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 10 ACCOUNTING REQUIREMENTS**

15.4.10.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.10.1 NMAC - Rp, 15.4.10.1 NMAC 2/23/2021]

15.4.10.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.10.2 NMAC - Rp, 15.4.10.2 NMAC 2/23/2021]

15.4.10.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico

Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.10.3 NMAC - Rp, 15.4.10.3 NMAC 2/23/2021]

15.4.10.4 DURATION:

Permanent.

[15.4.10.4 NMAC - Rp, 15.4.10.4 NMAC 2/23/2021]

15.4.10.5 EFFECTIVE

DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.10.5 NMAC - Rp, 15.4.10.5 NMAC 2/23/2021]

15.4.10.6 OBJECTIVE:

This rule establishes standards for accounting and financial reporting procedures for bingo, raffle and pull-tab licensees under the New Mexico Bingo and Raffle Act.

[15.4.10.6 NMAC - Rp, 15.4.10.6 NMAC 2/23/2021]

15.4.10.7 DEFINITIONS:

See 15.4.1.7 for all applicable definitions.

[15.4.10.7 NMAC - Rp, 15.4.10.7 NMAC 2/23/2021]

15.4.10.8 AUDIT PROCEDURES:

A. The board or its agents shall:

(1) conduct audits on quarterly report forms and supporting documents, periodic and special audits or reviews of the books and records of licensees, examine the books and records of any licensee when conditions indicate the need for such action or upon the request of the board;

(2) review and observe methods and procedures used by licensees, which can include

the counting or handling cash or cash instruments; and

(3) determine each licensee's compliance with the act and board rules.

B. Audits shall be conducted in conformity with generally accepted auditing standards and compliance standards as established by the board.

C. If not in compliance, the licensee will have 15 days, after receiving notification from the board or its agents, to submit the required supporting documentation or prepare and submit an amended quarterly report.

D. During the audit, should it be determined that an error on the report resulted in an under or over reporting of tax, the board or its agents shall report its findings to the New Mexico taxation and revenue department, per requirements set forth in the Tax Administration Act and to the licensee.

E. Each licensee shall submit a complete quarterly report for each quarter it holds a valid bingo and raffle license. If a licensee has no bingo, raffle or pull-tab activity during any quarter, for whatever reason, the licensee shall submit a zero activity report for that quarter by the prescribed deadline.

F. A licensed distributor shall keep and maintain a complete set of records which shall include details of all activities of the distributor related to the conduct of the licensed activity as may be required by the board, including the quantities and types of bingo equipment, bingo paper, pull-tabs and associated supplies purchased and sold. Such records shall be available upon request by the board or its agents and shall be retained in accordance with Section 15.4.10.12 NMAC.

[15.4.10.8 NMAC - Rp, 15.4.10.8 NMAC 2/23/2021]

15.4.10.9 ACCOUNTING PROCEDURES:

A. All information set forth in the act is required to be documented on forms prescribed by the board.

B. The licensee shall separately account for the gross receipts from all games of chance on the prescribed quarterly report forms.

C. Each licensee shall maintain a bingo operating account to be used for all games of chance. All gross receipts shall be deposited and all disbursements shall be made from this account.

D. A licensee must have at least one separate general operating account in addition to a bingo operating account.

E. Funds from games of chance shall not be co-mingled with any other funds used by the licensee.

F. The bingo operating account shall have an end-of-month cutoff date.

G. The licensees shall reconcile bank statements monthly.

H. Licensees shall use a check, not a debit card, ATM card or any form of electronic transfer to pay any expense out of the bank operating account unless an electronic payment is required by IRS, federal, state or, bank regulations or an automated payroll system that uses direct deposits to employees' accounts.

I. If a licensee elects to pay bingo and raffle payroll using direct deposit, the licensee shall maintain adequate records to document each individual transaction and will provide all copies of such deposit record transactions with the corresponding bingo and raffle quarterly report form. If an independent bookkeeping or payroll company is used, the licensee shall keep a copy of the agreement that authorizes them as the assigned agent to perform these duties.

J. Licensees with pull-tab dispensers shall empty and reconcile the receipts and payouts weekly and at the end of each month. The bingo manager shall ensure the audit printout is legible and retained in its original condition.

K. The gross receipts from all games of chance conducted during a bingo occasion shall be deposited into the bingo operating

account no later than the next business day. Gross receipts from pull-tab dispensers shall be deposited into the bingo operating account on a weekly basis and at the end of each month.

L. Licensees utilizing pull-tab dispensers without a concurrent bingo occasion shall complete an approved record as defined in 15.4.1.7 NMAC for each pull-tab dispenser on a weekly basis.

M. Deposit records must be sufficient to allow a determination of deposits made from each occasion and each game of chance.

N. Signature stamps shall not be allowed.

O. Pre-signed checks shall not be allowed.

P. Checks shall be consecutively numbered and signed by two authorized persons.

Q. No check shall be drawn to "cash" or a fictitious payee. All checks used to withdraw funds from the bingo operating account to replenish prize payouts or the change fund shall be made payable to the licensee and the memo section shall state "prize payouts" or "change fund".

R. A perpetual inventory of the bingo paper and pull-tabs shall be maintained by the bingo manager on a form approved by the board.

S. All bingo paper and pull-tab not intended for sale due to defect, damage or any other reason shall be segregated, and destroyed or returned to a licensed distributor:

(1) prior to the segregation or destruction of any bingo paper and pull-tabs:

(a) the material shall be inventoried and recorded on a form approved by the board;

(b) the form signed by the highest ranking officer of the licensee that does not hold a valid staff permit; and

(c) the form shall be submitted to the board's audit division.

(2) all bingo paper and pull-tab returned to a licensed distributor shall:

(a) be inventoried and recorded on a form approved by the board;

(b) have this form signed by a representative of the licensed distributor;

(c) any monies paid by the distributor to the operator for returns shall not be subject to the bingo and raffle tax; and

(d) segregated pull-tabs and documentation regarding the return of pull-tabs to a licensed distributor or the destruction of pull-tabs shall be retained pursuant to 15.4.1.12 NMAC.

T. All unaccounted for bingo paper and pull-tabs may be subject to the bingo and raffle tax.

U. Bingo paper and pull-tab inventories shall not be stored or in any way comingled with the bingo paper and pull-tabs of any other licensee.

V. Any deposits made into the bingo operating account from the organization's general operating account for the purpose of sustaining bingo, pull-tab and raffle activity shall be noted on the deposit slip. These deposits are not considered to be bingo and raffle activity receipts and therefore, not subject to bingo and raffle tax.

[15.4.10.9 NMAC - Rp, 15.4.10.9 NMAC 2/23/2021]

15.4.10.10 QUARTERLY REPORTS:

A. The licensee shall submit quarterly bingo and raffle activity reports for all games of chance on the prescribed forms on or before but no later than the 25th day of April, July, October and January. If any due date falls on Saturday, Sunday or legal holiday, the due date is the next business day.

B. Licensees shall provide bank statements, images of the front of all cleared checks, and images of the front of all deposit slips for the period that corresponds with each report.

C. Each quarterly report shall be submitted with the required supporting documentation in the following order:

- (1) quarterly report form;
- (2) supplement forms;
- (3) bank statements for each month;
- (4) copies of all check images and deposit slip images; and
- (5) copy of quarterly tax coupon.

D. If a licensee fails to file quarterly reports within the time required, or if the reports are not properly verified, accurate, and complete, the licensee's license may be suspended until the default has been corrected:

- (1) a \$100 processing fee may be assessed for quarterly reports 30 days or more past due;
- (2) a \$100 processing fee may be assessed if the licensee fails to submit all required supporting documentation or amended quarterly reports per Subsection C of 15.4.10.8 NMAC within 15 days of notification by the board;
- (3) any \$100 processing fees shall be paid within 15 days of receipt of notification along with submission of the quarterly reports and all items requested by the board; to include amended quarterly reports and required supporting documentation;
- (4) failure to submit the quarterly reports or required items requested by the board; to include amended quarterly reports, required supporting documentation and the processing fee(s) within 15 days of receipt of notification, may result in an administrative citation being issued; and
- (5) the licensee may submit an appeal for the assessment of the processing fee(s) to the board within 15 days of receipt of notification. The appeal shall include a written rebuttal to the assessment. Appealing any processing fee does not relieve the licensee from the

obligation to pay the fee or allow the licensee additional time to submit the quarterly reports or any required supporting documentation requested by the board.

[15.4.10.10 NMAC - Rp, 15.4.10.10 NMAC 2/23/2021]

15.4.10.11 REPORTING AND PAYMENT PROCEDURES:

A. Each licensee shall prepare an approved record covering each game of chance. This approved record shall disclose the following information:

- (1) gross receipts collected from the sale of all bingo cards, pull-tabs or raffle tickets;
- (2) the retail value of all promotional games;
- (3) cash on hand at the commencement and at the conclusion of each occasion;
- (4) signature of the bingo manager who oversees the occasion on all paperwork; and
- (5) name, signature, and assigned duties of each employee for each occasion.

B. A bingo and raffle tax as established by statute, of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

C. The tax imposed pursuant to this section shall be submitted quarterly to the New Mexico taxation and revenue department on or before April 25, July 25, October 25 and January 25.

D. Fees required under the act and all reports relating to taxes and fees shall be received by the board no later than the date specified. [15.4.10.11 NMAC - Rp, 15.4.10.11 NMAC 2/23/2021]

15.4.10.12 RETENTION OF RECORDS: The licensee shall maintain all records required pursuant to 15.4.1.12 NMAC.

[15.4.10.12 NMAC - Rp, 15.4.10.12 NMAC 2/23/2021]

HISTORY OF 15.4.10 NMAC:
[RESERVED]

History of Repealed Material:

15.4.10 NMAC, Bingo and Raffles - Accounting Requirements, filed 3/27/2013 - Repealed 2/23/2021,

Other History:

15.4.10 NMAC, Bingo and Raffles - Accounting Requirements, filed 3/27/2013 replaced by 15.4.10 NMAC, Bingo and Raffles - Accounting Requirements, effective 2/23/2021.

GAMING CONTROL, BOARD OF

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 11 VARIANCE PROCEDURES**

15.4.11.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.11.1 NMAC - Rp, 15.4.11.1 NMAC, 2/23/2021]

15.4.11.2 SCOPE:

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.11.2 NMAC - Rp, 15.4.11.2 NMAC, 2/23/2021]

15.4.11.3 STATUTORY

AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.11.3 NMAC - Rp, 15.4.11.3 NMAC, 2/23/2021]

15.4.11.4 DURATION:

Permanent.

[15.4.11.4 NMAC - Rp, 15.4.11.4 NMAC, 2/23/2021]

15.4.11.5 EFFECTIVE DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.11.5 NMAC - Rp, 15.4.11.5 NMAC, 2/23/2021]

15.4.11.6 OBJECTIVE: This rule establishes procedures for requesting a temporary exemption to any rule within 15.4 NMAC that is not directed by the act.

[15.4.11.6 NMAC - Rp, 15.4.11.6 NMAC, 2/23/2021]

15.4.11.7 DEFINITIONS: See 15.4.1.7 NMAC for applicable definitions.

[15.4.11.7 NMAC - Rp, 15.4.11.7 NMAC, 2/23/2021]

15.4.11.8 GENERAL REQUIREMENTS: Licensee may seek a variance of limited provisions of the New Mexico Bingo and Raffle Rules 15.4 NMAC.

[15.4.11.8 NMAC - Rp, 15.4.11.8 NMAC, 2/23/2021]

15.4.11.9 VARIANCE PROCEDURES:

A. The bingo manager may submit a variance request on a form prescribed by the board, that shall include the licensee’s name, license number, address, contact information and the specific part of 15.4 NMAC which the variance is being sought.

B. The board shall not grant a variance to any provision of the act.

C. The board or its agent shall review the request and respond to the licensee in writing within 30 days of the request.

D. Factors the board may consider when granting or denying a variance request include but are not limited to:

- (1) impact on game integrity;
- (2) annual gross receipts;

- (3) proximity of licensed premise:
- (a) to the financial institution holding the operating account;
- (b) to licensed distributor; and
- (c) to another licensee’s licensed premise;
- (4) number of occasions per annum;
- (5) staff, volunteer or paid; and
- (6) regulatory compliance history.

E. A granted variance may be for a specific period of time and shall not exceed the expiration date of the license. In the absence of a specified period, the variance shall expire on the license expiration date.

F. The bingo manager may submit a request to renew a variance with license renewal application using the form prescribed by the board and the board’s staff shall review, grant or deny and respond to said request within 30 days of receipt of request and independently of the approval of the license renewal. Renewal of license shall not automatically result in renewal of variance.

G. A copy of the approved variance request shall be posted adjacent to the license at the licensed premise.

[15.4.11.9 NMAC - Rp, 15.4.11.9 NMAC, 2/23/2021]

15.4.11.10 APPEAL: The bingo manager may submit an appeal of a denial of a variance request to the board in writing within 30 days of notification of denial. The appeal shall comply with Subsection A of 15.4.14.9 NMAC.

[15.4.11.10 NMAC - Rp, 15.4.11.10 NMAC, 2/23/2021]

HISTORY OF 15.4.11 NMAC:
[RESERVED]

History of Repealed Material: 15.4.11 NMAC, Bingo and Raffles - Variance Procedures, filed 3/27/2013 - Repealed 2/23/2021,

Other History:

15.4.11 NMAC, Bingo and Raffles - Variance Procedures, filed 3/27/2013 replaced by 15.4.11 NMAC, Bingo and Raffles - Variance Procedures, effective 2/23/2021.

GAMING CONTROL, BOARD OF

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 12 ENFORCEMENT PROCEEDINGS**

15.4.12.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.12.1 NMAC - Rp, 15.4.12.1 NMAC, 2/23/2021]

15.4.12.2 SCOPE: This rule applies to all persons subject to revocation or suspension of a license or permit, disciplinary or other enforcement action under the New Mexico Bingo and Raffle Act.

[15.4.12.1 NMAC - Rp, 15.4.12.2 NMAC, 2/23/2021]

15.4.12.3 STATUTORY

AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection F of Section 60-2F-6 NMSA 1978 authorizes the board to appoint a hearing officer.

[15.4.12.3 NMAC - Rp, 15.4.12.3 NMAC, 2/23/2021]

15.4.12.4 DURATION:

Permanent.

[15.4.12.4 NMAC - Rp, 15.4.12.4 NMAC, 2/23/2021]

15.4.12.5 EFFECTIVE

DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.12.5 NMAC - Rp, 15.4.12.5 NMAC, 2/23/2021]

15.4.12.6 OBJECTIVE:

This rule establishes the guidelines and procedures for the conduct of

enforcement proceedings initiated by the board under the New Mexico Bingo and Raffle Act.
[15.4.12.6 NMAC - Rp, 15.4.12.6 NMAC, 2/23/2021]

15.4.12.7 DEFINITIONS:

For purposes of this Part 15.4.12 NMAC, “**party**” means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.
[15.4.12.7 NMAC - Rp, 15.4.12.7 NMAC, 2/23/2021]

15.4.12.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2F-23 NMSA 1978 will be conducted by a hearing examiner duly appointed by the board.

B. Except for telephonic hearings, the location of the hearing shall be at the office of the board unless either party makes a written request to have the hearing conducted in the place or area affected.

C. All hearings held pursuant to the act shall be open to the public.

D. The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

[15.4.12.8 NMAC - Rp, 15.4.12.8 NMAC, 2/23/2021]

15.4.12.9 SUMMONING OF LICENSEE:

A. The board may summon any licensee, or its agents or employees, to appear to testify before the board or its agents concerning the conduct of a licensee or any of the licensee’s agents or employees. All such testimony shall be given under oath and may cover any matter the board determines is relevant to the discharge of its duties.

B. Any person who is summoned to appear before the

board or its agents has the right to be represented by legal counsel. Any testimony taken may be used by the board as evidence in any proceeding or matter then before it or which may later come before it. Failure to appear and testify at the designated time and place, unless excused by the board, constitutes grounds for the revocation or suspension of any license held by the person summoned, their principal, or employer.

[15.4.12.9 NMAC - Rp, 15.4.12.9 NMAC, 2/23/2021]

15.4.12.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:

A. If after investigation the board determines that a license, permit or other prior approval by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board shall initiate a hearing by issuing a complaint.

B. The complaint shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

C. The board shall serve the complaint, together with a summary of evidence in the board’s possession and a transcript of testimony at any investigative hearing conducted in the matter, upon the licensee. Service and proof of service shall be made in any manner permitted by the New Mexico rules of civil procedure for the district courts.

D. The respondent shall file a written answer with the board within 30 days of service of the complaint.

[15.4.12.10 NMAC - Rp, 15.4.12.10 NMAC, 2/23/2021]

15.4.12.11 RECORD OF PROCEEDING:

A. The record of the proceeding will include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;
(3) a statement of matters officially noticed;
(4) questions and offers of proof, objections and rulings thereon;
(5) proposed findings and conclusions; and
(6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript will bear the cost of transcription.
[15.4.12.11 NMAC - Rp, 15.4.12.11 NMAC, 2/23/2021]

15.4.12.12 DISCOVERY; SUBPOENAS:

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

D. Witnesses summoned shall be paid the same fees for attendance and travel as in

civil actions in the state district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any enforcement action, the respondent and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20 including all discrete subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[15.4.12.12 NMAC - Rp, 15.4.12.12 NMAC, 2/23/2021]

15.4.12.13 FAILURE OR REFUSAL TO TESTIFY:

A. If a respondent fails to testify in its own behalf or asserts a claim of privilege with respect to any question presented to the respondent, the hearing examiner may infer from such refusal that the testimony or

answer would have been adverse in the respondent's case.

B. If any affiliate, holding company, employee, or agent of a respondent fails to respond to a subpoena or asserts a claim of privilege with respect to any question presented, the hearing examiner, after considering all of the circumstances, may infer that such testimony would have been adverse to the respondent. [15.4.12.13 NMAC - Rp, 15.4.12.13 NMAC, 2/23/2021]

15.4.12.14 PROCEDURES; EVIDENCE:

A. The respondent may be represented by any person licensed to practice law in the state. An individual respondent may represent himself.

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and

made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge; whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

F. The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

G. A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[15.4.12.14 NMAC - Rp, 15.4.12.14 NMAC, 2/23/2021]

15.4.12.15 CONDUCT OF ENFORCEMENT HEARING:

A. In addition to the procedures prescribed by the act, the following procedures shall apply, when appropriate:

(1) the board will present its opening statement on the merits; the respondent then will be permitted to make an opening statement on defense;

(2) the board will present its case in chief in support of the complaint;

(3) upon conclusion of the board's case in chief, the respondent will present its case in defense;

(4) upon conclusion of the respondent's case, the board may present rebuttal evidence; and

(5) the board will present its closing argument, the

respondent will present answering argument, and the board may present rebuttal argument. Thereafter, the matter will be submitted for recommendation by the hearing examiner.

B. The hearing examiner may ask questions of witnesses and may request or allow additional evidence at any time as determined appropriate by the hearing examiner.

[15.4.12.15 NMAC - Rp, 15.4.12.15 NMAC, 2/23/2021]

15.4.12.16

CONTINUANCES: The hearing examiner shall not grant a continuance except for good cause shown.

[15.4.12.16 NMAC - Rp, 15.4.12.16 NMAC, 2/23/2021]

15.4.12.17 **DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

A. Failure of the respondent either to file an answer to the complaint or to appear at the hearing on the merits personally or by telephone, without having obtained a continuance, shall constitute an admission on all matters and facts contained in the complaint filed with respect to the respondent and shall be deemed a waiver of the right to an evidentiary hearing on the matter.

B. If the respondent fails to file an answer to the complaint, the petitioner shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against respondent:

(1) the respondent shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served; failure of the respondent to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) if the respondent timely files a response to the motion, the hearing examiner shall

hear the matter; the hearing examiner may deny the motion and allow the respondent additional time to answer the complaint if an accident, illness or other good cause prevented the respondent from timely answering the complaint.

C. If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

[15.4.12.17 NMAC - Rp, 15.4.12.17 NMAC, 2/23/2021]

15.4.12.18 **RECOMMENDED ACTION; FINAL DECISION:**

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than 45 days from the date of continuance.

B. The hearing examiner shall prepare a written decision containing their recommendation of action to be taken by the board. The hearing examiner's recommendation may include any, or any combination, of the following:

(1) revocation of the license or approval;

(2) suspension of the license or approval;

(3) limitation or conditioning of the license or approval; and

(4) imposition of a fine not to exceed \$1,000 for each violation.

C. Notice of the hearing examiner's recommended action shall be served on the parties within 30 days of the conclusion of the hearing on the matter. Service shall be made by registered or certified mail.

D. The board shall accept, reject or modify the hearing examiner's recommendation by majority vote.

E. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken, including limiting, conditioning, suspending, or revoking any license or imposing a fine, or any combination thereof. The board shall not impose any sanction or order except within the board's jurisdiction or as authorized by law.

F. The board may dismiss an enforcement action with or without prejudice without recommendation of the hearing officer.

[15.4.12.18 NMAC - Rp, 15.4.12.18 NMAC, 2/23/2021]

15.4.12.19 **EX PARTE COMMUNICATIONS:**

A. No party or representative of any other person shall communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board shall communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice

and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.4.12.19 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

D. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

E. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state;

(2) any party from conferring with the hearing examiner or board counsel concerning procedural; or

(3) matters that do not involve issues of fact or law related to the proceeding. [15.4.12.19 NMAC - Rp, 15.4.12.19 NMAC, 2/23/2021]

15.4.12.20 TELEPHONIC HEARINGS:

A. Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner’s fact-finding ability. The hearing examiner’s decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

C. The location or locations of the parties during the hearing shall have a telephone and the means by which documents may be transmitted between the parties and hearing examiner.

D. The hearing officer shall initiate the telephone call. The petitioner and respondent are responsible for ensuring that the telephone number to their locations for the telephonic hearing is accurate and that they are available at that telephone number at the time the hearing is to commence. The board’s staff shall conduct the hearing on a speaker phone and shall record the hearing, or in the alternative, shall provide a court reporter to transcribe the hearing. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the respondent to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner. [15.4.12.20 NMAC - Rp, 15.4.12.20 NMAC, 2/23/2021]

15.4.12.21 APPEALS TO THE DISTRICT COURT. Pursuant to Subsection A of Section 60-2F-24 NMSA 1978, any person aggrieved by a final decision of the board issued pursuant to Section 15.4.12.18 NMAC may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. [15.4.12.21 NMAC - Rp, 15.4.12.21 NMAC, 2/23/2021]

HISTORY OF 15.4.12 NMAC: [RESERVED]

History of Repealed Material: 15.4.12 NMAC, Bingo and Raffles - Enforcement Proceedings, filed 3/27/2013 - Repealed 2/23/2021.

Other History: 15.4.12 NMAC, Bingo and Raffles - Enforcement Proceedings, filed 3/27/2013, Replaced by 15.4.12 NMAC, Bingo and Raffles - Enforcement Proceedings, effective 2/23/2021.

GAMING CONTROL, BOARD OF

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 13 LICENSE OR STAFF PERMIT REVOCATION**

15.4.13.1 ISSUING AGENCY: New Mexico Gaming Control Board. [15.4.13.1 NMAC - Rp, 15.4.13.1 NMAC, 2/23/2021]

15.4.13.2 SCOPE: This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board. [15.4.13.2 NMAC - Rp, 15.4.13.2 NMAC, 2/23/2021]

15.4.13.3 STATUTORY AUTHORITY: Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3

NMSA 1978. Subsection A of Section 60-2F-6 NMSA 1978 authorizes the board to grant, deny, suspend, condition or revoke license or permits issued.

[15.4.13.3 NMAC - Rp, 15.4.13.3 NMAC, 2/23/2021]

15.4.13.4 DURATION:

Permanent.

[15.4.13.4 NMAC - Rp, 15.4.13.4 NMAC, 2/23/2021]

15.4.13.5 EFFECTIVE

DATE: February 23, 2021, unless a later date is cited at the end of a section.

[15.4.13.5 NMAC - Rp, 15.4.13.5 NMAC, 2/23/2021]

15.4.13.6 OBJECTIVE:

This rule is established to provide persons holding licenses or staff permits issued by the New Mexico gaming control board notice of the types of circumstances under which the board may revoke the staff permit or license.

[15.4.13.6 NMAC - Rp, 15.4.13.6 NMAC, 2/23/2021]

15.4.13.7 DEFINITIONS:

See 15.4.1.7 NMAC for applicable definitions.

[15.4.13.7 NMAC - Rp, 15.4.13.7 NMAC, 2/23/2021]

15.4.13.8 REVOCABLE

PRIVILEGE: The holder of a staff permit or license issued by the board under the act has a revocable privilege only.

[15.4.13.8 NMAC - Rp, 15.4.13.8 NMAC, 2/23/2021]

15.4.13.9 GROUNDS FOR REVOCATION OF A STAFF PERMIT OR LICENSE:

A. The board or its agents may initiate action to revoke a staff permit or license for any cause deemed reasonable, including but not limited to the following:

(1) the making of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the

board or made in connection with any investigation, including a background investigation, regardless of when discovered by the board;

(2) conviction of any gambling offense in any jurisdiction, or any offense involving theft, fraud, embezzlement, or any fiduciary misconduct;

(3) entry of a civil judgment against the licensee that is based, in whole or in part, on conduct that allegedly constituted a crime involving theft, fraud, embezzlement or any fiduciary misconduct;

(4) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the conduct of games of chance;

(5) failure to timely respond to any request by, or order of, the board or its agent;

(6) revocation of a work permit, or finding of suitability issued pursuant to the New Mexico Gaming Control Act;

(7) violation of any provision of the act or this title;

(8) failure to notify the board in writing of any criminal conviction or criminal charge pending, which is grounds for revocation under this part, against the licensee within 10 days of any arrest, summons, or conviction;

(9) falsification of, failure to make a required entry in, or destruction of records required to be maintained;

(10) failure to file any report as required under the act or rules;

(11) failure to appear and testify at the designated time and place, unless excused by the board;

(12) refusal or failure to possess the licensee's staff permit badge while engaged in the conduct of games of chance;

(13) failure to follow operating procedures;

(14) failure

to remain current on child support payments; and

(15) any other cause deemed appropriate by the board.

B. Any person whose staff permit has been revoked by the board may not reapply for a permit or license issued by the board for the period of at least one year pursuant to Section 60-2F-14 NMSA 1978 or as ordered by the board.

[15.4.13.9 NMAC - Rp, 15.4.13.9 NMAC, 2/23/2021]

15.4.13.10 CRIMINAL CONVICTION AS GROUNDS FOR REVOCATION OR

SUSPENSION: The board may revoke or suspend the license, or staff permit, of a person convicted of a felony or a crime of dishonesty, regardless of whether that person has exhausted their post-conviction rights and remedies.

[15.4.13.10 NMAC - Rp, 15.4.13.10 NMAC, 2/23/2021]

15.4.13.11 REVOCATION PROCEEDINGS; SURRENDER OF STAFF PERMIT OR LICENSE:

A. If after investigation the board determines that sufficient grounds exist to revoke a staff permit, the board shall initiate a hearing on the matter by issuing a complaint.

B. The required contents and service of the complaint and all other aspects of the proceeding shall be conducted in accordance with board rule 15.4.12 NMAC, "Enforcement Proceedings."

C. A staff permit badge issued by the board is state property and shall be returned to the board by the licensee upon revocation of the staff permit.

[15.4.13.11 NMAC - Rp, 15.4.13.11 NMAC, 2/23/2021]

15.4.13.12 DELEGATION OF AUTHORITY TO INITIATE REVOCATION PROCEEDINGS:

A. At the board's discretion, the board may delegate to the executive director authority to make the initial determination

to revoke a staff permit or license and to issue a complaint seeking revocation. The initial determination shall be based on evidence sufficient to support issuance of a complaint seeking to revoke the staff permit or license.

B. The board retains accountability for the authority delegated and retains the authority to make the final decision to revoke a staff permit or license following the initial decision by the executive director and public hearing before the board.

[15.4.13.12 NMAC - Rp, 15.4.13.12 NMAC, 2/23/2021]

HISTORY OF 15.4.13 NMAC: [RESERVED]

History of Repealed Material:

15.4.13 NMAC, Bingo and Raffles - License or Staff Permit Revocation, filed 3/27/2013 - Repealed 2/23/2021,

Other History:

15.4.13 NMAC, Bingo and Raffles - License or Staff Permit Revocation, filed 3/27/2013, Replaced by 15.4.13 NMAC, Bingo and Raffles - License or Staff Permit Revocation, effective 2/23/2021.

GAMING CONTROL, BOARD OF

**TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 4 BINGO AND RAFFLES
PART 14 ADMINISTRATIVE APPEAL**

15.4.14.1 ISSUING

AGENCY: New Mexico Gaming Control Board.

[15.4.14.1 NMAC - Rp, 15.4.14.1 NMAC, 2/23/2021]

15.4.14.2 SCOPE: This rule applies to all licensees, applicants for licensure, and persons aggrieved by an action of the board or its agents under the act.

[15.4.14.2 NMAC - Rp, 15.4.14.2 NMAC, 2/23/2021]

15.4.14.3 STATUTORY AUTHORITY:

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Sections 60-2F-6, 60-2F-23 and 60-2F-24 NMSA 1978 authorize the board to adopt procedural regulations to govern the procedures to be followed in administrative appeal hearings conducted pursuant to the New Mexico Bingo and Raffle Act.

[15.4.14.3 NMAC - Rp, 15.4.14.3 NMAC, 2/23/2021]

15.4.14.4 DURATION:

Permanent.

[15.4.14.4 NMAC - Rp, 15.4.14.4 NMAC, 2/23/2021]

15.4.14.5 EFFECTIVE DATE:

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.14.5 NMAC - Rp, 15.4.14.5 NMAC, 2/23/2021]

15.4.14.6 OBJECTIVE:

This rule establishes the guidelines and procedures for the conduct of hearings under the New Mexico Bingo and Raffle Act when the hearing is initiated by a person aggrieved by an action of the board or its agent. Any person aggrieved by a decision of the board, including a denial of a license or permit, shall request a hearing for review of board action pursuant to 15.4.14 NMAC and obtain a final decision of the board pursuant to 15.4.14.17 NMAC prior to filing an appeal to the district court.

[15.4.14.6 NMAC - Rp, 15.4.14.6 NMAC, 2/23/2021]

15.4.14.7 DEFINITIONS:

For purposes of this 15.4.14 NMAC, "party" means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.

[15.4.14.7 NMAC - Rp, 15.4.14.7 NMAC, 2/23/2021]

15.4.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

A. All hearings held pursuant to Section 60-2F-24 NMSA 1978 shall be conducted by a hearing examiner duly appointed by the board.

B. Except for telephonic hearings, hearings shall be conducted at the office of the board.

C. All hearings held pursuant to Section 60-2F-24 NMSA 1978 shall be open to the public.

D. The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

[15.4.14.8 NMAC - Rp, 15.4.14.8 NMAC, 2/23/2021]

15.4.14.9 REQUEST FOR REVIEW OF BOARD ACTION:

A. Any person aggrieved by an action of the board or one of its agents may request a hearing for the purpose of review of such action. The appellant shall file the request for hearing within 30 days of the date the action is taken. The request shall include the following:

(1) a statement of the facts relevant to the review of the action;

(2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;

(3) a statement of the arguments that the appellant considers relevant to the review of the action; and

(4) any other evidence considered relevant.

B. The hearing examiner will schedule the hearing as soon as practicable but in any event no later than 60 days from the date it receives the appellant's request for hearing. The hearing examiner may extend the 60 day time upon motion for good cause shown, or the parties may extend the 60 day time period

by mutual agreement. The hearing examiner shall issue notice of the hearing, which shall include:

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted;

(4) notice to any other parties to give prompt notice of issues controverted in fact or law; and

(5) all necessary telephone numbers if a telephonic hearing will be conducted.

C. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.

[15.4.14.9 NMAC - Rp, 15.4.14.9 NMAC, 2/23/2021]

15.4.14.10 RECORD OF PROCEEDING:

A. The record of the proceeding shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript shall bear the cost of transcription.

[15.4.14.10 NMAC - Rp, 15.4.14.10 NMAC, 2/23/2021]

15.4.14.11 DISCOVERY; SUBPOENAS:

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information,

the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

D. Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any administrative appeal, the appellant and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20, including all subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[15.4.14.11 NMAC - Rp, 15.4.14.11 NMAC, 2/23/2021]

15.4.14.12 PROCEDURES; EVIDENCE:

A. Any party may be represented by a person licensed to practice law in the state. An individual appellant may represent himself.

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence.

F. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board’s possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board’s specialized knowledge. Whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

G. The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

H. A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[15.4.14.12 NMAC - Rp, 15.4.14.12 NMAC, 2/23/2021]

15.4.14.13 CONDUCT OF PROCEEDING:

A. Unless the hearing examiner reasonably determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule.

B. In addition to any procedures described by the act, the following procedures shall apply:

(1) the appellant may present an opening statement on the merits and the appellee may make a statement of the

defense or reserve the statement until presentation of its case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of its petition;

(3) upon conclusion of appellant’s case in chief, the appellee may move for dismissal of the petition; the hearing examiner may suspend the hearing and refer the motion to the board, which shall grant, deny, or reserve decision on the motion, with or without argument, as soon as practicable but in no event later than its next regularly scheduled board meeting;

(4) if no motion to dismiss is made, or if the board denies or reserves decision on the motion, the appellee shall present its case in defense;

(5) upon conclusion of the appellee’s case, the appellant may present rebuttal evidence;

(6) after presentation of the evidence by the parties, the appellant may present a closing argument; the appellee then may present its closing argument, and the appellant may present a rebuttal argument; and

(7) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

[15.4.14.13 NMAC - Rp, 15.4.14.13 NMAC, 2/23/2021]

15.4.14.14 BURDEN OF PROOF: The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the board or its agents should be reversed or modified.

[15.4.14.14 NMAC - Rp, 15.4.14.14 NMAC, 2/23/2021]

15.4.14.15 CONTINUANCES: The hearing examiner shall not grant a continuance except for good cause shown.

[15.4.14.15 NMAC - Rp, 15.4.14.15 NMAC, 2/23/2021]

15.4.14.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:

A. Failure of the appellee to schedule a hearing within 60 days, unless the 60 day time period is extended, or of any party to appear at the hearing on the merits personally or by telephone, without having obtained a continuance may constitute a default and an admission on all matters and facts alleged by the opposing party and shall be deemed a waiver of the right to an evidentiary hearing on the matter. The hearing examiner may proceed to consider the matter, and the board may dispose of it, on the basis of the evidence before it.

B. If the appellee fails to schedule a hearing within 60 days, the appellant shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against the appellee:

(1) the appellee shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served; failure of the appellee to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) if the appellee timely files a response to the motion, the hearing examiner shall hear the matter; the hearing examiner may deny the motion and allow the appellee additional time to schedule a hearing on the merits if an accident, illness or other good cause prevented the appellee from timely scheduling a hearing.

C. If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

[15.4.14.16 NMAC - Rp, 15.4.14.16 NMAC, 2/23/2021]

15.4.14.17 RECOMMENDED ACTION; FINAL DECISION:

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law.

B. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than 45 days from the date of continuance.

C. Not more than 30 days after completion of the hearing, the hearing examiner shall prepare a written decision containing their recommendation of action to be taken by the board. The recommendation may propose to sustain, modify, or reverse the initial decision of the board or its agent.

D. Notice of the hearing examiner's recommended action shall be served on the parties as promptly as possible but in no event later than 15 days after the date of the hearing on the matter. Service shall be made by registered or certified mail.

E. The board shall accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action

taken to sustain, modify, or reverse the initial decision of the board or its agent.

F. The board may dismiss an appeal with or without prejudice without recommendation of the hearing officer, upon stipulation of the parties.

[15.4.14.17 NMAC - Rp, 15.4.14.17 NMAC, 2/23/2021]

15.4.14.18 EX PARTE COMMUNICATIONS:

A. No party or representative of any other person shall communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board shall communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.4.14.18 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as non-confidential is subject to the prohibition on ex parte communications withstanding the provisions of Subsections A and B of 15.4.14.18 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

D. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner

in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

E. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[15.4.14.18 NMAC - Rp, 15.4.14.18 NMAC, 2/23/2021]

15.4.14.19 TELEPHONIC HEARINGS:

A. Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific

reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

C. The location or locations of the parties during the hearing shall have a telephone and the means by which documents may be transmitted between the parties and hearing examiner.

D. The hearing officer shall initiate the telephone call. The petitioner and respondent are responsible for ensuring that the telephone number to their locations for the telephonic hearing is accurate and that they are available at the telephone number at the time the hearing is to commence. The board's staff shall conduct the hearing on a speaker phone and shall record the hearing, or in the alternative, shall provide a court reporter to transcribe the hearing. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the non-responsive party to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner. [15.4.14.19 NMAC - Rp, 15.4.14.19 NMAC, 2/23/2021]

15.4.14.20 APPEALS TO THE DISTRICT COURT: Pursuant to Subsection A of Section 60-2F-24 NMSA 1978, any person aggrieved by a final decision of the board issued pursuant to Section 15.4.14.17 NMAC may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. [15.4.14.20 NMAC - Rp, 15.4.14.20 NMAC, 2/23/2021]

HISTORY OF 15.4.14 NMAC: [RESERVED]

History of Repealed Material:

15.4.14 NMAC, Bingo and Raffles - Administrative Appeal, filed 3/27/2013 - Repealed 2/23/2021,

Other History:

15.4.14 NMAC, Bingo and Raffles - Administrative Appeal, filed 3/27/2013 Replaced by 15.4.14 NMAC, Bingo and Raffles - Administrative Appeal, effective 2/23/2021.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.500 NMAC, Section 8 effective 3/1/2021.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need

determination process: Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income

limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$885]	\$904
	(b)	
two persons	[\$1,199]	\$1,221
	(c)	
three persons	[\$1,511]	\$1,539
	(d)	
four persons	[\$1,824]	\$1,856
	(e)	
five persons	[\$2,138]	\$2,173
	(f)	
six persons	[\$2,451]	\$2,491
	(g)	
seven persons	[\$2,763]	\$2,808
	(h)	
eight persons	[\$3,077]	\$3,125
	(i)	

add [~~\$314~~] \$318 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

	(1)	one person
[\$1,041]		\$1,064
	(2)	two
persons	[\$1,410]	\$1,437
	(3)	three
persons	[\$1,778]	\$1,810
	(4)	four
persons	[\$2,146]	\$2,184
	(5)	five
persons	[\$2,515]	\$2,557
	(6)	six persons
[\$2,883]		\$2,930
	(7)	seven
persons	[\$3,251]	\$3,304
	(8)	eight
persons	[\$3,620]	\$3,677
	(9)	add [\$369]
\$374		for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

	(a)	one person	\$266
	(b)	two persons	\$357
	(c)	three persons	\$447
	(d)	four persons	\$539
	(e)	five persons	\$630
	(f)	six persons	\$721
	(g)	seven persons	\$812
	(h)	eight persons	\$922
	(i)	add \$91 for each additional person.	

E. Special needs:

(1) **Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW,

TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020; A/E, 10/01/2020; A, 3/1/2021]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8 effective 3/1/2021.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	one person	[\$885] \$904
	(b)	two persons	[\$1,199] \$1,221
	(c)	three persons	[\$1,511] \$1,539
	(d)	four persons	[\$1,824] \$1,856
	(e)	five persons	[\$2,138] \$2,173
	(f)	six persons	[\$2,451] \$2,491

(g) seven persons [\$2,763] \$2,808
 (h) eight persons [\$3,077] \$3,125
 (i) add [~~\$314~~] \$318 for each additional person

E. Standard of need:
 (1) As

published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic

needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:**

The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For

purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The

clothing allowance shall be allowed

for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The

clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental

issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one

time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be

eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

I. Minimum Benefit

Amount: Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020; A/E, 10/01/2020; A, 3/1/2021]

PRIVATE INVESTIGATIONS ADVISORY BOARD

This is an amendment to 16.48.1 NMAC, Sections 1, 2, 3, 7, 8 and 12, Effective 2/23/2021.

16.48.1.1 ISSUING

AGENCY: Regulation and Licensing Department [~~Private Investigations Advisory Board~~].

[16.48.1.1 NMAC - Re-pr, 16.48.1.1 NMAC, 9/24/2008; A, 2/23/2021]

16.48.1.2 SCOPE:

This part applies to the [~~board,~~] licensees, registrants, and applicants [~~and the general public~~].

[16.48.1.2 NMAC - Re-pr, 16.48.1.2 NMAC, 9/24/2008; A, 2/23/2021]

16.48.1.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Private Investigations Act, [~~Sections 61-27B-2, 61-27B-3, 61-27B-4,~~] Section 61-27B-5 [~~61-27B-12, 61-27B-22, 61-27B-28 and 61-27B-29~~] NMSA 1978.

[16.48.1.3 NMAC - Re-pr, 16.48.1.3 NMAC, 9/24/2008; A, 2/23/2021]

16.48.1.7 DEFINITIONS:

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

A. "act" means the

New Mexico Private Investigations Act;

B. "advisory board"

means the New Mexico private investigations advisory board;

~~[B:]~~ **C. "alarm company"**

means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;

~~[C:]~~ **D. "applicant"** means

any natural person who is applying for registration or licensure pursuant to the private investigations act;

~~[D:]~~ **E. "armored car**

company" [~~means a company that knowingly and willingly transports money and other negotiables for a fee~~]

or other remuneration] has the same meaning as defined in Subsection A of Section 61-27B-2 NMSA 1978;

E. “board” means the New Mexico private investigations advisory board;

F. “bodyguard” [means an individual who physically performs the mission of personal security for another individual] has the same meaning as defined in Subsection B of Section 61-27B-2 NMSA 1978;

G. “branch office” [means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager] has the same meaning as defined in Subsection C of Section 61-27B-2 NMSA 1978;

H. “charts” means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;

I. “client” [means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration] has the same meaning as defined in Subsection D of Section 61-27B-2 NMSA 1978;

J. “conviction” [means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended] has the same meaning as defined in Subsection E of Section 61-27B-2 NMSA 1978;

K. “department” [means the regulation and licensing department] has the same meaning as defined in Subsection F of Section 61-27B-2 NMSA 1978;

L. “good moral character” means a personal history characterized by honesty, fairness and respect for the rights of others and for state and federal law;

M. “individual” [means a single human being] has the same meaning as defined in Subsection G of Section 61-27B-2 NMSA 1978;

N. “legal business entity” [means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes] has the same meaning as defined in Subsection H of Section 61-27B-2 NMSA 1978;

O. “licensee” [means a person licensed pursuant to the Private Investigations Act] has the same meaning as defined in Subsection I of Section 61-27B-2 NMSA 1978;

P. “polygraph examiner” [means an individual licensed by the department to engage in the practice of polygraphy] has the same meaning as defined in Subsection J of Section 61-27B-2 NMSA 1978;

Q. “polygraph examination” also referred to as a psychophysiological detection of deception (PDD) means a test or series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

R. “polygraph instrument” means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

S. “polygraphy” [means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness] has the same meaning as defined in Subsection K of Section 61-27B-2 NMSA 1978 NMSA 1978;

T. “private investigation company” [means a legal business entity that provides

private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico] has the same meaning as defined in Subsection L of Section 61-27B-2 NMSA 1978;

U. “private investigator” [means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;

(5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;]

has the same meaning as defined in Subsection M of Section 61-27B-2 NMSA 1978;

V. “private investigations employee” [means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company performing all private investigator duties] has the same meaning as defined in Subsection N of Section 61-27B-2 NMSA 1978;

W. “private investigations manager” [means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs,

controls or manages a private investigation company for the owner of the company; and
 _____ (3) _____ is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;] has the same meaning as defined in Subsection O of Section 61-27B-2 NMSA 1978;

X. “private patrol company” [means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards] has the same meaning as defined in Subsection P of Section 61-27B-2 NMSA 1978;

Y. “private patrol operations employee” means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;]

Y. “private patrol employee” has the same meaning as defined in Subsection O of Section 61-27B-2 NMSA 1978;

Z. “private patrol operations manager” [means an individual who:

_____ (1) _____ is licensed as a private patrol operator or registered as a level three security guard, is issued a license by the department as a private patrol operations manager and is a New Mexico resident;

_____ (2) _____ directs, controls or manages a private patrol company for the owner of the company; and

_____ (3) _____ is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;] has the same meaning as defined in

Subsection R of Section 61-27B-2 NMSA 1978;

AA. “private patrol operator” [means an individual who is licensed by the department to:

_____ (1) _____ conduct uniformed or non-uniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

_____ (2) _____ prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

_____ (3) _____ perform the services required of a security guard or security dog handler or provide security services for an armored car company;]

has the same meaning as defined in Subsection S of Section 61-27B-2 NMSA 1978;

BB. “proprietary commercial organization” [means an organization or division of an organization that provides full- or part-time security guard services solely for itself] has the same meaning as defined in Subsection T of Section 61-27B-2 NMSA 1978;

CC. “provisional license” means a license to practice polygraphy for the probationary period that is required to determine operational competency;

DD. “psychologist” means an individual in good standing and licensed by the New Mexico board of psychologist examiners or another United States jurisdiction to engage in the practice of psychology;

EE. “registered agent” means registered agent means a business or individual designated to receive service of process or subpoena on behalf of a private investigations company or private patrol company licensed and doing business in New Mexico, located out of the state.

The registered agent must also be available to receive any informational notices or other documents on behalf of the licensee.

[DD:] FF. “registrant” [means an individual registered as a

private investigations employee, a private patrol operations employee or a security guard at any level] has the same meaning as defined in Subsection U of Section 61-27B-2 NMSA 1978;

[EE:] GG. “screening examination” means any examination that is non-specific and deals with general background information;

[FF:] HH. “security dog handler” [means an individual who patrols with dogs to detect illegal substances or explosives] has the same meaning as defined in Subsection V of Section 61-27B-2 NMSA 1978;

[GG:] II. “security guard” [means an individual who is registered to engage in uniformed or non-uniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect life and property or prevent thefts; and] has the same meaning as defined in Subsection W of Section 61-27B-2 NMSA 1978;

[HH:] JJ. “sponsor” means a licensed polygraph examiner;

[H:] KK. “special event” [means a parade or other public or private event of short duration requiring security] has the same meaning as defined in Subsection X of Section 61-27B-2 NMSA 1978;

[JJ:] LL. “specific event examination” means any examination that deals with a specific issue, crime or incident, criminal or otherwise;

[KK:] MM. “superintendent” means the superintendent of the regulation and licensing department;

[LL:] NN. “test data” means the psychological or physiological data recorded or collected during a psychological evaluation or polygraph examination;

[MM:] OO. “test data analysis” means the quantitative application of standardized scoring rules to the psychological or physiological test data and includes

the use of computerized scoring programs and interpretation of collateral and clinical information collected during the evaluation.

[16.48.1.7 NMAC - Re-pr, 16.48.1.7 NMAC, 9/24/2008; A, 1/15/2019; A, 2/23/2021]

16.48.1.8 CODE OF ETHICS AND CREED OF CONDUCT:

A. Code of ethics for private security management. As managers of private security functions and employees, we pledge:

(1)

to recognize that our principal responsibilities are, in the services of our organizations and clients, to protect life and property as well as to prevent and reduce crime against our business, industry, or other organizations and institutions; and in the public interest, to uphold the law and to respect the constitutional rights of all persons;

(2) to be

guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, client and employers; and in responsibilities to general public;

(3) to

strive faithfully to render security services of the highest quality and to work continuously to improve our knowledge and skills and thereby improve the overall effectiveness of private security;

(4) to uphold

the trust of our employers, our clients, and the public by performing our function within the law, nor ordering or condoning violations of law, and ensuring that our security personnel conduct their assigned duties lawfully and with proper regard for the rights of others;

(5) to respect

the reputation and practice of others in the private security field, but to expose to the proper authorities any conduct that is unethical or unlawful;

(6) to apply

uniform and equitable standards of employment in recruiting and selecting personnel regardless of

race, creed, color, sex or age and in providing salaries commensurate with job responsibilities and with training, education and experience;

(7) to

cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to our business;

(8) to respect

and protect the confidential and privileged information of employers and clients beyond the terms of our employment, except where their interests are contrary to law or to this code of ethics;

(9) to maintain

a professional posture in all business relationships with employers, and clients, with others in the private security field, and with members of other professions; and to insist that our personnel adhere to the highest standard of professional conduct;

(10)

to encourage the professional advancement of our personnel by assisting them to acquire appropriate security knowledge, education and training;

B. Code of ethics

for private security employees.

In recognition of the significant contribution of private security to crime prevention and reduction, as a private security guard, I pledge:

(1) to accept

the responsibilities and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institutions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons;

(2) to conduct

myself with honesty and integrity and to adhere to the highest moral principles in the performance of my security duties;

(3) to be

faithful, diligent and dependable in discharging my duties, and to uphold at all times the laws, policies, and procedures that protect the rights of

others;

(4) to observe

the precepts of truth, accuracy, and prudence without allowing personal feelings, prejudices, animosities or friendships to influence my judgments;

(5) to report

to my superiors, without hesitation, any violation of the law or of my employer's or client's regulation;

(6) to

respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to law or to this code of ethics;

(7) to

cooperated with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction;

(8) to accept

no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer;

(9) to conduct

myself professionally at all times, and to perform my duties in a manner that reflects positively upon myself, my employer, and private security;

(10) to strive

to continually to improve my performance by seeking training and educational opportunities that will better prepare me for my private security duties.

C. Code of ethics for

polygraph examiners.

(1) I shall at

all times conduct myself in a manner reflecting credit to the polygraph profession.

(2) I shall

deal fairly and impartially with all individuals, regardless of social, political, racial, religious, ethnic, economic or fraternal status.

(3) I shall keep

all decisions free of personal or any other extraneous influence and render unbiased opinion in all decisions.

(4) I shall not

publish misleading advertisements or claims concerning the polygraph profession. I shall advise each client

or examinee of the infeasibility of conducting an examination where I encounter conditions or circumstances that so warrant.

(5) I shall not conduct a polygraph examination of any person I have reason to believe may be mentally or physically unfit, without first seeking an opinion of medical, psychological or psychiatric authority, as appropriate, prior to testing.

(6) I shall not include an opinion in any decision or report relating to medical, psychological, psychiatric, legal, or any other field in which I am not qualified unless it relates to polygraph.

(7) I shall refrain from criticizing or maligning other polygraph examiners except as required by legal proceedings.

(8) I shall not testify concerning polygraph charts of another examiner until I have satisfied the requirements of NM Rule of Evidence 11-707, NMRA 2004.

(9) I shall support the professional goals of the polygraph profession at every opportunity.

(10) I shall consider the integrity and goals of the polygraph profession above my personal desires and ambitions.

D. Polygraphy creed of conduct: To encourage uniformity of procedures, enhance the image of polygraphy, promote the welfare of the public, establish standards and promote an understanding among all polygraphers operating in the state of New Mexico, the following standards of principle are endorsed.

(1) The primary goal of a polygraph examination is to assess ~~[truth or deception]~~ reactions pertaining to chart evaluations, respecting all rights of the examinee and using proper polygraph techniques and procedures accepted profession wide.

(2) No examinee will be compelled to take a polygraph examination except in compliance with existing law or terms of probation or parole. No force, threats, duress, coercion or promises

will be made by a licensee in an effort to complete a polygraph examination.

(3) A minimum of three charts is required to reach a conclusive diagnostic opinion in any polygraph examination conducted by a licensee.

(4) Inquiries into the personal life, sexual habits, political or religious principles, or any other aspects of one's life that are not connected to, or necessary for, addressing the issue concerned will not be made.

(5) Examinations addressing secondary aspects of an unresolved direct issue will not be made merely to avoid or circumvent addressing a primary issue or to satisfy the personal desires of the examinee or client.

(6) Information concerning polygraph examinations will not be released to unauthorized persons. This does not preclude consultation with other examiners, or testimony before legal proceeding or other duly constituted authority, or information requested by the department.

(7) It is the responsibility of each examiner to promote proper polygraph procedures. Knowledge of deliberate violations of the law governing polygraphy should be brought to the attention of the department. ~~[and any]~~ Any relevant issue shall be presented to national professional association for consideration and action, if appropriate.

(8) Any polygraph examiner conducting a registered business in the state of New Mexico must show proof of full time residency in the state while conducting business in the state. Any exception shall be heard or proved by the department.

(9) Anyone conducting a polygraph exam in the state of New Mexico must be licensed by the state.

[16.48.1.8 NMAC - Re-pr, 16.48.1.8 NMAC, 9/24/2008; A, 2/23/2021]

16.48.1.12 CUSTODY AND ALTERATION OF LICENSES:

A. Licenses and registrations issued by the department are at all times the property of the department, and may remain in the custody of the licensee or registrant only as long as the licensee or registrant complies with the act and department rules.

B. Licenses shall not be altered in any way.

C. Inspectors or ~~[board]~~ department designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment. [16.48.1.12 NMAC - Re-pr, 16.48.1.12 NMAC, 9/24/2008; A, 2/23/2021]

PUBLIC EDUCATION DEPARTMENT

This is an emergency amendment to 6.12.14 NMAC, Sections 6, 7, 8, 9, 10, 11, and 12, effective 2/11/2021.

6.12.14.6 OBJECTIVE:

This rule establishes the requirements for ~~[public school compliance with the department's COVID-19 school reentry guidance in order to protect and support the safe and healthy school attendance of New Mexico students, and safe and healthy working environment for teachers, faculty, staff, and administration]~~ public schools' operation during the pandemic.

[6.12.14.6 NMAC – N/E, 12/3/2020, A/E, 2/11/2021]

6.12.14.7 DEFINITIONS:

~~[A. "At-risk students" means students who are English learners, economically disadvantaged, Native American, highly mobile, or who have a disability.]~~

~~[B.]~~ **A. "Formative assessment"** means measures of academic achievement during the learning process.

~~[C.]~~ **B. "Full reentry operating category"** means the instructional model that permits

all students to return to in-person learning for the full school week, with continued use of preventative measures including COVID-Safe Practices and other practices in department guidance.

~~(D)~~ **C. “High-risk staff”** means [adult persons] a person employed by a school or school district [with the following underlying condition] who is 65 years of age or older or has one or more of the following conditions that [make them more at risk for severe illness from the virus that causes COVID-19] places the person at an increased risk of severe illness from the virus that causes COVID-19:

- (1) cancer;
- (2) chronic kidney disease;
- (3) chronic obstructive pulmonary disease;
- (4) [heart conditions such as heart failure] down syndrome;
- (5) heart conditions such as heart failure, coronary artery disease or [cardiomyopathy] cardiomyopathies;
- (6) immunocompromised state (weakened immune system) from solid organ transplant;
- ~~(6)~~ (7) severe obesity (body mass index greater than [or equal to 30kg/m²] 40 kg/m²);
- ~~(7)~~ (8) pregnancy;
- ~~(8)~~ (9) sickle cell disease;
- (9) smoking;
- (10) type 1 diabetes mellitus;
- ~~(11)~~ (10) type 2 diabetes mellitus;
- (12) moderate-to-severe asthma;
- (13) cerebrovascular disease;
- (14) cystic fibrosis;
- (15) hypertension or high blood pressure;
- (16) immunocompromised state from blood or bone marrow transplant;
- (17) immune deficiencies;

- (18) HIV;
- (19) use of corticosteroids or other immune-weakening medications;
- (20) neurologic conditions such as dementia;
- (21) liver disease;
- (22) pulmonary fibrosis; and
- (23) thalassemia.

E. “High-risk students” means students with certain underlying health conditions that may make them more at risk for severe illness from the virus that causes COVID-19, including but not limited to:

- (1) obesity;
- (2) medical complexity;
- (3) severe genetic disorders;
- (4) severe neurologic disorders;
- (5) inherited metabolic disorders;
- (6) sickle cell disease;
- (7) congenital heart disease;
- (8) diabetes;
- (9) chronic kidney disease;
- (10) asthma and other chronic lung disease; and
- (11) immunosuppression due to malignancy or immune-weakening medications.]

F. D. “Hybrid operating category” means the instructional model wherein schools assign a combination of some in-person learning days and some remote learning days, while limiting the number of students who may be in the school building at any given time by the number that can be accommodated while adhering to at least six feet of social distancing and other criteria provided in guidance documents, including limitations on the percentage of students eligible to be on school premises at one time.

G. “Interim assessment” means an assessment

conducted three to four times a year to assess specific skills and to identify those at risk academically;]

H. E. “Remote operating category” means the instructional model that requires all students to engage in [online] remote learning, with limited possible exceptions [for small groups], as defined in department guidance, of students with disabilities and students in grades pre-kindergarten through grade three to engage in in-person learning [such as students receiving special education services. The student to teacher ratio in small groups shall be provided in department guidance.] Schools should take all practical measures to provide each student with a digital device and to provide support for in-home internet connectivity. [6.12.14.7 NMAC – N/E, 12/3/2021, A/E, 1/29/2021, A/E, 2/11/2021]

6.12.14.8 [GENERAL REQUIREMENTS AND CONSIDERATIONS FOR SCHOOLS IN ALL OPERATING CATEGORIES] REQUIREMENTS FOR SCHOOLS:

- A.** All public schools and local school districts shall:
- (1) follow [guidelines appropriate to the school or school district’s safe reentry category, as determined by criteria established by the New Mexico department of health and the department] all public health orders and executive orders and department guidance for the operation of schools and school premises, including school transportation;
 - (2) participate in [a] surveillance [and rapid response testing program for all staff] testing programs detailed in department guidance;
 - (3) adhere to social distancing requirements [according to their safe reentry category];
 - ~~(4)~~ avoid large group gatherings;]
 - ~~(5)~~ (4) require all [staff and students] persons on school premises, and in school vehicles, to wear face coverings per department

guidance and current statewide public health orders;

~~[(6) — administer daily temperature checks and review of potential symptoms, as well as working with state and local health officials to have a plan for contact tracing;]~~

~~[(7) (5) [when providing transportation:] cooperate immediately and fully with department officials, environment department officials, fire marshals, state police and other officials conducting site visits and investigating COVID-safe practices; and~~

~~[(a) — require all staff and students to wear face coverings;~~

~~[(b) — limit the number of students permitted on each bus seat pursuant to current department guidance;]~~

~~[(8) — provide meals to students during both in-person instruction and remote learning]~~

~~[(9) (6) to the extent possible, [consider] implement practices to promote social emotional learning, support high quality teaching and learning, and effectively communicate with tribal communities and families.~~

B. COVID-19 safe practices. All local school districts and public schools shall maintain communication with ~~[local and state] department of health officials [and participate in contact tracing efforts and specimen collection efforts as directed by state and local health officials; and]~~ shall report all confirmed cases of COVID-19 in students, staff, contractors and volunteers to the department and the environment department as appropriate; and shall perform all COVID-19 safe practices described or referenced in department guidance, such as:

(1) [work] working with school administrators, school nurses, and other healthcare providers to identify an isolation room or area to separate anyone who exhibits COVID-like symptoms;

(2) closing off and limiting access to areas potentially affected by COVID-19 exposure and, if possible, wait 24 hours before cleaning and disinfecting;

[(2) (3) [require] requiring school nurses and other healthcare providers to use centers for disease control and prevention (CDC) recommended standard precautions when caring for sick people, including:

(a) engaging in frequent hand hygiene;

(b) using personal protective equipment when there is an expectation of possible exposure to infectious material;

(c) following respiratory hygiene and coughing etiquette;

(d) ensuring appropriate patient placement in quarantine or isolation;

(e) ensuring the proper handling and disinfection of patient care equipment and instruments;

(f) ensuring the careful handling of textiles and laundry;

(g) following safe injection practices; and

(h) ensuring healthcare provider safety, including proper handling and disposal of needles and other sharps.

[(3) (4) [require] requiring school nurses and other healthcare providers to use CDC recommended transmission-based precautions when caring for sick people, including:

(a) [establish] establishing procedures for safely transporting anyone who is sick home or to a healthcare facility;

[(b) — notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable federal and state privacy laws;]

[(c) (b) close [off school building if used by

a COVID-19-positive sick person and do not use again before cleaning and disinfection] closing for 24 hours parts of school buildings if used by a COVID-19 infected person then clean and disinfect before re-opening affected areas;

[(d) — wait 24 hours before cleaning and disinfecting, unless it is impossible to wait 24 hours, in which case wait as long as possible;]

[(e) (c) [advise] advising sick staff members and children not to return until they have met New Mexico department of health criteria to discontinue home isolation; and

[(f) (d) [inform] informing those who have had close contact with a person diagnosed with COVID-19 to stay home and follow New Mexico department of health guidance [if symptoms develop or if a person does not have symptoms, follow appropriate New Mexico department of health guidance for home quarantine; and].

[(g) — contact New Mexico department of health to activate contact tracing.]

C. Small group instruction. School districts and schools are permitted to provide small group instruction pursuant to department guidance regardless of whether the school district or school is in the remote learning, hybrid learning, or full reentry operational model.

D. Continuation of Remote Learning. When in-person learning is available through a hybrid operational model or full reentry operational model, school districts and schools shall continue to offer remote learning to students who choose remote learning.

E. Transportation. School districts and schools shall follow department guidance, which requires students to sit in spaced and assigned seating while being transported to and from schools, limits the number of students who may be seated together on a bus seat, and sets forth detailed requirements

and suggestions for COVID-19 safe practices for the transportation of students.

F. Student movement and gathering.

School districts and public schools in the hybrid operating category shall keep students' and student groups' movements and gatherings safe pursuant to current department guidance, which presently includes:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(b) planning staggered class changes to decrease the number of students in the hallways at one time;

(c) having the same group of students stay with the same staff in elementary school; and

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current public health orders;

(b) prohibiting the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces as weather permits for social distancing; and

(e) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events.

[E-] **G. Staffing.** All school districts and schools shall follow [guidelines in current statewide]

public health orders, [All local school districts and public schools shall] executive orders and department guidance and shall:

(1) train staff in local and state rules regarding health and safety procedures, such as appropriate use of personal protective equipment and procedures for when school personnel or students exhibit symptoms of COVID-19;

(2) establish processes, aligned with school district or charter school human resource departments to process formal requests from COVID-19 high-risk staff to work remotely; and

(a) consider formal requests from COVID-19 high-risk staff to work remotely;

(b) consider the circumstances of school personnel who live with someone who is in a COVID-19 high-risk group; and

(c) other criteria as stated in department of public education guidance.]

(3) adhere to department guidance stating that work that may be performed remotely should be performed remotely.

For certain work that may only be performed on school premises, schools and districts may require staff to physically report to the building.

Examples include food service preparation and delivery; work done to clean, maintain, supervise, and sanitize LEA premises, property, materials, and supplies; instructional services provided to students in-person; and any other work that cannot physically be performed off-site. For work that need not be done on school campus, such as most professional development, staff meetings and team planning, and fully remote instruction, staff's presence on school premises shall not be required.

However, if the school district or school deems it to be safe, then staff whose work need not be physically performed on school premises may choose to work on the school premises.

H. Tribal sovereignty.

School districts and schools shall honor tribal sovereignty and abide by applicable tribal public health orders, tribal executive orders and tribal council resolutions.

[6.12.14.8 NMAC – N/E, 12/3/2020, A/E, 1/29/2021, A/E, 2/11/2021]

6.12.14.9 [LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE REMOTE OPERATING CATEGORY:

A. COVID-19 safe practices:

(1) Local school districts and public schools shall implement requirements for COVID-19 safety, including:

(a) closing off and limiting access to areas potentially affected by COVID-19 exposure and, if possible, wait 24 hours before cleaning and disinfecting;

(b) leveraging virtual tools and platforms whenever possible to conduct essential business, and keep in-person reporting to a minimum;

(c) using social media and other methods of communication to inform parents, students, and staff about COVID-19 symptoms, preventative measures, good hygiene, and school district- and school-specific protocols; and

(d) providing support for students, families, and school personnel in their protection of high-risk students and staff; and developing and communicating guidelines for how best to support students, families, and school personnel.

(2) During periods of school closure, local school districts and schools shall require in-person reporting only of staff performing essential services such as food preparation and delivery, cleaning, and sanitation. Provided they wear face coverings and practice social distancing, teachers may reenter school premises at their own choosing to conduct remote learning.

(3) If feasible, local school districts and public

schools may permit school buildings to remain open for limited numbers of students and staff to continue in-person instruction and services for students in prekindergarten to third grade and for students with special needs, at a maximum ratio of five students to one teacher.

B. Transportation of Students. If feasible, local school districts and public schools shall transport students with special needs and students in prekindergarten through third grade who still may be physically attending school on a limited basis:

- C. Meal service.**
- (1) Local school districts and public schools in the remote operating category shall:
- (a) establish food distribution sites both at district buildings and at particular bus stops or routes to the greatest extent practicable and in line with the accessibility needs of the local community;
- (b) practice social distancing protocols;
- (c) provide face coverings to staff pursuant to guidance from the department;
- (d) provide face coverings to students who left their face coverings at home; and
- (e) provide personal protective equipment to all participating staff.
- (2) Local school districts and public schools in the remote category shall also consider additional practices to promote COVID-19 safety for meal service, including:
- (a) delivering a week's worth of meals during a designated time; and
- (b) distributing supplemental instructional materials and printed school and school district communications along with meals.
- (3) During periods of school closure, school buses may be used to deliver meals to students and families.

D. Student movement and gathering. If small groups of prekindergarten to third grade students or students with disabilities are meeting, public schools shall keep cohorts together and minimize all transitions, including those between classrooms, to lunch or recess, and to school buses. Local school districts and public schools shall abide by the maximum number of people allowed to congregate as defined in current statewide public health orders.]

[RESERVED]

[6.12.14.9 NMAC – N/E, 12/3/2020, A/E, 1/29/2021; Repealed 2/11/2021]

6.12.14.10 [LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE HYBRD OPERATING CATEGORY:

- A. COVID-19 safe practices.** Local school districts and public schools in the hybrid operating category shall implement requirements for COVID-19 safety, including requirements to:
- (1) afford adequate space for all staff and students to maintain at least six feet of social distance at all times;
- (2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;
- (3) screen all students and staff for COVID-19 symptoms to the greatest extent feasible, such as temperature screenings and daily health check questionnaires for all students and staff;
- (4) inform and educate parents and families to be alert for signs of illness in their children and to keep their children home from school when they are sick;
- (5) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;
- (6) isolate and deep-clean COVID-19-impacted classrooms and other areas of school premises;
- (7) teach and reinforce good hygiene measures,

such as handwashing, covering coughs, and appropriate use of face coverings;

(8) provide hand soap, hand sanitizer with at least sixty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(9) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(10) provide face coverings and other appropriate personal protective equipment to staff;

(11) require students and staff to wear face coverings unless a valid medical reason is provided;

(12) allow students and staff to bring hand sanitizer and face coverings and shields from home;

(13) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(14) take steps to ensure all water systems and features, including water fountains that cannot be shut off, are safe;

(15) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and

(16) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering School Buildings. Local school districts and public schools in the hybrid operating category shall implement practices for safely entering school buildings, including:

(1) mandating face coverings for all students and staff pursuant to department guidance;

(2) while maintaining confidentiality, screening all staff daily before being permitted to enter school buildings, including

temperature checks and reviews of potential symptoms;

(3) isolating and sending home students and staff who register temperatures greater than 100.4 degrees fahrenheit or 38 degrees celsius or exhibit COVID-19 symptoms;

(4) working with state and local health officials to implement school contact-tracing;

(5) restricting non-essential school visitors and volunteers;

(6) establishing a protocol for essential visitors, including calling the front office before entering school premises and requiring the use of face coverings;

(7) avoiding large group gatherings;

(8) marking spaced lines to enter school buildings and designating entrance and exit flow paths;

(9) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;

(10) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and

(11) establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.

C. Protecting high-risk students and staff. Local school districts and public schools in the hybrid operating category shall:

(1) when possible, employ additional nurses, healthcare aides, and fulltime substitute employees;

(2) provide a remote learning option;

(3) consult with local school board attorneys and school district human resources officials to offer special accommodations to personnel who are members of high-risk populations, such as alternative teaching assignments;

(4) adhere to the requirements of the federal Family Educational Rights and Privacy Act and the federal Health Insurance Portability and Accountability Act; and

(5) adhere to state and federal employment law and extended leave allowances.

D. Transportation of students. Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:

(1) limiting students to one per bus seat to the best of their ability, including encouraging parents to drive their children to school when possible, staggering bus routes, and expanding the minimum radius of eligibility for bus service;

(2) requiring students to sit in spaced and assigned seating of no more than two per bus seat when not possible to limit students to one per bus seat;

(3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;

(4) providing hand sanitizer for students, bus drivers, and bus attendants;

(5) providing face coverings for bus drivers and attendants;

(6) requiring students, bus drivers, and bus attendants to wear face coverings;

(7) screening students, bus drivers, and bus attendants for symptoms of illness;

(8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities association guidelines for sports and extracurricular activities;

(9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;

(10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;

(11) airing out

buses not in use; and

(12) restricting group transportation, including carpooling.

E. Meal service.

Local school districts and public schools in the hybrid operating category shall provide meals to students participating in remote learning on a given day per remote guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the hybrid category shall [consider] implement additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoid sharing of food and utensils.

F. Student movement and gathering. Local school districts and public schools in the hybrid operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day;

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff – all day for children in prekindergarten through third grade, and as much as feasible for other children; and

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) prohibiting the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces as weather permits for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before

the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing.];

[RESERVED]

[6.12.14.10 NMAC – N/E, 12/3/2020, A/E, 1/29/2021; Repealed 2/11/2021]

6.12.14.11 [LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE FULL REENTRY OPERATING CATEGORY:

A. COVID-19 safe practices. Local school districts and public schools in the hybrid operating category shall [consider implementing] implement requirements for COVID-19 safety, including requirements to:

(1) mandate that all persons on school premises practice social distancing to the greatest extent possible at all times;

(2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;

(3) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;

(4) teach and reinforce good hygiene measures, such as handwashing, covering coughs, and appropriate use of face coverings;

(5) provide hand soap, hand sanitizer with at least sixty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(6) require students and staff to wear face coverings unless they have a valid medical reason why they cannot;

(7) post signs in classrooms, hallways, and entrances, to communicate how to stop the spread of COVID-19;

(8) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(9) provide face coverings and other appropriate personal protective equipment to staff;

(10) require students and staff to wear face coverings unless a valid medical reason is provided;

(11) allow student and staff to bring hand sanitizer and face coverings and shields from home;

(12) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(13) take steps to ensure all water systems and features, including water fountains that cannot be shut off, are safe;

(14) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and

(15) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering school buildings. Local school districts and public schools in the full reentry operating category shall consider practices for safely entering school buildings, including:

(1) mandating face coverings for all students and staff per department guidance and current statewide public health orders;

(2) while maintaining confidentiality, screening all staff daily before being permitted to enter school buildings, including temperature checks and reviews of potential symptoms;

(3) isolating and sending home students and staff who register temperatures of greater than 100.4 degrees fahrenheit or 38 degrees celsius;

(4) working with state and local health officials to have a plan for contact tracing;

(5) restricting non-essential school visitors and

volunteers;

(6) establishing a protocol for essential visitors, including calling the front office before entering school premises and requiring the use of face coverings;

(7) avoiding large group gatherings;

(8) marking spaced lines to enter school buildings and designating entrance and exit flow paths;

(9) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;

(10) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and

(11) establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.

C. Protecting high-risk students and staff. Local school districts and public schools in the full reentry operating category shall:

(1) establish a point of contact with the local health department;

(2) identify local COVID-19 testing sites;

(3) provide hand sanitizer of at least sixty percent alcohol content to students and staff;

(4) allow high-risk students to complete coursework virtually;

(5) establish a process for regular check-ins with high risk staff and students;

(6) allow an early transition period for high-risk students to go to classes; and

(7) avoid large group gatherings and interactions

D. Transportation of students. Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:

(1) following current department guidance; at the

time of publication this includes limiting students to [one] two students per bus seat to the best of their ability; encouraging parents to drive their children to school when possible; staggering bus routes, and expanding the minimum radius of eligibility for bus service;

(2) when not possible to limit students to two per bus seat, requiring students to sit in spaced and assigned seating of no more than two per bus seat;

(3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;

(4) providing hand sanitizer for students, bus drivers, and bus attendants;

(5) providing face coverings for bus drivers and attendants;

(6) requiring students, bus drivers, and bus attendants to wear face coverings;

(7) screening students, bus drivers, and bus attendants for symptoms of illness;

(8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities-association guidelines for sports and extracurricular activities;

(9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;

(10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;

(11) airing out buses not in use; and

(12) restricting group transportation, including carpooling.

E. Meal service. Local school districts and public schools in the full reentry operating category shall provide meals to high-risk students participating in remote learning on a given day per remote-guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the full reentry operating category

shall also consider additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoiding sharing of food and utensils.

F. Student movement and gathering. Local school districts and public schools in the full reentry operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff all day for children in prekindergarten through third grade, and as much as feasible for other children; and

(e) when self-contained classrooms are not feasible, having teachers rotate, rather than students;

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) discouraging the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces – as weather permits – for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association’s guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing.]

[RESERVED]

[6.12.14.11 NMAC – N/E, 12/3/2020, A/E, 1/29/2021; Repealed 2/11/2021]

6.12.14.12 [SUPPORTS-AND-SERVICES-FOR-AT-RISK-STUDENTS:

All local school districts and public schools shall develop learning opportunities for students that are culturally and linguistically relevant, and maintain maintenance of effort for special education students.

A. Remote operating category. All local school districts and public schools in the remote operating category shall consider additional support for at-risk students, including:

(1) recording online instruction for students to re-watch;

(2) implementing small group instruction in order to meet students’ individual learning needs;

(3) identifying and implementing relevant formative assessments that may be specific to at-risk student groups to accelerate student learning;

(4) ensuring synchronous remote learning that includes explicit language practice for English language learners;

(5) providing support at the word, sentence and discourse levels;

(6) ensuring English language development instruction continues to be appropriate to the grade level and the English language proficiency level of the students;

(7) considering bringing Special Education students to school for services that cannot be provided remotely or implemented during distance learning; and

(8) providing communication in a language families can understand, at no charge to families.

B. Hybrid operating category. All local school districts and public schools in the hybrid operating category shall consider additional support for at-risk students, including:

(1) prioritizing scheduling for English language

learners, Native American students and students with disabilities;

(2) considering Native American tribes, pueblos, nations, and urban Native American organizations’ reopening plans, which may differ from state and department guidance;

(3) considering the length of commute-time required of rural students, as full days maybe better than half days when distance is an issue;

(4) having extra PPE available for students who lack or forget them; and

(5) consider allowing small groups of special education students to continue in-person instruction.

C. Full reentry operating category. All local school districts and public schools in the full reentry operating category shall consider additional supports for at-risk student, including:

(1) considering all the regular aspects of schooling, such as designated English language development time for special education students;

(2) identifying and implementing relevant formative assessments that may be specific to at-risk students groups to accelerate student learning;

(3) implementing small group instruction in order to meet students’ individual learning needs; and

(4) providing high-quality academic language instruction throughout the day, during which English language development instruction should continue to be appropriate to the grade level and the English language proficiency level of the students.] **[RESERVED]**

[6.12.14.12 NMAC – N/E, 12/3/2020; Repealed 2/11/2021]

HISTORY OF 6.12.14 NMAC:

[RESERVED]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**

EXECUTIVE ORDER 2021-004

**RENEWING THE STATE
OF PUBLIC HEALTH
EMERGENCY INITIALLY
DECLARED IN EXECUTIVE
ORDER 2020-004, OTHER
POWERS INVOKED IN
THAT ORDER, AND ALL
OTHER ORDERS AND
DIRECTIVES CONTAINED IN
EXECUTIVE ORDERS TIED
TO THE ONGOING PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of February 4, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 26 million people have been infected in the United States, with over 445,000 related deaths, and the New Mexico Department of Health has reported 176,211 positive COVID-19 cases and 3,355 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the

spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020- 064, 2020-073, 2020-080, 2020-085, and 2021-001 shall be renewed and extended through March 5, 2021.

2. All other powers, directives, and orders invoked in

Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, 2020-037, 2020-039, 2020-056, 2020-063, 2020-072, and 2020-075.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on February 5, 2021 and shall remain in effect until March 5, 2021 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 5TH DAY OF
FEBRUARY 2021**

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

/S/MICHELLE LUJAN
GRISHAM GOVERNOR

**GOVERNOR,
OFFICE OF THE**

EXECUTIVE ORDER 2021-006

**ORDER RESCINDING
EXECUTIVE ORDER 2020-075
AND INSTITUTING ADVISORY
QUARANTINE AND TESTING
FOR INDIVIDUALS TRAVELING
TO NEW MEXICO**

WHEREAS, I issued Executive Order 2020-075 on October 29, 2020, directing individuals traveling to New Mexico to self-isolate or self-quarantine

for a limited period in order to mitigate and contain the spread of COVID-19 in New Mexico pursuant to the All Hazards Emergency Management Act, NMSA 1978, § 12-10-1 to -10 (2007);

WHEREAS, the distribution of COVID-19 vaccines is currently underway throughout New Mexico and the United States; and

WHEREAS, the infection rate of COVID-19 in New Mexico has decreased since the distribution of vaccines was initiated, and the test positivity rate for the State indicates sufficient testing continues to occur.

NOW THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **RESCIND** Executive Order 2020-075, and **ADVISE**, as follows:

1. All persons who have arrived in New Mexico from another state or from outside the United States are recommended to self-isolate or self-quarantine for a period of at least 14 days from the date of their entry into the State of New Mexico or for the duration of their presence in the State, whichever is shorter.

2. Travelers arriving in New Mexico should be tested for COVID-19 as promptly as possible following their arrival to New Mexico.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on February 10, 2021 and shall remain in effect until rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 10TH DAY OF FEBRUARY 2021

ATTEST:
/S/MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/MICHELLE LUJAN
GRISHAM GOVERNOR

**End of Other Material
Related to Administrative
Law**

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 12
Issue 2	January 14	January 26
Issue 3	January 28	February 9
Issue 4	February 11	February 23
Issue 5	February 25	March 9
Issue 6	March 11	March 23
Issue 7	March 25	April 6
Issue 8	April 8	April 20
Issue 9	April 22	May 4
Issue 10	May 6	May 25
Issue 11	May 27	June 8
Issue 12	June 10	June 22
Issue 13	June 24	July 7
Issue 14	July 8	July 20
Issue 15	July 22	August 10
Issue 16	August 12	August 24
Issue 17	August 26	September 14
Issue 18	September 12	September 28
Issue 19	September 30	October 13
Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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