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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXII, Issue 18

September 28, 2021

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### **ECONOMIC DEVELOPMENT DEPARTMENT**

Notice of Proposed Rulemaking.....1095

#### **ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

##### **FORESTRY DIVISION**

Notice of Proposed Rulemaking.....1095

#### **HEALTH, DEPARTMENT OF**

Notice of Public Hearing.....1097

#### **HOME INSPECTORS BOARD**

New Mexico Home Inspectors Board Meeting and Rule Hearing Notice.....1100

#### **HUMAN SERVICES DEPARTMENT**

##### **INCOME SUPPORT DIVISION**

Notice of Emergency Rulemaking.....1102

##### **MEDICAL ASSISTANCE DIVISION**

Notice of Rulemaking/Newspaper Notices.....1102

#### **MEDICAL BOARD**

Notice of Public Hearing.....1104

#### **PUBLIC EDUCATION DEPARTMENT**

Notice of Limited Rehearing in Rulemaking.....1105

Notice of Proposed Rulemaking.....1106

#### **PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

Notice of PERA Rulemaking.....1108

#### **RACING COMMISSION**

Notice of Public Meeting and Rule Hearing.....1108

#### **REGULATION AND LICENSING DEPARTMENT**

##### **ATHLETIC TRAINERS PRACTICE BOARD**

Notice of Public Rule Hearing and Regular Board Meeting.....1110

##### **CANNABIS CONTROL DIVISION**

Notice of Proposed Rulemaking.....1111

##### **NUTRITION AND DIETETICS PRACTICE BOARD**

Notice of Public Rule Hearing and Regular Board Meeting.....1112

##### **PODIATRY, BOARD OF**

Notice of Public Rule Hearing and Regular Board Meeting.....1113

##### **PSYCHOLOGIST EXAMINERS, BOARD OF**

Notice of Public Rule Hearing and Regular Board Meeting.....1114

##### **SPEECH-LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS BOARD**

Notice of Public Rule Hearing and Regular Board Meeting.....1116

**SECRETARY OF STATE**

Notice of Proposed Rulemaking.....1118

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

Notice of Proposed Rulemaking.....1119  
Notice of Public Hearing.....1119  
Notice of Proposed Rulemaking.....1120

**Adopted Rules**

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

**HUMAN SERVICES DEPARTMENT**

**INCOME SUPPORT DIVISION**

8.100.100 NMAC A General Operating Procedures.....1121  
8.100.640 NMAC A Restoration and Claims.....1122  
8.102.500 NMAC A/E Eligibility Policy - General Information.....1122  
8.106.500 NMAC A/E Eligibility Policy - General Information.....1123  
8.139.120 NMAC A/E Case Administration - Case Management.....1125

**PUBLIC EDUCATION DEPARTMENT**

6.30.12 NMAC A K-5 Plus Schools.....1128

**REGULATION AND LICENSING DEPARTMENT**

**ALCOHOLIC BEVERAGE CONTROL DIVISION**

15.10.31 NMAC R Premises - General Requirements.....1131  
15.10.31 NMAC N Premises - General Requirements.....1131  
15.10.2 NMAC A Definitions.....1132  
15.10.32 NMAC A Premises - Location and Description of Licensed Premises.....1135  
15.10.33 NMAC A Premises - Minors on Licensed Premises.....1136  
15.10.51 NMAC A Sales - Restrictions on Sales.....1137  
15.10.52 NMAC A Segregated Alcohol Sales.....1139  
15.10.53 NMAC A Sales - Wholesalers.....1140  
15.10.54 NMAC A Sales - Clubs.....1141  
15.10.55 NMAC A Internet Sales.....1142  
15.10.61 NMAC A Citations - Fines and Penalties.....1143  
15.10.70 NMAC A Operation and Profiting by Authorized Persons and Alternating Proprietorships.....1147  
15.11.20 NMAC N Licenses and Permits - Alcoholic Beverage Delivery.....1148  
15.11.2 NMAC A Required Documents on Licensed Premises.....1150  
15.11.21 NMAC A Licenses and Permits - Applications.....1151  
15.11.22 NMAC A Licenses and Permits - Renewal and Suspension.....1151  
15.11.23 NMAC A Licenses and Permits - Change in Licensee.....1152  
15.11.24 NMAC A Licenses and Permits - Restaurant License.....1153  
15.11.25 NMAC A Licenses and Permits - Special Dispenser and Public Celebration Permits.....1154  
15.11.26 NMAC A Licenses and Permits - Fees.....1156  
15.11.27 NMAC A Licenses and Permits - Inter-Local Option District Transfers.....1157  
15.11.28 NMAC A Licenses and Permits - Bed and Breakfast License.....1157  
15.11.29 NMAC A Licenses and Permits - Tasting Permits.....1157  
15.11.30 NMAC A Purchasing Cooperatives.....1158  
15.11.31 NMAC A Alcohol Server Training - Certification.....1158

**REGULATION AND LICENSING DEPARTMENT  
CANNABIS CONTROL DIVISION**

16.8.2 NMAC	A/E	Licensing and Operational Requirements for Cannabis Establishments.....	1159
-------------	-----	---	------

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

13.10.34 NMAC	A/E	Standards for Accident Only, Specified Disease of Illness, Hospital Indemnity, and Related Excepted Benefits.....	1164
---------------	-----	---	------

---

**Other Material Related to Administrative Law**

**GOVERNOR, OFFICE OF THE**

Governor’s Executive Order 2021-054.....	1165
--	------

**HEALTH, DEPARTMENT OF**

9/15/2021 Amended Public Health Order - Masks.....	1165
9/15/2021 Amended Public Health Order - Vaccine.....	1167

**REGULATION AND LICENSING DEPARTMENT**

**ALCOHOLIC BEVERAGE CONTROL DIVISION**

Notice of Minor Nonsubstantive Correction.....	1171
--	------

**CANNABIS CONTROL DIVISION**

Notice of Minor Nonsubstantive Correction.....	1171
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Notices of Rulemaking and Proposed Rules

**ECONOMIC  
DEVELOPMENT  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

**Public Hearing.** The New Mexico Economic Development Department (EDD) hereby gives notice that it will conduct a virtual public hearing on Thursday, November 4, 2021, from 10:00am to 11:00 am (MDT). The purpose of the public hearing is to receive public commentary on the proposed rulemaking to make emergency rule, 2.92.1 NMAC, Public Finance, LEDA Recovery Grant, permanent.

**Rule Information:** The New Mexico Economic Development Department (NMEDD) issued a temporary emergency rule on April 16, 2021, which was in response to the current state of public health emergency regarding COVID-19 and 2021 House Bill 11, adding a new section of the Local Economic Development Act establishing grants to reimburse rent, lease or mortgage payments for certain businesses deemed “recovery entities” under that Act. The rule was enacted to avoid causing an imminent peril to the public health, safety or welfare and only applies to the grant program established by 2021 House Bill 11. NMEDD proposes to adopt the emergency rule to make it permanent.

**Statutory Authorization:** House Bill 11 of 1<sup>st</sup> Session of the 55<sup>th</sup> Legislature, Section 9-15-6 NMSA 1978.

**Public comment:** Interested individuals are strongly encouraged to submit written comments regarding the proposed rulemaking relating to the LEDA Recovery Grant to [sara.gutierrez@state.nm.us](mailto:sara.gutierrez@state.nm.us) or Sara Gutiérrez, Deputy Division Director, New Mexico Economic Development Department, P.O.

Box 20003 Santa Fe, New Mexico 87504-5003. Written comments must be received no later than 12:00 pm on Wednesday, November 3, 2021. The EDD encourages the early submission of written comments. Individuals may also testify at the public hearing.

A PDF of the proposed rule and meeting details may be accessed through EDD’s website [edd.newmexico.gov](http://edd.newmexico.gov) or from Sara Gutiérrez at the contact above on September 28, 2021.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Sara Gutiérrez as soon as possible. The EDD requests at least ten days advanced notice to provide requested special accommodations.

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
FORESTRY DIVISION**

**NOTICE OF PROPOSED  
RULEMAKING**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division hereby gives notice of the following proposed rulemaking. EMNRD proposes to amend its rule, 19.21.2 NMAC, Endangered Plant Species List and Collection Permits.

**Purpose of Amendment.** EMNRD proposes the amendment to add American Hart’s-tongue fern, *Asplenium scolopendrium* var. *americanum*, to the list of state endangered plant species; amend the definition of ‘take’ to include harm, kill, and destroy except for incidental removal, harm, killing, or destruction resulting from agricultural practices or tribal members use for religious

purposes; establish an incidental take permitting process; amend the definition of state forester; add definitions of “agricultural practice”, “applicant”, “endangered plant”, “harm”, “permittee”, “person”, and “tribal member”; amend the provisions regarding scientific study and propagation permits for state endangered plants; establish requirements for permit amendment; amend requirements for permit approval and revocation; establish a permit term; and amend the provisions regarding penalties.

EMNRD proposes to add American Hart’s-tongue fern as it was discovered at the El Malpais National Monument in 2020 and its identity was recently verified by various species specialists. The fern is a federally listed threatened species previously not known to occur in New Mexico, but it is now known to occur at one site containing 66 individuals. As a result, this plant must be included on the state endangered plant list as required by NMSA 1978, Section 75-6-1 because it federally listed under the Endangered Species Act.

EMNRD proposes to amend the definition of take to include harm, kill, and destroy because the current rule does not reflect the intent of NMSA 1978, Section 75-6-1 to protect and conserve endangered plant species as it only regulates the removal of endangered plants with the intent to possess, transport, export, sell, or offer for sale. The current rule does not regulate the harm, killing, or destruction of endangered plants from other activities or the intentional destruction of endangered plants. The proposed amendments are in response to a decline in New Mexico’s endangered plant species over recent decades which indicates that stronger efforts are needed to protect and conserve New Mexico’s endangered plant species. The new definition of take more closely



tracks the statute but exempts certain agricultural and tribal religious practices. To facilitate implementation EMNRD proposes to establish an incidental take permitting process as it is not always possible to avoid take of endangered plant species in connection with such actions.

EMNRD also proposes to add and amend additional definitions, amend the provisions regarding scientific study and propagation permits, establish requirements for permit amendment, amend requirements for permit approval and revocation, establish a permit term, and amend the penalty provisions for clarity and consistency in implementing NMSA 1978, Section 75-6-1 and 19.21.2 NMAC.

**Legal Authority.** EMNRD proposes this rule amendment under the authority of NMSA 1978, Section 75-6-1 and NMSA 1978, Section 9-1-5(E).

**The full text of the proposed rule amendment is available** from Daniela Roth at 505-372-8494 or [daniela.roth@state.nm.us](mailto:daniela.roth@state.nm.us) or can be viewed on the EMNRD, Forestry Division’s website at <https://www.emnrd.nm.gov/sfd/public-meetings/> or at the Forestry Division’s offices in Santa Fe, Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City.

**Public Hearing and Comment.**

EMNRD will hold a virtual public hearing on the proposed rule amendment at 9:00 a.m. on Wednesday, November 10, 2021. The public may join the hearing virtually through WebEx using one of the following:

Join from the meeting link <https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m182c1e85e603d03065e1914fb59068aa>

Join by meeting number  
Meeting number (access code): 2497 449 6948  
Meeting password: YbipaVzz665

Tap to join from a mobile device (attendees only)  
+1-408-418-9388,,24974496948##  
United States Toll

Join by phone  
+1-408-418-9388 United States Toll  
Global call-in numbers

Join from a video system or application  
Dial 24974496948@nmemnrd.webex.com  
You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business  
Dial 24974496948.nmemnrd@lync.webex.com

Those wishing to comment on the proposed rule amendment may make oral comments or submit information at the hearing or may submit written comments by November 10, 2021, by 9:00 a.m. by mail or email. Please mail written comments to Wendy Mason, EMNRD, Forestry Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to [wendy.mason@state.nm.us](mailto:wendy.mason@state.nm.us).

**Technical Information that served as a basis for the proposed rule amendments includes:**

Copies of the technical information can be obtained from Daniela Roth at 505-372-8494 or [Daniela.Roth@state.nm.us](mailto:Daniela.Roth@state.nm.us) or can be viewed on the EMNRD, Forestry Division’s website at <https://www.emnrd.nm.gov/sfd/public-meetings/>.

Bansbach, L., M. Bacigalupa, M. Beitner, N. Redeker, and Z. Davidson. 2019 Monitoring report: Aztec gilia (*Aliciella formosa*). Farmington Field Office, New Mexico. Technical report prepared for the BLM State Office, Santa Fe, NM.

Enquist, C., and D. Gori. 2008. A climate change vulnerability assessment for biodiversity in New Mexico, Part 1: Implications of recent climate change on conservation

priorities in New Mexico. Climate Change Ecology & Adaptation Program, The Nature Conservancy in New Mexico.

Goettsch, B., et al. 2015. High proportion of cactus species threatened with extinction. Nature Plants, Article No. 15142. DOI 10.1038/NPlants.2015.142.

Institute for Applied Ecology. 2020. Draft Conservation Strategy for Clover’s cactus (*Sclerocactus cloverae*) and Aztec gilia (*Aliciella formosa*). Unpublished draft report prepared for the Bureau of Land Management New Mexico State Office (Agreement L15AC002).

Ladyman, J.A.R. Ph.D. 2004. Status assessment report for *Sclerocactus mesae-verdae* (Mesa Verde cactus). Technical report prepared by JnJ Associates, LLC, Centennial, CO, for the Navajo Natural Heritage Program, Window Rock, AZ.

Nevada Endangered Plant Rule, Chapter 527 – Protection and preservation of timbered lands, trees, and flora. Revised date: 4-12

Roth, D. 2013. Status report – *Cirsium vinaceum* (Sacramento Mountains thistle) Section 6, Segment 27. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. and R. Sivinski. 2014. Status report for Zuni fleabane on the Cibola National Forest, New Mexico. Technical report prepared for the Cibola National Forest, Albuquerque, NM.

Roth, D. 2015. Wildfire impacts on species of concern in the Gila National Forest, New Mexico. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. 2017a. Ignacio Chavez Grant Special Management Area rare plant survey report. Technical report prepared by the EMNRD-Forestry Division for the Bureau of Land Management, Rio Puerco Field Office, Albuquerque, NM.

Roth, D. 2017b. Swale paintbrush (*Castilleja ornata*). Status survey report. Technical report prepared

by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. 2018. Post-fire status report – heartleaf groundsel (*Packera cardamine*), Mogollon death camas (*Anticlea mogollonensis*). Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D., and B. Sivinski. 2018. Status report – Aztec gilia (*Aliciella formosa*), San Juan County, NM. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM.

Roth, D. 2020a. *Ipomopsis sancti-spiritus* (Holy Ghost Ipomopsis). Recovery Summary report (Section 6, Segment 33) 1996 – 2020. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020b. Status report – Mancos milkvetch (*Astragalus humillimus*) BLM Hogback ACEC. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020c. *Pediocactus knowltonii* (Knowlton’s cactus). Summary report (Section 6, Segment 34). Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020d. Status report, Goodding’s onion (*Allium gooddingii*), Gila and Lincoln National Forest, New Mexico. Technical report prepared by the EMNRD-Forestry Division for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020e. 30-year monitoring report – Mancos milkvetch (*Astragalus humillimus*: *Fabaceae*). BLM Hogback Area of Critical Environmental Concern, San Juan County, NM. 1990-2020. Technical report prepared by the EMNRD-

Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020f. Wright’s marsh thistle (*Cirsium wrightii*). 2017-2020 Monitoring report. Blue Hole and Ballpark Ciénegas, Santa Rosa, NM. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020g. Monitoring report – Mesa Verde cactus (*Sclerocactus mesae-verdae*). 1986-2020. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2020h. Status report, Mesa Verde cactus (*Sclerocactus mesae-verdae*). BLM Hogback ACEC, Waterflow, NM. Technical report prepared by the EMNRD-Forestry Division, Santa Fe, NM, for the USFWS, R2, Albuquerque, NM (USFWS Grant Award No. F19AP00929).

Roth, D. 2021. 2021 Update – *Allium gooddingii*, Lincoln National Forest. Technical report prepared for the EMNRD-Forestry Division, Santa Fe, NM, and the USFWS, Albuquerque, NM.

Talkington, N.E. 2019. Mancos milkvetch (*Astragalus humillimus*) status assessment and monitoring report. Technical report prepared by the Navajo Natural Heritage Program, Window Rock, AZ.

Tonne, P. 2002. Status report for Arizona willow (*Salix arizonica*; Salicaceae). Technical report prepared by the NM Natural Heritage Program, Albuquerque, New Mexico, for the NM Forestry and Resources Conservation Division, Santa Fe, New Mexico (NMNHP Report: 02 – GTR-224)

Treher, A., A. Frances, L. Oliver, B.E. Young. 2012. Vulnerability of plants on BLM lands to climate change. Technical Report prepared by NatureServe, Arlington, VA. USDI – Bureau of Land Management, Farmington District Office. 2014.

Instructions Memorandum No. NMF000-2014-010. Manage conservation of Brack’s cactus. USDI – Bureau of Land Management, Farmington District Office. 2017.

Instructions Memorandum No. NMFO1210-2017-003. BLM Special Status Plant Species (SSPS) - Brack’s cactus and Aztec gilia.

USDI-USFWS. 2020. American Hart’s-tongue fern (*Asplenium scolopendrium* var. *americanum*). 5-Year Review. Summary and evaluation. U.S. Fish & Wildlife Service, New York Field Office, Cortland, NY.

Williams, A. P., E.R. Cook, J.E. Smerdon, B. I. Cook, J.T. Abatzoglou, K. Bolles, S.H. Baek, A. M. Badger, and B. Livneh. 2020. Large contribution from anthropogenic warming to an emerging North American megadrought. *Science* 368, 314-318.

Wiley John. 2020. AHTF in NM – Genetics and 5-year review. Email correspondence to Daniela Roth, EMNRD-Forestry Division from John Wiley, USFWS.

**If you are an individual with a disability** who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Daniela Roth at 505-372-8494 or through the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Daniela Roth at 505-372-8494, if a summary or other type of accessible format is needed.

**HEALTH,  
DEPARTMENT OF**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.3 NMAC, “Licensed Midwives”. The public hearing will be held on November 4, 2021, at 9:30 a.m.

via Cisco WebEx online, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.3 NMAC, concerning the licensing, scope of practice, and disciplining of licensed midwives. The proposed replacement rule is intended to provide greater clarity in existing regulatory and statutory requirements, to ensure continued high levels of professionalism among licensees, and to address recent statutory changes to revisions to the NM Criminal Offender Employment Act, Section 28-2-4 NMSA 1978.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, and Subsections S and V of Section 24-1-3 NMSA 1978.

Purpose of changes are listed below:

16.11.3.3 - Statutory Authority:

- To revise the section to reflect the statutory authority for the regulations.

16.11.3.6 - Definitions:

- The purpose of the changes is to clarify existing definitions to ensure clarity and better understanding by licensed midwives

of terms used throughout the regulation.

- The purpose of the changes is to add the definitions of “client”, “formulary”, “national practitioner data bank”, “permitting period”, “portfolio evaluation process”, and “student midwife” with the purpose of providing a detailed description to the licensed midwife of the processes within the regulation that will impact the licensee through the license process and in their daily professional work.

- The purpose is to expand on the definition of “contact hour” and “continuing education” in order to provide greater understanding to licensed midwives of sources for their required education credits.

16.11.3.8 - Documents Incorporated by Reference are the Latest Editions of:

- The purpose is to provide licensed midwives with references to the current guidelines, standards and core competencies to which they are required to practice pursuant to this regulation.

16.11.3.9 - Permits:

- The purpose of the changes is to set forth the clear distinction of procedural requirements for one of three processes for an apprentice or student midwife to care for New Mexico residents, to obtain renewal of permits and the process by which student midwives may obtain modified permits.

16.11.3.10 - Licensure:

- The purpose of the revisions to this section is to provide a more detailed explanation of the process of obtaining licensure, and renewal, reactivation and reinstatement processes in order to ensure better understanding of the process by applicants and current licensees, and to provide a detailed explanation of the contact hours for continuing education required for renewal of a license. Section C of 16.11.3.10 NMAC revises the license renewal schedule for the two-year term of licensure. Section G of 16.11.3.10

NMAC has changed the fees section to reflect a slightly higher initial fee and a penalty for late renewals.

16.11.3.11 - Disciplinary Action:

- In general, the purpose of the changes to Section A of 16.11.3.11 NMAC is to amend, clarify, and reorganize certain existing grounds for disciplinary action to ensure that complaints against licensees are evaluated and adjudicated in a fair and impartial manner that complies with due process while continuing to give the public confidence in this licensed profession. One such change has been made to the existing ground for disciplinary action for “obtaining, possessing, administering, or furnishing prescription drugs” to clarify where the applicable formulary may be located, to add that practicing midwifery without a valid “modified permit” may be grounds for disciplinary action, to add as grounds for disciplinary action the failure to care for a non-adherent client as required by department of health practice guidelines for New Mexico Licensed Midwives, and to add that verbally or physically abusing a client may be a ground for disciplinary action. Additionally, the rule adds new language governing consideration of criminal convictions in disciplinary actions, to comply with statutory changes to Section 28-2-4 NMSA 1978, has added conviction for misdemeanor offenses related to the practice of midwifery as grounds for disciplinary action, and added failure to report in writing to the division any complaint or claim made against the licensed midwife’s practice in any jurisdiction in which they practice as a registered, certified or licensed health care provider. The purpose of adding a new Section B of 16.11.3.11 NMAC Non-Disciplinary proceedings is to provide a hearing opportunity for non-disciplinary license proceedings. The purpose of Section C of 16.11.3.11 NMAC Disciplinary proceedings changes are to provide additional information to the licensee of the notifications to be expected in the disciplinary process, to provide clarity on the hearing



procedure to be followed under the Uniform Licensing Act, to advise the public and licensees of the regulation under which the department will keep a record of the number of complaints received and their disposition, to specify that any hearing is to be conducted by a hearing officer designated by the secretary, to provide clarity that a decision on any disciplinary proceeding will be final when the secretary renders a final administrative determination, to make it clear that final administrative decisions are reported to the National Practitioner Data Bank (NPDB), and to allow for reinstatement of a license revoked for non-compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978 upon presentation of a subsequent statement of compliance.

16.11.3.12 - Course of Education:

- The purpose of changes made to the section are to clarify for the license applicant what entry level skills, knowledge, and abilities are necessary to practice competently and to set forth with specificity the skills, knowledge, and clinical experiences needed.

16.11.3.13 - Examination:

- The purpose of the changes made to this section are to shorten the time to retake an examination after initial failure of the exam and increase the number of times per year that the division will administer the licensure examination. This will provide greater opportunity for an increased number of licensed midwives in the state and thereby increase their numbers in New Mexico to afford better healthcare to residents.

16.11.3.14 - Responsibilities and Scope of Practice:

- The purpose of the changes to Section A of 16.11.3.14 NMAC is to provide the licensed midwife with a more definitive scope of practice in a gender neutral manner, by providing for the healthcare of people without general health or obstetrical complications; to clarify the time for newborn care is up to

six weeks of age; to provide that a licensed midwife may provide non-pharmacological family planning and routine reproductive health care with training and experience, to set out that the licensed midwife may purchase and use specific drugs and medications as outlined in the department-approved formulary set out in the department's practice guidelines for licensed midwives in New Mexico. The purpose of the changes to Section B of 16.11.3.14 NMAC is to increase the type of licensed professionals with whom consultation may be made to include certified nurse-midwives. The purpose of the changes to Section C of 16.11.3.14 NMAC is to provide clarity on what content an informed consent should contain and the responsibility to maintain a copy in the client records. The purpose of changes to Section D of 16.11.3.14 NMAC would change the terminology of the admission criteria section to the gender-neutral term "client". The purpose of changes to Section G of 16.11.3.14 NMAC is to add "stillbirths" as a reportable neonatal or maternal mortality reportable incident for a client for whom the licensed midwife has care for in the perinatal period. The purpose of changes to Section J of 16.11.3.14 NMAC are to change reporting from quarterly to annual reporting. The purpose of changes to Section K of 16.11.3.14 NMAC would set new informational obligations on licensees such as maintaining the current and accurate contact information on file with the department.

16.11.3.15 - Advisory Board:

- The purpose of the changes to Section A of 16.11.3.15 NMAC are to clarify the definition of the general public member and to allow the Board to recommend changes to the department's practice guidelines for New Mexico Licensed Midwives. The purpose of the changes to Section B of 16.11.3.15 NMAC are to increase the number of members of the general public to allow for better representation on the board by the residents who are served by the licensees.

Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 2488 186 6556 #, Meeting password: vPWsJwAy728; click the "OK" button. You may also provide comment via Chat during the live streaming.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Abigail Reese  
Maternal Health Program Manager  
Family Health Bureau/Public Health Division  
2040 S. Pacheco (Colgate Building)  
Santa Fe, New Mexico 87505  
(505) 476-8866

Or preferably by e-mailing the comment to the e-mail address:  
[Abigail\\_Reese@state.nm.us](mailto:Abigail_Reese@state.nm.us).

Written comments must be received by the close of the public rule hearing on November 4, 2021. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within three (3) days of receipt, and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department’s website at <https://nmhealth.org/publication/regulation/>

**HOME INSPECTORS BOARD**

**NEW MEXICO HOME INSPECTORS BOARD MEETING AND RULE HEARING NOTICE**

The New Mexico Home Inspectors Board will conduct a meeting and rule hearing on Thursday, October 28, 2021 at 9:00 a.m. at the offices of the Greater Albuquerque Association of Realtors (GAAR) at 1635 University Boulevard NE, Albuquerque, New Mexico.

Because the Board’s public meeting space at the GAAR offices is under construction, broker and public participation in the meeting and rule hearing will be limited to attendance by a Zoom meeting hosted by GAAR. A link to the meeting will be posted on the Board website no later than 72 hours before the meeting.

Synopsis

The Board will be considering the following proposed changes to the Board Rules:

**16.66.1 NMAC, General Provisions**

**16.66.1.7 Definitions:**

**A. Definitions beginning with the letter “A”:**

(2) **“Activate”** means the act of turning on, supplying power, or otherwise enabling systems, equipment, or devices to become active by normal operating controls; **Not used (only reference 16.66.1.7 NMAC GARAGES (C) (2) is pressure-activated auto-reverse)**

(5) **“Appliance”** means a household device powered by electricity

or gas, but not including central heating, central cooling, or plumbing components;

**Modify (5) “Appliance” means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components;**

**“Appliance” used in SOP section 16.66.7.23**

**C. Definitions beginning with the letter “C”:**

(1) **“Central air conditioning”** [~~means a system which uses ducts to distribute either or both cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room. This definition does not include systems or appliances that are plugged into an electrical convenience outlet]~~

**“Central air conditioning”** means:

(a) designed to be permanently installed for central cooling (ducted) or modular (non-ducted) system. Systems may include evaporator coil(s), condenser unit(s), heat pump(s), air handler(s) and furnace(s) or

(2) permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and or are designed for installation at windows.

**Rationale Note: *Portable units are often installed permanently thru-walls and not per the manufacturer***

**16.66.7 NMAC, Standards of Practice**

**16.66.7.15 NMAC PLUMBING:**

(A) The licensee shall inspect:

(1) Interior water supply and distribution systems including fixtures and fixture trim components (faucets, valves, drain stops, shower arms and showerheads, flush handles, and functional flow at each fixture group, etc.).

(2) Interior drain, waste, and venting systems, including fixtures and functional drainage at each fixture group.

**16.66.3 NMAC, Applications and Licenses**

Expedited Licensure for Military Members and Veterans

The Board proposes to amend Part 3 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees for a period of three years if applicant holds equivalent license from another state or jurisdiction. Furthermore, the board seeks to add definitions to 16.66.17 NMAC as well as 16.66.3.7 NMAC. These definitions will further specify qualifications for expedited licensure. Additionally, the proposed revisions will provide notice to the public and interested parties of applications and renewal changes for military personnel, their spouses and dependent children as contemplated by House Bill 120 to be codified in 16.66.3.12.

**16.66.3.7 DEFINITIONS:**

[Refer to Definitions, 16.66.1.7 NMAC:] **“Disqualifying criminal conviction”** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978;

Disqualifying Convictions

The Board proposes to amend Part 3 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board’s ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Board proposes to amend Part 3 to include a list of felony convictions that could potentially disqualify an applicant from being issued a home inspectors license. The proposed rule amendment is shown below in 16.66.3.15 NMAC.

16.66.3.11- Pre-Licensing Examinations

The Board proposes to amend Subsection A of 16.66.3.11 of its rules to allow passage of either the National Home Inspector Examination (NHIE) or the Proctored Inter-NACHI Examination for applicants applying for licensure under Training and Examination.

**16.66.3.15 CRIMINAL CONVICTIONS:**

**A.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee from retaining a license issued by the board:

- (1) homicide, voluntary or involuntary manslaughter;
- (2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect; or
- (7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful

or dangerous use of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property.

(8) financial crimes involving fraud, forgery, embezzlement, or credit card fraud.

**(a)** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

**(b)** The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
  - (2) a conviction that has been sealed, dismissed, expunged or pardoned;
  - (3) a juvenile adjudication; or
  - (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.
- F.** In the circumstance where the board reserves a decision on an applicant/ licensee based on a potentially disqualifying conviction, the applicant/licensee will be entitled to notice and a hearing on the issues.

**16.66.6 NMAC, Code of Ethics**

The board proposes to amend 16.66.6.8 NMAC, Code of Ethics to add a new paragraph C:

**16.66.6.8 CODE OF ETHICS:** All licensed home inspectors in New Mexico shall abide at all times by the Code of Ethics contained in this Part.

**A.** This Code of Ethics rests on the fundamental principles of integrity, honesty, and objectivity. All provisions contained herein shall be interpreted at all times in the light of these principles, which govern the New Mexico home inspection industry.

**B.** All licensees shall comply with this Code of Ethics, shall avoid association with any enterprise whose practices violate this Code of Ethics, and shall strive to uphold, maintain, and improve the integrity, reputation, and practice of home inspection.

**C.** All licensees shall be of good repute and competent to transact the business of a home inspector in a manner that safeguards the interests of the public.

**Statutory Authority**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

**Public Comment and Participation**

Interested persons may submit written comments on the proposed changes to the board rules by email at wayne.ciddio@state.nm.us or may submit written comments to the New Mexico Home Inspectors Board, 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn. Wayne W. Ciddio, Board Administrator.

Interested persons may make comments and ask questions about the proposed rules via Zoom during the rule hearing. The board will vote on the final rules at the conclusion of the rule hearing. Full copies of the texts of the proposed rules can be obtained from the Board office at the email and physical addresses shown above.

**Special Accommodations**

If you are individual with a disability who is in need of reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the meeting and hearing, contact Wayne W. Ciddio, Board Administrator, New Mexico Home Inspectors Board at (505) 785-3937 at least one week prior to the meeting or as soon as possible.

Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION  
  
NOTICE OF EMERGENCY  
RULEMAKING**

The New Mexico Human Services Department (HSD) is issuing a temporary emergency rule to be effective October 1, 2021. The HSD is required to make changes to 8.102.500 of the New Mexico

Administrative Code (NMAC) and 8.106.500 NMAC.

Each year the Department is required to make changes to the income and resource eligibility standards and the deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS).

The Department received notification of the adjusted amounts on August 16, 2021 and will make the adjustments effective for benefit month October 2021 for Federal Fiscal Year (FFY) 2022 to comply with federal law and regulations.

The Department received the notice of the federal Cost-of-Living Adjustments (COLA) with less than sixty days to implement the changes to be effective on October 1 and has insufficient time to follow the regular rulemaking process. The Department is implementing an emergency rule in order to remain federally compliant as failure to implement beyond October 1 would place the Department in violation of Federal law.

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299.

Administration of the HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The emergency rule will remain in effect until a permanent rule takes effect under normal rulemaking process.

The Human Services Register Vol. 44 No. XX outlining the temporary emergency regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support/division-registers.aspx>.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**NOTICE OF RULEMAKING /  
NEWSPAPER NOTICE**

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.314.5 NMAC, Developmental Disabilities Home and Community Based Services (HCBS) Waiver.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 28, 2021  
Hearing Date: October 29, 2021  
Adoption Date: Proposed as January 1, 2022  
Technical Citations: 42 CFR 438 subparts A through J; 42 CFR 441 subpart G

**The Department is proposing to  
amend the rule as follows:  
Throughout the rule**

Language has been edited throughout the document to align with the Developmental Disabilities (DD) waiver application submitted to the Centers for Medicare and Medicaid Services (CMS) on April 1, 2021, as well as with other 1915(c) HCBS waivers in the state of New Mexico.

**Section 7**

Definitions are amended as follows:

**Subsection A** - Activities of daily living (ADLs): to include "oral care."

**Subsection F** - Clinical justification: (2) to include "and to maintain current level of function or minimize current level of function or minimize risk of further decline."

**Subsection H** - New definition added "Electronic Visit Verification (EVV):



A telephone and computer-based system that electronically verifies the occurrence of selected services, as required by the 21<sup>st</sup> Century CURES Act. The EVV system verifies the occurrence of authorized service visits electronically by documenting the precise time and location where service delivery visit begins and ends. EVV is implemented according to federal requirements and timelines. The 21<sup>st</sup> Century CURES Act requires EVV for personal care services (PCS), defined as services that provide assistance with activities of daily living (ADLs) or instrumental activities for daily living (IADLs) effective January 1, 2020 and for home health services effective January 1, 2023.”

### **Section 8**

New section added  
“Safeguards Concerning Restraints, Restrictions and Seclusion”.

### **Section 9**

**Subsection F** - Language is updated to include that all providers have a responsibility to monitor settings to ensure that the setting supports health and safety based upon the individual’s needs, decisions or desires.

### **Section 10**

**Subsection D** - Qualifications of case management provider agency is updated to require case managers to hold a bachelor’s or master’s degree in social work, psychology, sociology, counseling, nursing, special education, or a closely related field or to have a minimum of 6 years of direct experience related to the delivery of social services to people with disabilities.

**Subsection O** - Revised qualifications for a non-medical transportation provider agency to include the requirement for a business license and drivers must have a valid driver’s license and not have a disqualifying conviction after submitting to the Caregiver Criminal History Screening (CCHS).

**Subsection P** - Revised qualifications

for assistive technology provider agencies to allow providers to also be direct vendors of approved technology.

**Subsection T** - Revised qualification to allow additional certification types for socialization and sexuality education providers.

**Subsection U** - Language added requiring customized in-home supports provider agencies to comply with Electronic Visit Verification (EVV) requirements and allowance for legal guardians who are also natural or adoptive family members, relatives, or natural family members to provide Customized In-Home Supports service if they meet the DOH/DDSD requirements.

### **Section 14**

**Subsections A and B** - The children’s annual resource allotment (ARA) was removed as were references to services available with the ARA and those available to children outside of the ARA. A combined list of services was added.

### **Section 15**

#### **Subsection C**

Language added to therapy services and behavioral support consultation to allow for greater use of telehealth and remote service delivery in specified circumstances and as appropriate.

#### **Paragraph 5 of Subsection C**

- Definition of living supports is revised to clarify the scope of service and provider requirements to provide recipients services from a registered dietician or licensed nutritionist as needed and to have a licensed nurse on staff or under contract available on call as needed.

#### **Paragraph 7 of Subsection C**

- Revised community integrated employment services to clarify supports may not duplicate services available through the New Mexico Public Education Department or the Individuals with Disabilities Education Act (IDEA).

#### **Paragraph 16 of Subsection**

**C** - Personal Support Technology renamed “Remote” Personal Support Technology.

#### **Paragraph 17 of Subsection C**

- Revised definition for Preliminary Risk Screening and Consultation to include that this service is designed to assess continued risk of sexually inappropriate or offending behavior in persons who exhibit or have a history of exhibiting risk factors for these types of behaviors. This service is part of a variety of support services that promotes community safety and recues the impact of interfering behaviors that compromises the individual’s quality of life.

#### **Paragraph 18 of Subsection C**

- Revised definition for Socialization and Sexuality Education to include the Friends & Relationships Course that is a comprehensive lifelong adult education program.

#### **Paragraph 19 of Subsection C**

- Service description of customized in-home supports is revised to clarify the service is provided in the individual’s own home or family home, services may include an on-site response plan with use of remote support technology, and the service is intended to be intermittent support.

The register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement this rule effective January 1, 2022. A public hearing to receive testimony on these proposed rule changes will be held **via conference call** on **Friday, October 29, 2021 at**



10:00 a.m., Mountain Time (MT).  
Conference Number: 1-800-747-5150. Access Code: 2284263.

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on October 29, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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

## MEDICAL BOARD

### NOTICE OF PUBLIC HEARING

**Public Notice.** The New Mexico Medical Board (NMMB) gives notice that it will conduct a public rule hearing on November 4, 2021 at 2:00 p.m. (MDT). This rule hearing is tentatively in person and can be accessed virtually. The purpose of the public hearing is to receive public input on the proposed amendments to 16.10.2 NMAC - Physicians: Physicians Licensure Requirements, 16.10.3 - Examinations, 16.10.4 NMAC - Continuing Medical Education, 16.10.14 - Management of Pain and Other Conditions with Controlled Substances, 16.10.15 - Physician Assistants: Licensure and Practice Requirements, 16.10.9 - Fees, and 16.6.1 - 16.6.11 NMAC - Naprapathic Practitioners. Physical Hearing Location is 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505

**Zoom Meeting:**  
<https://us02web.zoom.us/j/81001970696?pwd=YndpZUI0ZFBUQUNCbXZhODI0TGpXdz09>

**Meeting ID: 810 0197 0696**

**Passcode: 1aeTPX**

TO CALL IN:

One tap mobile  
+13462487799,,81001970696#,,,,\*496561# US (Houston)  
+16699006833,,81001970696#,,,,\*496561# US (San Jose)

Dial by your location  
+1 346 248 7799 US (Houston)  
+1 669 900 6833 US (San Jose)  
+1 253 215 8782 US (Tacoma)  
+1 312 626 6799 US (Chicago)  
+1 929 205 6099 US (New York)  
+1 301 715 8592 US (Washington DC)

Meeting ID: 810 0197 0696

Passcode: 496561

Find your local number: <https://us02web.zoom.us/j/koHaR9pKn>

**Purpose.** During the 2021 Legislative Session SB279 passed and was signed by Governor Lujan

Grisham on April 5, 2021. SB279 merged the Osteopathic Examiners Board with the New Mexico Medical Board. The proposed changes to 16.10.2 through 16.10.4 NMAC are to change any reference of Medical Doctor to Physician to incorporate Doctors of Osteopathic Medicine and to add the licensure requirements for Doctors of Osteopathic Medicine.

The purpose of the proposed changes to 16.10.9 NMAC is to add Naturopathic Doctor fees to the fees rule.

The purpose of the proposed changes to 16.6.3 NMAC is to change the title of Naprapathic Physicians to Naprapathic Practitioners and to change the Naprapathic Practitioners fees to be more in line with similar license type fees, this proposed change reduces the required fees. The purpose of the proposed changes to 16.6.5 NMAC revises the process for reinstatement of a Naprapathic Practitioners license from inactive status, these changes would lower the reinstatement fee for this license type. The purpose of the proposed changes to 16.10.7 is to combine the requirements for licensure by examination and endorsement because the requirements are the same. The purpose of 16.6.8 NMAC is to change the title of Naprapathic Physicians to Naprapathic Practitioners and to delete a diagnostic procedure not used by Naprapathic Practitioners. The purpose of the changes to 16.6.9 is to change the title of Naprapathic Physicians to Naprapathic Practitioners, and to clarify supervision requirements of intern naprapaths.

### **The statutory authorization.**

Sections 61-6-1 through 61-6-35 NMSA 1978, Sections 61-12G-1 through 61-12G-13 NMSA 1978 and 61-12F-1 through 61-12F-11 NMSA 1978 grants the NMMB authority to make rules not inconsistent with law in order to promote the public welfare and protect the citizens of New Mexico.

**No technical information serves as a basis for this proposed rule change.**

**Public comment.** Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Sondra Frank, Esq., New Mexico Medical Board, 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505, or by electronic mail at AmandaL.Quintana@state.nm.us. All written comments must be received no later than 5:00 p.m. (MDT) on November 3, 2021. All written comments will be posted to the agency website within (3) three business days.

**Copies of proposed rule.** Copies of the proposed rules may be accessed through the New Mexico Medical Board’s website at www.nmmb.state.nm.us or may be obtained from Amanda Quintana by contacting her at (505) 476-7230 or via email at AmandaL.Quintana@state.nm.us.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Amanda Quintana at (505) 476-7230 or via email at AmandaL.Quintana@state.nm.us. The New Mexico Medical Board requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

**Summary of proposed changes.** The Board summarizes its proposed changes to its administrative rules as follows:

16.10.2 NMAC - Physicians: Licensure Requirements  
As a general summary, the proposed changes to 16.10.2 NMAC change the term “allopathic” physicians to physicians so that both allopathic doctors (MD’s) and doctors of osteopathy (DO’s) are incorporated into the rule. The proposed change adds osteopathic physician credentials and licensure requirements and adds the definition of physician which

means “allopathic doctor (MD) or doctor of osteopathy (DO).”

16.10.3 NMAC - Examinations  
As a general summary, the proposed changes to 16.10.3 NMAC again changes the reference from allopathic physician to physicians and adds the required exams for osteopathic medical licensing.

16.10.4 NMAC - Continuing Medical Education  
As a general summary, the proposed changes to 16.10.4 NMAC adds the required continuing medical education for osteopathic medical licensing.

16.10.9 NMAC - Fees  
As a general summary, the proposed changes to 16.10.9 NMAC adds the licensing, renewal and miscellaneous fees for Naturopathic Doctors.

16.10.14 NMAC - Management of Pain and Other Conditions with Controlled Substances  
As a general summary, the proposed changes to 16.10.14 NMAC changes the term medical doctor to physician.

16.10.15 NMAC - Physician Assistants: Licensure and Practice Requirements  
As a general summary, the proposed changes to 16.10.15 NMAC changes the term medical doctor to physician.

16.6.3 NMAC - Fees  
As a general summary, the proposed changes to 16.6.3 NMAC lower the fees for Naprapathic practitioner licensing to align with the fees for other mid-level providers licensed by the NMMB.

16.6.5 NMAC - Inactive Status, Reinstatement  
As a general summary, the proposed changes to 16.6.5 NMAC allow for a Naprapathic practitioner to inactivate their license with a one time fee of \$25.00 as opposed to \$100.00 per year.

16.6.7 NMAC - Licensure by Endorsement and Examination  
As a general summary, the proposed

changes to 16.6.7 NMAC combines the requirements for Naprapathic practitioner licensing by endorsement and by examination. The requirements are similar and did not need to be separated in the rule.

16.6.8 NMAC - Practice Procedures  
As a general summary, the proposed changes to 16.6.8 NMAC changes the name Naprapathic physicians to Naprapathic practitioner and also deletes a diagnostic procedure that is not used, beaches emergency assistance ministry.

16.6.9 NMAC - Supervision of Interns  
As a general summary, the proposed changes to 16.6.9 NMAC clarify the procedures for the supervision of interns and also changes he term doctor to naprapathic practitioner.

**PUBLIC EDUCATION DEPARTMENT**

**NOTICE OF LIMITED REHEARING IN RULEMAKING**

**Public Rehearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public rehearing on Friday, November 12, 2021 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public rehearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham’s Executive Order 2021-049, 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; or with any executive order that supersedes Executive Order 2021-049. Continuous updates on rehearing changes and Zoom information will be provided on the PED website. The purpose of the public rehearing

is to receive input on the portion of the proposed rule amendment covering the omitted word in 6.29.1 NMAC, General Provisions, and, in particular, the department-approved English language proficiency screening assessment in Subsection M of Section 6.29.1.9 NMAC, General Provisions, where the word “screening” was omitted. At the rehearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule change. Written comment will also be accepted at the hearing.

**Explanation of Purpose of Text**

The purpose of the proposed amendment to **Subsection M of Section 6.29.1.9 NMAC, General Provisions**, is to make a correction and include the omitted word – “screening” – from the previous amendment to 6.29.1 NMAC, General Provisions, which the PED formally adopted on December 15, 2020.

**Summary of Text**

The proposed amendment to **Subsection M of Section 6.29.1.9 NMAC, General Provisions**, includes the omitted word – “screening” – to Subparagraph (a) of Paragraph (2) of Subsection M of Section 6.29.1.9 NMAC, General Provisions, to read as follows: “English language learners. Students who have limited English language skills (i.e., students who are “English language learners”) as determined by the department-approved English language proficiency screening assessment shall participate in the statewide assessment program. The following considerations specify how assessment shall be conducted.”

**Statutory Authorization(s):** Sections 9-24-8, 22-2-2, 22-2C-3, and 22-13-1.1 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment at the public rehearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Friday, November 12, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, September 28, 2021 to Friday, November 12, 2021 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, “Rule Notification,” on the PED’s website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**PUBLIC EDUCATION DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a

public hearing on Friday, November 12, 2021 from 1 p.m. to 3 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham’s Executive Order 2021-049, 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; or with any executive order that supersedes Executive Order 2021-049. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed repeal of **6.29.11 NMAC, Social Studies**, to be replaced with **6.29.11 NMAC, Social Studies**; the proposed repeal of **6.30.6 NMAC, Suspension of Authority of a Local School Board, Superintendent, or Principal**, to be replaced with **6.30.6 NMAC, Suspension of Authority of a Local School Board**; and the proposed new rule of **6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors**. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

**Explanation of Purpose of Text**

The purpose of the proposed repeal of **6.29.11 NMAC, Social Studies**, to be replaced with **6.29.11 NMAC, Social Studies**, is to update the social studies standards.

The purpose of the proposed repeal of **6.30.6 NMAC, Suspension of Authority of a Local School Board**,



**Superintendent, or Principal**, to be replaced with **6.30.6 NMAC, Suspension of Authority of a Local School Board**, is to update the current department processes, procedures, and requirements related to the emergency or non-emergency suspension of a local school board by the secretary. The repeal and replace is designed specifically for local school boards. As such, any references to charter schools, governing councils, or suspensions related to school superintendents, principals, or charter school leader counterparts is removed from the proposed repeal and replace.

The purpose of the proposed new rule of **6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors**, is to align the new rule with the required ethical misconduct training program for all school district personnel, school employees, school volunteers, contractors, and contractors' employees outlined in the amended provisions of the School Personnel Act, Section 22-10A-32 NMSA 1978, from the 2021 legislative session.

#### Summary of Text

The proposed repeal of **6.29.11 NMAC, Social Studies**, to be replaced with **6.29.11 NMAC, Social Studies**, establishes the academic content and performance standards for social studies for grades kindergarten through 12. The social studies standards include six strands: (1) civics; (2) economics; (3) geography; (4) history; (5) ethnic, cultural, and identity standards; and (6) inquiry. The strands are organized by anchor standard, which are the core ideas that establish what students should understand and be able to do, with increasing complexity. Anchor standards consist of performance indicators, which are concise, written descriptions of what students are expected to know and be able to do in a specific grade or course.

The proposed repeal of **6.30.6 NMAC, Suspension of Authority**

**of a Local School Board, Superintendent, or Principal**, to be replaced with **6.30.6 NMAC, Suspension of Authority of a Local School Board**, includes: (1) the removal of any references to charter schools, governing councils, or suspensions related to school superintendents, principals, or charter school leader counterparts; (2) updates the current department processes and procedures related to factors the secretary can consider when determining if a local school board suspension is warranted; (3) clarifies the procedures for non-emergency suspensions; (4) details the procedures for emergency suspensions; (5) clarifies the hearing procedures for all suspensions; and (5) removes the requirement of periodic status reports.

The proposed new rule of **6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors**, includes the details of the new requirement for the mandatory ethical misconduct training program for all school district personnel, school employees, school volunteers, contractors, and contractors' employees within a specified time period. The proposed new rule also notes the mandatory training must address the following topics: child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse; and details the minimum training components will also include: reporting requirements, including minimal standards triggering reporting; trauma-informed instruction; identification of circumstances and factors that are indicators of likely child abuse or inappropriate behaviors; ethical misconduct; professional responsibilities; investigations and procedures; and relevant legal and regulatory definitions. Lastly, the new rule states that all school districts and public schools are required to maintain training records of those individuals who completed the

training.

**Statutory Authorization(s):** Sections 9-24-8, 22-2-1, 22-2-2, 22-2-14, 22-2C-3, and 22-10A-32 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Friday, November 12, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, September 28, 2021 to Friday, November 12, 2021 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

**NOTICE OF PERA  
RULEMAKING**

The Public Employees Retirement Association (“PERA”) will consider changes to its rules promulgated under the Public Employees Retirement Act (“PERA Act”). Changes are proposed for the following rules:

1. Rule 2.80.100.7 “GENERAL PROVISIONS” -Definitions Paragraph (M), Paragraph (Q)

Rule 100 would add definitions for “Adult probation and parole officer member” and “Juvenile probation and parole officer member”. The proposed changes would revise the definition of salary for purposes of inclusion of certain overtime paid for public safety members consistent with the Fair Labor Standards Act. The rule would be reformatted as necessary.

2. Rule 2.80.200.50 “COMMITTEES”-Standing Governance Committee

The proposed changes would create a standing Governance Committee of the PERA Board and require that committee members adhere to the New Mexico Governmental Conduct Act. The rule would be reformatted as necessary.

3. Rule 2.80.200.80 NMAC “ELECTIONS”- Electronic Signatures on Nominating Petitions

The proposed changes would allow use of electronic signatures and electronic submission of nominating petitions. The rule would be reformatted as necessary.

4. Rule 2.80.1800 “EXECUTIVE DIRECTOR”-General Provisions

The proposed changes would clarify the authority of the Executive

Director. The rule would also require that the Executive Director adhere to the New Mexico Governmental Conduct Act. The rule would be reformatted as necessary.

5. Rule 2.80.2100 “MEMBER CONTRIBUTIONS”-1099s For Representatives of Deceased Members

The proposed changes would allow for representatives of a deceased PERA member, upon submitting a notarized affidavit, to receive a Form 1099-R for the limited purpose of filing taxes for the deceased member. The rule would be reformatted as necessary.

A formal rulemaking hearing will be held on November 9, 2021, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the November 2021 monthly meeting of the PERA Board which may be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board’s Public Meeting Notice. The purpose of the rulemaking hearing is to obtain public input on the proposed amendments to the above-referenced rules. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule changes.

The purpose of the proposed rule changes is to conform with amendments made to the PERA Act in the 2021 legislative session and to facilitate PERA’s administrative duties.

The authority for the proposed rule changes is NMSA 1978, Section 10-11-130 of the PERA Act and Rule

20.80.200.10 NMAC, which authorize the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act.

Copies of the draft rules are available in PERA’s Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Laura Archuleta at PERA’s Office of General Counsel, P.O. Box 2123, Santa Fe, New Mexico, 87504-2123, (505) 476-9306 or laurae.archuleta2@state.nm.us or 1-800-342-3422. Written comments should be submitted by the close of business on November 9, 2021. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: <https://www.nmpera.org/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Trish Winter at 505-476-9305 or patricia.winter@state.nm.us at least one week prior to the public hearing, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

**RACING COMMISSION**

**NOTICE OF PUBLIC MEETING  
AND RULE HEARING**

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule Hearing on November 18, 2021. The Rule hearing will be held during the Commission’s regular business meeting with the public session beginning at 9:00 a.m. The Rule Hearing and Commission meeting will be held virtually via Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/81906894928?pwd=SGZGdGtuT01SNDV3dkNlSHU1RGVhbnQ0OQ==>

Meeting ID: 819 0689 4928  
 Passcode: 9sEQ9i  
 Dial by your location  
 +1 669 900 6833 US (San Jose)  
 +1 253 215 8782 US (Tacoma)  
 +1 346 248 7799 US (Houston)  
 +1 929 205 6099 US (New York)  
 +1 301 715 8592 US (Washington D.C.)  
 +1 312 626 6799 US (Chicago)  
 Meeting ID: 819 0689 4928  
 Passcode: 826049  
 Find your local number: <https://us02web.zoom.us/j/81906894928?pwd=SGZGdGtuT01SNDV3dkNlSHU1RGVhbnQ0OQ==>

The Commission is proposing the following amendments listed below to the Rules Governing Horse Racing in New Mexico to clarify the definition of a race meeting, to enhance the health and safety of all participants in the industry, to provide the Commission enhanced abilities to pursue alleged drug violations, to provide associations with greater flexibility and ability to make decisions in compliance with national requirements for improving the integrity of the profession, to further the legislative mandate and intent for the Commission to regulate purses, to provide for the increase wagering potential, and to realign the rules in accordance with current funding and staffing levels at the Commission.

- 15.2.1 NMAC – Definitions
- 15.2.3 NMAC – Flat Racing Officials General Provisions
- 15.2.6 NMAC – Veterinary Practices, Equine Health, Medication, and Trainer Responsibility
- 16.47.1 NMAC – General Provisions

A copy of the proposed rules may be found on the Commission’s website @ <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at (505) 249-2184 to request to receive a copy of the proposed rules by regular mail.

Interested persons may submit their written comments on the

proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and provide brief, verbal comments. All written comments must be received by the Commission by 12:00 PM on November 17, 2021. Written comments should be submitted to: Denise Chavez, Paralegal, via email at [DeniseM.Chavez@state.nm.us](mailto:DeniseM.Chavez@state.nm.us).

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission’s website.

No technical information served as the basis for the proposed rule.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

**Statutory Authority:** Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 through 60-1A-30 NMSA 1978 (2007, as amended through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

**The Commission proposes the following rule amendments:**

**Subsection M of 15.2.1.7 NMAC:**  
 The purpose of the proposed amendment is to provide clarity to exactly what activities at the racetracks trigger both the start and end dates of the race meeting.

**Subsection B of 15.2.1.9 NMAC:**  
 The purpose of the proposed amendment is to provide for consistency in the dollar amounts regarding the various filing fees for challenging or appealing a decision of the Stewards.

**Subsection D of 15.2.3.8 NMAC:**  
 The purpose of the proposed

amendment is to further ensure compliance with the legislative required mandate for the Commission to regulate the size of purses.

**Subsection C of 15.2.3.8 NMAC:**  
 The purpose of the proposed amendment is to provide associations greater authority to comply with national requirements for improving and maintaining integrity in horseracing subject to the approval of the commission.

**Subsection B of 15.2.6.8 NMAC:**  
 The purpose of the proposed amendment is to improve and promote the health and safety of all participants in the horseracing industry.

**Subsection C of 15.2.6.9 NMAC:**  
 The purpose of the proposed amendment is to provide associations greater authority to comply with national requirements for improving and maintaining integrity in horseracing.

**Subsection D of 15.2.6.10 NMAC:**  
 The purpose of the proposed amendment is to assure the State of New Mexico Racing Commission can continue to prosecute alleged drug violations in the event that the split sample is destroyed due to either circumstances beyond the control of the Commission or acts of God.

**Subsection A of 16.47.1.10 NMAC:**  
 The purposes of the proposed amendments are two-fold: to acknowledge that the State of New Mexico Racing Commission currently lacks the resources to provide, maintain and oversee a continuing education program; and to correct typographical errors in the current rule.

**Subsection D of 16.47.1.12 NMAC:**  
 The purpose of the proposed amendment is to improve and promote the health and safety of all participants in the horseracing industry.



**REGULATION AND  
LICENSING DEPARTMENT  
ATHLETIC TRAINERS  
PRACTICE BOARD**

**NOTICE OF PUBLIC RULE  
HEARING AND REGULAR  
BOARD MEETING**

The New Mexico Athletic Trainers Practice Board will hold a rule hearing on Friday, November 5, 2021, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

**Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.**

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e988b807fa27e6f050136a640716a71e7>

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

Access Code: 2496 862 1982

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

- 16.3.1 NMAC – General Provisions
- 16.3.2 NMAC – Scope of Practice
- 16.3.4 NMAC – Initial Licensing Requirements
- 16.3.6 NMAC – Examinations
- 16.3.7 NMAC – Annual Renewal of License
- 16.3.9 NMAC – Disciplinary Proceedings
- 16.3.10 NMAC – Emergency Licensure
- 16.3.11 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/athletic-trainers/athletic-trainers-board-information/athletic-trainers-board-meetings/> 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 Roxann Ortiz, Board Administrator, via electronic mail at: [athletic.trainers@state.nm.us](mailto:athletic.trainers@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, November 4, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/athletic-trainers/athletic-trainers-rules-and-laws/>. 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 <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/athletic-trainers/athletic-trainers-board-information/athletic-trainers-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roxann Ortiz, 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 Roxann Ortiz, Board Administrator at (505) 476-4622.

**Statutory Authority:** Legal authority for this rulemaking can be found in the Athletic Trainer Practice Act, NMSA 1978, 16-14D-1 to -19, which,

among other provisions, specifically authorizes the Board to “adopt and file...rules and regulations necessary to carry out the Athletic Trainer Practice Act.” NMSA 1978, Section 61-14D-9(F).

**Purpose of the Proposed Rules:**

The purposes of the amendments to **16.3.1 NMAC** are to update this part to reflect the current BOC certification process (internships are no longer permissible). Also, the definition of BOC was added because the BOC is a separate entity from the NATA and references to virtual meetings as an attendance option have been added to include and define how meetings can be conducted during the pandemic and the future.

The purposes of the amendments to **16.3.2 NMAC** are to provide clarity in the regulations by including the definitions provided by the statute in the regulations, by expounding on the scope of practice to, among other things, include references to the BOC, and by removing two categories of records that are not required to be kept.

The purposes of the amendment to **16.3.4 NMAC** is to comply with the 2021 legislative change which requires that each board, among other things, “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.” NMSA 1978, § 61-1-36.

The purpose of the amendment to **16.3.6 NMAC** is to update the accepted examination for licensure because a state examination is no longer permissible.

The purpose of the amendment to **16.3.7 NMAC** is to align continuing education requirements with the national standards of the BOC since there is no longer a state examination.

The purpose of the amendment to **16.3.9 NMAC** is to remove outdated terminology from the rule.

The purpose of the amendment to **16.3.10 NMAC** is to remove the requirement for notarization with respect to applications that are being transitioned to an all-online platform and to change the certification from NATA to the current certification which is BOC.

The purpose of the amendment to **16.3.11 NMAC** is to alter the language of the rule so that it aligns with the 2021 legislative changes mandated by HB 120.

#### Summary of Proposed Changes:

##### **16.3.1 NMAC – General Provisions**

The amendments to this part include removing the definition of “approved internship program” and adding a definition for “disqualifying criminal conviction” and “BOC.” Additional changes include the addition of “video conference, or other virtual means” with respect to how meetings may be attended remotely.

##### **16.3.2 NMAC – Scope of Practice**

The amendments to this part include the addition of several definitions as well as an addition to the explanation of the scope of practice. Additional changes include the removal of some of the categories of records that are required to be maintained by athletic trainers.

##### **16.3.4 NMAC – Initial Licensing Requirements**

The amendment to this part adds a new section to the rule to comply with the 2021 legislative change regarding SB2. The proposed rule sets out what criminal felony convictions directly relate to the particular employment, trade, business or profession of athletic training that may disqualify the applicant or licensee from holding a license. The rule also defines how the conviction may and may not be used when reviewing an application for licensure or for violation of Board statute or rules by a current licensee.

##### **16.3.6 NMAC – Examinations**

The amendment to this part changes the examination accepted by the board from the national athletic trainers association to the board of certification for athletic trainers.

##### **16.3.7 NMAC – Continuing Education Requirements**

The amendments to this part include a change to the continuing education requirements to simply state that “[e]ach licensee shall be required to maintain good standing with the BOC CEU requirements.” Additional changes include an elaboration with respect to the process for a licensee to go on inactive status as well changes with respect to reactivating a license that has been inactive.

##### **16.3.9 Disciplinary Proceedings**

The amendment to this part merely removes “or paragraph” from the description of effective date.

##### **16.3.10 Emergency Licensure**

The amendments to this part include removing the requirement that applications be notarized as well as changing the certification from NATA to BOC.

##### **16.3.11 NMAC - Licensure for Military Service Members, Spouses, Dependent Children and Veterans**

The amendments to this part includes a repeal and replace due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

## REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Regulation and Licensing Department

(RLD), Cannabis Control Division (CCD), will hold a public rule hearing on Thursday, October 28, 2021, starting at 9:00 a.m. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://ccd.rld.state.nm.us> or from Julia Valdez at the contact below.

**Purpose of Rule Hearing.** The CCD issued a temporary emergency rule amendment on September 9, 2021, which was in response to a finding of an immediate danger to the public health, safety, and welfare related to the use of non-volatile and volatile solvents exhibiting potential toxicity to humans.

The purpose of the public rule hearing is to receive public commentary to make the emergency rule amendments to 16.8.2 NMAC, regarding the classification, license application and amendment requirements, and operational standards for cannabis manufacturers permanent.

The rule hearing will further receive public commentary for proposed rule amendment to definitions, and additional requirements for the processing, approval, and denial of license applications for cannabis manufacturers, retailers, and couriers. In addition to licensure applications, the proposed amendments will establish operational standards for licensees that must be adhered to throughout the term of their licensure.

Any technical information used to inform the proposed rules will be made available no later than September 28, 2021, and will be accessible by visiting: <https://ccd.rld.state.nm.us/>.

**Statutory Authority.** Legal authority



for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 1978 Section 9-7-6(E) (2017) and at NMSA 9-16-6 (2021).

**Public Comment.** The Division will begin accepting public comment on the proposed rules beginning September 28, 2021. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at [ccd.publiccomment@state.nm.us](mailto:ccd.publiccomment@state.nm.us). Written comment may also be submitted by visiting the Division website at [ccd.rld.state.nm.us](http://ccd.rld.state.nm.us) or by mailing the comment to the following address:

Cannabis Control Division Public Comment  
c/o Robert Sachs  
P.O. Box 25101 Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on Thursday, October 28, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: [ccd.rld.state.nm.us](http://ccd.rld.state.nm.us).

No later than September 28, 2021, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 476-4995.

Any 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 should contact Julia Valdez, Executive Assistant for the Cannabis Control

Division, [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 362-2924 at least seven (7) days prior to the hearing.

**Summary of Proposed New Rules.**

**16.8.1 NMAC: GENERAL PROVISIONS**

Part 1 will provide for general requirements for licensees established under the Cannabis Regulation Act and required definitions. The amendments to be discussed at the hearing will propose an update to definitions related to manufacturers, retailers, and couriers.

**16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS**

Part 2 will provide the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 will govern the licensing and operational requirements for additional types of licensees. The proposed amendments to be discussed at the hearing will pertain to cannabis manufacturers, retailers, and couriers as well as the respective requirements for each of the three license type.

**REGULATION AND LICENSING DEPARTMENT  
NUTRITION AND DIETETICS  
PRACTICE BOARD**

**NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Nutrition and Dietetics Practice Board will hold a rule hearing on Friday, November 12, 2021, at 8:30 a.m. Following the rule hearing, the Board will convene a Board meeting to consider adoption of the rules and address regular business. The rule hearing and Board meeting will be held via Cisco Webex Meetings.

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

- 16.14.3 NMAC - Requirements for Licensure
- 16.14.11 NMAC - Disciplinary Proceedings
- 16.14.12 NMAC - Licensure for Military Service Members, Spouses and Veterans

To obtain and review copies of the proposed changes you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nutrition-and-dietetics/nd-laws-rules-and-policies/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Richard Espinoza, Executive Director, via electronic mail at: [nutritiondieteticsbd@state.nm.us](mailto:nutritiondieteticsbd@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, November 11, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nutrition-and-dietetics/nd-laws-rules-and-policies/>

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 Richard Espinoza, Executive Director at (505) 476-4622.

Any individual who does not have access to the internet and would like to participate in the rules hearing, please contact Richard Espinoza, Executive Director at (505) 476-4622.

**Statutory Authority:** The Nutrition and Dietetics Practice Act, Sections 61-7A-1 to -15 NMSA 1978 (1993, as amended through 2017), among other provisions, specifically authorizes the Board to "adopt and file all rules

necessary for the implementation and enforcement of the provisions of the Nutrition and Dietetics Practice Act.” See also NMSA 1978, Section 61-7A-6(A)(8)

**Summary of Proposed Changes: Expedited Licensure for Military Members and Veterans**

The Board proposes to amend Part 14 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees.

**Disqualifying Convictions**

The Board proposes to amend Part 14 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board’s ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Commission proposes to amend Part\_14\_ to include a list of felony convictions that would disqualify an applicant from being issued a nutritionist, nutritionist associate or dietitian license.

In addition to making minor clarification changes, the proposed rules are summarized as follows:

**16.14.3.8. NMAC – Requirements for Dietitian License**

This adoption is to add language to define a potentially disqualifying conviction for purposes of licensure pursuant to SB2 guidelines

**16.14.3.9. NMAC – Requirements for Nutritionist License**

This adoption is to add language to define a potentially disqualifying conviction for purposes of licensure

pursuant to SB2 guidelines.

**16.14.3.10. NMAC – Requirements for Nutritionist Associate**

This adoption is to add language to define a potentially disqualifying conviction for purposes of licensure pursuant to SB2 guidelines.

**16.14.11.11. NMAC – Disciplinary Guidelines**

This adoption is to add language to explain the hearing process for potential denial of licensure for disqualifying convictions under SB2 guidelines

**16.14.12.7. NMAC – Definitions**

This adoption is 1) to add definitions related to military license pursuant to HB 120 and 2) to add definitions regarding potentially disqualifying convictions for licensure under SB 2.

**16.14.12.9. NMAC – Fees**

This adoption is to delineate waiver of such fees for military personnel, veterans, spouses and dependents pursuant to HB120

**16.14.12.10. NMAC – Renewal Requirements**

This adoption is to clarify prerequisites and additional requirements for renewal procedure.

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**REGULATION AND LICENSING DEPARTMENT  
PODIATRY, BOARD OF**

**NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Board of Podiatry will hold a rule hearing on Friday, November 12, 2021, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in Hearing Room I for those desiring to attend in person.

**Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.**

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e3b96d9e57356c7768b7a8fbc061a4936>

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

Access Code: 2498 253 7029

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

16.21.6 NMAC – Licensure for Military Service Members, Spouses and Veterans

16.21.11 NMAC – Disciplinary Proceedings

To obtain and review copies of the proposed changes and public comments, you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/podiatry/pod-board-information/pod-board-meetings/> 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 Amanda Lewis, Team Leader, via electronic mail at: [Podiatryboard@state.nm.us](mailto:Podiatryboard@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, November 08, 2021. Written comments received prior to the rule hearing will be posted within three business days to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/podiatry/pod-laws-rules-and-policies/>. 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 <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/podiatry/pod-board-information/pod-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Amanda Lewis, Team Leader 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 Amanda Lewis, Team Leader (505) 476-4622.

**Statutory Authority:** The Podiatry Act, Sections 61-8-1 to 61.8.17 NMSA 1978. Paragraph (2) of Subsection E of Section 61-8-6 NMSA 1978 specifically provides that the board shall “adopt, publish and file...all rules for the implementation and enforcement of the provisions of the Podiatry Act.”

**Purpose of the Proposed Rules:** The purpose of the rule hearing is to receive written and oral comments from the public on proposed rules amending 16.21.6 NMAC - Licensure for Military Service Members, Spouses, Veterans to comply with 2021 legislative changes made during the regular session in HB 120 Military Spouses Expedited Licensure signed into law by Governor Lujan Grisham on April 6, 2021 and amending 16.21.11 NMAC – Disciplinary Proceedings to comply with 2021 legislative changes made during the special session in SB2 Expungement of Certain Records signed into law by the Governor Lujan Grisham on April 12, 2021.

**Summary of Proposed Changes:**

**16.21.6 NMAC - Licensure for Military Service Members, Spouses, and Veterans**  
The amendments to this part includes a repeal and replace due to the 2021 legislative change regarding

HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

**16.21.11 NMAC – Disciplinary Proceedings**

The amendments to this part is to add a new section to the rule to be in compliance with the 2021 legislative change regarding SB2 Expungement of Certain Records. The proposed rule sets out what criminal felony convictions directly relate to the particular employment, trade, business or profession of podiatry that may disqualify the applicant or licensee from holding a license. The rule also defines how the conviction may and may not be used when reviewing an application for licensure or for violation of Board statute or rules by a current licensee.

**REGULATION AND LICENSING DEPARTMENT  
PSYCHOLOGIST EXAMINERS,  
BOARD OF**

**NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico State Board of Psychologist Examiners (“Board”) will hold a public rule hearing on November 5, 2021, at 9:00 AM and following the rule hearing will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held in the Rio Grande Room, at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM 87505.

**Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.**

The meeting will also be held via Cisco Webex Meetings for those

desiring to attend virtually.  
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e5affd04f0c66c19b742bf809f7bd5928>

Event Number: 2486 465 3194  
Event Password: 64dRR8Y28Xn

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

Access Code: 2486 465 3194

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

- 16.22.1 NMAC – General Provisions;
- 16.22.2 NMAC – Code of Conduct;
- 16.22.5 NMAC – Psychologists: Application Requirements; Procedures;
- 16.22.6 NMAC – Psychologists: Predoctoral and Postdoctoral Supervised Experience;
- 16.22.8 NMAC – License Expiration and Renewal;
- 16.22.10 NMAC – Inactive Status and Reinstatement;
- 16.22.11 NMAC – Complaint Procedures;
- 16.22.12 NMAC – Psychologist Associates: Education Requirements and Conditions of Practice;
- 16.22.13 NMAC – Fees;
- 16.22.14 NMAC – Licensure for Military Service Members, Spouses and Veterans;
- 16.22.20 NMAC – Conditional Prescribing Certificate; Prescription Certificate: Health Care Practitioner Collaboration Guidelines;
- 16.22.21 NMAC – Conditional Prescribing or Prescribing Psychologist: Limits of Practice;
- 16.22.23 NMAC – Requirements for Education and Conditional Prescription Certificate;
- 16.22.24 NMAC – Application Procedures: Two-year Supervised Practice;
- 16.22.25 NMAC – Prescription Certificate: Application; Peer Review; Evaluation Outcome;
- 16.22.26 NMAC – Graduates of the Department of Defense Psychopharmacology Demonstration Project;



16.22.27 NMAC – Conditional Prescribing or Prescribing Psychologist: Formulary;  
 16.22.29 NMAC – Conditional Prescribing or Prescribing Psychologist: Continuing Professional Education and Certificate Renewal;  
 16.22.30 NMAC – Prescription Monitoring Program Requirements;

To obtain and review copies of the proposed changes and public comments, you may go to the Board’s website at:

<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/psychologist-examiners/psychologist-examiners-board-information/psychologist-examiners-board-meetings/>  
 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 Nicholas Henderson, Board Administrator, via electronic mail at: [Psychologist.examiners@state.nm.us](mailto:Psychologist.examiners@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, October 28, 2021. Written comments received prior to the rule hearing will be posted to the RLD website at:

<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/psychologist-examiners/psychologist-examiners-board-information/psychologist-examiners-board-meetings/>

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:

<https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/psychologist-examiners/psychologist-examiners-board-information/psychologist-examiners->

board-meetings/ Copies of the rules or the agenda may also be obtained by contacting Nicholas Henderson, 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 Nicholas Henderson, Board Administrator (505) 476-4622.

**Statutory Authority:** Professional Psychologist Act, NMSA 1978, Sections 61-9-6.

**Purpose of the Proposed Rules:**

The purpose of the rule hearing is to receive written and oral comments from the public on proposed rules amending 16.22.14 NMAC - Licensure for Military Service Members, Spouses, Dependent Children and Veterans to comply with 2021 legislative changes made during the regular session in HB 120 Military Spouses Expedited Licensure signed into law by Governor Lujan Grisham on April 6, 2021 and amending 16.22.2 NMAC - General Provisions to comply with 2021 legislative changes made during the special session in SB2 Expungement of Certain Records signed into law by the Governor Lujan Grisham on April 12, 2021.

Pursuant to its authority in Section 61-9-6, NMSA 1978, the Board is proposing the following amendments to the Psychology rules listed below to comply with the new state rules act and to provide for uniformity in the application of the rules, cleaning up definitions and removing similar language that appeared in more than one part.

**Summary of Proposed Changes:**

Pursuant to its authority in Section 61-9-6, NMSA 1978, the Board is proposing the following amendments to the Psychology rules listed below to comply with the new state rules act and to provide for uniformity in

the application of the rules, cleaning up definitions and removing similar language that appeared in more than one part, to add language to comply with SB-2, to add language to comply with HB-120, and to add language to the prescription monitoring program requirements.

The Board proposed to add definitions to 16.22.1. Those definitions include “accredited by a nationally recognized accreditation body”, “disqualifying criminal convictions”, and “independently licensed prescribing clinician” The proposed rule amendments also include re-lettering of current definitions.

The Board proposes to amend its rules in 16.22.2 to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board’s ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

The Board proposes to amend its rules in 16.22.5 to add application procedures. The Board will develop and approve a list of jurisdictions whose licensing requirements meet or exceed ours. Background check procedure is also to be revised. Record retentions for incomplete applications is added. Language is also added on disciplinary actions in another jurisdiction. Reciprocity has been changed from ten years to two. American board of professional Psychology is added to 16.22.5.11 to be included as a credential.

The Board proposes to amend its rules in 16.22.6 to remove restrictions on tele-supervision and making it equivalent to face to face supervision.

The Board proposes to amend its rules in 16.22.8 to remove background checks for renewals and to add electronic mail as the licensee responsibility.

The Board proposes to amend its rules in 16.22.9 to remove the requirement of continuing professional education in ethnic diversity, and the limit to online continuing professional education. It also proposes to add Health disparities as a category for continuing professional education.

The Board proposes to amend its rules in 16.22.10 to replace the word renewal with reinstatement.

The Board proposes to amend its rules in 16.22.11 to remove the notarization requirement for complaints.

The Board proposes to amend its rules in 16.22.12 to change from annual to biennial.

The Board proposes to amend its rules in 16.22.13 to remove out of state psychologist, and second year conditional prescription certificate fees and references. Instead, it proposes to add psychologist and psychologist associates to reinstatement fee and add reinstatement fee for prescription certificate.

The Board proposes to amend its rules in 16.22.14 to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees for a period of three years if applicant holds equivalent license from another state or jurisdiction. Furthermore, the board seeks to add definitions. These definitions will further specify qualifications for expedited licensure. Additionally, the proposed revisions will provide notice to the public and interested parties of applications and renewal changes for military personnel, their spouses, veterans, and dependent children as contemplated by House Bill 120 to be codified in 16.22. 14

The Board proposes to amend its rules in 16.22.20 to add that written notice shall be sent to the primary treating health care practitioner within 24 hours and removing the rest of the requirements about contacting the primary health care practitioner under this section.

The Board proposes to amend its rules in 16.22.21 to remove requirements on collaboration guidelines.

The Board proposes to amend its rules in 16.22.23 to allow video conference. It also proposes to remove American Psychological Association and replace with Association of State and Provincial Psychology Boards.

The Board proposes to amend its rules in 16.22.24 to add independently licensed prescribing clinician instead of physician. It also proposes to add training regarding knowledge/ understanding of New Mexico laws as a requirement.

The Board proposes to amend its rules in 16.22.25 to add independently licensed prescribing clinician instead of physician. It also proposes to add requirements for prescription certificate by applicants licensed to prescribe in another jurisdiction.

The Board proposes to amend its rules in 16.22.26 to add training regarding knowledge New Mexico laws as a requirement for licensure.

The Board proposes to amend its rules in 16.22.27 to correct the referencing statute.

The Board proposes to amend its rules in 16.22.29 to remove reference to conditional prescribing. It also proposes to add processes for failure to renew a prescribing certificate on time.

The Board proposes to amend its rules in 16.22.30 to add language that the board will review over prescription of schedule drugs.

**REGULATION AND LICENSING DEPARTMENT  
SPEECH-LANGUAGE PATHOLOGISTS,  
AUDIOLOGISTS AND HEARING AID DISPENSERS BOARD**

**NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Speech-Language Pathologists, Audiologists & Hearing Aid Dispensers Board (Board) will hold a rule hearing on Friday, November 12, 2021, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to consider adoption of the rules and address regular business.

The rule hearing and board meeting will be held via Cisco Webex Meetings:  
<https://nmrld.webex.com/nmrld/j.php?MTID=m4d6e8811c59cad3a48e2686d1ece2cd1>  
Meeting number (access code): 2487 691 1171  
To join the meeting by phone:  
1-415-655-0002 United States Toll

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

- 16.26.2 NMAC – Licensure Requirements
- 16.26.7 NMAC – Grounds for Disciplinary Action
- 16.26.11 NMAC – Licensure for Military Service Members, Spouses and Veterans

To obtain and review copies of the proposed changes you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/speech-language-pathology-audiology-and-hearing-aid-dispensing-practices/slp-rules-and-laws/> or contact the New Mexico Speech-Language Pathologists, Audiologists & Hearing Aid Dispensers Board at (505) 476-4622 or by email at [speech.hearing@state.nm.us](mailto:speech.hearing@state.nm.us).

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Sue Sneeringer, Board Administrator, via electronic mail at [speech.hearing@state.nm.us](mailto:speech.hearing@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, November 11, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/speech-language-pathology-audiology-and-hearing-aid-dispensing-practices/slp-rules-and-laws/>, no more than three business days following receipt to allow for public viewing.

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

**Statutory Authority:** Section 61-14B-11(A) of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, NMSA 1978, Sections 61-14B-1 through -25 (1990, as amended through 2021), authorizes the Board to "adopt rules necessary to implement the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the Uniform Licensing Act." Section 61-14B-11(C) of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act requires the Board to "adopt a code of ethics that includes rules requiring audiologists and hearing aid dispensers, at the time of the initial examination for possible sale and fitting of a hearing aid if a hearing loss is determined, to inform each prospective purchaser about hearing aid options that can provide a direct

connection between the hearing aid and assistive listening systems." Further, Section 61-14B-11(H) of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act requires the Board to adopt rules that provide for licensure by reciprocity, including temporary permits for speech-language pathologists, audiologists, or hearing aid dispensers. Finally, Section 61-1-36 of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -36 (1957, as amended through 2021), requires the Board to "promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction."

**Purpose of the proposed rules:**

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and registrants, and to generally satisfy the Board's statutory obligation to "adopt rules and regulations and establish policy necessary to carry out the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the Uniform Licensing Act." NMSA 1978, Section 61-14B-11(A). In addition, several of the proposed rule changes are intended to address to recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at <https://nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=2&year=21s>, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at <https://nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=120&year=21>.

**Summary of Proposed Changes:**

The Board summarizes its proposed changes to its administrative rules as follows:

**16.26.2 NMAC - Licensure Requirements**

As a general summary, the proposed changes to 16.26.2 NMAC add the requirement that all applicants certify that they have not been convicted of felonies listed in 16.26.7.8 NMAC. Additionally, the proposed changes provide for a bilingual/multicultural endorsement for out of state and out of country applicants that is consistent with the requirements for those applicants in New Mexico.

**16.26.7 NMAC – Grounds for Disciplinary Action**

As a general summary, the proposed changes to 16.26.2 NMAC would bring the rules into compliance with Section 61-1-36 NMSA 1978, which mandates that Boards and Commissions update identify specific disqualifying felony convictions which would preclude licensure under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act. The proposed changes remove previous references to certain misdemeanors and violations of the Controlled Substances Act and replaces those references with a list of disqualifying felonies which are job related for the position in question and consistent with business necessity. Further, the proposed change to this subsection outlines that practitioner could be disciplined for failing to deliver a person supplied with a hearing aid a receipt that contains particular information mandated by statute. Finally, the proposed change outlines the Board's ability to consider certain evidence of disqualifying convictions.

**16.26.11 NMAC – Licensure for Military Service Members, Spouses and Veterans**

As a general summary, the proposed changes to 16.26.2 NMAC update the rule to reflect recent legislative changes regarding expedited licensure for military service members. The updated rule expands the definition of eligibility for individuals applying for expedited licensure as a service member. Additionally, the new rule reflects the requirements for



individuals applying through this process. Finally, the new fee and time schedule as required by 61-1-34 NMSA 1978.

**SECRETARY OF STATE,  
OFFICE OF**

**NOTICE OF PROPOSED  
RULEMAKING**

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The public hearing will be held on October 28, from 9:00 am to 11:00 am, at the State Capitol Building located at 490 Old Santa Fe Trail, Santa Fe, NM 87501 in Room 317. Every effort will be made to ensure that this hearing will be live streamed on the Office’s website. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter.

The purpose of this hearing is to obtain public input on new rules relevant to the 2021 passage of the Revised Uniform Law on Notarial Acts [14-14A-1 to 14-14A-32 NMSA 1978] which is effective beginning January 1, 2022. The new rules shall be codified as:

12.9.3 NMAC Notarial Procedures

12.9.4 NMAC Remote Online Notarization Standards

Additionally, the purpose of the hearing is to obtain public input on repealing 12.9.2 NMAC Performing Electronic Notarial Acts.

**12.9.3 NMAC Notarial Procedures**

**Authority:** Section 14-14A-26 NMSA 1978

**Purpose:** The purpose of this rule

is to establish standards, guidelines, procedures, fees and to define the duties and responsibilities for notarial officers under the Revised Uniform Law on Notarial Acts.

**Summary of Full Text:** *Section 12.9.3.7 NMAC* defines key terms including “electronic record,” “in-person electronic notarization,” “notary seal,” “remote online notarization,” “tamper evident,” “tangible copy,” and “tangible record.” *Section 12.9.3.8 NMAC* provides the process for applying for or renewing a notary public commission including the established application fees. *Section 12.9.3.9 NMAC* provides the condition under which a notary public’s commission automatically expires. *Section 12.9.3.10 NMAC* provides the process for suspending or revoking a notary public commission. *Section 12.9.3.11 NMAC* provides the procedures and requirements for providing training and the required examination course. *Section 12.9.3.12 NMAC* sets the maximum fees that may be charged by a notarial officer. *Section 12.9.3.13 NMAC* provides the requirements for notarial procedures. *Section 12.9.3.14 NMAC* provides requirements of a notarial officer to prevent fraud and mistakes. *Section 12.9.3.15 NMAC* provides requirements for the appearance of the official stamp. *Section 12.9.3.16 NMAC* provides requirements for maintaining a notarial journal. *Section 12.9.3.17 NMAC* provides requirements for non-commissioned notarial officers.

**12.9.4 NMAC Remote Online Notarization Standards**

**Authority:** In accordance with Subsection H of Sections 14-14A-5 and 14-14A-26 NMSA 1978, the secretary of state has the authority to promulgate rules for notaries public to perform notarial acts for remotely located individuals using communication technology.

**Purpose:** The purpose of this rule is to establish uniform standards of performance and governance of

notarial acts for remotely located individuals by use of communication technology under the Revised Uniform Law on Notarial Acts.

**Summary of Full Text:** *Section 12.9.4.7 NMAC* defines key terms including “communication technology,” “identity proofing,” “knowledge-based authentication,” “public key infrastructure,” and “remote notarization system provider.” *Section 12.9.4.8 NMAC* provides the process for applying to perform remote online notarizations including the established application fees. *Section 12.9.4.9 NMAC* provides the procedures and requirements for providing training and the required examination course. *Section 12.9.4.10 NMAC* provides the process for performing remote online notarial acts. *Section 12.9.4.11 NMAC* provides the methodology used by notary public authorized to perform remote online notarizations to ensure the identity of a remotely located individual. *Section 12.9.4.12 NMAC* establishes the requirements for the audiovisual communication technology utilized to perform remote online notarizations. *Section 12.9.4.13 NMAC* provides the requirements for the electronic signature and stamp utilized by notary publics authorized to perform remote online notarizations. *Section 12.9.4.14 NMAC* provides requirements audio visual record retention. *Section 12.9.4.15 NMAC* provides requirements for maintaining a notarial journal by notary publics authorized to perform remote online notarizations. *Section 12.9.4.16 NMAC* provides requirements for an online certificate for a remote notarial act. *Section 12.9.4.17 NMAC* establishes standards for remote notarization system providers. *Section 12.9.4.18 NMAC* provides requirements for non-commissioned notarial officers to be authorized to perform remote online notarizations. *Section 12.9.4.19 NMAC* provides guidance regarding how commissioned notary publics with an appointment date prior to the effective date of the new law to

become authorized to perform remote online notarizations.

**Repeal of 12.9.2 NMAC Performing Electronic Notarial Acts**

**Purpose:** 12.9.2 NMAC is based on previous law that is no longer applicable and must be repealed.

**Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments:** Copies of the proposed rule are available on the Office’s website at [www.sos.state.nm.us](http://www.sos.state.nm.us) or can be obtained from the Business Services Division by calling (505) 827-3600 or emailing [kari.fresquez@state.nm.us](mailto:kari.fresquez@state.nm.us). The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide oral or written comments at the public hearing.

Before the public hearing, written comments may be sent to Kari Fresquez, Director of Legislative and Executive Affairs, via email at [kari.fresquez@state.nm.us](mailto:kari.fresquez@state.nm.us), fax (505) 827-3611, or by regular mail at Attn: Kari Fresquez – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is 11:00 am on October 28, 2021. All written public comments will be posted on the website throughout the written comment period at: [www.sos.state.nm.us](http://www.sos.state.nm.us).

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email [kari.fresquez@state.nm.us](mailto:kari.fresquez@state.nm.us) at least five (5) business days prior to the hearing.

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**SUPERINTENDENT OF INSURANCE, OFFICE OF  
NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1 -1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to repeal and replace rule 13.10.34 NMAC STANDARDS FOR ACCIDENT ONLY, SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, AND RELATED EXCEPTED BENEFITS.

**PURPOSE OF THE PROPOSED RULE** is to establish regulatory requirements for the subject excepted benefit plans. The rule will standardize and simplify the terms and coverages; facilitate public understanding and comparison of coverage; eliminate provisions that may be misleading or confusing in connection with the purchase and renewal of the coverages or with the settlement of claims and require disclosures in the marketing and sale of subject excepted benefit plans.

**STATUTORY AUTHORITY** for this rulemaking is Section 59A-23G-1 et seq. NMSA 1978.

The Superintendent will conduct a formal rulemaking pursuant to the Administrative Procedures Act, the State Rules Act, and 13.1.4 NMAC. A notice with additional details and information on how to obtain a copy of the proposed rules will publish November 30, 2021.

ISSUED this 28<sup>th</sup> day of September, 2021  
/S/RUSSELL TOAL

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**SUPERINTENDENT OF INSURANCE, OFFICE OF  
NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that the Office of Superintendent of Insurance (“OSI”) pursuant to the statutory mandates of NMSA 1978, Section 59A-30-8(A) will hold a public video/telephonic hearing to

determine title insurance rates. This hearing will commence on **November 30, 2021 at 9:00 a.m.**

**TO ATTEND THE HEARING:**  
Join via Video: <https://us02web.zoom.us/j/2916274744>

The hearing will be governed by the procedures specified in Rule 13.1.5 NMAC – Formal Administrative Hearings. Only parties shall be allowed to offer evidence or argument at the hearing.

Any person interested in participating as a party must request intervenor party status pursuant to Rule 13.1.4.9(D) NMAC. Filing deadline for intervenor party status is **October 12, 2021.**

Updates and filings concerning this case are available on OSI’s electronic docket (“eDocket”) at <https://edocket.osi.state.nm.us/home?to=%2Fdashboard>

All documents shall be filed through the eDocket at <https://edocket.osi.state.nm.us/home?to=%2Fqueue-cases%2F3962%2Fpreview&exp=true> or by mail:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689  
For assistance with filing documents, please email: [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us).

Note: The eDocket requires an initial registration step to allow users to upload documents. All documents submitted for filing shall indicate the docket number for this case.

**Docket No. 2021-0061  
IN THE MATTER OF THE 2021 BIENNIAL TITLE INSURANCE RATE HEARING**

Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than November 19, 2021.



ISSUED this 28th day of September, 2021  
/S/RUSSELL TOAL

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold a public video/telephone hearing regarding proposed amendments to **13.1.3 NMAC PRIVACY OF NONPUBLIC PERSONAL INFORMATION**. The hearing will commence on **October 29, 2021 at 9:00 a.m.**

**PURPOSE AND SUMMARY OF THE PROPOSED**

**AMENDMENTS:** On February 3, 2021, the Superintendent of Insurance granted the petition of American Property Casualty Insurance Association (“APCIA”) for a rulemaking to amend 13.1.3.9 NMAC. APCIA is proposing that the current rules be amended so that if certain criteria set forth in the federal FAST Act are met by a licensee, then the sending of an annual privacy notice pursuant to 13.1.3.9 NMAC is not required; the licensee will, however, be required to send a copy of its current privacy policies and practices to policyholders if it does not meet the criteria.

**STATUTORY AUTHORITY:**

Sections 59A-2-9 and 59A-2-9.3 NMSA 1978.

**TO ATTEND THE HEARING:**

Join via Video: <https://us02web.zoom.us/j/2916274744>

The Superintendent designates R. Alfred Walker to act as the hearing examiner for this rulemaking.

Copies of the Notice of Proposed Rulemaking and proposed amended rules are available by electronic download from the OSI eDocket

<https://edocket.osi.state.nm.us/guest/case-view/3920> or the New Mexico Sunshine Portal, or by requesting a copy by calling (505) 476-0333. Note: Due to the COVID-19 pandemic, the physical offices of the OSI remain closed to the public until further notice.

Oral comments will be accepted at the public hearing from members of the public and any interested parties. Written comments will be accepted through 4:00 pm on Friday, October 29, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on November 8, 2021. All comments shall be filed through the eDocket at <https://edocket.osi.state.nm.us/guest/case-view/3920> or by mail:

OSI Records and Docketing, NM  
Office of Superintendent of Insurance  
1120 Paseo de Peralta, P.O. Box 1689,  
Santa Fe, NM 87504-1689

For assistance with filing documents, please email [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us).

Note: The eDocket requires an initial registration step before allowing users to upload/file documents. All documents submitted for filing shall indicate the docket number for this case.

**Docket No. 21-00008-RULE-PC  
IN THE MATTER OF THE  
PETITION OF THE AMERICAN  
PROPERTY CASUALTY  
INSURANCE ASSOCIATION TO  
AMEND 13.1.3.9 NMAC**

Only signed comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day. The

Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

**SPECIAL NEEDS:** Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 28th day of September, 2021  
/S/RUSSELL TOAL

**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.

### HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.100.100 NMAC, Section 17 effective 10/1/2021.

#### 8.100.100.17 BENEFIT ISSUANCE SYSTEM:

**A. Electronic benefit transfer (EBT):** SNAP and cash benefits are issued through a direct deposit into an EBT account. The benefits are maintained in a central database and accessed by the household through an individual debit card issued to the household.

**B. Initial issuance of EBT card:** The EBT card is issued to the designated payee of the eligible household or to the designated authorized representative.

(1) The EBT card is mailed to the head of household or the designated authorized representative on the first working day after the application is registered. The applicant or recipient shall receive training on the use of the EBT card prior to activation of the EBT card.

(2) The EBT card shall be issued to the payee for an eligible household through the most effective means identified by HSD which may include issuance at the county office or by mail.

(3) The applicant or recipient must verify his or her identity.

(4) The payee for the eligible household may select the four-digit personal identification number that will allow access to the household's benefits.

**C. Replacement of the EBT card:** The recipient or designated authorized representative shall be instructed on the procedure

for replacement of an EBT card that has been lost, stolen or destroyed.

(1) The recipient or designated authorized representative may report a lost, stolen or destroyed EBT card through the HSD EBT contractor customer service help desk, HSD EBT customer service help desk or any ISD field office.

(2) The lost, stolen, or destroyed EBT card shall be deactivated prior to a replacement card being issued to the household.

(3) ISD shall make replacement EBT cards available for client to pick up or place the card in the mail within two business days following notice by the household to ISD that the card has been lost, stolen or damaged.

(4) ISD may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however, the fee may not exceed the cost to replace the card.

**D. Excessive replacement cards:** The HSD office of inspector general (HSD OIG) will generate a warning letter to SNAP recipients that have replaced their EBT card five or more times in a 12 month period. The letter is a notice of warning and will explain that as a result of the recipient's high number of replacement EBT cards, their EBT SNAP transactions will be closely monitored. The letter will become part of the recipient's case record. The letter will:

(1) be written in clear and simple language;

(2) meet the language requirements described at 7 CFR 272.4(b);

(3) specify the number of cards requested and over what period of time;

(4) explain that the next request, or the current request if the threshold has been exceeded, requires contact with ISD before another card is issued;

(5) provide all applicable information on how contact is to be made in order for the client to comply, such as whom to contact, a telephone number and address; and

(6) include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

**E. Inactive EBT accounts:** EBT accounts which have not been accessed by the recipient in the last 90 days are considered a stale account. HSD may store stale benefits offline after notification to the household of this action.

(1) The notification to the household shall include the reason for the proposed action and the necessary steps required by the recipient to reactive the account.

(2) The recipient may request reinstatement of their EBT account anytime within 364 days after the date of the last benefit account activity.

**F. EBT benefit expungement:** When benefits have had no activity:

(1) **SNAP:** HSD may expunge benefits that have not been accessed by the household after a period of ~~365 days~~ 274 days. HSD must attempt to notify the household prior to expungement. Expunged benefits are no longer available to the household. Requests for reactivation must be received prior to expungement and a determination shall be made by the director or designee of the income support division.

**(2) Cash:**

Cash assistance benefits which have had no activity for an excess of 180 days will be expunged. All benefits older than 180 days in the account will no longer be accessible to the household. The household loses all rights to all expunged benefits. The department shall attempt to notify the household no less than 45 days prior to the expungement of the cash assistance benefits.  
[8.100.100.17 NMAC - N, 3/1/2020; A, 10/1/2021]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.100.640 NMAC, Section 18 effective 10/1/2021.**

**8.100.640.18 DORMANT BENEFIT ACCOUNTS:** Stale benefit accounts are those SNAP and cash assistance accounts that have not been accessed for 90 days from the most recent date of withdrawal.

**A. Offline accounts:**

If EBT accounts are not accessed for 90 days, the department may store such benefits in an offline account.

**(1)**

**Notification:** The department shall notify the eligibility determination group of this action before storing benefits in an offline account and how to reactivate the account.

**(2)**

**Reinstatement:** An adult eligibility determination group member or authorized representative may contact the department or the EBT customer service help desk and request reinstatement of their EBT account.

**(a)**

**SNAP:** SNAP benefits may be restored within [364] 274 days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

**(b)**

**Cash assistance:** Cash assistance benefits may be restored within 364

days of the initial date of benefit activity. Initial date of benefit activity is the first deposit made to the account upon initial approval of the eligibility determination group's benefits.

**B. Expungements:**

SNAP and cash assistance benefits that have not been accessed in excess of the threshold for each program will be expunged. All benefits will no longer be available to the eligibility determination group. The eligibility determination group loses all rights to expunged benefits.

**(1) Stale**

**benefit threshold:**

**(a)**

**SNAP:** SNAP benefits will be expunged after no activity within 274 days of the initial date of benefit activity.

**(b)**

**Cash assistance:** Cash assistance benefits which have had no activity within 180 days of the initial date of benefit activity will be expunged.

**(2)**

**Notification:** The contractor shall notify the department no less than five days prior to expungement of the SNAP benefits. The department shall identify any SNAP claims against the eligibility determination group and shall apply upon expungement.

**(a)**

**SNAP:** The department shall notify the eligibility determination group no less than 30 days prior to the expungement of the SNAP benefits. Request from the participant to reinstate any benefit must be received prior to date of expungement.

**(b)**

**Cash assistance:** The department shall attempt to notify the eligibility determination group no less than 45 days prior to the expungement of the cash assistance benefits. A request from the participant to reinstate any benefit must be received prior to the date of expungement.

**(3) Payments**

**of claims against the eligibility determination group.** The contractor shall notify the department no less than five days prior to expungement of the SNAP or cash assistance benefits and any claims against

the eligibility determination group shall be removed from the account and applied to the claims upon expungement.

[8.100.640.17 NMAC - N, 09/30/2013; A and Rn, 3/1/2020; A, 10/1/2021]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an emergency amendment to 8.102.500 NMAC, Section 8 effective 10/1/2021.**

**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:

one person	(a) [904] <u>\$913</u>
two persons	(b) [1,221] <u>\$1,234</u>
three persons	(c) [1,539] <u>\$1,556</u>
four persons	(d) [1,856] <u>\$1,878</u>
five persons	(e) [2,173] <u>\$2,199</u>
six persons	(f) [2,491] <u>\$2,520</u>
seven persons	(g) [2,808] <u>\$2,842</u>
eight persons	(h) [3,125] <u>\$3,164</u>
add [318] <u>\$318</u> for each additional person.	(i)

**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	[1,064] <u>\$1,074</u>
(2) two persons	[1,437] <u>\$1,452</u>
(3) three persons	[1,810] <u>\$1,830</u>
(4) four persons	[2,184] <u>\$2,209</u>
(5) five persons	[2,557] <u>\$2,587</u>
(6) six persons	[2,930] <u>\$2,965</u>
(7) seven persons	[3,304] <u>\$3,344</u>
(8) eight persons	[3,677] <u>\$3,722</u>
(9) add [374] <u>\$379</u> 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

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; A/E, 10/01/2021]

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an emergency amendment to 8.106.500 NMAC, Section 8 effective 10/1/2021.**



**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	<del>[\$904]</del>	<u>\$913</u>
	(b)	
two persons	<del>[\$1,221]</del>	<u>\$1,234</u>
	(c)	
three persons	<del>[\$1,539]</del>	<u>\$1,556</u>
	(d)	
four persons	<del>[\$1,856]</del>	<u>\$1,878</u>
	(e)	
five persons	<del>[\$2,173]</del>	<u>\$2,199</u>
	(f)	
six persons	<del>[\$2,491]</del>	<u>\$2,520</u>

(g) seven persons ~~[\$2,808]~~ \$2,842

(h) eight persons ~~[\$3,125]~~ \$3,164

(i) add ~~[\$318]~~ \$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; A/E, 10/01/2021]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an emergency amendment to 8.139.120 NMAC, Section 8 effective 10/1/2021.**

**8.139.120.9 SIMPLIFIED REPORTING:** All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

**A. Household Certification Periods:** A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

**B. Household responsibility to turn in interim report form:**

(1) A household assigned to a 12-month certification period shall be required to file an interim report form no later than the tenth day of the sixth month of the certification period in order to receive uninterrupted benefits.

(2) A household assigned to a 24-month certification period shall be required to file an interim report form no later than the tenth day of the twelfth month of the certification period in order to receive uninterrupted benefits.

**C. Information that ISD is responsible to provide to households regarding simplified reporting:** At the initial certification and at recertification, ISD shall

provide the household with the following:

(1) A written and oral explanation of how simplified reporting works;

(2) A written and oral explanation of the reporting requirements including:

(a) what needs to be reported and verified;

(b) when the interim report form is due;

(c) how to obtain assistance; and

(d) the consequences of failing to file an interim report form.

(3) Special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(4) A toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

**D. Information requirements for the interim report form:** The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

(1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;

(3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

**E. The following information, along with required verification, must be returned to ISD with the interim report form:**

(1) a change of more than one hundred twenty-five dollars [~~(\$100)~~] \$125 in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than one hundred twenty-five dollars [~~(\$100)~~] \$125 a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC;

(8) changes in the legal obligation to pay child support; and

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i).

**F. ISD's responsibility with interim report forms:**

(1) **Interim report form is not received:** If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) **Incomplete interim report form is received:**

(a) An interim report form that is not signed shall be returned to the household for a signature. The household:

- (i) shall be notified that the form is incomplete;
- (ii) what needs to be completed to complete the interim report form; and
- (iii) shall be given 10 calendar days to provide the signed interim report form

to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

- (i) shall be notified that the form is incomplete;
- (ii) what information must be provided to complete the interim report form; and
- (iii) shall be given 10 calendar days to provide the verification to process the interim report form.

(3) **Complete interim report form is received:**

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

- (i) shall be notified that verification is questionable; and
- (ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to

provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

**G. Changes that must be reported at any time during certification period:** Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) The household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) Able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

**H. Action on changes reported outside of the interim report form:** In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if

it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

- (1) The household has voluntarily requested that its case be closed;
- (2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:
  - (a) information is not questionable; and
  - (b) the provider of the information is the primary source of information; or
  - (c) the recipient's attestation exactly matches the information received from a third party.
- (3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);
- (4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

**I. Responsibilities on reported changes outside of the interim report form:** When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) **Decreased or termination of benefits:** For reported and verified changes that result in a decrease or termination of

household benefits, ISD shall act on the change as follows:

- (a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.
- (b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.
- (c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) **Increased benefits:** For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

- (a) For changes which result in an increase in a household's benefits, other than changes described in paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.
- (b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of fifty dollars (\$50) or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the tenth day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) **No change in SNAP benefit amount:** When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) **Providing verification:** The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its SNAP benefit amount shall revert to the original benefit amount.

**J. Resolving unclear information:**

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

- (a) information fewer than 60 days old relative to the current month of participation; and,



(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

**(2) Unclear information resulting from certain data matches:**

(a) if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

**K. Failure to report changes:** If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

(1) **Decreased benefit amount:** After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the

adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

(2) **Increased benefit amount:** When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[02/01/95, 10/01/95, 06/15/96, 09/14/96, 11/01/96, 07/01/98, 06/01/99; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008; A, 12/31/2008; A, 09/01/2017; A/E, 10/01/2021]

**PUBLIC EDUCATION DEPARTMENT**

**This is an amendment to 6.30.12 NMAC, Sections 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, effective 09/28/2021.**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS  
PART 12 K-5 PLUS [PROGRAM] SCHOOLS**

**6.30.12.3 STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-8-23.11 and 22-13D-1 et seq. NMSA 1978.

[6.30.12.3 NMAC - Rp, 6.30.12.3 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.6 OBJECTIVE:** This rule provides criteria for the development and implementation of the K-5 plus program [~~in order~~] to maximize successful outcomes for students. Development and implementation includes assisting school districts and charter schools as they build capacity to offer K-5 plus [programs]. Development and implementation also includes assessing and evaluating K-5 plus [programs] schools.

[6.30.12.6 NMAC - Rp, 6.30.12.6 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.7 DEFINITIONS:**  
[~~A.~~] **“Capacity”** means having the appropriate numbers of teachers and students participating in the K-5 plus program to meet program eligibility requirements.]

[~~B.~~] **A. “Evidence-based scientific math strategies and program”** means instructional strategies and mathematics programs that apply rigorous, systematic, and objective procedures to obtain valid measures relevant to math instruction and that are developmentally appropriate and integrate standards for mathematical practices.

[~~C.~~] **B. “Evidence-based scientific reading strategies and program”** means instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

[~~D.~~] **C. “High-priority schools”** means, for the purpose of [the K-5 plus program] K-5 plus, a public school:

(1) in which eighty percent or more of the elementary school's students are eligible for free or reduced-fee lunch at the time the public school applies for the K-5 plus program;

(2) that is a low-performing elementary school;

(3) that participated in K-3 plus or K-5 plus

[programs] in the most recent school year;

(4) that is identified as a comprehensive support and improvement school; or

(5) that is identified as a targeted support and improvement school.

~~[E.]~~ **D. “Instructional day”** means at least five and one-half instructional hours per day for qualifying schools.

~~[F.]~~ **E. “K-5 plus” or “K-5 plus program”** means ~~[a voluntary program, for approved elementary schools, that extends the school year by 25 or more additional instructional days for the purpose of literacy and numeracy instruction. The additional 25 or more instructional days will commence prior to the regular school year]~~ a program in which the school year is extended to 205 instructional days per school year or by 25 or more additional instructional days per school year, whichever requires the addition of the fewest number of instructional days for the purpose of literacy and numeracy instruction.

~~[G.]~~ **E. “K-5 plus program units”** means the number of students ~~enrolled [participating in a department-approved]~~ in a K-5 plus [program] school, multiplied by a factor of 0.3.

~~G.~~ **“K-5 plus school”** means an approved elementary school implementing the K-5 plus program.

**H. “Local education agency” or “LEA”** means a school district or a locally chartered or state-chartered charter school.

**I. “Multi-layered system of support”** means an umbrella framework that encompasses response to intervention and positive behavioral intervention and supports.

**J. “Progress monitoring”** means a scientifically based practice that teachers use to evaluate the effectiveness of their instruction for individual students and their entire class through:

(1) the identification of goals;

(2) measurement of progress toward meeting those goals, comparing

expected and actual rates of learning; and

(3) adjustments in instruction.

~~[K.]~~ **“School-wide”** means ~~the program is offered as many of grade levels an elementary school has;~~

~~[L.]~~ **J. “Screening assessment”** means the standardized assessment administered multiple times per year for all students to assess specific skills and to identify academically at-risk students.

[6.30.12.7 NMAC - Rp, 6.30.12.7 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.8 PROGRAM DEVELOPMENT AND IMPLEMENTATION:**

The department shall support schools in their capacity-building to increase participation in ~~[the K-5 plus program]~~ K-5 plus. Capacity-building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation.

[6.30.12.8 NMAC - N, 6/9/2020; A, 09/28/2021]

**6.30.12.9 PROGRAM ELIGIBILITY:**

~~[To be eligible for K-5 plus program units a school shall commit to]~~ A K-5 plus school:

**A.** shall provide 205 instructional days per school year or 25 or more additional instructional days of K-5 plus programming ~~[prior to the start of the regular school year]~~ per school year, whichever requires the addition of the fewest number of instructional days for a five-day school week;

**B.** shall provide a good-faith attempt to keep students who participate in ~~[the]~~ K-5 plus ~~[program]~~ with the same teacher and cohort of students for the following regular school year and minimize mid-year transfers to only those transfers that are in the best interest of the student;

**C.** shall provide K-5 plus teachers additional professional development on how young children learn to read; and

**D.** [implement the program school-wide] shall be considered an extended school calendar for all students in each participating school.

~~E.~~ that operates a four-day school week shall provide no fewer than 175 instructional days per school year or 20 additional instructional days per school year, whichever requires the addition of the fewest number of instructional days. [6.30.12.9 NMAC - Rp, 6.30.12.8 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.10 PROGRAM ELEMENT INSTRUCTION:**

**A.** K-5 plus ~~[programs]~~ schools shall ~~[include]:~~

(1) provide a daily classroom schedule with time for all students to practice independent reading;

(2) provide instruction and intervention to students based on screening assessment data to guide instruction to meet student needs;

(3) provide a comprehensive, evidence-based, early literacy, core basal reading program or intervention in alignment with the English language arts common core state standards established in 6.29.13.8 NMAC, which can be accessed at [corestandards.org/ELA-Literacy/](http://corestandards.org/ELA-Literacy/), that:

(a) ~~[identify]~~ identifies the concepts and skills necessary to establish the foundation of success in early reading;

(b) ~~[include]~~ includes instructional strategies that ensure children learn identified concepts and skills; and

(c) ~~[include]~~ includes key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension.

(4) provide a sequential, comprehensive, developmentally appropriate, early mathematics program that aligns with the mathematics common core

state standards established in 6.29.14 NMAC that:

- (a) ~~[identify]~~ identifies the concepts and skills necessary to establish the foundation of success in early mathematics; and
- (b) ~~[include]~~ includes instructional strategies that ensure children learn identified concepts and skills; and
- (5) ~~[implementation of]~~ implement the department's multi-layered system of supports.

**B.** K-5 plus schools shall provide intervention services in literacy and numeracy for students who are not meeting grade-level requirements.  
[6.30.12.10 NMAC - Rp, 6.30.12.9 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.11 PROGRAM ELEMENT - ASSESSMENT:**

K-5 plus schools shall administer a common screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency at the ~~[following times]~~ beginning, middle, and end of the school year:

- ~~[A. beginning of the K-5 plus program;~~
- ~~\_\_\_\_\_ B. end of the K-5 plus program;~~
- ~~\_\_\_\_\_ C. beginning of the regular school year;~~
- ~~\_\_\_\_\_ D. middle of the regular school year; and~~
- ~~\_\_\_\_\_ E. end of the regular school year.]~~

[6.30.12.11 NMAC - Rp, 6.30.12.10 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.12 PROFESSIONAL DEVELOPMENT:**

**A.** The LEA shall provide professional development to K-5 plus teachers in the following areas:

- (1) early literacy research and its implications for instruction for phonemic awareness, letter knowledge,

alphabetic decoding, vocabulary, spelling, comprehension and fluency in kindergarten and grades one through five;

(2) best practices of culturally and linguistically responsive instruction, including instruction for English language learners; and

(3) best practices in early mathematics instruction.

**B.** To support successful implementation of K-5 plus ~~[programs]~~, the department shall develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design.  
[6.30.12.12 NMAC - Rp, 6.30.12.11 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.13 APPLICATION AND REVIEW PROCESS:**

**A.** Pursuant to ~~[the K-5 Plus Act]~~ Section 22-13D-4 NMSA 1978, the department shall review for approval all applications ~~[for approval]~~ to establish a K-5 plus school. Priority ~~[with]~~ shall be given to those schools identified as high-priority schools. The department shall approve applicants that meet the application deadlines and demonstrate the capacity to meet K-5 plus ~~[program]~~ requirements as set forth in statute, regulation, and department guidance, provided there is sufficient funding.

**B.** No later than October 15 of each year, a ~~[school-district or charter school]~~ LEA that wishes to apply for a new K-5 plus program for the next fiscal year shall submit to the department the actual number of students who participated in its K-5 plus programs in the current calendar year and an estimate of the number of students the ~~[school-district or charter school]~~ LEA expects will participate in the K-5 plus programs in the next calendar year.

**C.** No later than November 15 of each year, the department shall notify the legislature of the number of students

participating in K-5 plus programs in the current school year and of the number of students projected to participate in K-5 plus programs in the next school year.

[6.30.12.13 NMAC - Rp, 6.30.12.12 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.14 FUNDING MECHANISMS:**

**A.** Funding for ~~[individual school]~~ K-5 plus ~~[programs]~~ schools shall be calculated based on the approved number of K-5 plus program units.

**B.** A ~~[school-district or charter school]~~ LEA that provides ~~[a department-approved]~~ K-5 plus ~~[program to all elementary students]~~ shall be eligible to generate K-5 plus program units using the total average number of elementary school students enrolled on the second and third reporting date of the previous school year.

[6.30.12.14 NMAC - Rp, 6.30.12.13 NMAC, 6/9/2020; A, 09/28/2021]

**6.30.12.15 EVALUATION AND REPORTING AND AUDITING:**

**A.** Schools shall comply with annual and interim reports as required by the department for student and program assessment and evaluation.

**B.** All students participating in K-5 plus shall be reported to the department through the department's data collection and reporting system. Required fields include ~~[the following]~~:

- (1) daily attendance;
- (2) student demographic information; and
- ~~[(3) services-rendered under the multi-layered-system of support;~~
- ~~\_\_\_\_\_ (4) assigned teacher; and]~~

~~[(5) (3) the number of years the student has participated in [the] K-5 plus [program].~~

**C.** The department may request additional information regarding ~~[staffing, endorsements, licensure levels,]~~ program elements,



class roster reports, professional development activities, parent and family involvement activities, implementation successes and challenges, and suggested modifications.

**D.** Site-monitoring visits by the department or by evaluators designated by the department shall be conducted. [~~District~~] School district and school personnel shall attend site visits as needed as determined by the department.

**E.** The department shall report annually to the legislature and the governor on the development and progress of [~~the K-5 plus program~~] K-5 plus schools.

**F.** The department shall establish a K-5 plus advisory committee composed of representatives of [~~school districts and charter schools~~] LEAs that [~~participate in the K-5 plus program~~] operate K-5 plus schools, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation. [6.30.12.15 NMAC – Rp, 6.30.12.14 NMAC 6/9/2020; A, 09/28/2021]

**HISTORY OF 6.30.12 NMAC:** 6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014, was repealed and replaced by 6.30.12 NMAC, K-5 Plus Program, effective 6/9/2020.

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS PART 31 PREMISES - GENERAL REQUIREMENTS**

**15.10.31.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division. [15.10.31.1 NMAC - Rp, 15.10.31.1 NMAC, 9/28/2021]

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

**15.10.31.3 STATUTORY AUTHORITY:** Section 60-3A-10 NMSA 1978, of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. [15.10.31.3 NMAC - Rp, 15.10.31.3 NMAC, 9/28/2021]

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

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

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

**15.10.31.7 DEFINITIONS:** Unless otherwise defined in 15.10.2 NMAC, terms used in these rules

have the same meanings as set forth in the Liquor Control Act. [15.10.31.7 NMAC - Rp, 15.10.31.7 NMAC, 9/28/2021]

**15.10.31.8 LIGHTING OF LICENSED PREMISES:** At any licensed premises open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance, age and conduct of all persons on the premises where alcoholic beverages are sold, served or consumed. [15.10.31.8 NMAC - Rp, 15.10.31.8 NMAC, 9/28/2021]

**15.10.31.9 SANITATION REQUIREMENTS:** All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico, this is to include all requirements set forth in any Public Health Order issued pursuant to Sections 24-1-1 through 24-1-40 NMSA 1978, of the Public Health Act, Sections 12-10A-1 through 12-10A-19 NMSA 1978, of the Public Health Emergency Response Act, and Sections 9-7-1 through 9-7-18 NMSA 1978, of the Department of Health Act and local sanitation ordinances. Failure to comply shall be deemed a violation of this rule. [15.10.31.9 NMAC - Rp, 15.10.31.9 NMAC, 9/28/2021]

**HISTORY OF 15.10.31 NMAC:** Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under: ABC Regulation No. 3A-2.(E), Lighting of Licensed Premises Regulation 3A-2.(E), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/85; AGD 3A-2(D), Lighting of Licensed Premises, filed 9/25/90; ABC Regulation No. 3A-2.(F), Sanitation Requirements Regulation 3A-2.(F), Interpreting and Exemplifying Section 60-3A-2 NMSA 1978 (1981-1984 Supp.), filed 11/4/85; and



AGD 3A-2(E), Sanitation Requirements, filed 9/25/90.

**History of Repealed Material:**

15 NMAC 10.3.1.8.2, Repealed 7/15/99.

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

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.10.2.1 ISSUING**

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

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

**15.10.2.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 10 and Chapter 11, have the same meanings as set forth in the Liquor Control Act.

**A. "The Act"** means the New Mexico Liquor Control Act, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A of Chapter 60 NMSA 1978.

**B. "Affiliate of the licensee"** means any of the following:

(1) A corporation is an affiliate of a licensee if:

(a) the corporation, or its officers, directors or controlling shareholders, owns a majority of stock of a licensee that is itself a corporation; or

(b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, if the licensee owns a majority of the corporation; or

(c) the company is owned by the same

entities or individuals that own the licensee.

(2) A limited liability company is an affiliate of a licensee if:

(a) the limited liability company, or its manager or controlling members, owns a majority of the stock of a licensee that is a corporation;

(b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, owns the controlling membership interest in the limited liability company; or

(c) a licensee that is a corporation is the manager of the limited liability company; or

(d) the limited liability company is owned by the exact same entities or individuals that own the licensee.

(3) Any other entity is an affiliate if there is a demonstration of common ownership with the entity holding the license.

**C. "Alcoholic beverage display area"** means that portion of a licensee's premises in which all alcoholic beverages on display for sale are contained.

**D. "Applicant"** means (a) an individual 19 years of age or older seeking a server permit under the Alcohol Server Education Article of the Liquor Act; or (b) a person or legal entity applying for a liquor license.

**E. "Approved operator"** means the [~~licensee or lessee approved by the division to operate a liquor license.~~] the following:

(1) a licensee or lessee approved by the division to operate a liquor license;

(2) the licensee's or lessee's officers, directors, managers, and members owning a ten percent interest or greater in the licensee or lessee; and

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

**F. "Bartender"** means a person who pours alcohol into a

container, or who opens alcohol in containers, for immediate service and consumption on the premises, except for the service of wine or beer at a customer's table in a restaurant.

**G. "Bed and breakfast"** means a business establishment that offers temporary lodging with meals included and has a guest capacity of 20 or fewer persons.

**H. "Bona fide guest"** means a person whose presence in a non-profit club is in response to a specific invitation by a member of the club and for whom the member assumes responsibility.

**[H:] I. "Cider"** means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe [~~fruit~~] apples or pears that contains not less than one-half of one percent alcohol by volume and not more than [~~seven~~] eight and one-half percent of alcohol by volume.

**[H:] J. "Commercial gambling"** means any of the following:

(1) participating in the earnings of or operating a gambling place;

(2) receiving, recording or forwarding bets or offers to bet;

(3) possessing one or more facilities with the intent to receive, record or forward bets or offers to bet;

(4) becoming a custodian of anything of value that was bet or offered to be bet;

(5) conducting a lottery in which either the consideration or the prize are of value;

(6) possessing one or more facilities to conduct a lottery or betting with intent to do so; or

(7) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game.

**[H:] K. "Commercial gambling"** does not mean the following:

(1) activities authorized pursuant to the New Mexico Lottery Act;

(2) the conduct of activities on the licensed premises of the holder of a club license that is regulated by the New Mexico Bingo and Raffle Act at Sections 60-2B-1 to -14 NMSA 1978, or is specifically exempted from regulation by the provisions of the New Mexico Bingo and Raffle Act; and

(3) gaming authorized pursuant to the Gaming Control Act, Sections 60-2E-1 to -62 NMSA 1978, on the premises of a gaming operator licensee licensed pursuant to that act.

**[K:] L. “Controlling shareholders”** means persons or entities who own fifty percent or more of the outstanding shares of stock in a corporation.

**[H:] M. “Controlled access area”** means that portion of a licensed premises under the licensee’s or lessee’s direct control where the licensee or lessee stores, sells, serves, delivers, and provides a place for patrons to consume alcoholic beverages.

**[M:] N. “Craft distiller”** means a person or entity that is engaged in bona fide manufacture of [~~spiritous~~] spirituous liquors, holds a valid federal license to produce [~~spiritous~~] spirituous liquors, and owns or controls fully operational distilling equipment.

**O. “Delivery”** means the transporting of alcoholic beverages from a licensed premises to consumers, off of a licensed premises, at or near the time of purchase, constituting a sale of alcoholic beverages. Delivery does not include curbside pickup by consumers while seated in a motor vehicle, unless written approval has been granted by the division.

**[N:] P. “Director”** means the director of the alcohol and gaming division.

**[O:] Q. “Division”** means the [~~alcohol and gaming~~] alcoholic beverage control division of the New Mexico regulation and licensing department.

**[P:] R. “Employee”** means any person, whether paid or not, who works under the direction of a

licensee or lessee or a licensee’s or lessee’s designate selling or serving alcoholic beverages.

**[Q:] S. “Fast food establishment”** means an establishment dispensing food for consumption on and off premises that tends to have any of the following characteristics: a menu consisting solely of pre-cooked items or items prepared in advance and heated quickly, placement of orders at a fast serve drive-through window, service of food solely in disposable wrapping or containers, or a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods.

**[R:] T. “Growler”** means a clean, refillable, resealable container, including crowlers, that traditionally has a liquid capacity [that] of sixty-four fluid ounces, but does not exceed one gallon, and that is intended and used for the sale of beer, wine, or cider for consumption off-premises.

**U. “Howler”** means a clean, refillable, resealable container, that has a liquid capacity that does not exceed thirty-two fluid ounces, and is intended and used for the sale of cocktails containing spirituous liquor.

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

**[T:] W. “Large premises licensee”** means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains 20,000 or more square feet of merchandise display space.

**[U:] X. “Legal entity”** means a corporation, general partnership, limited partnership, limited liability company, association or other entity, including but not limited to, entities for which registration is required with the New Mexico office of the secretary of state, other than an individual.

**[V:] Y. “Licensee”** means the holder of any license or permit authorizing the sale of alcoholic

beverages issued under the provisions of the act, but does not mean the holder of a server permit.

**[W:] Z. “Manufacture”** means the process of a licensee using the licensee’s own equipment on the licensed premises to do one of the following:

(1) for small brewers or winegrowers, or any large manufacturer of wine or beer, the creation of ethyl alcohol, from basic ingredients through a fermentation process;

(2) for craft distillers, brandy manufacturers and any large manufacturer of distilled spirits, the purification of ethyl alcohol from basic ingredients through a distillation process;

(3) for rectifiers and wine blenders, the blending or mixing of spirituous liquors with other alcoholic or non-alcoholic liquids, or non-alcoholic substances.

**AA. “Member”** means: (1) a person who pays annual membership dues to a holder of a club license pursuant to Section 60-6A-5 NMSA 1978, at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has been voted as a member by the current membership, and has all voting rights and full membership privileges as described in Subsection E of Section 60-3A-3 NMSA 1978;

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

(3) a member of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or

~~(4)~~ a person who pays membership dues and is a member of a class of a club licensed pursuant to Section 60-6A-5 NMSA 1978, but are persons without full voting rights or full membership privileges, so long as such members are provided for in the articles of incorporation, bylaws, charter, constitution or resolution of the board of directors or other appropriate governing body of the entity holding the club license; members described in this paragraph may not purchase, be served or consume alcoholic beverages within the bar or lounge area of the licensed premises, but may purchase, be served or consume alcoholic beverages in other areas of the licensed premises while engaged in activities whose primary purpose is other than the consumption of alcoholic beverages.

~~(X)~~ **BB.** “Primary activity”, “primarily” or “primarily engaged in” means the principal use of a licensed premises or area within a licensed premises at any given time. If more than fifty percent of the annual total gross receipts are derived from the sale of alcoholic beverages for consumption on the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption on the licensed premises. If more than sixty percent of the annual total gross receipts are from the sale of alcoholic beverages for consumption off the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption off the licensed premises.

~~(Y)~~ **CC.** “Principal officer” means an officer of the organization who, regardless of title, has responsibility for implementing the decisions of the organization’s governing body with respect to the liquor license, or for supervising the management, administration, or operation of the organization’s interest in the license. Such officer may include the president, one or more vice-presidents, secretary, or treasurer of the licensee, the manager or managers of a limited liability

company, a managing member of a member-managed, LLC or the president, vice-president, secretary or treasurer of any corporation, or the manager or managers of a limited liability company holding a direct or indirect interest in the license, which requires that corporation or limited liability company to be disclosed if that officer or manager has the authority to do any act on behalf of the licensee.

~~(Z)~~ **DD.** “Priority application” means one of the first 10 applications received during any filing period or, if more than 10 are received on the first day of the filing period, the 10 applications randomly selected by the director pursuant to 15.11.27.10 NMAC.

~~(AA)~~ **EE.** “Private party” means an event open only to invited guests and not open or advertised to the general public in which there is no financial consideration in exchange for alcoholic beverages. “Private party” does not include alcohol industry promotional events or other events with a commercial purpose.

~~(BB)~~ **FF.** “Public celebration” means any state fair, county fair, community fiesta, cultural or artistic performance or event, professional athletic competition and events or activities held on an intermittent basis that are open or advertised to the general public.

~~(CC)~~ **GG.** “Public nuisance” means loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, consumption of alcoholic beverages in the parking lot of the licensed premises, use of weapons on the licensed premises or in the parking lot, lack of adequate security outside of the licensed premises, lack of adequate lighting outside of the licensed premises, vandalism to vehicles or other property, or other disturbances or activities offensive to the average citizen or to the residents of the neighborhood in which the licensed premises are located or failure to comply with all public health orders issued during a public health emergency.

~~(DD)~~ **HH.** “Restaurant” means any establishment, except a “fast food” establishment, having a New Mexico resident as a proprietor or manager that is held out to the public as a place where ~~full meals are~~ food is prepared on-site from basic ingredients and served primarily for on-premises consumption to the general public in consideration of payment; that has a dining room, a commercial kitchen, and the employees necessary for preparing, cooking and serving meals.

**II.** “Restaurant with beer and wine license” means a restaurant A license.

**JJ.** “Restaurant with spirits license” means a restaurant B license.

~~(EE)~~ **KK.** “Restricted area” means an area of a licensed premises that is restricted to persons age 21 and older in accordance with the act and these rules where the primary activity in that area is the sale or consumption of alcoholic beverages.

~~(FF)~~ **LL.** “School” means:

(1) a public or private educational institution accredited as such by the state or federal government;

(2) a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school or combination thereof; or

(3) a center for attendance where educational instruction is offered by certified school instructors; a “school” must be located in a zoning area of the local option district that permits schools, but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.

~~(GG)~~ **MM.** “Securities listed on a national securities exchange” means securities listed or approved for listing on the New York stock exchange or American



stock exchange, or designated or approved for designation for inclusion on the national market system by the national association of securities dealers, inc.

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

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

~~[H.]~~ **PP.** “Small brewer” means a person or entity that is engaged in bona fide manufacture of beer, holds a valid New Mexico small brewer license and federal brewer’s notice of license to produce malt beverages, demonstrates bona fide brewing operations; owns or controls fully operational brewing equipment such as two or more of the following: fermenting vessels, brew house, and brite or holding tanks with capacity for commercial production, and does not produce more than 200,000 barrels of total product per year.

~~[J.]~~ **QQ.** “Small premises licensee” means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains less than 20,000 square feet of merchandise display space.

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

~~[LL.]~~ **SS.** “Taste” or “tastes” means offering smaller than usual drink sizes of alcoholic beverages to the public at no cost for the sole purpose of promoting the product, in quantities of .5 ounces or less if the product is undiluted spirituous liquors, and 1.5 ounces or less for all other alcoholic beverages.

~~[MM.]~~ **TT.** “Transferable license” means a license that may be assigned, transferred or leased pursuant to Section 60-6A-19 NMSA 1978, provided that the license holder has met all requirements of the act and these rules.

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

~~VV.~~ **“Unbroken, original package”** means the sealed, unopened glass, plastic or aluminum container holding the alcoholic beverage, but does not mean the cardboard or other packaging holding the containers together.

~~[NN.]~~ **WW.** “Unrestricted area” means an area of a licensed premises in which minors are allowed to enter unaccompanied by a parent, adult spouse or legal guardian, because the primary activity in that area is not the sale, service or consumption of alcoholic beverages.

~~[OO.]~~ **XX.** “Winegrower” means a person or entity that is engaged in bona fide manufacture of wine, holds a valid New Mexico winegrower’s license and federal basic permit to manufacture wine, who owns or controls fully operational winemaking equipment with capacity for commercial production.

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

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

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

[15.10.32.1 NMAC - Rp, 15 NMAC 10.3.2.1, 4/25/2017; A, 9/28/2021]

**15.10.32.8 LOCATION NEAR CHURCH, SCHOOL OR MILITARY INSTALLATION:**

All measurements for the purpose of determining the location of a licensed premises in relation to churches or schools [~~or military installations~~] shall be the shortest direct line measurement between the actual limits of the real property of the church or school [~~or military installation~~] in which there is regularly conducted church services or educational functions [~~or military troops housed~~], and the controlled access area of the licensed premises where alcoholic beverages are proposed to be sold. If the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied by a certified report of a registered engineer or duly licensed surveyor. A license may be granted for a proposed location if a person has obtained a waiver from a local option district governing body for the proposed location. [15.10.32.8 NMAC - Rp, 15 NMAC 10.3.2.8, 4/25/2017; A, 9/28/2021]

**15.10.32.10 LICENSED PREMISES [~~OF GOLF COURSE, VINEYARD, HOTEL, RACETRACK, SKI AREA, OR RESTAURANT~~] AND CONTROLLED ACCESS AREAS:**

[Nothing in these rules shall prohibit the licensure of the entire premises, including more than one structure, of the controlled access areas of the grounds of any hotel, golf course, ski area, racetrack or vineyard of a winery, as defined in the act, or any restaurant, identified in Subsection ~~O~~ of Section 60-3A-3 NMSA 1978, when any of these types of licenses are operated by the licensee who profits directly and exclusively from the operation of the license.]

A. Nothing in these rules shall prohibit the licensure of the entire premises, including more than one structure, of the controlled access areas of the grounds of any hotel, golf course, ski area, racetrack, distillery, brewery, or vineyard of a winery, as defined in the act, or any restaurant, identified in Subsection O of Section



60-3A-3 NMSA 1978, when any of these types of licenses are operated by the licensee who profits directly and exclusively from the operation of the license.

B. An accurate description of the licensed premises with the proposed controlled access areas clearly marked, must be filed with the division.

C. The sale, service and consumption of alcoholic beverages is limited to to controlled access areas.

D. Roads are not to be included in controlled access areas, except within golf courses, in which the boundaries of golf cart and pedestrian crossings are clearly marked by permanent marking on the surface of the roads by white or yellow reflective painting or striping material similar to pedestrian crossing markings found on city and state streets and roads; and

E. parking lots and fuel pump stations, unless granted written approval by the division, may not be included in controlled access areas.

F. A licensee may obtain an exception to these requirements with written approval issued by the division.  
[15.10.32.10 NMAC - Rp, 15 NMAC 10.3.2.10, 4/25/2017; A, 9/28/2021]

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

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

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

C. if roads are included in controlled access areas, the boundaries of golf cart and pedestrian crossings must be clearly marked by permanent marking on the surface of the roads by white or yellow reflective paint or striping material similar to pedestrian crossing markings found

on city and state streets and roads.]

**[RESERVED]**

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

**15.10.32.12 CHANGE OR EXPANSION OF LICENSED PREMISES:** Floor plans that accurately reflect the controlled access areas of a licensee’s licensed premises must be kept current by filing an application to change a floor plan within 30 days of a change, and to expand a floor plan by filing an application prior to the expansion, or upon request by the director. If the total square footage of [a] the controlled access area of the licensed premise will increase by more than twenty-five percent pursuant to the floor plan change, the licensee may be required to file an application for change of location on a form approved by the division.

[15.10.32.12 NMAC - Rp, 15 NMAC 10.3.2.13, 4/25/2017; A, 9/28/2021]

**15.10.32.13 [OUTDOOR LICENSED PREMISES:** Except as provided in 15.10.32.10 NMAC, licensed premises or portions of a licensed premises that are outdoors must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the licensed premises from the surrounding area. The division may allow exceptions to this requirement for a demonstrated case of undue hardship by a licensee. If an outdoor area is a portion of the licensed premises, it must be connected and contiguous to the indoor portion of the licensed premises through an indoor passageway.] **[RESERVED]**

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

**15.10.32.14 [RESERVED] OUTDOOR CONTROLLED ACCESS AREAS:** Controlled access areas of a licensed premises that are outdoors must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the controlled access area

from the surrounding area. The division may allow exceptions to this requirement upon written request by a licensee.

[15.10.32.14 NMAC – N, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

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

[15.10.33.1 NMAC - Rp, 15 10.33.1 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.33.7 DEFINITIONS:** [The following definitions shall apply to this part:

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

B. **“Unaccompanied minor”** means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.] Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.

[15.10.33.7 NMAC - Rp, 15 10.33.7 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.33.9 EMPLOYMENT OF MINORS:**

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

B. In accordance with Subsection B of Section 60-

7B-11 NMSA 1978, a holder of a dispenser's, restaurant or club license that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, may employ minors [49] 18 years of age or older to sell or serve alcoholic beverages, except that a person younger than 21 years of age shall not be employed as a bartender. Otherwise, no person may employ a minor to participate in the sale or service of alcoholic beverages, except as provided below.

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

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

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

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

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

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

amusement device or vending machine; and

(4) security and law enforcement officers.

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

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

**15.10.33.12 [RESERVED] MINORS PROHIBITED FROM PARTICIPATING IN THE DELIVERY OF ALCOHOLIC BEVERAGES:**

**A.** Licensees are prohibited from allowing minors to participate in the delivery of alcoholic beverages.

**B.** A minor participates in the delivery of alcoholic beverages when:

(1) a minor loads the alcoholic beverages into the delivery vehicle; or

(2) a minor is the driver, or passenger, of a vehicle being used to deliver alcoholic beverages to consumers.

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

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

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

[15.10.51.1 NMAC - Rp, 15 10.51.1 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.8 SALES FROM LICENSED PREMISES ONLY:**

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

[15.10.51.8 NMAC - Rp, 15 10.51.8 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.10 AFTER HOURS SALES OR SERVICE OF ALCOHOLIC BEVERAGES:**

**A.** Licensees may not sell, serve or allow the consumption of alcoholic beverages on the licensed premises except during the hours permitted by the Liquor Control Act.

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

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

[15.10.51.10 NMAC - Rp, 15 10.51.10 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.11 SALES TO INTOXICATED PERSONS:**

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

In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on breath or blood test taken not more than one and one-half hour or 90 minutes after sale, service, delivery or consumption of alcoholic beverages shall be

presumptive evidence that the person was intoxicated at the time of the last sale. For purposes of this rule, a "sale" shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person, or when the alcoholic beverage is delivered to the intoxicated person's address for delivery, when applicable.

**B.** The following practices are prohibited on a licensed premises:

- (1) games or contests that involve drinking alcoholic beverages or the awarding of alcoholic beverage drinks as prizes;
- (2) the sale or delivery to a person of an unlimited number of alcoholic beverage drinks during any set period of time for a fixed price;
- (3) the sale or delivery of two or more alcoholic beverage drinks for the price of one;
- (4) the sale or delivery of alcoholic beverages by the drink for less than half the usual, customary, or established price for a drink of that type on the licensed premises;
- (5) the sale or delivery of alcoholic beverages by the drink for less than cost;
- (6) the advertising of the practices prohibited by this regulation; or
- (7) the sale or service of a bottle of spirits for on-premises consumption.

**C.** The two drink rule:  
**(1)** No licensee shall serve or otherwise allow any person to have more than two unconsumed, opened alcoholic beverage drinks on a licensed premises at any one time.

**(2)** Examples of Paragraph (1) of Subsection C of 15.10.51.11 NMAC, include but are not limited to, the following:

- (a)** a licensee shall not sell, serve or allow any person to have at any one time a beer flight that exceeds the equivalent total volume of two drinks;
- (b)** a licensee shall not sell, serve, or allow

any person to have at any one time a wine flight that exceeds the equivalent total volume of two drinks; and

**(c)** a licensee shall not sell, serve or allow any person to have at any one time a spiritous liquor flight that exceeds the equivalent total volume of two drinks.

**D.** Nothing contained in this regulation shall prohibit a licensee from:

- (1)** including one alcoholic beverage drink per person as part of a meal package when approved by the director in writing;
- (2)** selling wine by the bottle or carafe [~~or beer in a pitcher,~~] when sold with a meal;
- (3)** selling wine by the bottle or carafe, or beer in a pitcher, to more than one person;
- (4)** offering free tastes;
- (5)** offering free alcoholic beverage drinks to registered guests in its hotel when approved by the director in writing;
- (6)** utilizing a "free drink coupon" which is limited to one drink per day per patron or giving a patron a free drink as a gesture of good will or friendship; free drinks as a gesture of good will or friendship may not be advertised and may not be given at any established interval or based on the purchases by the customer; or
- (7)** offering to customers product promotions such as sweepstakes, rebates on non-alcoholic beverage items, or goods that are not or do not include alcoholic beverages.

[15.10.51.11 NMAC - Rp, 15 10.51.11 NMAC, 4/25/2017; A, 9/28/2021]

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

**A.** A licensee may

allow a private party at which the host provides his own alcoholic beverages to be held on the licensed premises, the host must be able to provide the licensee with a receipt for the alcohol being served at the event, showing where the alcohol was purchased.

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

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

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

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

[15.10.51.12 NMAC - Rp, 15 10.51.12 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.13 ALCOHOL SERVICE BY EMPLOYEES ONLY:**

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

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

- (1)** A person may self-serve beer from a pitcher that has been previously served to



that person if in compliance with Subsection D of 15.10.51.11 NMAC, above.

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

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

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

(1) owners, employees, contractors, licensed wholesalers and licensed retailers may drink alcoholic beverages for product training and evaluation purposes, but must not become impaired;

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

(3) the licensee, lessee, or an owner or operator may consume alcoholic beverages provided that such consumption does not result in impairment.

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

**15.10.51.14 GAMBLING ON LICENSED PREMISES:**

~~[A.]~~ An entity holding a valid license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 NMSA 1978.

~~[B.]~~ Except as noted in Subsection A of 15.10.51.14 NMAC, any licensee may only conduct commercial gambling on what is

otherwise a licensed premises if the licensee either:

~~(1)~~ temporarily suspends the license for the entire premises; or

~~(2)~~ temporarily suspends the portion of the licensed premises on which the gambling will occur, subject to the following conditions:

~~(a)~~ gambling may be conducted in areas of the licensed premises that are physically segregated from areas in which alcoholic beverages are being sold, served, or consumed. The areas must be separated by walls or other physical obstructions limiting movement of customers between the areas;

~~(b)~~ no alcohol may be sold, served, or consumed within the physical area in which gambling is being conducted;

~~(c)~~ appropriate signs must be posted within the areas in which gambling is being conducted advising customers that alcoholic beverages may not be sold, served, or consumed within those areas; and

~~(d)~~ customers are prohibited from participating in gambling in areas in which alcoholic beverages are being sold, served, or consumed.

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

~~D.~~ Any temporary suspension described in Subsection B of 15.51.14 NMAC, must be requested by application provided by the division, and approved in writing by the division prior to the date of the suspension.]

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

**15.10.51.15 SALES OF CERTAIN SPIRITOUS LIQUORS:**

A. A licensee shall not sell spiritous liquor in a closed container of three fluid ounces or less, for consumption off the licensed premises, except for:

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

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

B. Nothing within this section shall prohibit the sales of spiritous liquors in open containers of three fluid ounces or less, for consumption on the licensed premises.

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

[15.10.51.15 NMAC – N, 9/28/2021]

**15.10.51.16 SALES OF ALCOHOLIC BEVERAGES TO MOTOR VEHICLES**

**PROHIBITED:** An entity holding a valid license issued under the act shall not sell, serve, or deliver alcoholic beverages to a customer in a motor vehicle through a drive-up window, curbside pickup, or other means in which the customer remains in the motor vehicle during the transfer of the alcoholic beverage, unless written approval is granted by the division.

[15.10.51.16 NMAC – N, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

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

[15.10.52.1 NMAC - Rp, 15 NMAC 10.5.2.1, 4/25/2017; A, 9/28/2021]



**15.10.52.8 LARGE PREMISES LICENSEES:**

**A.** Large premises licensees must consolidate all alcoholic beverages in an alcoholic beverage display area located within a clearly designated and marked area of the controlled access area of the licensed premises. Growler sales for beer and cider may be located in a separate, clearly designated and marked display area from other alcoholic beverage sales. Both the storage area and the area where growlers will be filled must be designated. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed or stored in small quantities in no more than two locations outside the designated alcoholic beverage display area provided that all display areas can be roped off, chained off, or covered during non-alcoholic sale hours or days. [~~Signs saying "liquor department - no one under 21 unless accompanied by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area.~~] Licensees must file floor plans with the division for approval showing the consolidated and segregated areas where alcoholic beverages, including growler sales, are displayed within the licensed premises.

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

**C.** Small displays of chips, snacks, or similar items may be displayed for sale in the alcoholic beverage display area so long as those items are also available in

other parts of the licensed premises outside the alcoholic beverage display area. Except for such small displays, displays of food or other merchandise that would require shoppers to enter the alcoholic beverage display area for food or other merchandise are not permitted.

[15.10.52.8 NMAC - Rp, 15 NMAC 10.5.2.8, 4/25/2017; A, 9/28/2021]

**15.10.52.9 SMALL PREMISES LICENSEES:** Small premises licensees must use diligent, good faith efforts to consolidate alcoholic beverages within a clearly designated and marked alcoholic beverage display area of the controlled access area of the licensed premises. [~~Signs saying "liquor area - no one under 21 unless accompanied by parent, legal guardian or adult spouse" must be conspicuously posted around the boundaries of the alcoholic beverage display area.~~] Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed outside the alcoholic beverage display area provided that all display areas can be roped off, chained off or covered during non-alcoholic sale hours or days.

[15.10.52.9 NMAC - Rp, 15 NMAC 10.5.2.9, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

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

[15.10.53.1 NMAC - Rp, 15 NMAC 10.5.3.1, 4/25/2017; A, 9/28/2021]

**15.10.53.8 PAYMENT, REFUND AND EXCHANGE:**

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

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

**C.** A wholesaler may not use a promissory note or other similar obligation from a licensee as a device to avoid the credit prohibition set forth in the act and this rule. As long as a promissory note, or other similar obligation, remains outstanding for alcoholic beverages, the licensee must pay in cash.

**D.** Limitations on product returns:

**(1)**

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

**(2)** Ordinary

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

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

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

~~[15.10.53.8 NMAC - Rp, 15 NMAC 10.5.3.8, 4/25/2017; A, 9/28/2021]~~

**15.10.53.10 COMMERCIAL COERCION AND BRIBERY:** ~~[The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 of the Act. That Section shall be interpreted consistent with the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.]~~

~~A. The director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 NMSA 1978, of the Act.~~

~~B. The director shall enforce the prohibitions against unlawful inducements as set forth in Section 60-8A-1.1 NMSA 1978, of the Act.~~

~~C. Sections 60-8A-1 and 60-8A-1.1 NMSA 1978, of the Act shall incorporate the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.~~

(1) Wholesalers and manufacturers shall not provide money or any other thing of substantial value to a retailer, restaurant, club, governmental or any

other type of dispensing licensee, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand of alcoholic beverage.

(2) Retailers, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, shall not receive or ask for money or any other thing of substantial value from a wholesaler or manufacturer, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand or kind of alcoholic beverage.

(3) Things are of substantial value when it has a value greater than three hundred dollars.

(4) Generally, product displays, point of sale advertising materials, temporary signage valued at three hundred dollars or less are permissible.

(5) Fixtures, capital improvements and equipment, including refrigeration units, keg coolers, and permanent signage are not permissible unless there is a written contract to buy or lease the item, at fair market value, between the retailer, restaurant, club, governmental, or any other type of dispensing licensee and the wholesaler or manufacturer.

~~[15.10.53.10 NMAC; N, 4/25/2017; A, 9/28/2021]~~

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

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

~~[15.10.54.1 NMAC - Rp, 15 NMAC 10.5.4.1, 4/25/2017; A, 9/28/2021]~~

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

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

B. "Member" means: (1) a person who pays annual membership dues to a holder of a club license pursuant to Section 60-6A-5 NMSA 1978, at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has been voted as a member by the current membership, and has all voting rights and full membership privileges as described in Subsection E of Section 60-3A-3 NMSA 1978;

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

(3) a member of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or

(4) a person who pays membership dues and is a member of a class of a club licensed pursuant to Section 60-6A-5 NMSA 1978, but are persons without full voting rights or full membership privileges, so long as such members are provided for in the articles of incorporation, bylaws, charter, constitution or resolution of the board of directors or other appropriate governing body of the entity holding the club license; members described in this paragraph may not purchase,

be served or consume alcoholic beverages within the bar or lounge area of the licensed premises, but may purchase, be served or consume alcoholic beverages in other areas of the licensed premises while engaged in activities whose primary purpose is other than the consumption of alcoholic beverages].

[15.10.54.7 NMAC - Rp, 15 NMAC 10.5.4.7, 4/25/2017; A, 9/28/2021]

**15.10.54.9 GAMES OF CHANCE:**

**A.** An entity holding a valid club license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 NMSA 1978, of the Act.

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

~~**(1)** temporarily suspends the license for the entire premises, or~~

~~**(2)** temporarily suspends the portion of the licensed premises on which the games of chance will occur, subject to the following conditions:~~

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

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

~~**(c)** appropriate signs must be posted within the areas in which games of chance are being conducted advising members and their guests that alcoholic beverages may not be sold, served, or consumed within those areas; and~~

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

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

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

**B.** Nothing within this section shall be deemed to allow for commercial gambling, as defined by Subsection C of Section 60-7A-19 NMSA 1978, of the Act.

[15.10.54.9 NMAC - Rp, 15 NMAC 10.5.4.9, 4/25/2017; A, 9/28/2021]

**15.10.54.10 FUND RAISING**

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

[15.10.54.10 NMAC - Rp, 15 NMAC 10.5.4.10, 4/25/2017; A, 9/28/2021]

**15.10.54.12 CHANGE IN**

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

[15.10.54.12 NMAC - Rp, 15 NMAC 10.5.4.12, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.10.55.1 ISSUING**

**AGENCY:** The [division] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

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

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

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

**15.10.55.8 THIRD-PARTY, INTERNET SALES [GENERALLY PROHIBITED]:**

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

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

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

**(2)** a New Mexico winegrower's agent;



(3) a New Mexico resident;  
 (4) a resident in any other state or foreign jurisdiction, as authorized by that jurisdiction; and  
 (5) the holder of a license in any other state or foreign jurisdiction issued under the authority of that jurisdiction that authorizes the purchase of wine.

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

D. All third-party internet sales described in this part are subject to the restrictions on direct wine shipment permits as provided by Sections 60-6A-11.1 and Subsection F of Section 60-7A-3 NMSA 1978 of the act.  
 [15.1.55.8 NMAC - N, 4/25/2017; A, 9/28/2021]

**15.10.55.9 USE OF INTERNET WEBSITE AND APPLICATION BASED PLATFORMS FOR DELIVERY SALES:**

A. Licensees issued an alcoholic beverage delivery permit may sell alcoholic beverages, allowed by their license type, through an internet website or application to customers.

B. The internet website or application platform may be provided by a third-party intermediary, for use by the licensee, in accordance with the act.  
 [15.1.55.9 NMAC - N, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
 ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.10.61.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
 [15.10.61.1 NMAC - Rp, 15 10.61.1 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.61.7 DEFINITIONS:** [~~The following definition applies to this part: “Unbroken, original package” means the sealed, unopened glass, plastic or aluminum container holding the alcohol, but does not mean the cardboard or other packaging holding the containers together~~] Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.  
 [15.10.61.7 NMAC - Rp, 15 10.61.7 NMAC, 4/25/2017; A, 9/28/2021]

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

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

Code	Description
90	Sale to intoxicated person
105	Sale to a minor
(1)	The first offense within a 12 month period will result in a fine ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) and suspension of all alcohol sales for a minimum of one business day.
(2)	The second offense within a 12 month period will result in a fine ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) and suspension of all alcohol sales for seven business days or possible

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

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

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

Code	Description
313	Sale to minor or to an intoxicated person
(1)	the first offense may result in a fine up to \$500, up to a 30-day suspension, or both;
(2)	the second offense may result in a fine up to \$500, up to a one-year suspension, or both;
(3)	the third offense may result in a fine of up to \$500, a suspension of greater than one year, or revocation.

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

**Continued Next Page**



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

**E. Illegal sale, delivery or possession of alcoholic beverages:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to ten thousand dollars (\$10,000). Penalties may also include suspension or revocation of the liquor license.

Code	Description
160	sale/possession - illegal

**F. Public nuisance violations:**

Code	Description
125	public nuisance

(1) Penalties imposed for public nuisance violations will be determined depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines and penalties shown below.

(2) The first offense will result in a fine of two thousand dollars (\$2000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the division notifies the licensee, or the citation may be referred to a formal hearing.

(3) Failure to correct the violations as agreed will result in an additional fine of three thousand dollars (\$3,000) and immediate suspension of the license until the corrections are completed.

(4) The second offense within a 24-month period will result in a fine of four thousand dollars (\$4000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the department notifies the licensee, or the citation may be referred to a formal hearing. After the plan of correction is agreed to, the license will be immediately suspended until completion of the corrections.

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

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

Code	Description
40	commercial gambling

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

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

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

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

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

Code	Description
35	liquor sales to non-members
37	other violations of club sales restrictions

**I. Violations of a tasting permit:****Code Description**

36 tasting permit

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

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

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

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

**Code Description**

38 credit extension

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

Code	Description
1	unauthorized package sale
[2	<del>unauthorized sunday sale by drink]</del>
3	unattended alcoholic beverages
27	purchase from other than a wholesaler
28	alcohol server training program - failure to complete
29	alcohol server training certification - failure to renew
45	removal of open container from licensed premises
66	violation of restaurant license restriction
80	employing an underage person
87	dispenser, drink or price violation
107	minor in possession/consuming
110	unaccompanied minor in restricted area of premises
120	operating hours - improper or illegal
145	unauthorized sale by the drink
146	filling of bottles
155	sale from other than [designated] controlled access area of licensed premises
157	change of floor plan without approval
180	special dispenser's, private celebration or public celebration permit violation
[185	<del>unauthorized sunday sale – package]</del>
[195	<del>failure to obtain sunday sales permit]</del>
215	violation of wholesaler license restriction
301	obstruction of the administration of the liquor control act
302	private party violation
320	employee drinking on duty
321	segregated sales violation

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

Code	Description
1	unauthorized package sale
[2	<del>unauthorized sunday sale by drink</del>
3	unattended alcoholic beverages
27	purchase from other than a wholesaler
28	alcohol server training program - failure to complete
29	alcohol server training certification - failure to renew
45	removal of open container from licensed premises
66	violation of restaurant license restriction
80	employing an underage person
87	dispenser, drink or price violation
107	minor in possession/consuming
110	unaccompanied minor in restricted area of premises
120	operating hours - improper or illegal
145	unauthorized sale by the drink
146	filling of bottles
155	sale from other than <del>[designated]</del> <u>controlled access area of licensed premises</u>
157	change of floor plan without approval
180	special dispenser's, <u>private celebration or public celebration permit violation</u>
[185	<del>unauthorized sunday sale – package</del>
[195	<del>failure to obtain sunday sales permit</del>
215	violation of wholesaler license restriction
301	obstruction of the administration of the liquor control act
302	private party violation
320	employee drinking on duty
321	segregated sales violation

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

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

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

Code	Description
999	miscellaneous

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

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

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

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

**P. Suspension of alcoholic beverage sales:**

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

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

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

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

(3) Signs provided by the division must be posted on all cash registers and entrances to the restricted area on days that alcohol sales are suspended because of violations of the act.

[15.10.61.8 NMAC - Rp, 15 10.61.8 NMAC, 4/25/2017; A, 5/30/2017; A, 9/28/2021]

**REGULATION  
AND LICENSING  
DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

**15.10.70.1 ISSUING  
AGENCY:** The ~~[Alcohol and  
Gaming Division of the Department  
of Regulation and Licensing]~~ New  
Mexico Regulation and Licensing  
Department, Alcoholic Beverage  
Control Division.  
[15.10.70.1 NMAC - Rp, 15 NMAC  
10.7.1, 4/25/2017; A, 9/28/2021]

**15.10.70.8 OPERATION  
AND PROFITING BY  
AUTHORIZED PERSONS:**

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

(1) All orders, sales, service, dispensing, delivery and receipt of payment for alcoholic beverages must be ~~[done]~~ completed by the ~~[approved operator]~~ licensee or lessee, or employees of the ~~[approved operator]~~ licensee or lessee, or the employees of a third-party delivery licensee contracted with for delivery purposes.

(2) Sales of alcoholic beverages by ~~[an approved~~

~~operator]~~ a licensee or lessee may not be combined with any sales of another person or entity that is not ~~[an approved operator]~~ the licensee or lessee. Nothing in this section shall prohibit the a licensee and a third-party delivery licensee from contracting for the delivery of alcoholic beverages to consumers.

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



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

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

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

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

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

(6) such agreements reviewed and approved by the division in regards to licensees and third-party delivery licensees contracting for delivery services to consumers.

C. Except as provided in this part, it is a violation of the act for any licensee to divide, split, or in any way share the right to sell alcoholic beverages, with any person not named as a licensee on the license.

D. Upon 30 days’ written notice, a licensee shall demonstrate compliance with this rule. Failure to demonstrate compliance will result in initiation of proceedings against the licensee by the director, pursuant to Section 60-6C-1 NMSA 1978 et seq. Evidence of compliance will be provided as follows:

(1) proof that all employees are paid by the approved operator or that the employees are providing such services as bona fide volunteers, consisting of copies of canceled paychecks or equivalent documents for the most

recent three-month period; and  
(2) proof that receipts of the licensed business are deposited directly into a bank account in the sole name of the approved operator, consisting of copies of bank records showing deposits and the name of the approved operator and signatories on the account; and

(3) proof of operation by the licensee or lessee, consisting of copies of all real estate lease agreements, concession agreements, management agreements, contracts for delivery or contracts of any kind to which the licensee or lessee is a party with other persons for operation or profit-sharing in the operation; and

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

[15.10.70.8 NMAC - Rp, 15 NMAC 10.7.8, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 11 ALCOHOLIC BEVERAGES LICENSING  
PART 20 LICENSES AND PERMITS – ALCOHOLIC BEVERAGE DELIVERY**

**15.11.20.1 ISSUING AGENCY:** The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[15.11.20.1 NMAC - N, 9/28/2021]

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

**15.11.20.3 STATUTORY AUTHORITY:** Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.  
[15.11.20.3 NMAC - N, 9/28/2021]

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

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

**15.11.20.6 OBJECTIVE:** This rule is intended to establish standard procedures for obtaining and operating alcoholic beverage delivery permits and third-party alcohol delivery licenses.  
[15.11.20.6 NMAC - N, 9/28/2021]

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

**15.11.20.8 ALCOHOLIC BEVERAGE DELIVERY PERMIT:** An alcoholic beverage delivery permit may be issued, at the discretion of the director, to the holder of a retailer’s, dispenser’s, craft distiller’s, winegrower’s, small brewer’s, restaurant a, or restaurant b license upon submission of an application to the division.

**A.** For purposes of this section dispenser’s licenses shall include dispenser’s, inter-local dispenser’s, canopy, and lottery licenses.

(1) Those licenses that no longer have package sales capabilities, for consumption off of the licensed premises, to be limited in alcoholic beverage quantities established in Subsection B of 15.11.20.10 NMAC and Subsection C of 15.11.20.10 NMAC.

(2) Nothing within these rules allows licensees

to allow for to go sales of alcoholic beverages for consumption off of the licensed premises, if the license does not allow for package sales.

**B.** The holder of an alcoholic beverage delivery permit may do the following:

- (1) Deliver alcoholic beverages only in unbroken packages or sealed growlers;
- (2) Deliver alcoholic beverages only within the geographical boundaries of the county and the local option district the licensee is located, unless written approval to deliver into an adjoining county has been given by the division;
- (3) Deliver alcoholic beverages only during the hours allowed by the Act, based on the license type; and
- (4) Contract for the delivery of alcoholic beverages with the holder of a third-party delivery license issued in accordance with the act.

**C.** The holder of an alcoholic beverage delivery permit:

- (1) Shall receive payment for alcoholic beverages only at the licensed premises of the licensee personally, telephonically, electronically, via website or application, or other internet platform;
- (2) Shall not change the price charged for an alcoholic beverage because it was purchased for delivery, provided they may charge a separate delivery fee disclosed at the time of the purchase;
- (3) Shall not deliver an alcoholic beverage to a business, a commercial establishment, a college or university, or a school campus;
- (4) Shall obtain valid proof of the delivery recipient's identity and age and keep records of such in accordance with 15.11.2.15 NMAC;
- (5) Shall not deliver alcoholic beverages to intoxicated persons or to anyone unable to demonstrate that they are 21 years of age or older; and
- (6) Shall have only alcoholic beverages that have

been purchased for delivery, in their vehicle, while transporting alcoholic beverages for delivery.

**D.** If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.

**E.** Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent these rules.  
[15.11.20.8 NMAC - N, 9/28/2021]

**15.11.20.9 DELIVERY RESTRICTIONS AND REQUIREMENTS IN CLASS A COUNTIES:**

**A.** The division shall follow the county classifications established by the local government division of the department of finance and administration.

**B.** Licensees otherwise qualified to be issued an alcoholic beverage delivery permit, with an indoor retail space greater than 10,000 square feet, located in a class A county shall:

- (1) Use an identification verification system approved by the division. The system must have the capabilities to establish identification of the purchaser was checked and scanned for each delivery and store such informatio;
- (2) Only sell for delivery beer and wine.
- (3) Provide to the division proof of liquor liability endorsement in the amount of five million dollars (\$5,000,000) or greater; and
- (4) Only utilize employees of the licensee for purposes of delivery of alcoholic beverages.  
[15.11.20.9 NMAC - N, 9/28/2021]

**15.11.20.10 DELIVERY RESTRICTIONS AND REQUIREMENTS FOR RESTAURANT LICENSES:**

**A.** Restaurant licenses are limited to the delivery of alcoholic beverage types allowed by their license.

**B.** Alcoholic beverages shall only be delivered to customers concurrently with the delivery of a minimum of ten dollars (\$10.00) worth of food.

**C.** Delivery of alcoholic beverages to one location, during a three hour period of time, shall not exceed:

- (1) 750 milliliters of wine;
- (2) six 12-ounce containers of prepackaged wine, beer, cider;
- (3) three 12-ounce containers of manufacturer canned or bottled ready to drink cocktails containing spiritous liquors with an alcoholic by volume of thirteen percent;
- (4) one growler or crowler of product manufactured by a small brewer; or
- (5) one howler of a cocktail, mixed by the licensee, containing no more than four and one-half ounces of spiritous liquors, in order to comply with Paragraph (6) of Subsection F of Section 60-6A-4 NMSA 1978, of the act. The howlers used must contain the DBA of the licensee etched onto the glass or have the receipt secured onto the container.

**D.** Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent these rules.  
[15.11.20.10 NMAC - N, 9/28/2021]

**15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE:**

**A.** A person may be issued a third-party alcohol delivery license upon submission of a completed application or renewal application to the division, on a form to be prescribed by the director. Applications and renewal applications must be accompanied by:

- (1) Documentation of delivery employees state issued server permits;
- (2) Proof of general liability insurance coverage, providing coverage for employees and independent contractors of applicant, in an amount of one million

dollars (\$1,000,000) or greater, per occurrence;

(3) Proof of applicant being authorized to do business in the state; and

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

**B.** The holder of a third-party alcohol delivery license may:

(1) Contract with licensees issued an alcoholic beverage delivery permit for the purpose of delivering alcoholic beverages to customers;

(2) Deliver alcoholic beverages, in accordance with the act and these rules, from a licensed premises of a licensee to customers.

(3) Have in their possession only alcoholic beverages purchased by a customer and received from a licensee's stock.

**C.** If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.

**D.** A third-party alcohol delivery licensee shall not:

(1) Share in the profits of the sale of alcoholic beverages with a licensee;

(2) Buy, hold or deliver alcoholic beverages under a third-party alcohol delivery license; or

(3) Assist licensees in the delivery of alcoholic beverages in violation of these rules.

(4) Nothing in this section shall preclude a third-party alcohol delivery licensee from holding any other license issued pursuant to the Liquor Control Act. [15.11.20.11 NMAC - N, 9/28/2021]

**HISTORY OF 15.11.20 NMAC:**  
[RESERVED]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.2.1 ISSUING**

**AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.2.1 NMAC - Rp, 15 NMAC 11.1.1.1, 4/25/2017; A, 9/28/2021]

**15.11.2.9 POSTERS:**

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

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

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

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

(4) posters warning of the dangers of,

and penalties for, driving while intoxicated].

**B.** Licensees may, with the director's prior approval, develop and use posters of their own design that contain the same information required in this sections. Any such posters shall be valid only if bearing the director's stamp of approval.

[15.11.2.9 NMAC - Rp, 15 NMAC 11.1.1.10, 4/25/2017; A, 9/28/2021]

**15.11.2.11 STATUTES AND RULES:**

All licensees and their employees shall have access on the licensed premises to either a hard or electronic copy of the most current versions of the act and the rules promulgated thereunder. [~~Access to a computer larger than a cellular phone with internet capacity shall constitute compliance with this section.~~]

[15.11.2.11 NMAC - Rp, 15 NMAC 11.1.1.11, 4/25/2017; A, 9/28/2021]

**15.11.2.13 [SIGNS FOR DAYS WHEN SALES NOT PERMITTED]:**

All licensees will clearly mark alcoholic beverage display areas with signs that prominently read "no package alcoholic beverage sales permitted on Sunday" if the licensee does not have a Sunday sales permit or if Sunday package sales are not permitted in that local option district, or "no package alcoholic beverage sales permitted on Christmas Day" on the appropriate days. [RESERVED]

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

**15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES:**

**A.** A licensee holding an alcoholic beverage delivery permit, or a third-party delivery license, must cause all delivery employees to have on their person, during delivery, the following:

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

(2) A physical or electronic copy of the delivery

personnel's server certification;

(3) A

physical copy of the receipt printout accompanying all alcoholic beverages out for delivery; and

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

(1) The name and age information for the customer who ordered and paid for the alcoholic beverages;

(2) The address alcoholic beverages are to be delivered to;

(3) The quantity and type of alcoholic beverage being delivered; and

(4) The time of alcoholic beverage delivery.

[15.11.2.15 NMAC – N, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.21.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.21.1 NMAC - Rp, 15 NMAC 11.2.1.1, 4/25/2017; A, 9/28/2021]

**15.11.21.12 LICENSED PREMISES:**

A. The applicant shall provide the division with proof of the applicant's right to sole occupancy of the real property or the portion of the real property where the proposed license is to be operated in the form of a valid lease, deed, management agreement, or an equivalent legal document in the name of the

applicant. All documents submitted must be fully executed and dated.

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

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

D. Floor plans must show:

(1) every level of the controlled access area of a licensed premises including the square footage for the [~~premises~~] controlled access area of the licensed premises as a whole, and separately for each level and for any patio;

(2) all clearly labeled areas where alcoholic beverages are sold, served or consumed;

(3) an exterior footprint of the licensed premises, including any patios, fences, walls, and dimensions;

(4) if the applicant is a hotel whose entire establishment will be the licensed premises, floor plans must be submitted for each floor where public rooms in which alcoholic beverages will be sold, served or consumed are located, clearly designating the public rooms;

(5) the interior and exterior premises through photographic pictures, if requested by the director; and

(6) orientation of the premises relative to the nearest streets and to at least one cardinal direction.

E. In the event that the premises are proposed for a structure to be built, the applicant shall provide sufficient architectural plans that reflect the exact location and layout of the [~~structure to be built~~] structures and patios to serve as the controlled access area of the licensed premises.

[15.11.21.12 NMAC - Rp, 15 NMAC 11.2.1.12, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.22.1 ISSUING AGENCY:** The [~~division~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.22.1 NMAC - Rp, 15 NMAC 11.2.2.1, 4/25/2017; A, 9/28/2021]

**15.11.22.8 RENEWAL OF LICENSE:**

A. A complete renewal application, including a current and accurate list of servers and the payment of all applicable fees for renewal, shall be filed with the division as follows:

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

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

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

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



of each year that the license is up for renewal.

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

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

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

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

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

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

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

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

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

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

**F.** The licensee shall provide the division with a current floor plan of the licensed premises for approval pursuant to Subsection D of 15.11.21.12 NMAC within 30 days of the director's request.  
[15.11.22.8 NMAC - Rp, 15 NMAC 11.2.2.8, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

**15.11.23.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.23.1 NMAC - Rp, 15 NMAC 11.2.3.1, 4/25/2017; A, 9/28/2021]

**15.11.23.8 CHANGE OF OWNERSHIP:**

**A.** All licensees must notify the division of any reportable change of ownership of the licensee

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

**B.** A reportable change of ownership in a transferrable license arises when any of the following events occurs since the last application was filed with the division:

(1) if the licensee is a corporation: when a total of ten percent or more of its stock is transferred, when an existing stockholder previously not disclosed, pursuant to Section 60-6B-2 of the act, NMSA 1978, now holds ten percent or more stock in licensee or when there is a merger or consolidation of the licensee with another entity;

(2) if the licensee is a limited liability company: when ten percent or more of the membership interests are transferred, when an existing member previously not disclosed, pursuant to Section 60-6B-2 of the act, NMSA 1978, now holds ten percent or more of the membership interest in licensee or when there is a merger or consolidation of the licensee with another entity;

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

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

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

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.  
[15.11.23.8 NMAC - Rp, 15 NMAC 11.2.3.8, 4/25/2017; A, 9/28/2021]

**15.11.23.9 REPORTABLE CHANGE IN STRUCTURE:**

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

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

- (1) any change of manager;
- (2) any change in a principal officer or directors of a licensee that is a corporation or limited liability company;
- (3) any change in the legal entity under which the licensee operates, for example, an individual licensee changing to a corporation which is wholly-owned by the same licensee or between corporate entities wholly owned by the same licensee;
- (4) any change in general partners, or in limited partners who already own ten percent or more, of a partnership;
- (5) any change in ownership between the shareholders who continue to own ten percent or more of any corporate entity;
- (6) a change in subsidiary ownership within the same parent company; ~~or~~
- (7) any change

in the trustee or beneficiary of a trust who has control over trust property and income or receives substantial and regular distributions from the trust; or

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

C. A reportable change of structure required by this section does not require a hearing by the division or by the local governing body. A reportable change of structure may require compliance with Section 60-6B-2 of the act, NMSA 1978.

D. The division must be notified within 30 days of a reportable change in structure by filing application for change of structure and providing all documents necessary to ensure full disclosure and qualification of all persons and entities.  
[15.11.23.9 NMAC - N, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.24.1 ISSUING AGENCY:** The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.24.1 NMAC - Rp, 15 NMAC 11.2.4.1, 4/25/2017; A, 9/28/2021]

**15.11.24.8 LIMITATIONS ON RESTAURANT LICENSE**

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

A. The primary source of revenue for a restaurant holding

[a] any restaurant license must be the sale of food, meaning that sixty percent or more of the gross receipts must be derived from the sale of food, not alcoholic beverages, which must be demonstrated to the satisfaction of the division upon renewal of the license.

B. ~~[A]~~ All restaurant ~~[license is]~~ licensees are prohibited from selling alcoholic beverages for consumption off the licensed premises except as provided by Subsection D of 15.10.51.9 NMAC or, when issued an alcoholic beverage delivery permit, through appropriate delivery methods.

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

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

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

F. A restaurant may only purchase alcohol through a duly licensed wholesaler, except that a restaurant licensee that also holds a small brewer's or winegrower's license may be duly licensed as a wholesaler, solely for the purpose of selling beer or wine to the licensee's restaurant that it has manufactured through its own license.  
[15.11.24.8 NMAC - N, 4/25/2017; A, 9/28/2021]

**15.11.24.9 APPLICATION FOR ALL RESTAURANT LICENSE TYPES:**

An applicant for [a] any restaurant license shall satisfy the director that the applicant is a restaurant as defined in these rules

and its primary purpose is not the sale or service of alcohol, by submitting the following:

**A.** Documentation showing that the applicant holds a valid food service establishment permit, and has a dining room and a kitchen for preparation of food for on premises consumption. Documentation shall include photos of kitchen equipment.

**B.** A menu showing that the food items available are not fast foods, consistent with the definition of a restaurant as defined in these rules. The menu must contain entrees that are available during all usual and customary hours of operation, and identify the hours of operation.

**C.** A detailed floor plan and photos of the proposed licensed premises that depicts and labels all areas of the restaurant including, but not limited to the kitchen, dining, storage and patio areas. Outdoor patios must be enclosed by a fence or wall to physically separate the outdoor portion of the ~~[licensed premises]~~ controlled access area from the surrounding area. The enclosure must enclose the majority of the outdoor patio, but may have a small opening or a gate to allow patrons to enter and exit, unless the director finds good cause to require the patio to be completely enclosed or to waive this requirement subject to any necessary restrictions where the outdoor patio areas are sited within a licensed premise comprised of areas and facilities, provided that the totality of the controlled access area of the licensed premise is physically or otherwise appropriately separated from the surrounding areas. The enclosure for an outdoor area does not have to be permanent, but the enclosure must be erected any time alcoholic beverages are being served to patrons seated in the outdoor patio.

**D.** Except for food counters where patrons may sit to order food and drinks, a restaurant may not have any counters dedicated primarily to the display, service, or consumption of alcoholic beverages, with incidental food service; and.

**E.** All areas of the licensed premises must have food service as the primary commercial purpose.  
[15.11.24.9 NMAC - N, 4/25/2017A, 9/28/2021]

**15.11.24.10 REQUIREMENTS FOR RENEWAL:**

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

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

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

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

**REGULATION AND LICENSING DEPARTMENT ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.25.1 ISSUING AGENCY:** The ~~[Alcohol and Gaming Division of the Department of Regulation and Licensing]~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.25.1 NMAC - Rp, 15 NMAC 11.2.5.1, 4/25/2017; A, 9/28/2021]

**15.11.25.6 OBJECTIVE:**  
This rule is intended to establish standard procedures for obtaining and operating special dispensers' permits and public or private celebration permits.

[15.11.25.6 NMAC - Rp, 15 NMAC 11.2.5.6, 4/25/2017; A, 5/30/2017; A, 9/28/2021]

**15.11.25.9 [RESERVED] SMALL MANUFACTURER'S PRIVATE CELEBRATION PERMITS:**

**A.** A small brewer, winegrower or craft distiller may apply for a private celebration permit for a private event, in which the organizers of the event wish for alcoholic beverages to be sold, served, and consumed by guests, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

**(1)** Permits for applications received less than seven days prior to February 28th for events to held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

**(2)** Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

**(3)** All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

**B.** The application for a private celebration permit must be accompanied by written permission from the governing body of the local option district where the private celebration is held.

**C.** The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and



which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit submit photographs or electronic images of the proposed location.

**D.** Private celebration permits will not be issued for more than three consecutive days, unless the director finds good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

**E.** The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

**F.** Private celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

**G.** A copy of the private celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

**H.** A small brewer, winegrower, or craft distiller may sell the beer, wine, and spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

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

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

[15.11.25.9 NMAC – N, 9/28/2021]

**15.11.25.10 SMALL MANUFACTURER’S PUBLIC CELEBRATION PERMITS:**

**A.** A small brewer, winegrower or craft distiller may apply for a public celebration permit for any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

**(1)** permits for applications received less than seven days prior to February 28th for events to be held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

**(2)** Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

**(3)** All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

**B.** The application for a public celebration permit must be accompanied by written permission from the governing body of the local option district where the public celebration is held.

**C.** The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit submit photographs or electronic images of the proposed location.

**D.** Public celebration permits will not be issued for more than three consecutive days, unless the director ~~[shall find]~~ finds good cause to justify a longer period. A

separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

**E.** The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

**F.** Public celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

**[H] G.** A copy of the public celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

**[I] H.** ~~[A small brewer or winegrower may sell the beer and wine of other small brewers and winegrowers pursuant to a permit issued under this section.]~~ A small brewer, winegrower, or craft distiller may sell the beer, wine, and spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

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

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

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



**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.26.1 ISSUING**

**AGENCY:** The ~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~ New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.26.1 NMAC - Rp, 15 NMAC 11.2.6.1, 4/25/2017; A, 9/28/2021]

**15.11.26.8 ANNUAL FEES:**

Every application for the issuance or renewal of the following licenses shall be accompanied by an annual fee in the following specified amounts:

- A.** manufacturer's license as a distiller, except a brandy manufacturer: \$3,000;
- B.** manufacturer's license as a brewer: \$3,000;
- C.** manufacturer's license as a rectifier: \$1,050;
- D.** wholesaler's license to sell all alcoholic beverages for resale only: \$2,500;
- E.** wholesaler's license to sell spirituous liquors and wine for resale only: \$1,750;
- F.** wholesaler's license to sell spirituous liquors for resale only: \$1,500;
- G.** wholesaler's license to sell beer and wine for resale only: \$1,500;
- H.** wholesaler's license to sell beer for resale only: \$1,000;
- I.** wholesaler's license to sell wine for resale only: \$750;
- J.** retailer's license: \$1,300;
- K.** dispenser's license: \$1,300;
- L.** canopy license: \$1,300;
- M.** restaurant A license: \$1,050;
- N.** restaurant A license: \$10,000;
- ~~[N.]~~ **O.** club license, for

clubs with more than 250 members: \$1,250; and for clubs with 250 members or fewer: \$250;

~~[O.]~~ **P.** wine bottler's license to sell to wholesalers only: \$500;

~~[P.]~~ **Q.** public service license: \$1,250;

~~[Q.]~~ **R.** non-resident licenses, for a total billing to New Mexico wholesalers, in excess of:

- (1) \$3,000,000 annually: \$10,500;
- (2) \$1,000,000 annually: \$5,250;
- (3) \$500,000 annually: \$3,750;
- (4) \$200,000 annually: \$2,700;
- (5) \$100,000 annually: \$1,800;
- (6) \$50,000 annually: \$900; and
- (7) \$1 annually: \$300.

~~[R.]~~ **S.** limited wine wholesaler's license, for persons with sales of 5,000 gallons of wine per year or less: \$25.00; and for persons with sales in excess of 5,000 gallons of wine per year: \$100; and

~~[S.]~~ **T.** beer bottler's license: \$200;

~~[T.]~~ **U.** brandy manufacturer's license: \$750;

~~[U.]~~ **V.** small brewer's license: \$750;

~~[V.]~~ **W.** winegrower's license, computed on the basis of total annual wine produced or blended:

- (1) less than 5,000 gallons per year: \$25;
- (2) between 5,000 and 100,000 gallons per year: \$100;
- (3) over 100,000 gallons per year: \$250.

~~[W.]~~ **X.** wine blender's license: \$750;

~~[X.]~~ **Y.** wine exporter's license: \$500;

~~[Y.]~~ **Z.** direct wine shipment permit: \$50, only required if the applicant does not hold a separate winegrower's license;

~~[Z.]~~ **AA.** bed and breakfast dispensing license: \$100;

~~[AA.]~~ **BB.** small brewer's off-premises permit: \$200 for each off-premises location;

~~[BB.]~~ **CC.** craft distiller's license: \$750;

~~[CC.]~~ **DD.** craft distiller's off-premises permit: \$200 for each off-premises location;

~~[DD.]~~ **EE.** winegrower's off-premises permit: \$200 for each off-premises location; and

~~[EE.]~~ **FF.** limited winegrower's or small brewer's wholesaler's license:

- (1) in excess of 5,000 gallons: \$100;
- (2) 5,000 gallons or less: \$25.

**GG.** third-party alcohol delivery license: \$1,000;

**HH.** alcoholic beverage delivery permit: \$300.

**II.** New Mexico spirituous liquors permit: \$500.

[15.11.26.8 NMAC - Rp, 15 NMAC 11.2.6.8, 4/25/2017; A, 9/28/2021]

**15.11.26.10 EVENT**

**PERMITS: the following are permit fees per each event:**

- A.** special dispenser's permit for public celebrations, \$50;
  - B.** special dispenser's permit for catering an off-premises function, \$25;
  - C.** craft distiller's public or private celebration permit, \$10;
  - D.** winegrower's public or private celebration permit, \$10; and
  - E.** small brewer's public or private celebration permit, \$10.
- [15.11.26.10 NMAC - N, 4/25/2017; A, 9/28/2021]

**15.11.26.12 PRORATION OF FEES:**

**A.** License fees for new licenses issued after the beginning of the license year shall be prorated.

**B.** Dispenser, retailer, restaurant ~~A, restaurant B~~, club, and public service license fees shall be prorated as follows:

(1) licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

(2) licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

(3) licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

(4) licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

**C.** License fees for all new licenses not provided for in Subsection B of 15.11.26.12 NMAC, except Non-resident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

**D.** Non-resident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for Non-resident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Non-resident licenses and common carrier registrations issued at any time during the:

(1) first license year must pay the full amount of the three-year license fee;

(2) second license year must pay two-thirds of the three-year license fee; and

(3) third license year must pay one-third of the three-year license fee.

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

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

**15.11.27.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.27.1 NMAC - Rp, 15 NMAC 11.2.7.1, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

**15.11.28.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division

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

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION**

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

**15.11.29.1 ISSUING AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

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

**15.11.29.8 TASTING PERMIT, GENERAL PROVISIONS:** A licensed dispenser, retailer, resident manufacturer, wholesaler, winegrower, non-resident manufacturer or an agent or lessee of any such licensed entity may apply for and receive a tasting permit on a licensed premises that sells alcoholic beverages directly to the public and shall adhere to the following limitations of the permit:

**A.** The liquid volume of all pours of alcoholic beverages must be no larger than a taste.

**B.** All tastes must be given free of charge.

**C.** All tastes must be poured by the permit holder, or an employee, agent or contractor of the licensee, with a valid server certification. Any such employee, agent or contractor must be directly paid by the licensee holding the tasting permit, not through a third party.

**D.** The permit holder, and its employees, agents or contractors may not sell any alcoholic beverages while operating the tasting permit.

**E.** The licensee shall notify the division in writing or via email at least 48 hours prior to conducting any tasting event, disclosing the date, time and location of the tasting event.

~~**F.** Issuance of tasting permits are subject to local option district elections regarding Sunday sales by the drink, and will not issue on any Sunday where sales by the drink are not allowed by the local option district.~~

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

**15.11.29.10 NO TASTING PERMIT ON SAME PREMISES REQUIRED FOR LICENSES ALLOWING SALES BY THE DRINK:** Nothing in this part requires a holder of a license for sales of alcoholic beverages by the drink to obtain any additional permit to offer tastes in the controlled access area on their own licensed premises, except that any service of free

alcoholic beverages shall comply with Subsection C of 15.10.51.11 NMAC regarding free drinks.  
[15.11.29.10 NMAC - N, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.30.1 ISSUING**

**AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[15.11.30.1 NMAC - N, 4/25/2017; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

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

**15.11.31.1 ISSUING**

**AGENCY:** The [~~Alcohol and Gaming Division of the Department of Regulation and Licensing~~] New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.  
[[15.11.31.1 NMAC - Rp, 15 NMAC 11.3.1.1, 4/25/2017; A, 9/28/2021]

**15.11.31.8 SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:**

**A. Server permit required.** Every licensee or lessee who is directly involved in sale, delivery or service of alcoholic beverages, and all servers must satisfactorily complete a program every three years to obtain a server

permit. No person shall be employed as a server on a licensed premises, or participate in the delivery of alcoholic beverages unless that person first obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

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

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

**D. Division will distribute permits.** The division

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

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

**F. Replacement server permits.** Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee



in the form of a cashier’s check or money order. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

**G. 18, 19 and 20 year olds.** Pursuant to Subsection B of 60-7B-11 NMSA 1978, a person between the ages of [19] 18 years and 21 years old may only serve alcohol in a restaurant. A provider may offer its program to a student between the ages of [19] 18 years and 21 years old, provided that the student is given notice that the server permit will only allow the student to serve in a restaurant and that he or she will not be eligible to participate in the delivery of alcoholic beverages, serve in a bar or retail location, or in a restaurant as a bartender, even with a server permit, until he or she reaches the age of 21 years. [15.11.31.8 NMAC - Rp, 15 NMAC 11.3.1.8; A, 9/28/2021]

**REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION**

**This is an emergency amendment to 16.8.2 NMAC amending and renumbering Section 29 to Section 35 and adding new Sections 29 through 34, effective 9/8/2021.**

**16.8.2.29 CANNABIS MANUFACTURER LICENSURE; GENERAL PROVISIONS:**

**A. License Types:** The division may license four classes of manufacture:

**(1) Class I:**  
A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

**(2) Class II:** A licensee that conducts Class I

activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

**(3) Class III:**  
A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

**(4) Class IV:**  
A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO<sub>2</sub>.

**B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

**C. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

**D. Other activities prohibited:** Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

**E. Prohibited additives:** A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

[16.8.2.29 NMAC – N/E, 09/08/2021]

**16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:**

**A.** An initial application or renewal for cannabis manufacturer licensure shall include the following:

**(1)** Contact information for the applicant and the cannabis establishment, to include:

**(a)** applicant’s full legal name;

**(b)** applicant’s mailing address;

**(c)** applicant’s contact telephone number;

**(d)** applicant’s contact email address;

**(e)** applicant’s business physical address and mailing address, if different;

**(f)** applicant’s business legal name, including a DBA name if applicable;

**(g)** applicant’s business web address, if applicable;

**(h)** applicant’s business hours of operation;

**(i)** name and contact information for each controlling person;

**(j)** demographic data pursuant to the Cannabis Regulation Act; and

**(k)** license type sought (Class I, Class II, Class III, or Class IV);

**(2)** proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

**(3)** legible and accurate diagram containing information required by Subsection 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;



(4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) a copy of a current business license, fire inspection report, and zoning approval;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other

current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) a list of the types of products that will be manufactured, packaged, or labeled;

(11) a complete written description of good manufacturing practices (GMPs).

(12) a complete written description of the means that the manufacturer shall employ to safely manufacture cannabis products, including hygiene standards consistent with the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to manufacturing;

(13) A detailed description of the licensee's proposed plan for obtaining cannabis from a licensed cannabis producer or cannabis microproducer.

(14) legible electronic images of the labeling and packaging of the cannabis or cannabis products that the manufacturer shall utilize, which satisfies the labeling and packaging requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

(15) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(16) if applicable, a sample of the record form(s), which shall identify (among

other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(17) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(18) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(19) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(20) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(21) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(22) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three

years immediately preceding the date of the application:

(23) certification the applicant is not licensed under the Liquor Control Act.

(24) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(25) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer:

(26) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(27) for a class IV license, a signed attestation from a licensed engineer stating the chemical extraction equipment is a closed loop system, is being utilized for its intended use and meets requirements of Subsection I of 16.8.2.34 NMAC;

(28) for class II, III, and IV licenses, evidence that the applicant has obtain all necessary permits required for the production of edibles and topicals from the New Mexico environment department and that such permits are valid at the time the license application is submitted; and

(29) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

**C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act [16.8.2.30 NMAC – N/E, 09/08/2021]

**16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:**

**A. Application:** A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain

approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size or location of the premises;

(2) change of licensee's legal or business name;

(3) change or modification in extraction type(s) or equipment;

(4) material or substantial change in water source;

(5) addition of a controlling person;

(6) material or substantial change to a licensee's security system;

(7) material or substantial modification of the premises; or

(8) engaging in an activity which requires an addition or change of a license type.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises,

including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) a modification in the licensee’s access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee’s water usage;

(3) change to a license’s security system, including relocation or security points or installation of a new security system; or

(4) modification of the premises to relocate cannabis activities. [16.8.2.31 NMAC – N/E, 09/08/2021]

**16.8.2.32 PREMISES DIAGRAM:**

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the

markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence. [16.8.2.32 NMAC – N/E, 09/08/2021]

**16.8.2.33 CANNABIS MANUFACTURER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure**

**requirements:** A manufacturer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

(b) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(c) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to

another cannabis establishment for any purpose;

(d) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(e) protocols for testing sample collection that ensures accurate test results; and

(f) procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident or incident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational health and safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

(d) training requirements for the proper use of health and safety measures and controls;

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

(2) Prior to independently engaging in any cannabis manufacturing process, including but not limited to extraction:

(a) an overview of the process and standard operating procedure(s);

(b) quality control procedures;

(c) hazard analysis and control procedures as appropriate;

(d) proper and safe usage of equipment or machinery;

(e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(f) cleaning and maintenance requirements;

(g) emergency operations, including shutdown; and

(h) any additional information reasonably related to an employee's job duties.

(3) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the

American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. This annual refresher training must be completed within 12 months of the previous training completion date. The licensee shall maintain a record which contains at minimum:

(a) an annual attestation by licensee that they received and understood all information and training provided in the training program;

(b) a list of all personnel at the premises, including at minimum, name and job duties of each;

(c) documentation of training topics and dates of training completion for all personnel;

(d) training topics and dates of refresher training completion for all personnel;

(e) the signature of the individual personnel and the licensee verifying receipt and understanding of each training or refresher training completed by the personnel;

(f) any official documentation attesting to the successful completion of required training by personnel.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section. Assigned supervisory personnel must have the education, training, or experience (or a combination thereof) necessary to ensure the production of clean and safe cannabis products by all personnel. The designated training personnel shall sign and date a document on an annual basis attesting that they have received

and understood all information and training provided in the training program. This documentation shall be maintained as part of the record requirements.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.33 NMAC – N/E, 09/08/2021]

**16.8.2.34 MINIMUM STANDARDS FOR THE MANUFACTURE OF CANNABIS PRODUCTS:**

**A. General**

**requirements:** Licensees shall ensure the following:

(1) manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;

(2) the licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;

(3) weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and

(4) licensee shall notify the division of any changes to the days or hours of business operation;

**B. Permissible Extractions:**

(1) Except as provided in Subsection (2), cannabis extraction shall only be conducted using the following methods:

(a) Mechanical extraction, such as screens or presses;

(b) chemical extraction using a nonvolatile solvent such as a



nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);

(c)

chemical extraction using a professional closed loop CO2 gas extraction system;

(d)

chemical extraction using a volatile solvent; or I cap applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.

(3) Extraction

equipment shall be used and operated in accordance with its intended manufacturer use and design.

**C. Volatile Solvent**

**Extractions:** Chemical extractions using volatile solvents shall be subject to the following requirements:

(1)

hydrocarbon-based solvents shall be at least ninety-nine percent purity;

(2) ethyl

alcohol must be food grade, and non-denatured in composition;

(3) all

extractions shall be performed in a closed loop extraction system as described in subsection D of 16.8.2.34 NMAC; and

(4)

Manufacturers shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

**D. Closed-Loop**

**Extraction System Requirements:**

(1) Chemical

extractions using CO2 or a volatile solvent shall be conducted in a professional closed loop extraction system. The system shall be commercially manufactured and bear a permanently affixed and visible serial number. The system shall be certified by a licensed engineer

that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, or listed, or approved by a nationally recognized testing laboratory.

(2) The

certification document must contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

(3)

Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a)

National Fire Protection Association (NFPA) standards;

(b)

International Building Code (IBC);

(c)

International Fire Code (IFC);  
or

(d)

Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.

[16.8.2.34 NMAC – N/E, 09/08/2021]

**[16.8.2.29] 16.8.2.35**

**SEVERABILITY:** If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.2.35 NMAC – N 08/22/2021; Rn/E, 09/08/2021]

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**This is an emergency amendment to 13.10.34 NMAC, Section 6, effective 9/16/2021.**

**13.10.34.6 EFFECTIVE DATE:** October 1, 2020, unless a later date is cited at the end of a section. If the superintendent previously approved a subject excepted benefits plan for sale in this state, that plan shall be amended to comply with this rule no later than October 1, [2021] 2022, if issued on or after that date.  
[13.10.34.6 NMAC – N, 10/01/2020; A/E, 9/16/2021].

**End of Adopted Rules**

Other Material Related to Administrative Law

**GOVERNOR,  
OFFICE OF THE  
EXECUTIVE ORDER 2021-054  
  
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 September 14, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 41 million people have been infected in the United States, with over 650,000 related deaths, and the New Mexico Department of Health has reported 242,399 positive COVID-19 cases and 4,631 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 subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

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, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030,

2021-044, and 2021-049 shall be renewed and extended through October 15, 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, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on September 15, 2021 and shall remain in effect until October 15, 2021 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE  
OFFICE THIS 15TH DAY OF  
SEPTEMBER 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**

**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**September 15, 2021**

**Public Health Emergency Order**

**Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
  - A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition

- COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;
  - B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;
  - C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;
  - D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and
  - E. September 15, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated.
3. The September 15, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has

renewed the declaration of a Public Health Emergency through October 15, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 41 million and confirmed COVID-19 infections in New Mexico have risen to over 242,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 662,000 Americans and over 4,621 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE**, I, David R. Scrase, M.D.,

Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**I HEREBY DIRECT AS FOLLOWS:**

(1) Unless a healthcare provider instructs otherwise, all individuals age 2 years and older shall wear a mask or multilayer cloth face covering in all indoor public settings except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to

the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools”, available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the Reentry Guidance and COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through October 15, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico

Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**DONE AT THE EXECUTIVE OFFICE THIS 15TH DAY OF SEPTEMBER 2021**

**ATTEST:**  
**/S/MAGGIE TOULOUSE OLIVER**  
**SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/DAVID R. SCRASE, M.D.**  
**ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**

**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**September 15, 2021**

**Amended Public Health  
Emergency Order Requiring All  
School Workers Comply with  
Certain Health Requirements  
and Requiring Congregate Care  
Facility Workers, Hospital  
Workers, and Employees of the  
Office of the Governor Be Fully  
Vaccinated**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the



emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, Governor Michelle Lujan Grisham issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through October 15, 2021;

**WHEREAS**, over 41 million people have been infected with COVID-19 in the United States, with over 662,000 related deaths, and the New Mexico Department of Health has reported 242,000 positive COVID-19 cases and 4,621 related deaths in New Mexico;

**WHEREAS**, the currently available COVID-19 vaccines are safe and the most effective way of preventing infection, serious illness, and death;

**WHEREAS**, widespread vaccination protects New Mexico’s health care system as vaccines decrease the need for emergency services and hospitalization;

**WHEREAS**, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State has made against the pandemic

by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

**WHEREAS**, one such highly transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections in the United States;

**WHEREAS**, New Mexico has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of children who are not yet eligible to receive a vaccine; persons who cannot be vaccinated due to medical reasons; immunocompromised individuals; and vulnerable persons including persons in hospitals, long-term care facilities, and other congregate care facilities; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance, and issue rules for immunization against conditions of public health importance.

**NOW, THEREFORE**, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition

of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

**DEFINITIONS**

For the purposes of this Order, the following term shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Congregate care facility” means nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans’ Home, and community homes.

(2) “Congregate care facility worker” means any paid or unpaid individuals working in a congregate care facility. This includes workers providing services who have the potential for direct or indirect exposure to patients or residents in a congregate care facility. A congregate care facility worker includes contractors who perform services on-site at the congregate care facility.

(3) “Fully vaccinated” means two weeks after an individual completed the entire recommended series of vaccination with a vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will be fully vaccinated two weeks after the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines. An individual will be fully vaccinated two weeks after a single-dose Johnson and Johnson’s Jassen COVID-19 vaccine.

(4) “Hospital” means any public hospital, profit or nonprofit private hospital, general hospital, or special hospital.

(5) “Hospital Worker” means all paid and unpaid individuals who work on-site in a hospital in a setting where care is provided to patients or patients have access for any purpose. This

includes workers who have the potential for direct or indirect exposure to patients or COVID-19 airborne aerosols. Hospital workers include, but are not limited to, nurses, physicians nursing assistants, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the hospital, and persons not directly involved in patient care, but who could be exposed to infection agents that can be transmitted in the hospital (e.g. clerical, dietary, environmental services, laundry, security, and volunteer personnel).

(6) "School worker" means all paid and unpaid adults serving in a private school, public school, or charter school.

(7) "Qualifying medical condition" means a permanent or temporary medical condition recognized by the FDA or Centers for Disease Control and Prevention (CDC) as a contra-indication to COVID-19 vaccination.

**DIRECTIVES**

**I HEREBY DIRECT AS FOLLOWS:**

(1) All school workers in any private school, public school, or charter school who are not fully vaccinated against COVID-19 or are unwilling to provide proof of vaccination to their respective supervisors shall:

- a. Provide adequate proof that the school worker has tested negative for COVID-19 on a weekly basis; and
- b. Wear a mask or multilayer cloth face covering at all times indoors during the course and scope of their employment except when eating or drinking. An unvaccinated school worker will only be exempt from wearing a mask indoors if adequate proof is provided that the school worker has been instructed otherwise by a licensed healthcare provider.

(2) All private schools, public schools, and charter schools shall maintain records of school worker vaccination status in accordance with applicable privacy laws and regulations. The records regarding a worker's vaccination status shall be provided to the Department of Health promptly upon request.

(3) All hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham are required to be fully vaccinated against COVID-19 unless they qualify for an exemption. If an individual does not qualify for an exemption, the individual shall:

- a. Receive the first dose of a COVID-19 vaccine by August 27, 2021 and their second dose within 40 days of their first dose of a COVID-19 vaccine; and
- b. Provide proof of vaccination to the appropriate person or supervisor:
  - i.

Hospital workers and congregate care facility workers shall provide proof of vaccination or exemption to their respective supervisors.

- ii. Contractors who are hospital workers shall provide proof of vaccination to the operator of the hospital in which the contractor provides on-site services.

- iii. Employees of the Office of Governor Michelle Lujan Grisham shall provide proof of vaccination to the Chief Operations Officer.

(4) The workers subject to Section (3) of this Order may be exempt from the COVID-19 vaccination requirement set forth above if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), or any other applicable law to a disability-related reasonable accommodation

or a sincerely held religious belief accommodation. Nothing in this Order precludes the entities which employ or contract with these workers from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law.

- a. To be eligible for an exemption due a qualifying medical condition, the individual must provide their employer or operator of the facility they contract with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;

- b. To be eligible for an exemption due to a qualifying medical condition, the individual must provide their employer or operator of the facility they contract with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine; or

- c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has been made and provide their employer or the operator of the facility they contract with a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(5) If an operator of a hospital, operator of a congregate care facility, or the Office of Governor Michelle Lujan Grisham determines a worker to have met the requirements of an exemption pursuant to Section (4), the unvaccinated exempt worker shall:

- a. Provide adequate proof that the individual

has tested negative for COVID- 19 on a weekly basis; and

b. Wear a mask or multilayer cloth face covering at all times indoors at the hospital or congregate care facility except when eating or drinking. An unvaccinated worker will only be exempt from wearing a mask indoors if adequate proof is provided that the individual has been instructed otherwise by a licensed healthcare provider.

(6) The operator of a hospital, operator of a congregate care facility, and the Office of Governor Michelle Lujan Grisham shall maintain records of all workers' vaccination or exemption status in accordance with applicable privacy laws and regulations. If a worker is exempt pursuant to Section (4), then the operator or employer also must maintain records of the worker's testing results pursuant to Section (5). The operator of a hospital is required to report to the Department of Health the total number of (i) workers who are subject to this Order, (ii) fully vaccinated workers, (iii) partially vaccinated workers, (iv) unvaccinated workers, (v) unvaccinated workers who have been granted an exemption from the COVID-19 vaccination requirement. The number of hospital workers shall be submitted to the Department of Health's Hospital Reporting Portal (<https://nm.readyop.com/fs/4cjm/d866>) weekly or at an interval to be determined by the Department. The operator of a congregate care facility shall provide the Department of Health records regarding a worker's vaccination or exemption status promptly upon request.

(7) Hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham shall provide proof of vaccination or records of their exemption status to the Department of Health, if requested.

(8) All persons who are eligible to receive a COVID-19 vaccine and enter the grounds of the New Mexico State Fair from September 9-19, 2021 must provide adequate proof of being fully vaccinated against COVID-19 to a State Fair official unless the individual qualifies for an exemption. A person may be exempt from the COVID-19 vaccination requirement set forth in this section if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the ADA, Title VII, or any other applicable law to a disability related reasonable accommodation or a sincerely held religious belief accommodation. Nothing in this Order precludes the New Mexico State Fair from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law. The requirements for an exemption are as follows:

a. To be eligible for an exemption due a qualifying medical condition, the individual must provide a State Fair official with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;

b. To be eligible for an exemption due to a disability, the individual must provide a State Fair Official with accommodation documentation from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation; or

c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has

been made and provide a State Fair official a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(9) If a State Fair official determines an individual entering the grounds of the New Mexico State Fair has met the requirements of an exemption pursuant to Section (8), the unvaccinated individual shall provide adequate proof that they have tested negative for COVID- 19 within 48 hours prior to entering the fair grounds.

(10) New Mexico State Fair officials shall maintain records of the vaccination or exemption status of all persons entering the grounds New Mexico State Fair in accordance with applicable privacy laws and regulations. The records regarding an individual's vaccination or exemption status shall be provided to the Department of Health promptly upon request. All individuals entering the grounds of the New Mexico State Fair shall provide proof of vaccination or records of their exemption status and negative test to the Department of Health, if requested.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Public Education Department and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person, hospital, or congregate care

facility who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on September 15, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration, unless otherwise rescinded.

**DONE AT THE EXECUTIVE OFFICE THIS 15TH DAY OF SEPTEMBER 2021**

**ATTEST:  
/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/DAVID R. SCRASE, M.D.  
ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION**

The Alcohol Beverage Control Division, Regulation and Licensing Department gives Notice of a Minor, Nonsubstantive Correction to 15.10.70 NMAC and 15.11.20 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

**15.10.70 NMAC:** for this amendment, only Sections 1 and 8 were amended. Section 10 was not amended. Any reference to Section 10 has therefore been removed.

**15.11.20 NMAC:** Section 5 Effective Date has incorrectly listed effective date as “September 14, 2021”. The correct effective date is “September 28, 2021”. The correct date has been inserted.

A copy of this Notification will be filed with the official version of each of the above rules.

**REGULATION AND LICENSING DEPARTMENT  
ALCOHOLIC BEVERAGE CONTROL DIVISION**

**NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION**

The Cannabis Control Division, Regulation and Licensing Department gives Notice of a Minor, Nonsubstantive Correction to 16.8.2 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Section 31, Submittal of Application for Amended Cannabis Manufacturer License, Subsection D, in Paragraph (2), “10 percent” was corrected to “ten percent” to conform to proper rule style.

In Section 34, Minimum Standards for the Manufacture of Cannabis Products, Subsection D was errantly numbered as subsection I. The correct subsection number was changed and the internal citation within Subsection C was also changed. Lastly, also within Subsection C, in Paragraph (1), “99

percent” was corrected to “ninety-nine percent” to conform to proper rule style.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material  
Related to Administrative  
Law**



# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 4</b>	<b>January 12</b>
<b>Issue 2</b>	<b>January 14</b>	<b>January 26</b>
<b>Issue 3</b>	<b>January 28</b>	<b>February 9</b>
<b>Issue 4</b>	<b>February 11</b>	<b>February 23</b>
<b>Issue 5</b>	<b>February 25</b>	<b>March 9</b>
<b>Issue 6</b>	<b>March 11</b>	<b>March 23</b>
<b>Issue 7</b>	<b>March 25</b>	<b>April 6</b>
<b>Issue 8</b>	<b>April 8</b>	<b>April 20</b>
<b>Issue 9</b>	<b>April 22</b>	<b>May 4</b>
<b>Issue 10</b>	<b>May 6</b>	<b>May 25</b>
<b>Issue 11</b>	<b>May 27</b>	<b>June 8</b>
<b>Issue 12</b>	<b>June 10</b>	<b>June 22</b>
<b>Issue 13</b>	<b>June 24</b>	<b>July 7</b>
<b>Issue 14</b>	<b>July 8</b>	<b>July 20</b>
<b>Issue 15</b>	<b>July 22</b>	<b>August 10</b>
<b>Issue 16</b>	<b>August 12</b>	<b>August 24</b>
<b>Issue 17</b>	<b>August 26</b>	<b>September 14</b>
<b>Issue 18</b>	<b>September 12</b>	<b>September 28</b>
<b>Issue 19</b>	<b>September 30</b>	<b>October 13</b>
<b>Issue 20</b>	<b>October 14</b>	<b>October 26</b>
<b>Issue 21</b>	<b>October 28</b>	<b>November 9</b>
<b>Issue 22</b>	<b>November 15</b>	<b>November 30</b>
<b>Issue 23</b>	<b>December 2</b>	<b>December 14</b>
<b>Issue 24</b>	<b>December 16</b>	<b>December 28</b>

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# 2022 New Mexico Register

## Submittal Deadlines and Publication Dates

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<b>Issue 7</b>	<b>March 24</b>	<b>April 5</b>
<b>Issue 8</b>	<b>April 7</b>	<b>April 19</b>
<b>Issue 9</b>	<b>April 21</b>	<b>May 3</b>
<b>Issue 10</b>	<b>May 5</b>	<b>May 24</b>
<b>Issue 11</b>	<b>May 26</b>	<b>June 7</b>
<b>Issue 12</b>	<b>June 9</b>	<b>June 21</b>
<b>Issue 13</b>	<b>July 1</b>	<b>July 12</b>
<b>Issue 14</b>	<b>July 14</b>	<b>July 26</b>
<b>Issue 15</b>	<b>July 28</b>	<b>August 9</b>
<b>Issue 16</b>	<b>August 11</b>	<b>August 23</b>
<b>Issue 17</b>	<b>August 25</b>	<b>September 13</b>
<b>Issue 18</b>	<b>September 15</b>	<b>September 27</b>
<b>Issue 19</b>	<b>September 29</b>	<b>October 11</b>
<b>Issue 20</b>	<b>October 13</b>	<b>October 25</b>
<b>Issue 21</b>	<b>October 27</b>	<b>November 8</b>
<b>Issue 22</b>	<b>November 17</b>	<b>November 29</b>
<b>Issue 23</b>	<b>December 1</b>	<b>December 13</b>
<b>Issue 24</b>	<b>December 15</b>	<b>December 27</b>

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