

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

15.10.33.1 ISSUING AGENCY: The 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]

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

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

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

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

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

15.10.33.7 DEFINITIONS: 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]

15.10.33.8 MINORS ON LICENSED PREMISES:

- A.** A licensee shall not allow an unaccompanied minor on restricted premises.
- B.** If a licensee chooses to allow minors on the licensed premises for any reason except a bona fide emergency, the licensee must, in an annual application filed with the division, designate the licensed premises as either entirely a restricted area, entirely an unrestricted area, or both restricted and unrestricted areas, showing such designations on a correct floor plan of the licensed premises.
 - (1)** The designations shall be approved or disapproved by the division. The applicant shall also indicate the nature and extent of security that will be provided to control restricted areas.
 - (2)** If the licensed premises are designated as both restricted and unrestricted areas, and the division approves the designations, restricted areas of the licensed premises must be clearly posted and marked so that they are unmistakable from unrestricted areas.
- C.** A licensee who chooses to allow minors on the licensed premises must:
 - (1)** ensure that no minor is sold or served, purchases, possesses or consumes an alcoholic beverage on the premises; and
 - (2)** post in restricted areas of the licensed premises conspicuous signs that state that “minors are not permitted in this area, unless accompanied by a parent, adult spouse or legal guardian”.
- D.** A licensee shall maintain the plans, public notices and access restrictions required by this rule, and shall properly designate restricted areas on its licensed premises. Failure to do so shall be a violation of this rule.
- E.** The director shall consider all violations of this rule by a licensee which occurred within the preceding five years of a pending application, and may consider any corrective measure adopted by the licensee, to determine whether to grant or deny an application for minors on licensed premises.
[15.10.33.8 NMAC - Rp, 15 10.33.8 NMAC, 4/25/2017]

15.10.33.9 EMPLOYMENT OF MINORS:

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

B. In accordance with Subsection B of Section 60-7B-11 NMSA 1978, a holder of a dispenser's, restaurant or club license that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, may employ minors 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]

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

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

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

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

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

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

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

15.10.33.12 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]

HISTORY OF 15.10.33 NMAC:

Pre-NMAC History: None.

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

NMAC History:

15 NMAC 10.3.3, Premises - Minors on Licensed Premises (filed 3/14/1997) was renumbered, amended, and reformatted to 15.10.33 NMAC, Premises - Minors on Licensed Premises, effective 04/14/2006.
15.10.33 NMAC, Premises - Minors on Licensed Premises (filed 3/30/2006) was replaced by 15.10.33 NMAC, Premises - Minors on Licensed Premises, effective 4/25/2017.