

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

15.10.51.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.10.51.1 NMAC - Rp, 15 10.51.1 NMAC, 4/25/2017; A, 9/28/2021]

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

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

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

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

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

15.10.51.7 DEFINITIONS: Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act:
[15.10.51.7 NMAC - Rp, 15 10.51.7 NMAC, 4/25/2017]

15.10.51.8 SALES FROM LICENSED PREMISES ONLY: Licensees shall sell, offer to sell, and serve alcoholic beverages for promotional or otherwise commercial purposes only from 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]

15.10.51.9 OPEN CONTAINER RESTRICTIONS:

- A.** No one shall provide a person with an open container of an alcoholic beverage for consumption off the licensed premises or permit removal of an open container from the licensed premises.
- B.** No person shall remove an open container of an alcoholic beverage from a licensed premise.
- C.** All alcoholic beverages sold by package, including growlers, must be consumed off-premises.
- D.** Nothing in this rule shall prohibit a dispenser or restaurant licensee from allowing the removal of a partially consumed bottle of wine from the premises pursuant to Section 60-3A-12 NMSA 1978.
- E.** A licensee may permit a customer to remove a growler from the licensed premises, provided that the licensee cleans the growler before filling it, re-seals the growler, and provides a sales receipt to the customer.

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

15.10.51.10 AFTER HOURS SALES OR SERVICE OF ALCOHOLIC BEVERAGES:

- A.** Licensees may not sell, serve or allow the consumption of alcoholic beverages on the licensed premises except during the hours permitted by the Liquor Control Act.
- B.** 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 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 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: 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.

[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]

HISTORY OF 15.10.51 NMAC:

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

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

AGD 6A-2, Sales from Licensed Premises Only, filed 9/25/1990;

ABC Regulation No. 6A-7.(A), Shipping Invoices Regulation 6A-7.(A) Interpreting and Exemplifying Section 60-6A-7 NMSA 1978 (1981 and 1984 Supp.), filed 11/4/1985;

AGD Regulation 6A-7, Shipping Invoices, filed 9/25/1990;

AGD Regulation 7A-1(C), After Hours, filed 9/25/1990;

ABC Regulation No. 7A-16.(A), Sales to Intoxicated Persons Regulation 7A-16(A), Interpreting and Exemplifying Section 60-7A-16 NMSA 1978 (1981-1984 Supp.), filed 11/4/1985; and

AGD 7A-16, Sales to Intoxicated Persons, filed 9/25/1990.

History of Repealed Material:

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

15 10.51 NMAC, Sales - Restrictions on Sales, filed 09/15/2006 - Repealed effective 4/25/2017.

Other History:

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

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

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