

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

15.10.61.1 ISSUING AGENCY: The 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]

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

15.10.61.3 STATUTORY AUTHORITY: Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.10.61.3 NMAC - Rp, 15 10.61.3 NMAC, 4/25/2017]

15.10.61.4 DURATION: Permanent.
[15.10.61.4 NMAC - Rp, 15 10.61.4 NMAC, 4/25/2017]

15.10.61.5 EFFECTIVE DATE: April 25, 2017, unless a later date is cited at the end of a section.
[15.10.61.5 NMAC - Rp, 15 10.61.5 NMAC, 4/25/2017]

15.10.61.6 OBJECTIVE: This rule is intended to comply with Subsection M of Section 60-6C-4 NMSA 1978 which requires the director to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director. It is also intended to establish violation codes for consistent tracking within the division.
[15.10.61.6 NMAC - Rp, 15 10.61.6 NMAC, 4/25/2017]

15.10.61.7 DEFINITIONS: 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.

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
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 controlled access area of licensed premises
157	change of floor plan without approval
180	special dispenser's, private celebration or public celebration permit violation
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]

15.10.61.9 ENHANCEMENT OF SCHEDULED PENALTIES: Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.
[15.10.61.9 NMAC - Rp, 15 10.61.9 NMAC, 4/25/2017]

15.10.61.10 ENHANCEMENT OF SCHEDULED PENALTIES FOR VIOLATIONS INVOLVING THE USE OF ALTERNATIVE FORMS OF ALCOHOL: In recognition of the heightened public policy concerns regarding the greater potential for abuse and greater need for deterrence, whenever a violation identified in this part involves the sale, service or consumption of alternative forms of alcohol, including but not limited to powdered, vaporized or freeze-dried alcohol, the penalty otherwise set forth in this part shall be enhanced up to the maximum allowed by the act.
[15.10.61.1 NMAC - N, 4/25/2017]

15.10.61.11 COMPROMISE:

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

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

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

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

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

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

HISTORY OF 15.1.61 NMAC:

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

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

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

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

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

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

AGD 6C-1, Public Nuisances, filed 9/25/1990.

History of Repealed Material:

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

Other History:

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

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

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