

**TITLE 15        GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 10    ALCOHOLIC BEVERAGES GENERAL PROVISIONS**  
**PART 70        OPERATION AND PROFITING BY AUTHORIZED PERSONS AND ALTERNATING PROPRIETORSHIPS**

**15.10.70.1        ISSUING AGENCY:** The 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]

**15.10.70.2        SCOPE:** These rules apply to all licensees and applicants for licensure under the act.

[15.10.70.2 NMAC - Rp, 15 NMAC 10.7.2, 4/25/2017]

**15.10.70.3        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.

[15.10.70.3 NMAC - Rp, 15 NMAC 10.7.3, 4/25/2017]

**15.10.70.4        DURATION:** Permanent.

[15.10.70.4 NMAC - Rp, 15 NMAC 10.7.4, 4/25/2017]

**15.10.70.5        EFFECTIVE DATE:** April 25, 2017, unless a later date is cited at the end of a section.

[15.10.70.5 NMAC - Rp, 15 NMAC 10.7.5, 4/25/2017]

**15.10.70.6        OBJECTIVE:** This rule is intended to establish standards by which licensees may sell alcoholic beverages under the act.

[15.10.70.6 NMAC - Rp, 15 NMAC 10.7.6, 4/25/2017]

**15.10.70.7        DEFINITIONS:** Unless otherwise defined in 15.10.2 NMAC, terms used in these regulations have the same meanings as set forth in the act.

[15.10.70.7 NMAC - Rp, 15 NMAC 10.7.7, 4/25/2017]

**15.10.70.8        OPERATION AND PROFITING BY AUTHORIZED PERSONS:**

**A.** No person other than the licensee or lessee or employees of the 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 completed by the licensee or lessee, or employees of the licensee or lessee, or the employees of a third-party delivery licensee contracted with for delivery purposes.

(2) Sales of alcoholic beverages by a licensee or lessee may not be combined with any sales of another person or entity that is not 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 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 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;

(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]

#### **15.10.70.9 EMPLOYMENT BY MULTIPLE LICENSEES:**

**A.** No person shall receive valuable consideration from a manufacturer or wholesaler for services performed while working as an employee, contractor, or other agent for a holder of a retailer, dispenser, restaurant or club license.

**B.** Any person receiving valuable consideration as described in Subsection A of 15.10.70.9 NMAC or any person who knowingly provides such consideration, shall be in violation of these rules and subject to fines and penalties as provided in these rules. Such violations may also be considered by the division in the granting of applications pursuant to Subsection C of 15.11.21.15 NMAC, and the renewal of licenses pursuant to Paragraph (2) of Subsection B of 15.11.22.8 NMAC.

[15.10.70.9 NMAC - N, 4/25/2017]

#### **15.10.70.10 ALTERNATING PROPRIETORSHIPS:**

**A.** An "alternating proprietorship" is an arrangement in which two or more entities may alternate using a licensed premises, equipment and employees to manufacture alcoholic beverages. Alternating proprietorships allow existing, duly licensed New Mexico winegrowers, small brewers and craft distillers to use excess capacity and provide opportunity to begin on a small scale, without investing in premises and equipment.

**B.** Each licensee participating in an alternating proprietorship must separately manufacture alcoholic beverages, whereby each licensee's product must be separate and identifiable from the product of any other parties to the alternating proprietorship, including prior to fermentation, during fermentation, during cellar storage, and as finished product after production and before removal from the premises.

**C.** An alternating proprietorship may only occur between licensees of the same license type.

**D.** Filing of written agreement:

(1) Any bona fide alternating proprietorship between one or more duly licensed craft distillers, winegrowers or small brewers shall be documented through a written agreement signed by each licensee or its resident agent.

(2) The agreement shall quantify the extent to which the licensed premises, employees and equipment may be used by each duly-licensed licensee.

(3) All parties to the agreement shall furnish a true and correct copy to the division.

**E.** All alternating proprietorships must be approved in advance by the Division: Any determination pursuant to this section shall be interpreted consistent with the United State Code of Federal Regulations at Part 27, Section 19.693, Part 27, Section 25.52, and with all relevant United States alcohol and tobacco tax and trade bureau industry circulars.

**F.** All alternating proprietorships must be approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau prior to final approval by the division.

**G.** A small brewer, winegrower, or craft distiller license whose production plan wholly relies upon an alternating proprietorship shall not be entitled to any off-site premises as otherwise provided by the act.

[15.10.70.10 NMAC - N, 4/25/2017]

**HISTORY OF 15.10.70 NMAC: [RESERVED]**