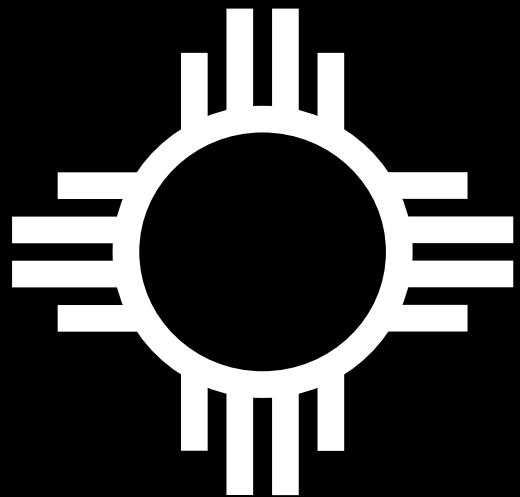


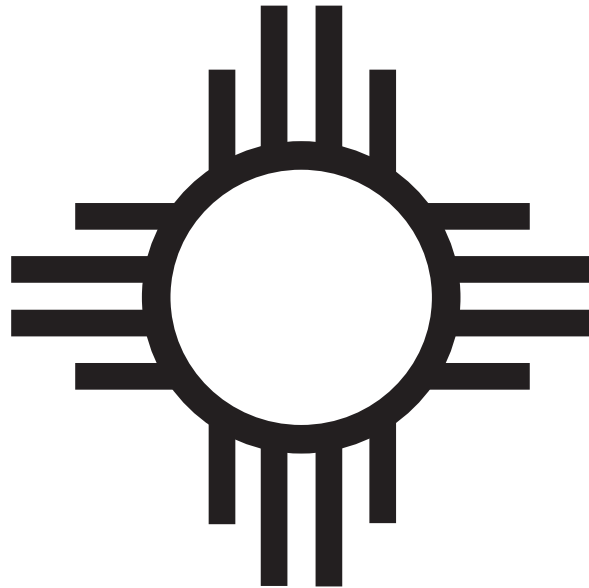
**NEW  
MEXICO  
REGISTER**



Volume XXVI  
Issue Number 19  
October 15, 2015

# **New Mexico Register**

**Volume XXVI, Issue 19  
October 15, 2015**



The official publication for all notices of rulemaking  
and filing of proposed, adopted and emergency rules in  
New Mexico

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2015

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# New Mexico Register

Volume XXVI, Issue 19

October 15, 2015

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The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

## Notices of Rulemaking and Proposed Rules

### ENVIRONMENT DEPARTMENT

#### Notice Of Public Hearing To Consider Proposed Amendments To 20.7.6 NMAC – Wastewater Facility Construction Loan Policies And Guidelines

The New Mexico Environment Department will hold a public hearing beginning at 10:00 a.m. on November 16, 2015, at the Harold Runnels Building Annex Conference Room, 1190 St. Francis Drive, Santa Fe, New Mexico, 87505, to consider proposed amendments to 20.7.6 NMAC. The proposed amendments would (1) allow mutual domestic water consumer associations organized under the Sanitary Projects Act to be eligible for funding under the Wastewater Facility Construction Loan Act and (2) lengthen the maximum repayment period for borrowers from twenty (20) years to thirty (30) years.

The proposed amendments may be reviewed during regular business hours at the Hearing Office Administrator's office located in the Harold Runnels Building, 1190 St. Francis Drive, Room S-2100 Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with 20.1.9 NMAC – Rulemaking Procedures – Environment Department, the Department of Environment Act, Section 9-7A-6 NMSA 1978, and other applicable procedures. Written comments regarding the proposed revisions may be addressed to Linda Vigil, Hearing Clerk, at the above address; reference docket number CPB 15-29 (R).

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of hearing.

Persons wishing to present technical testimony must file with the Hearing Officer a written notice of intent to do so. The requirements for a notice of intent can be found in Rulemaking Procedures for the Environment Department, which

may be obtained from the Hearing Clerk or found on the Department's webpage. Notices of intent for the hearing must be received by the Hearing Office by 5:00 p.m. on Friday, October 30, 2015, and should reference the name of the regulation, the date of the hearing, and docket number CPB 15-29 (R).

Those interested parties wishing to provide non-technical testimony or comment to the Hearing Officer on this matter may do so without submitting prior notice. Time will be reserved specifically for public comment during the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by October 30, 2015. The Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, and (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

The Hearing Officer will not make a decision on the proposed regulatory changes at the conclusion of the hearing. Pursuant to 20.1.9 NMAC, the Hearing Officer will consider the evidence presented and submit a report to the Secretary of the Environment Department for his consideration.

### ENVIRONMENT DEPARTMENT

#### AVISO PUBLICO QUE OYE PARA CONSIDERAR ENMIENDAS A 20.7.6 NMAC – Las Aguas Residuales De Préstamos De Construcción Políticas Y Directrices

El Departamento Del Medio Ambiente de Nuevo Mexico llevara a cabo una audiencia publica comensando a las 10:00 a.m. del día 16 de Noviembre de 2015, en el edificio Harold Runnels, en la sala de conferencia Annex, 1190 St. Francis Drive, Santa Fé, Nuevo Mexico 87505, a tener en cuenta propuestas de enmiendas a la 20.7.6 NMAC. Las enmiendas propuestas seria (1) permitir

que asociaciones del consumidor acuáticas domésticas mutuas organizadas segun el acto de Proyectos Sanitarias sean elegibles para financiar según el Acto del Préstamo de Construcción de la Instalación Wastewater y (2) alargan el periodo del reembolso máximo para prestatarios de veinte (20) años a treinta (30) años..

Las enmiendas propuestas pueden ser revisadas durante el horario regular de la oficina del Administrador de la Oficina de Audencia ubicadas en el edificio Harold Runnels, 1190 St. Francis Drive, en la habitacion S-2100 Santa Fé, Nuevo Mexico, 87505.

La audiencia se llevará a cabo de conformidad con 20.1.9 NMAC – Reglamentacion Procedimientos – Departamento de Medio Ambiente, el Departamento Del Medio Ambiente Seccion 9-7A-6 NMSA 1978, y otros procedimientos aplicables. Los comentarios por escrito respecto a las revisiones propuestas pueden dirigirse a Linda Vigil, Secretaria de la Audencia la dirección anterior; número de expediente de referencia CPB 15-29 (R).

Todas las personas interesadas se les dará la oportunidad razonable en la audiencia para presentar pruebas pertinentes, datos, opiniones y argumentos, de forma oral o por escrito, a presentar pruebas, y para interrogar a los testigos. Cualquier persona que desee presentar una declaración por escrito no técnico para el registro en lugar del testimonio oral debe presentar dicha declaración antes del cierre de la audición.

Las personas que deseen presentar testimonio técnico deberán presentar ante el Oficial de Audencia una notificación por escrito de su intención de hacerlo. Los requisitos para un aviso de intención se pueden encontrar en los Procedimientos Reglamentacion para el Medio Ambiente que puede ser obtenidas de la Secretaria de Audencia o se encuentra en la pagina web del Departamento. Las notificaciones de intención para la audiencia deben recibirse antes en la Oficina de Audencia de las 5:00 p.m. el día Viernes, 30 de Octubre de 2015, y debe hacer referencia al nombre de la regulación, la fecha de la audiencia, y el número de expediente CPB 15-29 (R).

Las personas interesadas que deseen proporcionar testimonio no técnico o comentario al Oficial de Audencia sobre

este asunto, puede hacerlo sin presentar previo aviso. Tiempo se reservará específicamente para comentario público.

Si usted es una persona con una discapacidad y necesita ayuda o una ayuda auxiliar, por ejemplo, firmar intérprete de lenguaje, para participar en cualquier aspecto de este proceso, por favor póngase en contacto con la Oficina de Servicios de Personal del día 30 de Octubre de 2015. La oficina puede ser localizada en el Departamento de Medio Ambiente de Nuevo México, 1190 St. Francis Drive, P.O. Caja de 5469, Santa Fé, NM 87502-5469, y (505) 827-9872. TDD o TDY pueden acceder a este número a través de Nuevo México Rele (usuarios Albuquerque TDD: (505) 575-7333, en el exterior de Albuquerque: 1-800-659-1779).

La Oficina de Audencia no tomara una decision sobre los cambios regulatorios propuestas en la conclusion de audencia. De acuerdo con 20.1.9 NMAC, el Oficial de Audencias considerara las pruebas presentadas y prestar un informe al Secretario del Medio Ambiente para su consideracion.

## ENVIRONMENTAL IMPROVEMENT BOARD

### Notice Of Rulemaking Hearing

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on December 18, 2015 at 9:00 a.m. in Room 322 at the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 15-01(R), proposed amendments to the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

The proponent of these regulatory amendments is the New Mexico Environment Department (NMED).

The purpose of the public hearing is to consider and take possible action on a petition from NMED to amend 20.2.77 NMAC, 20.2.78 NMAC and 20.2.82 NMAC by incorporating by reference

the new rules, corrections, revisions and amendments to the federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT) which were promulgated by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register from the most recent date of incorporation through September 15, 2015.

The proposed revised regulations and the list of federal standards to be incorporated by reference may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, on NMED's web site at [https://www.env.nm.gov/aqb/prop\\_regs.html](https://www.env.nm.gov/aqb/prop_regs.html), or by contacting Cindy Hollenberg at (505) 476-4356 or [cindy.hollenberg@state.nm.us](mailto:cindy.hollenberg@state.nm.us). You may also contact Cindy Hollenberg if interested in attending an informational open house on the proposed incorporation by reference.

The hearing will be conducted in accordance with 20.1.1. NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, NMSA 1978, Section 74-1-9, the Air Quality Control Act, NMSA 1978, Section 74-2-6, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) Identify the person for whom the witness(es) will testify;
- (2) Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) Include a copy of the direct testimony of each technical witness in narrative form;
- (4) List and attach each exhibit anticipated to be offered by that person at the hearing; and
- (5) Attach the text of any recommended modifications to the proposed regulatory change.

Notices of intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on November 25, 2015 and should reference the docket number, EIB 15-01(R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator  
Environmental Improvement Board  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone (505) 827-2425; Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with that testimony as long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing.

Persons having a disability and needing accommodations to participate in this hearing process should contact Juan Carlos Borrego of the NMED Human Resources Bureau by December 8, 2015 at P. O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-0424 or email [juancarlos.borrego@state.nm.us](mailto:juancarlos.borrego@state.nm.us). TDY users, please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

## DEPARTMENT OF FINANCE AND ADMINISTRATION

### Notice Of Board Of Finance New Rule

The State Board of Finance is in the process of introducing a new rule: *Determinations of the State Board of Finance* (2.61.9 NMAC). Copies of the proposed new rule are available in room 181, Bataan Memorial Building, Santa Fe, NM and on the State Board of

Finance website, [http://nmdfa.state.nm.us/Board\\_of\\_Finance.aspx](http://nmdfa.state.nm.us/Board_of_Finance.aspx). The Board will consider adopting the proposed new rule at its November 17, 2015 meeting, which takes place at 9:00 a. m. in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed new rule to: Leila Kleats, Director, State Board of Finance, 181 Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501, by November 14, 2015.

## DEPARTMENT OF HEALTH

### Amended Notice Of Public Hearing

The New Mexico Department of Health will hold a public hearing on new regulations known as 7.10.2 NMAC, "Requirements for Freestanding Birth Centers." The hearing will be held on November 17, 2015 at 9:00 a.m. in the auditorium of the Harold Runnels Building located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The hearing will be conducted to receive public comments regarding proposed adoption of new rules required by the passage of 2015 House Bill 84 which amended the Public Health Act to provide for the licensure by the Department of Health of Freestanding Birth Centers and the promulgation of rules it deems necessary or desirable to promote the health, safety and welfare of persons using freestanding birth centers. All of the provisions in this rule are new. A copy of the rule may be obtained by request in writing, and written comments may be submitted, by e-mail sent to: Amber.Espinosa-Trujillo@state.nm.us.

Alternatively, you may mail the request or comments to:

Amber Espinosa-Trujillo  
Bureau Chief, SMQT, QIS, ICF/IID  
Certified  
Office of Policy, Planning & Evaluation  
2040 South Pacheco Suite 137  
Santa Fe, NM 87505  
(505) 476-8810  
(505) 476-9026

The Department will accept written comments through the close of the hearing. 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

Ms. Espinosa-Trujillo by email, or via the address above, or call (505) 476-8810. The Department requests at least ten (10) days advance notice for special accommodations requests.

## COMMISSION OF PUBLIC RECORDS

### Notice Of Regular Meeting And Rule Hearing

The New Mexico State Commission of Public Records ("Commission") has scheduled a regular meeting and rule hearing for Tuesday, November 17, 2015, at 9:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Pam Lujan-Vigil at 476-7990 by November 6, 2015. Public documents, including the agenda and minutes, can be provided in various accessible formats.

At the hearing the Commission will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions.

**Interested individuals may submit written comments regarding the proposed rulemaking actions via email at [rmd.cpr@state.nm.us](mailto:rmd.cpr@state.nm.us). Written comments must be received no later than 5:00 p.m. on October 30, 2015 for inclusion in the Commission packet.**

The submission of written comments as soon as possible is encouraged.

Persons offering written comments at the hearing must have seven (7) copies for the Commission to review.

Copies of the proposed rules are available on the Commission website ([www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us)) and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located in the Santa Fe State Records

Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

### Repeal

1.15.3 NMAC GRRDS, General Administrative Records (for Use by Local Government and Educational Institutions)\*  
1.15.5 NMAC GRRDS, General Financial Schedule (Interpretive)\*  
1.15.7 NMAC GRRDS, General Personnel (Interpretive)\*  
1.19.2 NMAC LGRRDS, Office of the County Assessor  
1.19.3 NMAC LGRRDS, Office of the County Clerk  
1.19.4 NMAC LGRRDS, Board of County Commissioners County Managers  
1.19.5 NMAC LGRRDS, Office of the County Sheriff  
1.19.6 NMAC LGRRDS, Office of the County Treasurer  
1.19.7 NMAC LGRRDS, Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA)  
1.19.8 NMAC LGRRDS, New Mexico Municipalities  
1.19.9 NMAC LGRRDS, New Mexico Municipal Courts  
1.19.10 NMAC LGRRDS, Middle Rio Grande Conservancy District  
1.19.11 NMAC LGRRDS, Soil and Water Conservation Districts and Watershed Districts

### Repeal and Replace

1.13.30 NMAC Destruction of Public Records and Non-Records (Repeal)  
1.13.30 NMAC Disposition of Public Records and Non-Records (Replace)

### Amend

1.21.2 NMAC Retention and Disposition of Public Records  
1.13.4 NMAC Records Management Requirements for Electronic Messaging

### New

1.13.12 NMAC Designation of Records Management Personnel

## REGULATION AND LICENSING DEPARTMENT BOARD OF PHARMACY

### Regular Board Meeting; Notice To The Public

The New Mexico Board of Pharmacy will convene on October 22<sup>nd</sup> & 23<sup>rd</sup>, 2015 at 9:00 a.m. and continue until



finished in the \*Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM for the purpose of conducting a regular board meeting. Anyone who needs special accommodations for the meeting should contact the board office at (505) 222-9830 or contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or fax (505) 222-9845, e-mail [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) as soon as possible.

You may view and obtain copies of the agenda (tentative) starting October 12, 2015 through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx).

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Ben Kesner, [Ben.Kesner@state.nm.us](mailto:Ben.Kesner@state.nm.us) or Debra Wilhite, [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) no later than Monday, October 12, 2015, if in attendance must provide 12 copies of the documentation for distribution to board members. (*Board staff is not required to make copies.*)

The Board will address:

Rule Hearings:

- 16.19.5 NMAC Internship Training Program; 30 hours/interns
- 16.19.11 NMAC Nursing Home Drug Control; Nurse 24/7, controlled substances in kit
- 16.19.37 NMAC Minimum Standards for Outsourcing Facilities; New Rule

\*Executive Director's Report:

\*The board may go into Executive Session to discuss these items and any other items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

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## End of Notices of Rulemaking and Proposed Rules

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# 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.

### DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.5 NMAC, Section 9, effective 10-15-2015.

#### 19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

**A. Season and hours:** Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to one-half hour after sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills Prairie conservation area hunting hours shall be from one-half hour before sunrise to one-half hour after sunset.

(2) On waterfowl management areas (WMAs), hunting hours shall be from one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on W.S. Huey WMA, hunting hours shall be from one-half hour before sunrise to 4 p.m.

**B. Bag limit:** It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation.

**C. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any upland game that are illegally obtained.

**D. Use of bait:** It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

**E. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any upland game.

**F. Use of calling devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any upland game.

**G. Killing out-of-season:** It shall be unlawful to kill any upland game out-of-season.

#### H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for pheasants, and quail:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) bows and arrows; and

(c) crossbows.

(2) The following are legal sporting arms for dusky grouse, Eurasian collared-dove, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows

(f) pellet guns

(3) Non-toxic shot is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzleloader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with lead shot.

**I. Drugs and explosives:** It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

#### J. Proof of species or sex:

(1) One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the personal abode of the possessor or storage facility.

#### K. Possession or sale of

**protected species:** It shall be unlawful to possess, sell, or offer for sale all or part of any upland game except as provided below:

(1) License or permit: A person may possess upland game or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any upland game or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the upland game, or parts thereof, and which shall contain the following:

(a) the kind and number of upland game parts donated;

(b) the date and county where the upland game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the upland game was lawfully taken;

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain upland game in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those species listed on the permit;

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected upland game

being transported.

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

(a) description of the skin, claws, or feathers involved;

(b) the date and county where the upland game was taken;

(c) the disposer's name, address and hunting license number under which the upland game was taken;

(d) the date and place of the transaction.

#### L. Release of wildlife:

It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any upland game, without first obtaining a permit from the department of game and fish.

#### M. Use of vehicles and roads in hunting upland game:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any upland game from within a motor vehicle, power boat, sailboat, or aircraft.

(3) Harassing protected wildlife: It shall be unlawful, at any time, to pursue, harass, harr, drive, or rally any upland game by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for upland game, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) snowmobiles; 2) all landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any upland game, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road

when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill upland game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or upland game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

#### N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The W.S. Huey WMA and Seven Rivers shall be open for quail hunting on Mondays, Wednesdays, and Saturdays

during established seasons. The W.S. Huey WMA shall be open to pheasant hunting by special permit only.

(b) The Brantley WMA (excluding the Seven Rivers portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons.

(d) The Big Hatchet mountain wildlife management area shall be open for quail hunting during established seasons.

(e) The state game commission owned lesser prairie-chicken areas shall be open for quail hunting during established seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only hunting for upland game during established seasons.

O. Areas closed to upland game hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All state game commission owned or managed properties.

(2) Rio Grande wild and scenic river area.

(3) Sub-unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 4-1-14; A/E, 8-29-14; A, 10-15-15]

## DEPARTMENT OF GAME AND FISH

This is an amendment to 19.35.7 NMAC, Sections 14 and 15, effective 10-15-2015.

**19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO:** All fish species or eggs of the families salmonidae,

esocidae, percichthyidae, ictaluridae, centrarchidae, percidae, may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

**A.** the name of department approved supplier pursuant to this regulation;

**B.** description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acres-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;

**C.** species, size, pounds, and number of fish to be imported will be specified;

**D.** purpose of importation will be specified;

**E.** full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;

**F.** GPS coordinates (latitude and longitude in degree decimal minutes (DDM) using WGS 84 datum for each location where fish are stocked.

**G.** Oreochromis niloticus and oreochromis mossambicus may be imported into the state provided that:

**(1)** all requirements set forth in the application and on the permit are met

**(2)** all other regulatory requirements, including those set forth herein, are met

[19.35.7.14 NMAC - Rp, 19.35.7.14 NMAC, 1-31-14; A, 10-15-2015]

**19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:**

**A.** The department will maintain a listing of approved fish suppliers.

**B.** All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

**C.** Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.

**D.** Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth

bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico department of game and fish.

**E.** Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

**F. Salmonids:**  
**(1)** For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), and viral hemorrhagic septicemia (VHS).

**(a)** Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

**(b)** Disease testing ~~[on]~~ of fish must use American fisheries society (AFS) blue book ~~[procedures--“suggested procedures for the detection and identification of certain finfish and shellfish pathogens; 4th edition 1994”] or meet OIE (office international des epizooties) standards.~~

**(c)** Disease testing will be conducted on an annual basis; annual inspection must have occurred within the previous 12 months of application date.

**(d)** 60 fish per lot will be sampled.

**(e)** For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

**(2)** Salmonids -for the whirling disease pathogen and bacterial kidney disease.

**(a)** Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

**(b)** Lots of fish older than six months will be sampled.

**(c)** 60 fish per lot will be sampled.

**(d)** Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery’s water source for at least 10 months.

**(e)** Disease testing will be conducted on an

annual basis. Annual inspection must have occurred within the previous 12 months of application date.

**(f)** Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.

**(g)** For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

**(h)** Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New Mexico department of game and fish.

**(i)** Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

**(j)** Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.

**(k)** Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has: 1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

**G.** Warm water fish: [For channel catfish imported into New Mexico.]

**(1)** Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

**(2)** Disease testing of fish must use American fisheries

society (AFS) blue book procedures or meet OIE standards.

**(3)** Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

**(3)(4)** ~~Channel catfish will be tested for Edwardsiella ictaluri (hole in the head disease)~~ 60 warm water fish per lot shall be tested for viruses and bacteria.

**(5)** Oreochromis niloticus and oreochromis mossambicus shall be certified as to species and as either all male or otherwise sterile by a qualified independent laboratory or by other means approved by the director.

**(6)** Oreochromis niloticus and oreochromis mossambicus capable of reproduction and certified as to species by a qualified, independent laboratory or by other means approved by the director may be approved for import only to a qualified expert.

**(7)** Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

**H.** Triploid grass carp: A notarized certificate of triploidy issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

**I.** Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions. [19.35.7.15 NMAC - Rp, 19.35.7.15 NMAC, 1-31-14; A, 10-15-2015]

## DEPARTMENT OF GAME AND FISH

This is an amendment to 19.35.9 NMAC, Sections 7, 8, 9, 12, 13, and 14 effective 10-15-2015

### 19.35.9.7 DEFINITIONS:

**A.** "Animal health emergency" A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

**B.** "Aquaculture/recirculating water systems" is a facility designed for the culture, rearing, and propagation of protected species of fish.

**(B)(C)** "Chronic wasting disease" or "CWD" is a transmissible spongiform encephalopathy of cervids.

**(C)(D)** "CWD-exposed animal" is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD positive animal or contaminated premise within the previous 60 months.

**(D)(E)** "CWD-exposed herd" is a herd in which a CWD-positive animal resided within 60 months prior to that animal's diagnosis as CWD-positive.

**(E)(F)** "CWD-positive herd" is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

**(F)(G)** "CWD profile" is a deer or elk at least 12 months of age that is emaciated and exhibits some combination of clinical signs associated with CWD including increased salivation, tremors, stumbling, incoordination, difficulty swallowing, excessive thirst, and excessive urination.

**(G)(H)** "CWD-response committee" is the group of persons who will develop a herd plan for any facility in which CWD is confirmed or in which is identified a trace-back or a trace-forward herd. This group will be comprised of at least the owner or designee of the facility, a representative from the department, from USDA veterinary services, and from the New Mexico livestock board. The committee must contain a qualified epidemiologist designated for the event.

**(H)(I)** "CWD-suspect animal" is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

**(I)(J)** "CWD-suspect herd" is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

**(J)(K)** "CWD-trace-back herd" is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

**(K)(L)** "CWD-trace-forward herd" is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

**(L)(M)** "Department" shall mean the New Mexico department of

game and fish.

**(M)(N)** "Director" is the director of the New Mexico department of game and fish.

**(N)(O)** "Double fenced" means a park surrounded by two (2) fences, each continuous, with one fence surrounding the other and a separation of at least 30 feet between the fences.

**(O)(P)** "Facility" is the area of a class A park surrounded by a fence meeting specifications defined herein, and all buildings, isolation pens, loading chutes, gates, waters, and other structures and equipment used in the class A park operation.

**(P)(Q)** "Feed" is all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

**(Q)(R)** "Herd plan" is a written facility management agreement that sets forth the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

**(R)(S)** "Official animal identification" is a device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:

- (1) national uniform ear tagging system;
- (2) animal identification number (AIN);
- (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system; or
- (4) any other numbering system approved by USDA for the identification of animals in commerce.

**(S)(T)** "Permit owner" is that person or persons to whom the class A park or lake permit is issued. This person(s) may be a lessee on the land designated for the class A park or lake.

**(T)(U)** "Quarantine" is an order issued to any class A park or lake prohibiting all animal ingress or egress. The director shall declare the end of the quarantine.

**(U)(V)** "Quarantine fence" is a fence, inside a facility, constructed to ensure isolation within the facility.

**(V)(W)** "Record" shall mean all vital documents and electronic data kept for each animal. These documents

include, but are not limited to, breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, etc.

~~[W:]~~ X. "Single fenced" is a park surrounded by one (1) continuous fence.

~~[X:]~~ Y. "Shooter animals" are animals designated by a permit owner or his designee for hunting or harvesting in the facility.

~~[Y:]~~ Z. "Water" is the system for delivering water to animals in a facility including but not limited to wells, streams, ponds, troughs, and water catchments.

~~[Z:]~~ AA. "USDA" is the United States department of agriculture. [19.35.9.7 NMAC - Rp, 19.35.9.7 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.8 POSSESSION AND RETENTION OF PROTECTED SPECIES LIVE ANIMALS, BIRDS AND FISH:**

It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued by the director. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and appeal processes, if any, listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

**A.** Only members of the following families of fish [~~except as noted in Subsections D and E of 19.35.7.8 NMAC~~] will be considered for retention in New Mexico class A lakes or class A - aquaculture/recirculating water systems:

- (1) salmonidae;
- (2) esocidae;
- (3) percichthyidae;
- (4) ictaluridae;
- (5) centrarchidae; and
- (6) percidae

**B.** Live oreochromis niloticus and oreochromis mossambicus capable of reproducing and/or propagation may be considered for retention in New Mexico only by a department approved qualified expert as defined in 19.35.7 NMAC.

**C.** Live oreochromis niloticus and oreochromis mossambicus incapable of reproducing (hybrid and sterile or triploid of the same sex) shall be considered for retention in New Mexico

for the purposes of aquaculture.

~~[B:]~~ D. Only members of the following families of mammals and birds will be considered for retention in New Mexico class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

~~[C:]~~ E. Permission may be granted by the state game commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, or upon requiring that certain additional conditions are met by the applicant, and does not conflict with any other law, rule or ordinance. [19.35.9.8 NMAC - Rp, 19.35.9.8 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION:**

All live protected species of the families' bovidae, antilocapridae, and cervidae retained in the state of New Mexico shall meet the following criteria:

**A.** All class A parks with cervids must develop and follow a herd plan if any animal is identified to come from a CWD-positive herd, CWD-suspect herd, CWD-exposed herd, CWD-trace-back or CWD-trace-forward herd. The herd plan will be developed by the CWD response committee:

(1) tissues from all CWD-exposed or CWD-suspect animals that die or are depopulated or otherwise killed must be collected and tested for CWD as specified in the herd plan. Carcasses and tissues of such animals should be disposed of as specified in the herd plan.

(2) CWD testing specified by the herd plan must be done at the expense of the class A park;

(3) CWD testing shall be done only at a laboratory approved by USDA and the department;

(4) laboratory results must be retained by the class A park and presented to the department with the annual inventory inspection; and

(5) the director may require CWD testing of cervids from class A parks not enrolled in the CWD herd certification program.

**B.** Any live cervid leaving a park must be accompanied by a health certificate by an accredited veterinarian.

**C.** Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

**D.** All class A game parks must maintain herd records that

include at least:

(1) bills of sale or donation receipts, that is, the source of all animals moved into the herd from an outside source;

(2) importation permit if the animal was imported into New Mexico from a source outside of the state;

(3) all health certificates associated with importation or other activities;

(4) age or date of birth, species, gender; and location of birth, that is, born at the facility or introduced from a location outside of the facility;

(5) registration documents if applicable;

(6) all health and medical records including details of veterinary care and consultation;

(7) all laboratory results and reports from disease testing and any necropsies performed;

(8) all documents associated with movement of live animals from the facility including movement to slaughter, and final destination of all movements; and

(9) all individual animal identification data.

**E.** Feed containing animal products or by-products shall not be administered to cervids.

**F.** Any positive test for CWD shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis by the class A park owner or owner's designee. This notification requirement will only be considered met if the owner or designee talks directly or by telephone to the department or sends a verifiable email to appropriate representatives of the department:

(1) the park shall be under immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense

(2) the director shall assemble the CWD response committee to determine immediate actions to:

(a) contain, control, and prevent further transmission

(b) develop and write a herd plan. If the CWD-positive herd is enrolled or certified in the CWD herd certification program, the herd plan will follow the guidelines contained in the publication,

USDA Chronic Wasting Disease Program Standards; and

(c) determine all trace-back and all trace-forward facilities;

(3) class A park owners or designees shall notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 96 hours of the diagnosis.

G. Domestic sheep shall not be kept within the boundaries of the park unless the domestic sheep herd is enrolled and participating in the USDA scrapie program.

H. All live protected species of [the family salmonidae] fish retained [for] in an aquaculture/ recirculating water system operated by a qualified expert [propagation] or live protected species for sale outside of the class A lake shall meet the following criteria:

(1) test annually meeting the same requirements as specified as 19.35.7 NMAC;

(2) any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person:

(a) the lake or aquaculture/recirculating water system shall be under immediate indefinite quarantine; and

(b) owners shall submit factual copies of all records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - Rp, 19.35.9.9 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.11 INTRASTATE TRANSPORTATION:**

A. All live captive ungulates transported within the state of New Mexico shall:

(1) be legally possessed;

(2) can be transferred only to other class A park facilities or to processor for slaughter, or sold for immediate consumption;

(3) be shipped following all applicable laws;

(4) all live ungulates including cervids must be permanently identified with any two of

the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(a) implanted electronic identification device;

(b) ear tag with park identification number;

(c) tamper-proof ear tag with imprinted national identification number; or

(d) USDA metal ear tags.

B. Any individual(s) transporting live fish from a class A lake or aquaculture/recirculating water system shall:

(1) be required to [seek] obtain importation and release permits through the process outlined in 19.35.7 NMAC;

(2) legally possess the fish; [and]

(3) only transfer or ship to another individual with a valid permit or by means or to destinations previously approved in the permit issued by the department; and

(4) ship following all applicable laws.

[19.35.9.11 NMAC - Rp, 19.35.9.11 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.12 CLASS A PARK AND LAKE AND CLASS A - AQUACULTURE/RECIRCULATING WATER SYSTEM APPLICATION AND PERMITTING OF NEW PARKS:**

New class A park and lake applications will be accepted anytime during the license year. All park and lake licenses will expire March 31 and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

A. Name of owner, address, telephone number, name of contact person;

B. Complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acre-lake or water; major use of water; a map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;

C. Species, size, pounds, and number of wildlife to be retained will be specified;

D. Purpose of park or lake will be specified;

E. Each park or lake facility shall meet all the specifications listed on the application prior to final

approval and no permit will be approved until all conditions and inspections have been completed by a department designee; and

F. Inclusion of annual fee for processing of application as per 19.30.9 NMAC.

[19.35.9.12 NMAC - Rp, 19.35.9.12 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES AND CLASS A - AQUACULTURE/ RECIRCULATING WATER SYSTEMS:**

All applicants renewing their class A license shall apply to the department by May 1 of each year and must be received by the close of the business day. Any renewal application received after May 1 will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any class A park or lake or class A - aquaculture/ recirculating water system failing to send in or renew their application by June 1 will be deemed delinquent and revocation action may commence following 19.31.2 NMAC.

[19.35.9.13 NMAC - Rp, 19.35.9.13 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.14 CLASS A PARK AND LAKE AND CLASS A - AQUACULTURE/RECIRCULATING WATER SYSTEM FACILITY DESIGN, INSPECTION AND RECORDS:**

A. Park enclosure: each class A park facility shall, at a minimum, conform to all rules listed below and on the application:

(1) no park shall exceed 3200 acres. Any additional acres will result in another class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to;

(2) fence height shall be at least eight feet (8') from ground level to the top wire or fence top for all new class A parks and for all parks participating in the state herd certification program. Fence shall be continuous from bottom to top, even if multiple layers must be used. Current class A parks with seven and one half foot (7.5') fences will not have to meet this requirement unless they apply for certification;

(3) fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven inch (6"X7") openings;

(4) fence

wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire must either be re-stretched or bolstered in some other permanent fashion;

(5) fence wire must be maintained securely four inches (4") or less to the ground. Any fencing that is found to be greater than four inches (4") above the ground shall not constitute a proper fence and shall be aproned with permanent material;

(6) all fences must be securely fastened to the posts;

(7) barbed wire may be used on the bottom or top horizontal wires at the owner's discretion;

(8) posts shall be metal "T" posts, pipe or wooden (at least three and one half inches (3.5") in diameter; and must be pressure treated with a preservative);

(9) posts shall be set firmly in the ground and not subject to dislodging;

(10) posts shall be spaced at intervals not to exceed 18 feet (18') with T-posts or wood; or not to exceed 20 feet (20') on metal pipe;

(11) perimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than four inches (4") from ground to gate bottom;

(12) all water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure;

(13) all fence right-of-ways shall be cleared for a distance of eight feet (8') on each side of the fence and all dead timber with a height greater than the distance to the fence shall be felled;

(14) class A park fences shall be constantly maintained as described above, if found out of compliance, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein;

(15) all working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park; and

(16) if the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.

**B. Park design:**

(1) all feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities;

(2) no placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed; and

(3) gates shall remain open until the final inspection and approval by a department designee.

**C. Lake enclosure:** each class A lake facility shall conform to all rules listed below and on the application:

(1) all bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application;

(2) list and describe all screens or other appliances that prevent ingress and egress of fish into and out the bodies of water; and

(3) a map of the lake facility and surrounding watershed shall be provided by the applicant upon application.

**D. Aquaculture/ recirculating water systems rearing fish capable of reproduction operated by a qualified expert:**

(1) shall provide the department with a comprehensive biosecurity plan detailing preventative actions for disease, safety, escape and expected final disposition of fish. Permit issuance will not be considered until the biosecurity plan is complete and approved by the department;

(2) shall submit an annual report with detailed records regarding the operations, preventative measures utilized to maintain healthy fish and any biosecurity plan modifications or updates;

(3) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;

(4) shall be covered to prevent loss of fish through predation, theft, or other means;

(5) No fish shall be removed from the facility alive unless it is being exported outside of New Mexico according to lawful procedures or is moving within the state according to lawful procedures and cannot reproduce; and

(6) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits.

**E. All other aquaculture/ recirculating systems:**

(1) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;

(2) shall be covered to prevent loss of fish through predation, theft, or other means;

(3) shall maintain detailed records and submit annual reports regarding the operations;

(4) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits; and

(5) live fish shall not be removed from the aquaculture/recirculating system unless they are being transferred to another department permitted individual within the permit provisions.

**E.** Facility inspections of parks and lakes: once application is made to the department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity. All inspections will be limited to the facility and the animals held therein.

~~E.] G.~~ Natural disasters: every owner or his designee shall immediately notify the department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

~~F.] H.~~ Animal escapes: every owner or his designee shall immediately notify the department of any escapes from a park or lake. Species and all identification data shall be reported with time, location, number or quantity, and sex of escaped animals. Owner or designee shall immediately attempt to recapture escaped animals and make every reasonable effort to return the animals to their facility.

~~G.] I.~~ Park and lake closure or termination: any park or lake failing to renew by May 1 of each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake shall be considered in violation of 17-4-9 NMSA 1978. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section



shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the department. However disposition must occur immediately as required by all applicable laws.

[H] J. Records:

(1) any animal disposed or sold from a park or lake must be accompanied by an invoice signed by the owner or his designee and state the following:

(a)

park or lake name and license number;

(b)

date of disposition or sale, and;

(c)

species, quantity, sex and identification data of game animals included in disposition or sale; or, if fish, the approximate weight and number;

(2) each owner

shall submit a year-end report to the director by May 1 and state the following: species, quantity, sex, and identification data of game animals disposed, sold, or removed in any way; or, if fish, the approximate weight and number for the previous license year;

(3) owner or

designee shall maintain all inventory and health records obtained or created for each animal as designated in 19.35.9.9 NMAC herein;

(4)

final disposition, if known, shall be documented of every class A park or lake animal; and

(5) all such

records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceedings pursuant to 19.31.2 NMAC.

[H] K. Existing parks: parks

and lakes permitted prior to January 1, 2014 of this regulation will have five (5) years to bring their facility into compliance with this regulation. However, all possession conditions and health certification requirements are mandatory and must begin immediately, even for existing class A parks and lakes.

[19.35.9.14 NMAC - Rp, 19.35.9.14 NMAC, 3-14-14; A, 10-15-2015]

**GAMING CONTROL BOARD**

The Gaming Control Board approved, at its 5/1/2014 hearing, to repeal its rule 15.1.10 NMAC, Conduct of Gaming Activity Under The Gaming Control Act, (filed 12/14/1998) and replace with 15.1.10 NMAC, Conduct of Gaming Activity Under The Gaming Control Act , effective 10/15/15.

**GAMING CONTROL BOARD**

**TITLE 15 GAMBLING AND LIQUOR CONTROL  
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS  
PART 10 CONDUCT OF GAMING ACTIVITY UNDER THE GAMING CONTROL ACT**

**15.1.10.1 ISSUING AGENCY:** New Mexico Gaming Control Board. [15.1.10.1 NMAC - Rp, 15.1.10.1 NMAC, 10/15/15]

**15.1.10.2 SCOPE:** This rule applies to all gaming operator licensees, applicants for licensure as gaming operators, and other persons involved in gaming activity under the New Mexico Gaming Control Act. [15.1.10.2 NMAC - Rp, 15.1.10.2 NMAC, 10/15/15]

**15.1.10.3 STATUTORY AUTHORITY:** Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-8(C) (6) directs the board to adopt regulations defining the area, games and gaming devices allowed and the methods of operation of such games. [15.1.10.3 NMAC - Rp, 15.1.10.3 NMAC, 10/15/15]

**15.1.10.4 DURATION:** Permanent. [15.1.10.4 NMAC - Rp, 15.1.10.4 NMAC, 10/15/15]

**15.1.10.5 EFFECTIVE DATE:** October 15, 2015, unless a later date is cited at the end of a section. [15.1.10.5 NMAC - Rp, 15.1.10.5 NMAC, 10/15/15]

**15.1.10.6 OBJECTIVE:** This rule

establishes standards for the conduct of gaming activities authorized by the Gaming Control Act. [15.1.10.6 NMAC - Rp, 15.1.10.6 NMAC, 10/15/15]

**15.1.10.7 DEFINITIONS:**

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A. "act"** means the

Gaming Control Act;

**B. "additional payout"**

means a supplemental cash payout, based on a jackpot, that is not reflected in the gaming machine pay table (e.g., double jackpot);

**C. "affiliate"** means

a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation;

**D. "allocate"** means

the transfer of an allocating racetrack's right to operate a number of its authorized gaming machines to the receiving racetrack;

**E. "allocation**

**agreement"** means a written contract between an allocating racetrack and a receiving racetrack;

**F. "allocating**

**racetrack"** means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement;

**G. "allowable gaming**

**expenses"** means the following bona fide expenses in reasonable and customary amounts:

(1) purchase

prices of non-cash prizes;

(2) security and

surveillance expenses;

(3) independent

accountant's fees;

(4) license fees,

including renewals and gaming machine license fees;

(5) utilities

attributable to the licensed premises;

(6) installment

payments to an independent administrator or lease payments for licensed gaming machines;

(7) gaming

device repair and maintenance;

(8) gaming

employee salaries and employment taxes;

(9) gaming

supplies;

(10) approved

management fees; and

(11) licensed premises repair and maintenance;

**H. “balance of net take”** means the amount of net take remaining after the gaming operator licensee pays the gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule;

**I. “charitable purposes”** means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the state; the term “charitable purposes” does not include operating expenses of the organization or any affiliated organization;

**J. “control”** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee;

**K. “credit slip”** means a cash-out ticket for winnings earned on a gaming machine that provides for credit play;

**L. “disciplinary action”** means an action by the board that limits, conditions, suspends or revokes a license, registration, finding of suitability or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing;

**M. “educational purposes”** means activities or uses that develop the capabilities of individuals by formal instruction; the term “educational purposes” does not include the operating expenses of the organization or any affiliated organization;

**N. “gaming credit”** means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one (1) gaming credit equals the denomination of the game being played;

**O. “independent administrator”** means:

(1) a bank licensed by the state or a national bank with an office in the state; or

(2) an insurance company admitted to transact business in the state with a best insurance rating of “A,” “A+” or “A-”; and

(3) one (1) that is not an affiliate of the gaming operator licensee;

**P. “receiving racetrack”** means a racetrack gaming operator licensee that is proposing to

receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack;

**Q. “management contractor”** means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee;

**R. “nonprofit operator licensee”** means a qualified nonprofit organization that has obtained a gaming operator’s license pursuant to the provisions of the act and board regulations;

**S. “periodic payments”** means a series of payments that are paid at least annually and includes annuities;

**T. “person”** means a legal entity or individual;

**U. “personal property award”** means an award of personal property based on gaming machine play;

**V. “promotion”** means a short-term program designed to stimulate participation in gaming activities by patrons through advertising and the award of cash and non-cash prizes, not based on a jackpot; “promotion” includes the gift of nominal value items, such as T-shirts and mugs; and includes player’s clubs or similar programs in which gaming patrons accumulate points, which can be exchanged for cash, machine credits, merchandise or any other thing of value;

**W. “state”** means the state of New Mexico;

**X. “this title”** means Title 15, Chapter 1 of the New Mexico Administrative code (NMAC);

**Y. “trust”** means an irrevocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.

[15.1.10.7 NMAC - Rp, 15.1.10.7 NMAC, 10/15/15]

**15.1.10.8 METHODS OF OPERATION:**

**A.** All gaming establishments shall be operated in a manner suitable to protect the health, safety, morals, and general welfare of the public.

**B.** It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy.

[15.1.10.8 NMAC - Rp, 15.1.10.8 NMAC, 10/15/15]

**15.1.10.9 UNSUITABLE METHODS OF OPERATION:** Any

activity by any licensee or its agents or employees that is contrary to the health, safety, morals, or welfare of the public, shall be deemed an unsuitable method of operation. Without limitation, the following shall be determined to be unsuitable methods of operation:

**A.** failing to exercise discretion and sound judgment in the operation of the activity authorized under the license;

**B.** permitting persons who are obviously intoxicated to participate in gaming;

**C.** serving or allowing possession of alcoholic beverages by any person on the licensed premises of a racetrack gaming operator licensee;

**D.** directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

**E.** employing as a key executive any person who has been denied a gaming license, work permit, finding of suitability in any jurisdiction, or who has failed or refused to apply for such permit or finding, or who has failed or refused to apply for renewal or recertification;

**F.** failing to comply with all federal, state and local laws and regulations governing the operations of a gaming establishment, including without limitation the payment of all fees and taxes;

**G.** possessing or permitting the operation of any unlicensed gaming machine, gaming device, or other unauthorized device on the gaming establishment;

**H.** conducting, operating, or dealing with any cheating game or device on the gaming establishment, knowingly or unknowingly, that alters or tends to alter the normal random selection of criteria that determine the results of the game;

**I.** except as otherwise provided in this rule, selling, transferring or otherwise assigning interest in the license or revenues from the license;

**J.** denying the board or its agents or other authorized persons access to a gaming establishment or records, wherever located, as authorized by the act and rules adopted by the board;

**K.** a nonprofit operator licensee knowingly or unknowingly permitting persons other than members or auxiliary members to participate in gaming on the licensed premises;

**L.** employment of,

association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

**M.** misrepresentation of any material fact or information to the board;

**N.** engaging in, furthering, or profiting from any illegal activity or practice or any violation of the act or this title;

**O.** obstructing or impeding the activities of the board or its employees or agents;

**P.** facilitating, participating in, or allowing the issuance of any loans or extending credit to a patron for gaming purposes;

**Q.** conducting or permitting the conduct, knowingly or unknowingly, of any gaming activity other than that allowed pursuant to the license;

**R.** cashing or permitting the cashing of governmental assistance checks, including welfare checks, social security checks, and child support payments;

**S.** failing to follow, or to ensure that employees follow, the minimum internal controls established by regulation or failure to notify the board of any changes to the minimum internal controls;

**T.** failing to require employees to wear work permits or key executive identification as required in this title;

**U.** employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license as required by the act;

**V.** failing to adhere to the compulsive gambling guidelines or plan;

**W.** failing to comply with any subpoena or other order of the board;

**X.** except on the basis of a properly invoked privilege against self-incrimination, failing or refusing to testify in any proceeding before the board or before an administrative hearing officer appointed by the board;

**Y.** permitting a person under the age of twenty (21) years to enter onto the gaming premises;

**Z.** otherwise failing to conduct gaming operations in accordance with the act or this title.  
[15.1.10.9 NMAC - Rp, 15.1.10.9 NMAC, 10/15/15]

**15.1.10.10 CRIMINAL CONVICTION AS GROUNDS FOR REVOCATION OR SUSPENSION:**  
The board may revoke or suspend the

license, work permit, or finding of suitability of a person convicted of a felony, regardless of whether that person has exhausted his or her post-conviction rights and remedies.

[15.1.10.10 NMAC - Rp, 15.1.10.10 NMAC, 10/15/15]

**15.1.10.11 VIOLATION OF LAW OR REGULATIONS AS GROUNDS FOR REVOCATION OR SUSPENSION:**

**A.** Violation of any provision of the act or of this title by a licensee, its agent, or employee is deemed contrary to the public health, safety, morals, and welfare and constitutes grounds for suspension or revocation of the license, or imposition of a fine, or both.

**B.** It is the responsibility of every licensee to keep informed of the content of the act, rules promulgated under the act, and all amendments to either. Ignorance of the act, rules, or amendments thereto shall not be an excuse or defense for such violations.

[15.1.11.2 NMAC - Rp, 15.1.11.2 NMAC, 10/15/15]

**15.1.10.12 INVESTIGATION OF LICENSEE'S CONDUCT:** The board is charged by law with the duty of observing the conduct of all licensees for the purpose of ensuring that licenses shall not be held by unqualified or disqualified persons, unsuitable persons, or persons who conduct gaming operations in an unsuitable manner. Such investigations shall be conducted in the manner and to the extent deemed necessary by the board.  
[15.1.10.12 NMAC - Rp, 15.1.10.12 NMAC, 10/15/15]

**15.1.10.13 REPORTS OF VIOLATIONS:**

**A.** Each licensee shall immediately notify the board's enforcement division by telephone and in writing of the discovery of any violation or suspected violation of the act, rules promulgated under the act, or of any other state or federal law on the licensed premises or related to the gaming operation.

**B.** The board shall provide a toll-free number to aid in the reporting of administrative or criminal violations. The board shall prepare and a gaming operator shall post a written notice of the toll-free number, at least 8.5 by 14 inches in size, in the employee lounge or adjacent to a time reporting system.

**C.** A gaming operator shall include the information on the

written notice in any employee training materials or handbook.

**D.** A gaming operator shall not retaliate against an employee for reporting an administrative or criminal violation.

[15.1.10.13 NMAC - Rp, 15.1.10.13 NMAC, 10/15/15]

**15.1.10.14 UNLICENSED AND SUSPENDED GAMES OR GAMING DEVICES:**

**A.** No unlicensed or unauthorized games shall be operated at the gaming establishment, nor shall a licensee offer for sale, distribution, or play any gaming device that shall be used in gaming without first having obtained all necessary licenses and having paid all current fees and taxes applicable to such devices.

**B.** A licensee who desires to temporarily remove or suspend a game from play shall give the board advance written notice of the type and number of games sought to be suspended and the beginning date and duration of the proposed suspension. In addition, the licensee shall physically remove the gaming device from any area accessible by members, in the case of a nonprofit operator licensee, or the public, in the case of a racetrack gaming operator licensee, and place it in a secured area approved by the board. Thereafter, the board shall disenroll the gaming device from the central monitoring system and periodically inspect the gaming device and allow it to remain on the licensed premises during the suspension period not to exceed thirty (30) days. Temporary removal of a gaming device under this subsection shall not exceed sixty (60) days.

**C.** Before any suspended game or gaming device shall be reactivated and placed into play, the licensee shall:

(1) advise the board in writing of the licensee's intention and date to reactivate such game or gaming device;

(2) pay all applicable fees and taxes; and

(3) offer the game or gaming device for play following the board's reinspection and central monitoring system enrollment of the gaming device.

**D.** If a gaming operator licensee shall remove a gaming machine from the gaming area due to suspected cheating, tampering, or malfunction, the gaming operator:

(1) shall immediately notify the board's

enforcement and information systems on-call personnel by telephone of the temporary removal and file a written report within five (5) days; remove the gaming machine to a secure location as directed by the board; and ensure that the gaming machine is secured during any investigation deemed necessary by the board or its agent;

(2) may temporarily replace the removed gaming machine with a pre-approved gaming machine obtained from a licensed distributor or manufacturer, provided the gaming operator licensee and licensed distributor or manufacturer fully disclose the terms of the temporary replacement and provided the terms are satisfactory to the board; and

(3) shall notify the board of the date on which the removed gaming machine will be returned to play and provide proof satisfactory to the board that the replacement gaming machine has been removed from the licensed premises and returned to the distributor.

[15.1.10.14 NMAC - Rp, 15.1.10.14 NMAC, 10/15/15]

**15.1.10.15 PLAY BY PERSONS UNDER THE AGE OF 21 PROHIBITED:**

A. Persons under twenty one (21) years of age are prohibited from entering the gaming premises.

B. Licensees shall display posters in full public view at both the entrance to and inside the licensed premises stating, at a minimum, "*these premises are restricted by law to persons twenty one (21) years of age or older.*"

C. A gaming operator licensee shall be responsible for taking all reasonable measures to ensure that persons under twenty one (21) years of age do not enter the gaming premises.

D. In the event a person under twenty one (21) years of age attempts to claim cash or non-cash winnings, the gaming operator licensee shall treat the play of the game as void. The underage player shall not be entitled to any prize won or to a refund of any amounts bet.

[15.1.10.15 NMAC - Rp, 15.1.10.15 NMAC, 10/15/15]

**15.1.10.16 ADVERTISING:**

A. No racetrack gaming operator licensee shall allow, conduct, or participate in any false or misleading advertising concerning gaming on its licensed premises. Any advertising by the nonprofits shall advertise that gaming is

for members only.

B. All advertising by any gaming operator licensee shall include a compulsive gambling awareness component that includes, at a minimum, the statement "play responsibly" or similar language and a toll-free telephone number for problem gambling assistance.

[15.1.10.16 NMAC - Rp, 15.1.10.16 NMAC, 10/15/15]

**15.1.10.17 GAMING BY OWNERS, DIRECTORS, OFFICERS, KEY EXECUTIVES, WORK PERMITEES OR TECHNICIANS:**

A. None of the following members of a nonprofit operator licensee, or of any affiliate of the licensee, shall play any gaming device made available to members and auxiliary members by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee:

(1) officers, members or auxiliary members who have

(a) check-writing authority or other access to any account in which gaming receipts may be deposited; or

(b) other financial or decision-making responsibility over any gaming activity;

(2) key executives, such as the gaming manager; and

(3) any person who has access to software or an area within the internal structure of any gaming machine or associated equipment in which the functioning of the gaming machine may be altered or manipulated.

B. No officer, director, owner, or key executive of a racetrack gaming operator licensee, or of any affiliate of the licensee, shall play any gaming device made available to the public by that licensee or on a gaming establishment that is owned or operated in whole or in part by that licensee.

C. Except for the purpose of servicing the gaming device, no technician shall play any gaming device located at a gaming establishment that is operated by the technician's employer or by any licensee for which the technician or the technician's employer provides services.

[15.1.10.17 NMAC - Rp, 15.1.10.17 NMAC, 10/15/15]

**15.1.10.18 GAMING MACHINE OWNERSHIP IDENTIFICATION:**

A. In addition to any other requirements for identification set

forth in this title, gaming operator licensee shall affix the following items in a prominent place to each gaming machine offered for play or display the information on signs approved by the board and placed in at least two (2) conspicuous areas on the licensed premises:

(1) a sign or label that identifies the person or persons responsible for repairs or malfunctions of the machine, payments of winnings, and disputes regarding payments; and

(2) the board's address and telephone number to report malfunctions and complaints.

B. A licensee shall not offer for play a gaming machine that fails to display the information required by this title.

[15.1.10.18 NMAC - Rp, 15.1.10.18 NMAC, 10/15/15]

**15.1.10.19 PUBLICATION OF**

**PAYOFFS:** Payoff schedules applicable to every licensed gaming machine shall be displayed at all times on the machine or in a conspicuous place immediately adjacent to it. Payoff schedules shall accurately state actual payoffs applicable to the particular machine and shall not be worded in a manner that misleads or deceives the public.

[15.1.10.19 NMAC - Rp, 15.1.10.19 NMAC, 10/15/15]

**15.1.10.20 ADDITIONAL PAYOUTS; PROMOTIONS; PERSONAL PROPERTY AWARDS;**

A. Additional payouts and personal property awards shall be conducted in a manner that promotes responsible gaming. All advertising (any printed, television, newspapers, posters, direct mail, etc., excluding radio) shall include an appropriate responsible gaming message and toll free telephone number for compulsive gambling assistance.

B. The gaming operator licensee shall notify the board in writing at least ten (10) business days before the beginning date of the proposed additional payouts or personal property award. The written notice shall include a description of the proposed additional payouts (e.g., double jackpots for all dollar gaming machines), the proposed effective dates for the additional payouts the times and conditions necessary for additional payouts to occur, the license numbers of the gaming machines offering the additional payouts, and the dollar value of the additional payouts. The rules or any special conditions of how the additional payout or personal property award shall be conducted shall be clearly described in the

notification. The same information shall be clearly posted on the gaming premises in a clearly visible location during the effective dates of the additional payout program.

**C.** Advertising media for additional payouts and personal property awards shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) or bar(s) or grill(s) or vendor(s).

**D.** The value of additional payouts of any amount and personal property awards with a value of five hundred dollars (\$500.00) or more shall be deductible from gaming machine revenue provided the gaming operator licensee complies with all applicable requirements of this part and all other board rules. The cost of advertising, promotional materials, reimbursements to patrons, and promotions shall not be deductible from gaming machine revenue. The gaming licensee shall prepare and remit deduction information no later than the 3<sup>rd</sup> day of the following month to the New Mexico Gaming Control Board in a manner specified by the board.

**E.** A licensee shall take reasonable steps to remove advertising media for expired additional payouts and personal property awards within twenty four (24) hours of the expiration of the additional payout or personal property award.

**F.** The board's receipt of notice of a proposed additional payout or personal property award does not constitute endorsement of the proposed additional payout or personal property award or a guarantee by the board that any additional payouts will be made or that the personal property will be awarded.

**G.** The licensee shall notify the board immediately in writing if there is any change in the beginning and ending dates of the additional payout or personal property award or if there are any changes or modifications as to how the additional payout or personal property award shall be conducted.

**H.** Nothing in this rule permits the award of an additional payout, cash, or non-cash prize the value of which exceeds jackpot limits established by the act or these rules.

**I.** Promotions shall be conducted in a manner that promotes responsible gaming. All advertising media shall include an appropriate responsible gaming message and toll free telephone number for compulsive

gambling assistance.

**J.** Rules of the promotion shall be made available to any person requesting them. Any flyer, poster or other advertisement for the promotion shall identify the location where the rules of the promotion are available.

**K.** Advertising media for promotions shall not offer free or discounted food or beverages as an enticement to game. The use of the casino logo in display advertising shall not constitute an enticement to game when the advertising depicts the casino restaurant(s) or bar(s) or grill(s) or vendor(s).

**L.** A licensee shall take reasonable steps to remove advertising media for expired promotions within twenty (24) hours of the expiration of the promotion.

**M.** The cost of advertising, promotional materials, reimbursements to patrons, and promotions may not be deducted from gaming machine revenue.

**N.** The board may direct the gaming operator licensee to cancel, modify or discontinue the promotion if the board determines the promotion is contrary to law or otherwise contrary to the public health, safety, morals, or general welfare.

[15.1.10.20 NMAC - Rp, 15.1.10.20 NMAC, 10/15/15]

#### **15.1.10.21 [RESERVED]**

#### **15.1.10.22 SECURITY:**

**A.** Gaming operator licensees shall implement and maintain security measures that shall ensure safe and honest operation of the gaming establishment.

**B.** Security personnel shall possess and maintain valid work permit cards at all times while on duty.

**C.** A sufficient number of security personnel shall be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. If the board determines at any time that security measures are inadequate, the board may require that the licensee provide additional security measures to the board's satisfaction.

[15.1.10.22 NMAC - Rp, 15.1.10.22 NMAC, 10/15/15]

#### **15.1.10.23 SURVEILLANCE SYSTEMS:**

**A.** Each gaming operator licensee shall install, maintain and continuously operate a surveillance system at its licensed gaming establishment. The

purpose of the surveillance system is to assist the gaming operator licensee and the state in safeguarding the licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

**B.** The board, in its sole discretion, may exempt a gaming operator licensee from the requirements of this section.

**C.** Within sixty (60) days after filing its application, each applicant for a gaming operator's license shall submit a written surveillance system plan to the board. The plan shall be in a form approved or required by the board and shall include descriptions of all equipment utilized by the surveillance system, blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, description of the procedures used in the operation of the surveillance system, and any other information required by the board. The plan shall be approved before a gaming operator license is issued.

**D.** A licensee shall not make any changes to its approved surveillance plan without prior written approval by the board or its designee. Before implementing any changes to a surveillance system plan, the licensee shall submit the proposed changes on forms approved by the board to the board or its designee for approval. If, after reviewing the gaming operator licensee's proposed changes, the board or its designee determines that the proposed plan is not adequate, it shall notify the gaming operator licensee in writing. The gaming operator licensee shall revise the proposed plan and submit it to the board for approval or request a hearing within thirty (30) days after receipt of the board's written notice.

**E.** A licensee shall notify the board immediately of any failure of the surveillance system to continuously monitor the gaming premises or to otherwise operate properly. The board may require temporary suspension of gaming activities until the surveillance system is restored.

**F.** A racetrack gaming premise constructed after September 1, 2003, shall provide at least one (1) entrance to the surveillance room that is not located on the game room floor. Any racetrack gaming operator licensee who substantially remodels the gaming premises shall provide at least one (1) entrance to the surveillance room that is

not on the gaming room floor.

**G.** A gaming premise initially licensed or constructed after September 1, 2005 shall be required to use digital video recording equipment for its surveillance system.

**H.** The board may require a licensee to update its surveillance plan if the board, in its discretion, determines that the surveillance plan is not adequate. [15.1.10.23 NMAC - Rp, 15.1.10.23 NMAC, 10/15/15]

**15.1.10.24 AUTHORIZED GAMES; GAME REQUIREMENTS:**

**A.** Limited gaming permitted pursuant to Section 60-2E-2(A) of the act shall include only the play of approved games on licensed gaming machines. Table games, side bets, unapproved games, and all other forms of unauthorized gaming are expressly prohibited.

**B.** No game shall be played on a licensed premises until the board has authorized the game in conformity with the gaming operator applicant's or licensee's approved business plan and the gaming machine has been connected and transmitting satisfactorily to the board's central monitoring system.

**C.** The following games, one (1) or more of which may be simulated on a single gaming machine, re approved for play on a licensed premises:

- (1) draw poker;
- (2) keno;
- (3) blackjack;
- (4) line-up symbols and numbers;
- (5) any other

game authorized by the board.

**D.** A racetrack gaming operator licensee may operate licensed multi-station games provided it meets the following conditions:

(1) the racetrack gaming operator licensee shall notify the board of its intent to place multi-station games on the gaming premises, and obtain approval of the board or its designee prior to placing the games on the gaming premises;

(2) the racetrack gaming operator licensee shall apply for and obtain licensure for each multi-station game; for purposes of this subsection, each multi-station game shall count as one (1) gaming machine;

(3) no multi-station game shall have more than fifteen (15) player terminals;

(4) multi-station games shall not comprise more than three (3) percent of the total possible allowed

gaming machines on the gaming floor; for purposes of this subsection, each multi-station game having up to five (5) player terminals shall count as one (1) gaming machine, each multi-station game having between six (6) and ten (10) player terminals shall count as two (2) gaming machines and each multi-station game having between eleven (11) and fifteen (15) gaming machines shall count as three (3) gaming machines.

**E.** Each multi-station game operated by a racetrack gaming operator licensee shall comply with 15.1.7 NMAC, where applicable, and the following additional technical specifications:

(1) each individual player terminal shall be capable of being independently monitored by the central monitoring system;

(2) each multi-station game shall have one (1) random number generator;

(3) each multi-station game shall have one (1) master terminal which houses the logic area and game display, and which is shared among all player terminals;

(4) the player terminals of the multi-station game shall have no means to independently determine game outcomes;

(5) each multi-station game shall be configured so that it cannot be disconnected from the gaming device central processing unit that determines the game outcomes for all player stations without rendering that terminal inoperable;

(6) multi-station games shall only permit players to play against the house.

[15.1.10.24 NMAC - Rp, 15.1.10.24 NMAC, 10/15/15]

**15.1.10.25 PAYMENT OF WINNINGS:**

**A.** No gaming machine offered for play by a nonprofit operator licensee shall award a prize that exceeds four thousand dollars (\$4,000). Nonprofit operator licensees shall not offer periodic payments of cash or non-cash winnings and shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**B.** Except as otherwise provided in this title, racetrack gaming operator licensee shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**C.** If a gaming

operator licensee uses ticket-in/ticket out technology, patron shall be required to personally present the ticket for redemption at the licensee's premises. A licensee shall not redeem tickets by mail or by any common carrier.

[15.1.10.25 NMAC - Rp, 15.1.10.25 NMAC, 10/15/15]

**15.1.10.26 PERIODIC PAYMENTS:**

**A.** Periodic payments of winnings and non-cash prizes awarded to a patron as the result of any licensed game offered by a racetrack gaming operator licensee shall be made if one of the following is established as the method of funding the periodic payments:

(1) an irrevocable surety bond or an irrevocable letter of credit with an independent administrator that provides periodic payments to a winner if the licensee defaults for any reason; the written agreement establishing an irrevocable surety bond or irrevocable letter of credit must be submitted to the board for approval;

(2) an irrevocable trust with an independent administrator in accordance with a written trust agreement approved by the board that provides periodic payments from an unallocated pool of assets to a group of winners; the trust shall expressly prohibit the winner from encumbering, assigning, or otherwise transferring in any way the winner's right to receive the deferred portion of the winnings except to his or her estate; the assets of the trust shall consist of federal government securities including but not limited to treasury bills, treasury bonds, savings bonds or other federally guaranteed securities in an amount sufficient to meet the periodic payments required; or

(3) an other irrevocable method of providing the periodic payments to a winning patron that is approved by the board and consistent with the purpose of this rule.

**B.** The funding of periodic payments shall be completed within thirty (30) days of the date the patron wins or is awarded a prize.

**C.** Periodic payments shall not be used for winnings of, or non-cash prizes worth, fifty thousand dollars (\$50,000) or less. Periodic payments for total amounts won greater than fifty thousand (\$50,000) shall be paid as follows:

(1) for winnings greater than fifty thousand (\$50,000) but less than one hundred thousand

(\$100,000), payments shall be at least ten thousand (\$10,000) annually;

(2) for winnings of one hundred thousand (\$100,000) or more, payments shall be no less than 1/10 of the total amount annually;

(3) for winnings of five hundred thousand (\$500,000) or more, payments shall be made in the manner set forth in Paragraph (2) of Subsection C of 15.1.10.26 above or in such other manner approved by the board upon application by the licensee; and

(4) the first payment shall be made upon validation of the win.

**D.** Periodic payments of non-cash prizes awarded shall be offered if the patron has the right to decide whether to receive the non-cash prize or cash equivalent of the non-cash prize each time a periodic payment is due. The cash equivalent shall be the actual cost to the licensee of the non-cash prize on the day such prize was won. The amount of the periodic payments to be funded shall be determined by the present value of the cash equivalent of the non-cash prize based on the prime rate.

**E.** For any licensed game for which periodic payments are or may be used, the racetrack gaming operator licensee shall display signs on each gaming device setting forth either the amount or the terms of the payment to be made.

**F.** If the licensee fails to fund the periodic payments as required by this rule, the licensee shall immediately notify the board in writing and shall immediately cease offering any licensed game for which periodic payments are used.

**G.** The present value of all winnings and non-cash prizes offered payable by a periodic payment shall be used in calculating the minimum bankroll of the location.

**H.** The board may waive one (1) or more of the requirements of this section if the racetrack gaming operator licensee submits a written request for waiver to the board and the board makes a written finding that such waiver is not contrary to the public interest and the purposes of the act.

[15.1.10.26 NMAC - Rp, 15.1.10.26 NMAC, 10/15/15]

#### **15.1.10.27 PAYMENT OF GAMING CREDITS:**

**A.** Gaming operator licensees shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by

the licensee and approved by the board before opening the licensed premises for gaming activity. Such procedures shall be modified at the direction of the board, in its sole discretion.

**B.** A player shall redeem credit slips at the designated place in the licensed premises where the gaming credit was issued. A credit slip shall be redeemed within one hundred eighty (180) days of the date of issuance. Funds reserved for the payment of a credit slip shall be treated as net take if unredeemed within one hundred eighty (180) days from the date of issuance. The one hundred eighty (180) day redemption policy shall be prominently displayed on the licensed premises.

**C.** No payment for gaming credits awarded on a gaming machine shall be made unless the credit slip:

(1) is presented on a fully legible, valid, printed credit slip, with a bar code that can be validated, containing the information required;

(2) is not mutilated, altered, or tampered with in any way, or previously paid;

(3) is not counterfeit in whole or in part; and

(4) is presented by a person authorized to engage in licensed gaming at the licensed premises.

**D.** The gaming operator licensee shall designate employees authorized to redeem credit slips during hours of operation. Gaming credits shall be immediately paid in cash or by check when a player presents a credit slip for payment that meets the requirements of this section. No gaming credits shall be paid in tokens, chips or merchandise.

**E.** All credit slips redeemed by a gaming operator licensee shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

**F.** The state, the board, and the agents and employees of either are not liable for the payment of any gaming credits on any credit slips.

[15.1.10.27 NMAC - Rp, 15.1.10.27 NMAC, 10/15/15]

#### **15.1.10.28 PATRON DISPUTES (NON-PROFITS/ RACETRACKS ONLY):**

**A.** In the event a dispute arises with a patron concerning payment of alleged winnings or promotional prizes including any jackpot or credits valued at five hundred dollars (\$500) or more, the gaming operator licensee ("licensee") and the patron shall abide by the following

procedures:

(1) The licensee shall provide the patron with a "patron dispute form" at the time of the dispute. The patron dispute form and contact information for the enforcement division can be located on the board's website.

(2) The patron and licensee shall complete the patron dispute form immediately, except for good cause shown.

(3) Within twenty four (24) hours of the dispute, the licensee shall notify the enforcement division, by contacting the agent assigned to the licensee, via telephone and electronic mail.

(4) Within seventy two (72) hours of the dispute, the licensee and patron shall separately submit a copy of the patron dispute form to the enforcement division, via facsimile, electronic mail, or U.S. mail.

(5) In the event of any unresolved patron dispute concerning payment of alleged winnings or promotional prizes including any jackpot or credits valued at five hundred (\$500) or more on a gaming machine, the licensee shall immediately remove the game from play, and secure it until such time as the board's agents have inspected the machine and released it for further play.

(6) The licensee shall maintain relevant information, including the retention of video surveillance, history reports, slot accounting reports, machine meters, photographs of screen shots, and any other documentation that would prove relevant in resolving the dispute.

(7) If a critical memory clear is needed, it shall not be performed until the patron dispute is resolved and the reset is authorized by the board.

(8) The board shall conduct whatever investigation it deems necessary and shall determine whether payment should be made to the patron. An agent of the board may conduct a reasonable investigation and report to the board for a final decision.

(9) The board shall complete its investigation within thirty (30) days of having received the patron dispute form from both the licensee and patron.

(10) The board shall notify the licensee and patron in writing of the board's decision regarding the dispute within sixty (60) days of receipt of the patron dispute form from both the licensee and patron.

(11) It is a violation of this rule for a licensee to fail to notify the board of a an unresolved patron dispute within twenty four (24) hours; for a licensee to fail to provide the patron with the patron dispute form; for a licensee to fail to comply with all other provisions contained herein; or for the licensee to fail to pay the patron within fifteen (15) days after an adverse decision by the board unless the licensee appeals the decision.

(12) Failure to follow the above procedures may adversely affect that party's claim.

(13) Section 60-2E-59 of the New Mexico Gaming Control Act and board rules 15.1.15.1 through 15.1.15.19 NMAC shall control the appeal process.

**B.** In the event a dispute arises with a patron concerning payment of alleged winnings or promotional prizes including any jackpot or credits valued at less than five hundred (\$500) the licensee and the patron shall abide by the following procedures:

(1) The licensee shall provide the patron with a "patron dispute form" at the time of the dispute. The patron dispute form and contact information for the enforcement division can be located on the board's website.

(2) The patron shall complete the patron dispute form immediately, except for good cause shown.

(3) Unlike patron disputes of five hundred (\$500) or more, the initial burden in patron disputes of less than five hundred (\$500) shall be on the patron to notify the enforcement division within twenty four (24) hours of the dispute, via telephone or electronic mail. The enforcement division shall then immediately contact the licensee so that both parties can comply with the remaining rules.

(4) Board rule Paragraph (4, 6, 8, 9, 10 12 and 13) of Subsection A of 15.1.10.28 NMAC shall apply to patron disputes valued at less than five hundred (\$500).

(5) It is a violation of this rule for a licensee to fail to provide the patron with the patron dispute form; for a licensee to fail to comply with all other provisions contained herein; or for the licensee to fail to pay the patron within fifteen (15) days after an adverse decision by the board unless the licensee appeals the decision.  
[15.1.10.28 NMAC - Rp, 15.1.10.28 NMAC, 10/15/15]

**15.1.10.29 COMPLIANCE REVIEW AND REPORTING:**

**A.** Whenever the board determines that special circumstances exist that require additional management review by a licensee, the board may impose a condition upon any licensee to require implementation of a compliance review and reporting system by the licensee.

**B.** The terms of the condition may include, but are not limited to, the requirement that:

(1) the condition will expire on a certain date or after a designated period of time without board action;

(2) the condition may be administratively removed by the board if a specified activity ceases or a specified event occurs; or

(3) a periodic review shall be conducted by the board and upon such review the board may remove or continue to require the condition.

**C.** Notwithstanding the provisions of Subsection B of 15.1.10.29 NMAC above, licensee may request, upon application to the board, modification or removal of the condition imposed.

**D.** The purpose of the compliance review and reporting system is to monitor activities relating to the licensee's continuing qualifications under the act and this title. The system shall be in the form of a written plan and shall be submitted to the board for approval.

**E.** The written plan shall implement the compliance review and reporting system and shall designate the person responsible for the system. The plan shall require periodic reports to senior management of the licensee. Such reports shall be advisory, and the licensee shall maintain responsibility for compliance with the act and this title. The licensee shall provide copies of the reports to the board.

**F.** The activities to be monitored shall be set forth in the written plan. Without limitation, the board may require the following activities to be monitored:

(1) associations with persons denied licensing or other related approvals by the board or who may be deemed unsuitable to be associated with a licensee;

(2) business practices or procedures that may constitute grounds for denial of a gaming license;

(3) compliance with other special conditions that may be

imposed by the board upon the licensee; (4) review of reports submitted pursuant to the act and rules adopted by the board;

(5) compliance with all laws and rules and orders of the board or other governmental agencies having jurisdiction over gaming activities or the licensee's or affiliate's business activities; and

(6) review of such other activities determined by the board as being relevant to the licensee's continuing qualifications under the provisions of the act and board regulations.

[15.1.10.29 NMAC - Rp, 15.1.10.29 NMAC, 10/15/15]

**15.1.10.30 INFORMATION TO BE PROVIDED BY LICENSEES:**

**A.** Every licensee shall report to the board, on a quarterly basis, the full name and address of every person, including lending agencies, who has any right, direct or indirect, to share in the profits of such licensed gaming activities, or to whom any interest or share in the profits of a licensed gaming activity has been pledged as security for a debt or deposited as a security for the performance of any act or to secure the performance of a contract or sale. Such report shall be submitted concurrently with an application for renewal of the license.

**B.** Every gaming operator licensee shall report to the board, within ten (10) days of the date of the event, the name, date of birth, and social security number of any person who acquires the right or ability to control the licensee.

**C.** Every licensee shall report to the board in writing any change in key executive personnel. The report shall be made no later than thirty (30) days after the change.

**D.** A company licensee, other than a publicly traded corporation, shall obtain the board's prior approval before issuing or transferring five percent or more of its securities to any person. Any company licensee seeking approval shall file a report of the proposed action and request the board's approval. The licensee shall supplement the report with any additional information the board determines is reasonably necessary to its decision to approve or disapprove the proposed action. The request shall be deemed filed upon receipt of such information for purposes of the ninety (90) day period set forth in Section 60-2E-25(A) of the act.



**E.** Any person licensed by the board, including employees with work permits, and any affiliate, shall notify the board in writing of any criminal conviction and criminal charge pending against such person within ten (10) days of such person's arrest, summons, or conviction. Notice is not required for any non-felony traffic violation unless the violation results in suspension or revocation of a driver's license or is based on allegations of driving under the influence of intoxicating liquor or drugs.

**F.** Each licensee shall report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any gaming device sold or offered for sale, offered for play, or used for any other gaming purpose within the state by such licensee. The report shall be in writing and shall be submitted not later than seven (7) days after discovery of the plan, scheme, device or other method of cheating. The subject matter and reports of the investigation conducted under this subsection shall be considered confidential except that the board may, in its sole discretion, take whatever steps it deems necessary or appropriate to address or mitigate the cheating problem, including distributing a warning about the cheating problem to other state licensees or other licensing jurisdictions.

**G.** An individual who is the holder of a work permit or certification of finding of suitability shall notify the board in writing of any change in address or gaming employment within fifteen (15) days of the change. Refusal or failure to notify the board of any change in address shall be grounds for disciplinary action.

**H.** A licensee that is a manufacturer, distributor or racetrack gaming operator licensee shall report to the board in writing within sixty (60) days if it becomes a party to any civil, administrative or regulatory action or cause of action in any jurisdiction where the licensee reasonably believes the amount in controversy is five thousand (\$5,000) or more. A licensee that is a nonprofit gaming operator shall report to the board in writing within sixty (60) days if it becomes a party to any civil cause of action where the licensee reasonably believes the amount in controversy is one thousand (\$1,000) or more. A licensee that is a nonprofit gaming operator shall report to the board in writing within sixty (60) days if it becomes a party to any regulatory or administrative action. Following such written report, licensee shall provide any additional documentation requested by the board

within the time frame specified in the request for additional documentation.

**I.** A licensee that is a nonprofit gaming operator licensee shall notify the board in writing within thirty (30) days of any change in membership of the licensee's governing board or officers, including the names, telephone numbers and addresses of new board members or officers.

**J.** A licensee that is a racetrack gaming operator shall notify the board within thirty (30) days of any change to its organizational structure or management responsibilities.

**K.** Each licensee shall notify the board within thirty (30) days if it becomes subject to any tax liens.  
[15.1.10.30 NMAC - Rp, 15.1.10.30 NMAC, 10/15/15]

#### **15.1.10.31 ACCESS TO GAMING ESTABLISHMENT AND RECORDS:**

**A.** No applicant or licensee shall fail or refuse to produce records or evidence or to give information upon demand by the board or its agent. No applicant or licensee shall interfere or attempt to interfere with any effort by the board or its agent to obtain such records or evidence.

**B.** Each licensee shall immediately make available for inspection by the board or its agent all papers, books, and records produced by any gaming operation and all areas of the gaming establishment or the premises of any other licensee. The board or any of its agents shall be given immediate access to the gaming establishment or the premises of any other licensee for the purpose of examining or inspecting any gaming device and any records or documents required to be kept under the act or this title. The authority to examine and inspect includes the authority to make copies of any such documents and records.  
[15.1.10.31 NMAC - Rp, 15.1.10.31 NMAC, 10/15/15]

#### **15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:**

**A.** A nonprofit operator licensee may utilize up to sixty five percent of net take, after payment of the gaming tax, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the sixty five percent maximum shall be distributed as follows:

**(1)** the maximum of forty percent of net take after gaming taxes or no greater than the contract amount if less than forty percent for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine;

**(2)** for payment of other allowable gaming expenses, an amount equal to the difference between sixty five percent of net take less the amount paid to the distributor as described above.

**B.** The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices. These funds shall be transferred each month to the licensed organization's operating account.

**C.** A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section, until the required charitable and educational deposits have been made, gaming tax and other applicable taxes have been paid and all taxes and fees are current.

**D.** The nonprofit operator licensee shall distribute at least sixty percent of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within one hundred twenty (120) days after close of the nonprofit operator licensee's fiscal year end. The maximum forty percent of net take, after gaming taxes, remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

**E.** Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

**(1)** Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated

organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and the distribution is used for charitable purposes.

F. Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

G. The board shall maintain and publish guidelines that establish the allowed and disallowed uses for charitable and educational funds. The nonprofit operator licensee shall comply with these guidelines in making distributions from its charitable and educational account.

H. The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the The Gaming Control Act. [15.1.10.32 NMAC - Rp, 15.1.10.32 NMAC, 10/15/15]

**15.1.10.33 GAMING OPERATIONS MANAGEMENT CONTRACTS:**

A. If a gaming operator licensee enters into a management contract with any person, the management contract shall:

(1) provide that only gaming activity allowed pursuant to the act will be conducted on the licensed premises;

(2) list the responsibilities of each of the parties, including but not limited to maintaining and improving the licensed premises; hiring, firing, training and promoting employees and establishing employment practices; maintaining the books and records of the gaming operation; preparing financial statements and reports; hiring and supervising security personnel; obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage; and ensuring compliance with all applicable laws, including state and federal laws;

(3) provide

for the establishment and maintenance of satisfactory accounting systems and procedures, including a system of internal controls that meets the minimum standards established by the board;

(4) provide for the timely deposit of all gaming receipts required to be deposited into the gaming tax transfer account as set forth in this rule;

(5) if applicable, provide for the establishment and maintenance of a separate operating account as required by this chapter of this title, and limit access to the account to the nonprofit operator licensee;

(6) retain for the gaming operator licensee the right to timely receive, on at least a monthly basis, financial reports and information used or necessary to prepare the reports;

(7) retain for the gaming operator licensee the right to full and immediate access to all books and records for the purpose of verification of any information produced in connection with, or relating to, gaming activities;

(8) provide for a term not to exceed five (5) years;

(9) detail the method of compensating the contract manager and the amounts paid and provide for verification by the gaming operator licensee prior to payment;

(10) provide the grounds for modifying or terminating the agreement;

(11) provide the means for dispute resolution;

(12) prohibit subcontracting of all or part of the agreement;

(13) retain ownership of the gaming operator license with the licensee;

(14) verify that the management contractor is not an affiliate of the licensee;

(15) require that any personnel of the management contractor shall obtain a certification of finding of suitability or work permit if deemed necessary by the board; and

(16) specify that the agreement will not go into effect until approved by the board.

B. The gaming operator licensee may not enter into any management contract if the board determines that:

(1) the management contract fails to meet the minimum requirements described in this section; or

(2) the

management contractor or any principal, management official, or key executive of the management contractor is not licensed or is unsuitable for licensure.

[15.1.10.33 NMAC - Rp, 15.1.10.33 NMAC, 10/15/15]

**15.1.10.34 DAMAGE TO OR THEFT FROM DEVICES:**

A. Upon discovery of theft from or damage to a gaming device that affects operation of the device, the licensee or owner of the gaming device shall request an investigation by the board's agents, the department of public safety, or local law enforcement and shall immediately notify the board.

B. After investigation by the board's agents or other law enforcement agency, the licensee or owner of the gaming device shall obtain and submit the following reports to the board:

(1) service or repair report with hard and soft meter readings from the gaming device with an audit ticket attached; the meter readings shall be taken as soon as possible after discovery of the theft or damage; and

(2) when possible, an offense report or complaint report from the board's agents or other law enforcement agency.

[15.1.10.34 NMAC - Rp, 15.1.10.34 NMAC, 10/15/15]

**15.1.10.35 LICENSE TRANSFER PROHIBITED:**

A. Any license granted or renewed by the board may not be transferred. For purposes of this section, "transfer" includes assigning the license.

B. A transfer of license ownership that occurs after the board has issued the license shall automatically terminate the license as of the date of the transfer. For purposes of this section, transfer of ownership of a twenty percent interest or more of the licensee constitutes a transfer of the license unless the board determines otherwise following the former licensee's written request for a determination pursuant to board rule 15.1.5.28 NMAC.

C. A change in the ownership structure of the licensee, in which one (1) or more owners previously certified as suitable by the board retain ownership of the licensee, and no new persons obtain an ownership interest of twenty percent or more in the licensee or license, does not constitute a transfer of license ownership. The board, however, may require that any or all of the owners submit applications to obtain findings of suitability. Failure of the licensee to

request a determination, or to submit applications for findings of suitability as required shall automatically terminate the license.

**D.** If there is a change in ownership structure of the licensee in which there is a transfer of ownership of twenty percent or more of the licensee, the licensee shall comply with board rule 15.1.5.28 NMAC.

[15.1.10.35 NMAC - Rp, 15.1.10.35 NMAC, 10/15/15]

**15.1.10.36 POSSESSION AND VERIFICATION OF WORK PERMITS AND KEY EXECUTIVE IDENTIFICATION:**

**A.** Every gaming employee and key executive must wear his or her valid work permit or key executive identification where easily visible at all times when engaged in the conduct of gaming activities.

**B.** A work permit or key executive identification is not valid if it does not include the board-issued license number under which the work permit or identification was issued.

**C.** If a gaming identification badge is lost or damaged, the gaming employee holding the badge shall notify the board's licensing division within twenty four (24) hours and apply for a replacement badge on forms approved by the board within three (3) business days.

[15.1.10.36 NMAC - Rp, 15.1.10.36 NMAC, 10/15/15]

**15.1.10.37 HOUSE RULES:**

**A.** A licensee may establish house rules applicable to the operation of gaming machines or other gaming activities as long as the rules do not conflict with the act or this title. Before any licensee enacts or adopts any house rules, the rules shall be submitted to the board for approval.

**B.** A copy of the house rules shall be in the licensee's possession at all times and made available to any person on request.

[15.1.10.37 NMAC - Rp, 15.1.10.37 NMAC, 10/15/15]

**15.1.10.38 LICENSE POSTING REQUIREMENT:**

All licenses issued under the act shall be posted by the licensee and kept posted at all times in a conspicuous place on the licensed premises.

[15.1.10.38 NMAC - Rp, 15.1.10.38 NMAC, 10/15/15]

**15.1.10.39 DETENTION AND QUESTIONING:**

The gaming operator license shall post in a conspicuous place on the licensed premises a notice in boldface type, clearly legible and in substantially the following form: "any gaming operator licensee or any of his officers, employees or agent who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment."

[15.1.10.39 NMAC - Rp, 15.1.10.39 NMAC, 10/15/15]

**15.1.10.40 FORMS:** The board may prescribe all forms called for or required by the act or this title, and all filings with the board must be accompanied by such affidavits, documents, and other supporting data as the board requires.

[15.1.10.40 NMAC - Rp, 15.1.10.40 NMAC, 10/15/15]

**15.1.10.41 FOOD OR ALCOHOL AS ENTICEMENT TO GAME:**

**A.** Providing, allowing, contracting for or arranging to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game is prohibited.

**B.** Activities that constitute incentives or enticements to game include, but are not limited to, any action, promotion, advertisement, coupon, or special offer in which:

(1) tokens, cash, or other gaming incentives are offered or given in conjunction with free or reduced price alcohol or food;

(2) only persons whose names are on the gaming operator's player tracking system are eligible for free or reduced price alcohol or food, unless listing on the player tracking system is open to anyone by request;

(3) free or reduced price alcohol or food is offered or given to any person while playing a gaming machine;

(4) eligibility to receive free or reduced price alcohol or food requires gaming machine play or is otherwise directly tied to gaming machine play; or

(5) in the board's determination, reasonable person would be enticed to engage in gaming activity as a result of the free or reduced price alcohol or food.

[15.1.10.41 NMAC - Rp, 15.1.10.41 NMAC, 10/15/15]

**15.1.10.42 MINIMUM LIVE RACE DAYS AND RACES:**

**A.** A racetrack gaming operator's license shall become automatically void if the racetrack fails to maintain a minimum of four (4) live race days a week with at least nine (9) live races on each race day during its licensed race meet.

**B.** Maintaining fewer than four (4) live race days or nine (9) live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races required by Section 60-2E-27(B) of the Gaming Control Act or these rules if the licensee submits to the board written approval by the racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to any of the following:

(1) inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) strikes or work stoppages by jockeys or other persons necessary to conduct a race or meet;

(4) power outages, electrical failures, or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that is not within the control of the licensee even with the exercise of reasonable diligence or care.

**C.** Failure of a racetrack gaming operator licensee to submit to the board written approval by the racing commission of a variance in the licensee's live race days or races constitutes a failure to maintain the minimum number of live races required by the act and these rules regardless of the cause for the variance.

**D.** Upon determination by the board that a racetrack gaming operator licensee has failed to maintain the minimum number of live race days or races as required by the act and these rules:

(1) the gaming operator's license shall become automatically void and of no legal effect;

(2) the gaming operator licensee shall immediately cease the conduct of all gaming activity;

(3) the board will immediately disable all gaming devices on the gaming operator licensee's premises or under the gaming operator licensee's control and shall take the gaming devices into the board's custody in a manner to be determined by the board.

E. A racetrack gaming operator licensee whose license has been voided may apply for a new license from the board at any time. The application for licensure shall be processed in the same manner as a new application. The applicant shall submit all required forms, including but not limited to license and key person applications, and shall pay all applicable fees and costs.

F. Voiding of a license by the board pursuant to Section 60-2E-27(B) of the Gaming Control Act and these rules does not constitute a denial, permanent suspension or revocation of the license for cause by the board or a limiting action by the board on the gaming operator licensee.  
[15.1.10.42 NMAC - Rp, 15.1.10.42 NMAC, 10/15/15]

**15.1.10.43 CESSATION OF GAMING ACTIVITIES; SURRENDER AND CANCELLATION OF LICENSE:**

A. Any gaming operator licensee that ceases gaming activities for more than seven (7) consecutive days and has not requested and received authorization from the board under Subsection B of 15.1.10.43 NMAC, shall surrender its gaming operator's license to the board within ten (10) days of ceasing those activities. The board shall cancel the gaming operator's license as of the date gaming activities ceased, and no further gaming activities by the gaming operator's licensee shall be permitted. Cancellation of a gaming operator's license does not constitute revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. The gaming operator's licensee shall submit a new application and obtain a new gaming operator's license before resuming gaming activities.

B. Upon written request, the board may authorize a gaming operator licensee to temporarily cease gaming activities. A gaming operator licensee who is authorized by the board to temporarily cease gaming activities shall notify the board of its intent to resume gaming activities but shall not resume such activities until approved by the board.

C. If a gaming operator licensee wishes to cease gaming activities

indefinitely, with no intent to resume gaming activities, the gaming operator licensee:

(1) shall notify the board of its intentions to cease gaming activities indefinitely;

(2) shall submit to a final audit by the board to insure that all taxes, charitable payments and outstanding obligations of the gaming operation have been paid;

(3) shall ensure that all gaming machines are removed from the premises in a manner that complies with the Gaming Control Act and board rules;

(4) shall comply with any other requirements imposed by the board;

(5) shall physically surrender the gaming operator's license and all gaming badges.

D. If a gaming operator licensee complies with the requirements of Subsection C of 15.1.10.43 NMAC, the board shall cancel the gaming operator's license. Cancellation of the gaming operator's license shall not constitute a revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. Failure to comply with the provisions of Subsection C of 15.1.10.43 NMAC shall be grounds for revocation of the gaming operator's license. The board may take action to revoke the gaming operator's license notwithstanding the fact that the gaming operator licensee has ceased gaming activities.

E. The ceasing of gaming activities does not relieve the gaming operator licensee or former gaming operator licensee of its obligations to pay any tax, fee or cost due or to submit any report or information required as a result of engaging in gaming activities.

[15.1.10.43 NMAC - Rp, 15.1.10.43 NMAC, 10/15/15]

**15.1.10.44 ALLOCATION OF GAMING MACHINES:**

A. Only racetrack gaming operator licensees are eligible to allocate gaming machines or receive allocated gaming machines.

B. Gaming machines shall be allocated only pursuant to a valid allocation agreement. The allocation agreement must:

(1) specify the number of gaming machines to be allocated;

(2) specify the terms of the allocation agreement;

(3) provide

that the allocation agreement confers to the receiving racetrack only the right to operate the gaming machines;

(4) establish terms of payment for use of the allocated gaming machines;

(5) specify that the receiving racetrack will be responsible for payment of the gaming tax and all fees associated with the licensing of the allocated gaming machines;

(6) specify that the receiving racetrack be responsible for statutorily required payments based on net take, including payment of twenty percent of the net take from the allocated gaming machines to horsemen's purses and one-quarter of one percent of the net take to fund or support programs for the treatment and assistance of compulsive gamblers;

(7) provide that the receiving racetrack may not allocate the gaming machines;

(8) specify the party responsible for repairs and maintenance of the allocated gaming machines;

(9) provide that the allocation agreement cannot be modified without approval of the board and the New Mexico racing commission; and

(10) provide that the allocation agreement shall not become effective until approved in writing by the board and the New Mexico racing commission.

C. No allocation agreement shall cause the number of gaming machines on the licensed premises to exceed the number authorized by the act.

D. The board shall take action on a proposed allocation agreement at a public meeting of the board. The board may disapprove any allocation agreement if the board determines that:

(1) the allocation agreement fails to meet the minimum requirements described in this section;

(2) the allocating racetrack or receiving racetrack is not in compliance with minimum internal controls or other statutory requirements or board rules;

(3) the proposed allocation would otherwise be contrary to the public health, safety and welfare.

E. Movement of any allocated machine is subject to notice requirements established by board rules and procedures.

[15.1.10.44 NMAC - Rp, 15.1.10.44 NMAC, 10/15/15]

**15.1.10.45 NONPROFIT CONTRACTS:**

**A.** A nonprofit gaming operator and distributor licensee jointly shall submit any contract or lease agreement between the nonprofit gaming operator licensee or distributor licensee and any other licensee to the board for review not less than thirty (30) calendar days before the contract or lease agreement goes into effect. The term "contract or lease agreement" shall include any amendment of an existing contract or lease agreement.

**B.** Any contract or lease agreement submitted for review shall include copies of any ancillary agreement, shall state with specificity the beginning and expiration date of the contract and shall include meeting minutes or other evidence that the contract has been approved by the nonprofit gaming operator's governing body.

**C.** The contract or lease agreement shall be deemed approved unless the board disapproves the contract or lease agreement in writing prior to the effective date of the contract or lease agreement. The board shall disapprove a contract or lease agreement submitted for review if the contract or lease agreement was not submitted in compliance with this rule or if it directly or indirectly permits another licensee to manage or otherwise control the nonprofit gaming operator licensee.

**D.** The factors that may be considered by the board to be indicia of direct or indirect management or control include, but are not limited to:

(1) whether the amount and terms of any loans made to the nonprofit gaming operator licensee, including the principal amount, interest rate, monthly payment and re-payment period, re disproportionate to the assets of the nonprofit gaming operator licensee or create an excessive debt to income ratio;

(2) whether the terms and conditions of any gift, donation or other benefit conferred to the non-profit gaming operator licensee permit another licensee to exercise any direct or indirect management or control over the day-to-day operations of the nonprofit gaming operator licensee;

(3) whether the contract or agreement contains a provision that calls for automatic renewal of the contract or agreement without notice,

(4) whether the term of the contract or agreement is greater than five (5) years,

(5) whether any other term or condition of the lease

agreement or contract permits any licensee to effectively exercise direct or indirect management or control over any of the day-to-day operations of the nonprofit gaming operator licensee.

[15.1.10.45 NMAC - Rp, 15.1.10.45 NMAC, 10/15/15]

**15.1.10.46 DISTRIBUTOR/MANUFACTURER PARTICIPATION IN SLOT REVENUE; RACETRACK OPERATORS:**

**A.** A distributor licensee may receive a percentage of net take from a particular gaming machine as a payment pursuant to a lease or other arrangement for furnishing the gaming machine to a racetrack gaming operator in an amount as agreed to by the parties, but in no event more than forty percent of net take.

**B.** A manufacturer licensee may receive a percentage of net take from a particular gaming machine as a payment pursuant to a lease or other arrangement for furnishing the gaming machine to a racetrack gaming operator in an amount as agreed to by the parties, but in no event more than forty percent of net take.

[15.1.10.46 NMAC - Rp, 15.1.10.46 NMAC, 10/15/15]

**15.1.10.47 PLAYER TRACKING SYSTEMS:**

**A.** Player tracking systems shall be approved by the board or its designee in accordance with rules governing approval of associated equipment.

**B.** A gaming operator licensee shall delete a player's name from the system immediately upon the player's request.

**C.** Names deleted from the player tracking system at the player's request shall not be reprogrammed into the system except upon express authorization by the player.

[15.1.10.47 NMAC - Rp, 15.1.10.47 NMAC, 10/15/15]

**15.1.10.48 VARIANCE REQUEST:**

**A.** Any licensee may seek a variance of any provision of the board rules or minimum internal control standards. The licensee shall submit the request in writing to the board's legal division on a form provided by the board.

**B.** The variance request shall include:

(1) the licensee's name;

(2) the licensee's license number;

(3) the licensee's address;

(4) the specific section of the rules or minimum internal control standards for which the variance is being sought; and

(5) a specific basis for the request, including an explanation of any business justification for the request and a showing of how the variance request is in the public interest.

**C.** If the board determines that the variance request is in the public interest, it shall grant the variance in writing within sixty (60) days. If the board or its designee determines that the variance request is not in the public interest, it shall deny the request in writing within sixty (60) days. Failure of the board to respond in writing to the request shall be deemed a denial of the request.

**D.** The board shall not grant a variance for any provision of the act or any provision of the rules or minimum internal controls that is mandated by the act.

**E.** Any variance granted shall be for a specific period of time. A variance that is granted without specifying a time period shall expire upon expiration of the license.

**F.** Upon expiration of the variance, the licensee may submit a request for renewal of a variance using the variance request form. A renewal request shall be considered on the same basis as a new request, without any presumption that the request should be renewed.

[15.1.10.48 NMAC - N, 10/15/15]

**HISTORY OF 15.1.10 NMAC:**

**Pre NMAC History: none.**

**History of Repealed Material:** 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act, filed 12-14-98 - Repealed effective 10-15-15.

**Other History:**

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act, effective 12-31-98.

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act (filed 12-14-98) **renumbered, reformatted and amended to 15.1.10 NMAC**, Conduct Of Gaming Activity Under The Gaming Control Act, effective 03-31-00.

15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act, effective 10-15-15.

## GAMING CONTROL BOARD

This is an amendment to 15.1.7 NMAC, Sections 7, 8, 38 and 39, effective 10/15/15.

### 15.1.7.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. “Act”** means the Gaming Control Act.

**B. “Central monitoring system”** means the hardware and software at the board’s central site used to control, monitor, and retrieve information from, all licensed gaming machines.

**C. “Component”** means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed **erasable programmable read-only memory** (EPROM), bill acceptor, progressive system, monitoring system, and meter and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine’s operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

**D. “Conversion”** means a change from one pre-approved configuration to another pre-approved configuration.

**E. “Critical memory”** means memory that is used to store all data that is critical to the continued operation of the gaming device, including, but not limited to all electronic meters as required including last bill data, power up and door open metering; current credits; gaming device/game configuration data; information pertaining to a minimum of the last ten (10) plays with the random number generators (RNG) outcome (including the current game, if incomplete); and software state (the last normal state, last status or tilt status the gaming device software was in before interruption).

**[E] F. “Delayed ticket”** means a ticket generated by a ticket-in, ticket-out (TITO) enabled slot machine which contains all information necessary for validation, but for which the TITO

system has not yet received the validation information.

**[F] G. “Event”** means an occurrence of elements or particular combinations of elements that are available on the particular gaming device.

**[G] H. “Game outcome”** means the final result of the wager.

**[H] I. “Gaming device”** means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game.

**J. “Gaming media”** means any associated equipment that contains software which can only be used in a gaming device, affects game outcome and is programmed by the gaming machine manufacturer. “Gaming media” includes, but is not limited to, electrically erasable programmable read-only memory (EEPROM), erasable programmable read only memory (EPROM), compact flash, flash random-access memory (flash RAM), compact disc (CD), digital versatile disc (DVD) read-only memory (ROM) or hard drive CD/DVD ROM or hard drive.

**[F] K. “Incomplete ticket”** means a ticket that contains, at a minimum, the ticket validation number printed across the leading edge of the ticket, but is not of a quality that can be validated and redeemed through the automated functionality of a TITO system.

**[J] L. “Machine entry access log”** means a written record that is maintained by a gaming operator licensee inside the locked cabinet of a gaming machine that documents the names and activities of persons accessing the interior of the gaming machine.

**[K] M. “Modification”** means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs.

**[E] N. “Multigame”** means a gaming device that offers a menu of more than one (1) game to the player.

**[M] O. “Multi-station”** means a gaming device that incorporates more than one (1) player-terminal.

**[N] P. “Online ticket”** means a ticket which contains all information necessary for validation, which may be presented for redemption to the TITO system before its expiration.

**[O] Q. “Redeemed ticket”** means a ticket which has been properly validated and redeemed by the TITO system and is no longer reflected as an

active (i.e., unredeemed) ticket in the TITO system database.

**[P] R. “Terminal controller”** means the central hardware and software that monitors and controls one (1) or more gaming machines on the licensed premises.

**[Q] S. “Ticket redemption kiosk”** means a device which uses bi-directional communications to the TITO system for redemption of tickets in exchange for cash or tokens. Kiosks are not capable of gaming functionality and may not issue tickets in exchange for cash or tokens.

**[R] T. “TITO system”** means a ticket in/ticket out system which has a centralized TITO validation component and allows for issuance, validation, and acceptance of tickets at TITO-enabled gaming devices or kiosks, for gaming operations.

**[S] U. “TITO validation component”** means that function of the TITO system whereby the TITO system receives information about a ticket which is presented for validation, compares the questioned ticket information to its database of known ticket information, and determines the validity of the questioned ticket. The TITO validation component is a bi-directional, centralized function within the TITO system which serves to validate the tickets for redemption.

**[F] V. “State”** means the state of New Mexico.

[11/30/98; 15.1.7.7 NMAC - Rn, 15 NMAC 1.7.7, 3/31/00; A, 1/31/02; A, 5/15/07; A, 12/15/10; A, 10/15/15]

### 15.1.7.8 EVALUATION OF NEW GAMING MACHINES AND MODIFICATIONS TO PREVIOUSLY-APPROVED GAMING MACHINES:

**A.** All gaming machines operated in the state shall meet the specifications set forth in this section and shall conform to the exact specifications of the prototype tested and approved by the board.

**B.** No electronic or mechanical gaming machine shall be used prior to licensure by the board. Once the board has approved a new gaming machine or a modification to a pre-approved gaming machine, a gaming operator licensee shall file an application to obtain a gaming machine license or a notice of modification to pre-approved gaming machine before offering the machine for play.

**C.** Except as otherwise determined by the board, the following shall not be used for gaming by any gaming operator licensee without the

prior written approval of the board, bill acceptors, coin or token acceptors, progressive controllers, progressive displays, or associated equipment as set forth in this rule.

**D.** Any license or approval issued by the board shall specifically describe the gaming machine or gaming device approved.

**E.** All of the following must be tested before licensure or approval for use:

- (1) a gaming machine;
- (2) other devices or equipment as the board deems necessary to ensure compliance with the act and this rule; and
- (3) any modification to the gaming machines and equipment described in this section.

**F.** The board has the authority to take, authorize, or require any of the following actions with respect to testing a gaming machine or modification to an existing gaming machine:

- (1) employ the services of an outside independent gaming test laboratory to conduct the testing;
- (2) bill a licensee who requests licensure or approval of a gaming machine or equipment through any billing mechanism the board deems appropriate for all costs of testing;
- (3) if not already in the laboratory's possession, require transportation of one (1) working model of a new gaming machine to an independent gaming laboratory designated by the board or to some other location for review and inspection; with each gaming machine submitted for approval, the applicant must submit two (2) copies of prints, schematics, block diagrams, circuit analyses, technical and operation manuals, program source codes, and any other information requested by the board; the gaming laboratory may disassemble the model and may destroy electronic components to fully evaluate the gaming machine;
- (4) require that the applicant provide specialized equipment or the services of an independent technical expert to evaluate the gaming machine;
- (5) require the manufacturer seeking approval of the gaming machine to pay all costs of transportation, review, inspection and testing; ~~and~~
- (6) if requested by the board, require transportation of one (1) working model of a new gaming

machine, and any associated equipment to the board for communications testing.

**G.** Any applicant whose application is denied by the board under this rule may request a hearing before the board to appeal the denial. [11/30/98; 15.1.7.8 NMAC - Rn, 15 NMAC 1.7.8, 3/31/00; A, 5/15/07; A, 10/15/15]

#### **15.1.7.38 MAINTENANCE, REPAIR AND SERVICING OF GAMING DEVICES:**

**A.** A licensee shall not alter the operation of approved gaming machines or associated equipment and shall ensure that the gaming machines and associated equipment are maintained in proper condition.

**B.** Only the following persons shall service or repair a gaming machine or associated equipment:

- (1) a licensed manufacturer;
- (2) an employee of a licensed manufacturer; or
- (3) a technician approved by the board and employed by a distributor or gaming operator licensee.

**C.** A licensed manufacturer shall maintain a certification program for the purpose of training and certifying technicians to service and repair gaming devices manufactured by the licensed manufacturer. Upon request, the licensed manufacturer shall provide evidence of such program to the board, including a full description of the program, models of gaming devices for which training is provided, criteria for certification, information concerning instructor qualifications, and copies of training materials and tests. Any program deemed insufficient by the board shall be modified at the board's request.

**D.** The licensed manufacturer shall ensure that its technician employees have received sufficient and appropriate training in the service and repair of each of its approved gaming machine models before the gaming machine may be placed in operation in ~~[New Mexico]~~ the state.

**E.** A licensed manufacturer that certifies other persons as technicians shall ensure that the technicians have received sufficient and appropriate training in the service and repair of the approved gaming machine to be operated by the gaming operator licensee, or distributed by the licensed distributor, employing the technician.

**F.** A gaming operator and a licensed distributor shall establish written standards for qualifications of a

gaming device technician, which shall be submitted to the board for consideration and approval. Approval of the standards shall not be unreasonably denied so long as they include manufacturer gaming device certifications or a reasonable equivalent of work experience in the gaming industry. The educational and work experience requirements may be substituted by a background in electronics ~~[and/or]~~ or mechanics; a limited background in these areas may be compensated for by an in-house training program whereby the individual is closely supervised by an approved technician for a specified period of time.

(1) In order to be approved to service a gaming device, a person shall submit an application for a work permit and shall submit documentation of the qualifications required in Subsection F of 15.1.7.38 NMAC.

(2) The board shall notify the technician and their employer of whether the submitted qualifications are approved within seven (7) days of receipt of the documentation. Notification of approval of the application for work permit shall be done by the normal process as set out in parts 15.1.5 NMAC and 15.1.13 NMAC.

**G.** The gaming operator licensee shall ensure that all service and repairs on its gaming machines, including the installation or repairs of component parts such as bill acceptors, monitoring systems, or other parts that would significantly alter the current or subsequent operation of a gaming machine, are made correctly and in compliance with board requirements.

**H.** The gaming operator licensee shall notify the board's information systems division prior to performing any maintenance or service that requires access to the logic area of a gaming machine. The gaming operator licensee shall not perform any maintenance that requires access to the logic area of a gaming machine, as defined in board rule 15.1.7.18 NMAC, until the board's information systems division disables the gaming machine from service and approves performance of the maintenance or service.

**I.** The gaming operator licensee shall notify the board's information systems division by telephone to obtain authorization prior to taking out of service any gaming machine that is deemed to be in an error condition that requires the gaming machine to be powered down for more than the remainder of the gaming day.

J. The gaming operator licensee shall not install gaming media in a gaming machine without prior written approval of the board's information systems division.

K. The gaming operator licensee shall not perform any maintenance on a gaming machine that will result in clearing any critical memory of the machine without prior written approval of the board's information systems division.

H L. Except for qualified technicians, no employee of the gaming operator licensee shall perform service or repairs on the licensee's gaming machines other than incidental repairs, unless such service or repairs are performed under the direct supervision of a qualified technician as part of an in-house training program approved by the board. Incidental repairs are repairs that do not affect any of the machine's major systems or require that the person making the repair access any internal space of the gaming machine.

H M. The board may allow, at the board's discretion, on-site training by a qualified technician as long as the technician's qualifications have been approved by the board. Technicians in training shall work under the direct supervision of a qualified technician and shall obtain board qualification by satisfactorily completing all required training within thirty (30) days of employment.

H N. The gaming operator licensee shall keep a machine access entry log inside the main cabinet access area of each gaming machine. Every person who gains entry into any internal space of a gaming machine shall sign the machine entry access log, indicate the date and time of entry and list all areas inspected, repaired or serviced. The gaming operator licensee shall retain the maintenance log for a period of five (5) years and shall make the maintenance log available to the board or its authorized agents upon request.

H O. In addition to the machine entry access log required by Subsection J of ~~[this section]~~ 15.1.7 NMAC, a gaming operator licensee shall maintain a written log in a form acceptable to the board for recording service or repairs performed on the licensee's gaming machines by qualified technicians employed by a manufacturer or distributor licensee whose principal place of business is outside the state ~~[of New Mexico]~~. Any qualified technician employed by such a manufacturer or distributor who performs service or repairs on the gaming machines of a gaming

operator shall make a complete entry on the log at the time of the service or repairs, recording, at a minimum, the name and work permit number of the qualified technician performing the service or repairs, the dates and times of the service or repairs and a brief description of the service or repairs performed.

[11/30/98; 15.1.7.38 NMAC - Rn, 15 NMAC 1.7.38, 3/31/00; 15.1.7.38 NMAC - Rn, 15.1.7.37 NMAC & A, 12/15/10; A, 10/15/15]

**15.1.7.39** ~~LIABILITY FOR NONPAYMENT OF PRIZES:~~ The state, the board, and their employees and agents, are not responsible for any malfunction of any gaming device, site controller, or other system or error that causes prizes to be wrongfully awarded or denied to players.] **SALE AND TRANSPORTATION OF GAMING MACHINES FOR HOME OWNERSHIP:**

A. A manufacturer or distributor license by the board may offer gaming machines for sale for home use provided the manufacturer or distributor complies with this section of this part. The manufacturer or distributor selling a gaming machine for home use shall only transport such a gaming machine to a private residence.

B. A manufacturer or distributor selling a gaming machine for home use shall retain a written record of the sale of the gaming machine. The written record shall include the date of the sale, the name and address of the purchaser, the serial number and a description of the gaming machine, and the address to which the gaming machine is delivered.

C. A manufacturer or distributor selling a gaming machine for home use shall notify the board of the sale and transport of the gaming machine and provide the board with a copy of the written record of the sale prior to transporting the gaming machine to the residence of the person purchasing the machine.

D. A manufacturer or distributor selling a gaming machine for home use shall transport and deliver the gaming machine to the residence of the purchaser. No gaming machine sold for home ownership shall be transported by any person or entity other than the distributor or manufacturer selling the machine.

E. A gaming machine sold for home ownership shall:

(1) have a conspicuous and indelible notice

prominently affixed to the front of the machine stating that the machine is only legal for play in a private residence;

(2) have a conspicuous and indelible notice prominently affixed to the rear of the gaming machine stating that the sale and transportation of the gaming machine by other than a licensed manufacturer or distributor is a fourth (4<sup>th</sup>) degree felony; and

(3) either provide a payback value for each credit played, determined over time, of one hundred percent (100%) or be manufactured or modified in such a way as to be operable only with tokens.

F. A manufacturer or distributor selling a gaming machine for home use shall provide written notice to the purchaser:

(1) that the machine shall be played only at a private residence;

(2) that no person shall make money from play on the machine except through winnings as a player;

(3) that commercial gambling is a fourth (4<sup>th</sup>) degree felony;

(4) that it is illegal to resell the machine to any person or entity other than a licensed manufacturer or distributor; and

(5) that it is illegal for any person or entity other than a licensed manufacturer or distributor to transport the machine.

G. A manufacturer or distributor selling a gaming machine for home use shall require as a condition of purchase that the purchaser acknowledge in writing that he has received the written notice described in Subsection F of 15.1.7 NMAC.

H. A manufacturer or distributor shall comply with all board regulations concerning transportation of any electronic media to be placed in a gaming machine being used in a private residence. A manufacturer or distributor shall report all sales of electronic media for home gaming machines in accordance with Subsection B of 15.1.7 NMAC.

[11/30/98; 15.1.7.39 NMAC - Rn, 15 NMAC 1.7.39, 3/31/00; A, 5/15/07; 15.1.7.39 NMAC - Rn, 15.1.7.38 NMAC, 12/15/10; Repealed, 10/15/15; 15.1.7.39 NMAC - N, 10/15/15]



## GAMING CONTROL BOARD

This is an amendment to 15.1.8 NMAC, Sections 7, 9, 13, 14, 18 and 19 effective 10/15/15.

### 15.1.8.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "Audit"** means an examination of an applicant's or licensee's accounting records, financial situation, and business practices to determine compliance with generally accepted accounting principles, state law, or rules adopted by the gaming control board.

**C. "Business year"** means the annual period used by a licensee for internal accounting purposes.

**D. "Cash equivalent"** means an instrument of equal liquidity and security as that of legal tender.

**E. "Credit play"** means operation of a licensed gaming machine that accumulates awards on a display rather than dispensing the winnings from a hopper; one (1) credit equals the denomination of the game being played.

**F. "Credit slip"** means a cash-out ticket for winnings earned on a gaming machine that provides for credit play.

**G. "Drop"** means the total amount of money and tokens removed from the drop box, or for cashless gaming machines, the amount of credits deducted during play.

**H. "Drop box" or "drop bucket"** means a container in a locked part of the gaming machine or its cabinet that is used to collect the money and tokens retained by the gaming machine that are not used to make automatic payouts from the machine.

**I. "Gaming tax transfer account"** means a bank account maintained by a gaming operator licensee for the exclusive purpose of gaming tax payments to the state treasurer on a monthly basis.

**J. "Gross revenue"** means all receipts from the operation of gaming machines before any deductions and equals the total of cash wagered by patrons and cash received for credit play.

**K. "Hold percentage"** means the percent of coins or credits played that are retained by the gaming machine; it is determined by subtracting the payback percentage from one hundred

percent (100%).

**L. "Hopper"** means an assembly inside the gaming machine that receives, holds, and dispenses coins.

**M. "Licensed premises"** means the area that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

**N. "Payback percentage"** means the theoretical percentage that will be won by a player during a cycle of play on the machine.

**O. "Premises"** means the land together with all building's improvements and personal property located on the land.

**P. "Soft meter"** means an internal electronic accounting system that can be displayed on the screen of a gaming machine or in the coin window on a reel gaming machine.

**Q. "Standard financial statements"** means statements that represent fairly an entity's financial position and results of operation in conformity with generally accepted accounting principles (US GAAP), international financial reporting standards (IFRS) or any other comprehensive system of accounting acceptable to the board.

**R. "State"** means the state of New Mexico.

**S. "Statements on auditing standards"** means the auditing standards and procedures published by the American institute of certified public accountants.

**T. "Taxation and revenue"** means the New Mexico department of taxation and revenue.

**U. "Wager"** means a sum of money or thing of value risked on an uncertain occurrence.  
[12/31/98; 15.1.8.7 NMAC - Rn & A, 15 NMAC 1.8.7, 10/15/00; A, 12/28/01; A, 2/28/05; A, 10/15/15]

### 15.1.8.9 ACCOUNTING RECORDS:

**A.** Each licensee shall keep accurate, complete, legible, and permanent records, in the manner required or approved by the board and in accordance with either generally accepted accounting principles (U.S. GAAP), international financial reporting standards (IFRS) or other comprehensive basis of accounting approved by the board, pertaining to revenue that is taxable or subject to fees under the act. Each licensee that keeps permanent records in

an electronic format shall provide to the audit and compliance services division, upon request, a detailed index of computer records in a format satisfactory to the board.

**B.** Each manufacturer, distributor and racetrack gaming operator licensee shall use double-entry accounting and maintain detailed subsidiary records, including the following:

- (1) detailed records of revenues, expenses, assets, liabilities, and equity of the gaming establishment;
- (2) gaming machine analysis reports that compare, by each machine, actual hold percentages to theoretical hold percentages;
- (3) the records required either by the board's minimum standards for internal control systems or, if the board determines that the licensee's system is at least equivalent to the board's minimum standards, the records required by the licensee's system of internal control;
- (4) journal entries prepared by the licensee and its independent accountant; and
- (5) any other records that the board specifically requires to be maintained.

**C.** Each nonprofit gaming operator licensee shall use double-entry accounting and maintain detailed subsidiary records for gaming activity as part of their licensed organization's annual financial statements and shall submit a monthly financial reporting package as prescribed by the board.

**[E] D.** If a licensee fails to keep adequate gaming revenue records, the board may compute the amount of taxable revenue upon the basis of an audit conducted by the audit and compliance services division, on the basis of any information within the board's possession, upon statistical analysis, or upon any other basis deemed reasonable by the board.

**[D] E.** Non-profit licensees are required to have a designated gaming accountant, who shall be found suitable as a key person by the board. The gaming accountant shall have a reasonable amount of experience in accounting/bookkeeping.

~~**E.** In the event that the designated gaming accountant cannot provide monthly financial statements and books acceptable to the board, the board may require the non-profit licensee to contract with a qualified independent bookkeeper. The qualified independent bookkeeper shall have either a minimum of two (2) years experience in performing bookkeeping and accounting duties or at~~

least an associate's degree in accounting and one (1) year of experience in performing bookkeeping and accounting duties. The independent bookkeeper is not required to be found suitable as a key executive or to obtain a work permit so long as the bookkeeper duties are limited to preparing the gaming books and financial statements and not signing gaming forms. A qualified independent bookkeeper shall not be an officer, trustee or board member of the non-profit gaming licensee.]

[12/31/98; 15.1.8.9 NMAC - Rn & A, 15 NMAC 1.8.9, 10/15/00; A, 5/14/04; A, 2/28/05; A, 12/15/10: A, 10/15/15]

**15.1.8.13 [STANDARD-FINANCIAL STATEMENTS FOR NON-PROFITS:**

**A.** Non-profit licensees shall prepare monthly financial statements covering all financial activities of the licensee's gaming operations for submission to the board. Gaming financial statements shall include monthly and year-to-date profit and loss statements and balance sheets.

**B.** The monthly financial statements shall be prepared using a double entry accounting system.

**C.** Non-profit licensees shall prepare financial statements in accordance with the uniform chart of accounts prescribed by the board.

**D.** Non-profit licensees shall submit their financial statements to the board and to the non-profit licensee's governing body no later than the 28th day of the following month. Each financial statement shall be signed by the preparer, who thereby attests to the completeness and accuracy of the data provided.

**E.** In the event that a non-profit licensee fails to submit monthly gaming financial statements to the board, the board may require the non-profit licensee to provide annual CPA audited financial statements.

**F.** Non-profit licensees shall submit copies of their federal income tax returns (Form 990) to the board within 30 days of filing with the internal revenue service.] **[RESERVED]**

[12/31/98; 15.1.8.13 NMAC - Rn, 15 NMAC 1.8.13, 10/15/00; A, 5/14/04; A, 2/28/05; Repealed, 10/15/15]

**15.1.8.14 TAX RETURNS; AUDITED FINANCIAL STATEMENTS; OTHER LICENSEES:**

**A.** Racetrack gaming operator, distributor, and manufacturer licensees shall submit copies of their federal income tax returns to the board

within thirty (30) days of filing their returns with the internal revenue service. If a licensee files an "application for automatic extension of time to file U.S. income tax return" with the internal revenue service, the licensee shall submit a copy of the request for extension within thirty (30) calendar days of submitting such request to the internal revenue service.

**B.** Racetrack gaming operator, distributor, and manufacturer licensees shall submit annually two (2) copies of their audited financial statements with comparative figures from the prior year covering all financial activities of the licensee to the board no later than one hundred twenty (120) days after the close of the licensee's fiscal year end.

**C.** Each licensee shall engage an independent certified public accountant who shall audit the financial statements in accordance with auditing standards generally accepted in the United States of America. The financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America, international financial reporting standards (IFRS) or any other comprehensive system of accounting acceptable to the board.

**D.** In the event of a license termination or change in business entity, the licensee or former licensee shall, not later than ninety (90) days after the event, submit to the board two (2) copies of its financial statements, or if required by the board, audited financial statements, covering the period from the end of the period covered by the previous financial statement to the date of the event. If a license termination or change in business entity occurs within ninety (90) days after the end of a business year for which a financial statement has not been submitted, the licensee may submit financial statements covering both the business year and the final period of business rather than separate statements.

**E.** If a licensee changes its business year, the licensee shall prepare and submit to the board financial statements covering the period from the end of the previous business year to the beginning of the new business year, submitted within ninety (90) days after the end of the period. Such financial statements shall be audited if required by the board. With board approval, the licensee may incorporate the financial results of the period in the financial statements for the new business year.

**F.** The licensee shall submit to the board a copy of

any audit and review findings reports and management advisory letters with the audited financial statements and independent auditor's report on compliance with minimum internal control standards. The licensee shall submit audit and review reports and management advisory letters within thirty (30) days of receipt.

**G.** The board may request additional information and documents from either the licensee or the licensee's independent certified public accountant, directly or through the licensee, regarding the financial statements or services performed by the accountant. The licensee shall provide all additional information requested by the board.

[12/31/98; 15.1.8.14 NMAC - Rn, 15 NMAC 1.8.14, 10/15/00; A, 5/14/04; A, 6/30/08; A, 10/15/15]

**15.1.8.17 [TRANSMISSION OF DAILY REPORTS OF GAMING RECEIPTS AND PAYOUTS:**

**A.** Information regarding the preceding day's gaming receipts and payouts shall be made available to the board through the central monitoring system by no later than 8:00 a.m. the next day. In case of an electronic or other malfunction of the central monitoring system or the licensee's site controller, the gaming operator licensee may, with board approval, submit a hard copy of the report to the board by fax transmission or other approved reporting method. The licensee shall notify the board of the malfunction and request approval of an alternative reporting method before the reporting deadline.

**B.** The board may access current data from the licensee's site controller at any time the board determines such access is necessary or appropriate.] **[RESERVED]**

[12/31/98; 15.1.8.17 NMAC - Rn, 15 NMAC 1.8.17, 10/15/00; A, 2/28/05; A, 6/30/08; Repealed, 10/15/15]

**15.1.8.18 NONPROFIT LICENSEES; SEPARATE OPERATING ACCOUNTS:**

**A.** Nonprofit licensees shall establish and maintain a separate operating account exclusively for the deposit of all gaming funds. The account shall be in a financial institution that is licensed by the state, in a national bank with an office in the state, or in another financial institution acceptable to the board. The bank or other financial institution shall not be an affiliate of the nonprofit licensee.

**B.** The operating account is subject to the following restrictions and requirements:

(1) all net revenue after replenishment of imprest funds shall be deposited into the gaming operating account;

(2) if required by the board, a nonprofit gaming licensee [who does not prepare and file a correct financial statement] shall deposit all gaming funds into their gaming operating account after each drop and count; [determination of this requirement should be made by the board or their designee;] and, once the deposit is made, shall write a check [is written] back to the cashier cage or vault (if applicable) for replenishment;

(3) [at] by the end of the month, the required charity and educational funds shall be transferred from the operating account into the charity account;

(4) [at] by the end of the month, the required gaming tax shall be transferred from the operating account into the gaming tax account;

(5) by the end of the month, any discretionary funds shall be transferred from the gaming operating account shall be transferred to the licensee's general operating account;

(6) after making the required tax, charity and discretionary fund transfers, the remaining funds in the gaming operating bank account are the property of the licensee. The balance in the gaming operating bank account shall not exceed twenty thousand (\$20,000) dollars. All funds in excess of twenty thousand (\$20,000) dollars shall be transferred to the licensee's general operations bank account. The remaining funds in the gaming operating bank account balance shall be maintained as a cash reserve to replenish gaming funds, if needed; and

~~(5)~~ (7) the nonprofit licensee shall maintain detailed records of all deposits into, and withdrawals and disbursements from, the operating account.

~~(6)~~ monies in the operating account, with the exception of charity fund transfers, discretionary fund transfers and gaming tax fund transfers, shall be used exclusively for the payment of allowable gaming expenses; and

~~(7)~~ gaming funds shall not be commingled with any other monies of the nonprofit organization licensee.]

**C.** A non-profit licensee

shall not commingle gaming funds and other monies of the nonprofit licensee or use any monies in the operating account for any purpose other than the [payment of allowable gaming expenses, charity and educational fund transfers, discretionary fund transfers, and gaming tax fund] transfers as identified in this [title] section.

**D.** Non-profit licensees shall establish and maintain a separate charity and education bank account exclusively for the deposit of all required charitable and educational funds. The account shall be in a financial institution that is licensed by the state, a national bank with an office in the state, or in another financial institution accepted by the board. The bank or other financial institution shall not be an affiliate of the non-profit organization gaming operator licensee.

**E.** The charitable and education account is subject to the following restrictions and requirements:

(1) non-profit licensees shall deposit the required charity/educational percentage of net revenue (gross revenues less jackpot payouts) into their charity/educational account by the end of each month;

(2) the non-profit licensee shall maintain detailed records of all deposits into, and withdrawals, and disbursements from, the charity/educational account [unless an exemption is granted by the board];

(3) monies in the charity/educational account shall be used exclusively for charitable and educational payments as set forth in [this title] the charity and educational guidelines; and

(4) charitable/educational funds shall not be commingled with any other monies of the non-profit gaming licensee.

[12/31/98; 15.1.8.18 NMAC -Rn, 15 NMAC 1.8.18, 10/15/00; A, 5/14/04; A, 6/30/08; A, 10/15/15]

#### 15.1.8.19 MINIMUM BANKROLL REQUIREMENTS:

**A.** Each gaming operator licensee shall maintain, in the manner required or approved by the board:

(1) cash or cash equivalents in an amount equal to the value of the highest possible jackpot that could be won from a single gaming machine at the gaming establishment plus the value of the cash winnings and non-cash prizes to be paid in periodic payments or such higher amount as the board may determine; and

(2) if the

gaming operator licensee operates a progressive system, cash or cash equivalents [in an amount the board finds sufficient to protect the gaming operator licensee's patrons against defaults in gaming debts owed by the licensee] equal to the total of all progressive jackpots that may be won at the location, unless the board has approved payment of progressive jackpots by annuity.

**B.** If at any time the licensee's available cash or cash equivalents are less than the amount required by this section, the licensee shall immediately notify the [board] board's audit and compliance division of the deficiency.

[12/31/98; 15.1.8.19 NMAC - Rn, 15 NMAC 1.8.19, 10/15/00; A, 2/28/05; A, 6/30/08; A, 10/15/15]

## GAMING CONTROL BOARD

**This is an amendment to 15.1.11 NMAC, Sections 3 & 7 and adding new Sections 16 through 19, effective 10/15/15.**

**15.1.11.3 STATUTORY AUTHORITY:** Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-34(A) directs the board to adopt regulations that provide for the establishment of a list of persons who are to be excluded or ejected from a gaming establishment. Section 60-2E-34.1 of the Gaming Control Act requires the board to develop rules to permit a person who is a compulsive gambler to be self-excluded from a gaming establishment.

[15 NMAC 1.11.3 - N, 12/31/98; 15.1.11.3 NMAC - Rn, 15 NMAC 1.11.3, 2/14/02; A, 10/15/15]

**15.1.11.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A.** "act" means the Gaming Control Act.

**B.** "candidate" means any person whom the board believes should be placed on the list.

**C.** "involuntarily excluded person" means any person placed by the board on the involuntary exclusion list pursuant to Section 60-2E-34 of the act and who has failed to timely

request a hearing as set forth in this rule or who remains on the involuntary exclusion list after a final determination by the board.

**D. “involuntary exclusion list”** means a list of names of persons who are required to be excluded or ejected from gaming establishments pursuant to Section 60-2E-34 of the act.

**E. “self-exclusion list”** means a list of names of persons who have been placed on the voluntary exclusion list pursuant to Section 60-2E-34.1 of the act.

**F. “self-excluded person”** means a person who has excluded themselves from a gaming establishment pursuant to Section 60-2E-34.1 of the act.

**[E] G. “person”** means an individual.

**[F] H. “petitioner”** means a person who files a request for hearing before the board.

**[G] I. “state”** means the state of New Mexico.  
[15 NMAC 1.11.7 - N, 12/31/98; 15.1.11.7 NMAC - Rn, 15 NMAC 1.11.7, 2/14/02; A, 10/15/15]

**15.1.11.8 ENTRY OF NAMES ON INVOLUNTARY EXCLUSION LIST:**

**A.** The board may place on the involuntary exclusion list the name of any person who, because of any of the criteria set forth in this rule, is to be excluded or ejected from a licensed [premises] premise, upon the board’s determination that such exclusion or ejection is in the best interest of the state or licensed gaming activity.

**B.** Before a name is placed on the involuntary exclusion list, the board [with] shall informally review the information and evidence in its possession to determine whether there is sufficient reason to believe that any one of the criteria set forth in this rule is applicable to the candidate. ~~[At least three members of the board must concur in the decision at an investigative hearing, but a formal meeting of the board is not required to reach a decision.]~~

**C.** Except as otherwise provided in this rule, no person on the involuntary exclusion list [with] shall be excluded or ejected from a gaming establishment until the person has had notice and an opportunity for a hearing as provided for in this rule and the board has issued a final decision.

**D.** The filing of a petition for judicial review of the board’s decision does not stay enforcement of any board action placing an excluded person on the

list. The board may grant such a stay under circumstances it deems appropriate.  
[15 NMAC 1.11.8 - N, 12/31/98; 15.1.11.8 NMAC - Rn, 15 NMAC 1.11.8, 2/14/02; A, 10/15/15]

**15.1.11.9 CONTENTS AND DISTRIBUTION OF INVOLUNTARY EXCLUSION LIST:**

**A.** The involuntary exclusion list [with] shall be open to public inspection and [must] shall be distributed by the board to every licensed gaming establishment within the state and to the department of public safety for distribution to law enforcement agencies located in the state.

**B.** The following information [with] shall be provided for each excluded person:

- (1) the person’s full name and all aliases the person is believed to have used;
- (2) the person’s physical description, including height, weight, type of build, color of hair and eyes, and any other physical characteristics that may assist in the identification of the person;
- (3) date of birth;
- (4) effective date the person’s name was placed on the list; and

(5) a photograph and the date of the photograph.  
[15 NMAC 1.11.9 - N, 12/31/98; 15.1.11.9 NMAC - Rn, 15 NMAC 1.11.9, 2/14/02; A, 10/15/15]

**15.1.11.10 NOTICE OF CANDIDACY FOR INVOLUNTARY EXCLUSION LIST:**

**A.** After the board has determined that an individual should be placed on the involuntary exclusion list, notice of the determination [with] shall be given to the person by personal service or by certified mail to the person’s address last known to the board, or by service by publication if personal service or service by certified mail is unsuccessful.

**B.** Notice of candidacy [with] shall be in substantially the following form:

TO: (Name of candidate, including any aliases)

You are hereby notified that the New Mexico Gaming Control Board deems you to be a person to

be excluded from

licensed gaming establishments within the State of New Mexico, pursuant to Section 60-2E-34(A) of the Gaming Control Act, Sections 60-2E-1 through 60-2E-61 NMSA

1978. The grounds for exclusion are as follows: (designate subsections of the Act or board rules as grounds). You are further advised that you may request, within thirty (30) days from the date of service of this notice, a hearing before the Gaming Control Board pursuant to Section 60-2E-59 of the Act to show cause why your name should not be [excluded from said] placed on the involuntary exclusion list.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Board Member

**C.** If a candidate does not request a hearing, the board [with] shall issue a final written decision as to the candidate’s placement on the involuntary exclusion list. The person’s exclusion or ejection from gaming establishments [becomes] shall become effective the date of issuance of the board’s final order.  
[15 NMAC 1.11.10 - N, 12/31/98; 15.1.11.10 NMAC - Rn, 15 NMAC 1.11.10, 2/14/02; A, 7/31/02; A, 10/15/15]

**15.1.11.11 HEARING FOR PLACEMENT ON THE INVOLUNTARY EXCLUSION LIST:**

**A.** The procedures, rights, and remedies specified in Section 60-2E-59(B) of the act and rule 15.1.14 NMAC promulgated by the board [with] shall apply to any hearings provided to the candidate for placement on the involuntary exclusion list. As used in those provisions, “petitioner” means the candidate.

**B.** The board’s final written order [with] shall be given to the candidate and to all licensed gaming establishments within the state.  
[15 NMAC 1.11.11 - N, 12/31/98; 15.1.11.11 NMAC - Rn, 15 NMAC 1.11.11, 2/14/02; A, 10/15/15]

**15.1.11.12 PETITION TO REMOVE NAME FROM THE INVOLUNTARY EXCLUSION LIST:**

**A.** Any person who, after a final determination by the board, has been placed on the involuntary exclusion list may petition the board in writing and request that his or her name be removed from the list. The petition ~~[must]~~ shall be verified and state the specific grounds believed by the petitioner to constitute good cause for removal of his or her name.

**B.** The board ~~[with]~~ shall have ninety (90) days in which to entertain the petition. After ninety (90) days, the board ~~[must]~~ shall either set the petition for hearing or deny the petition. If the board decides to entertain the petition, it ~~[with]~~ shall specify a hearing date and, thereafter, the procedures set forth in 15.1.15 NMAC ~~[with]~~ shall apply. As used in those provisions, “[petitioner] appellant” means the excluded person.

**C.** The record of evidence and testimony, if any, used by the board in making its original determination of exclusion may be considered by the board at the petition hearing; provided, however, the record may not be reopened except upon the express consent of the board. Unless otherwise allowed by the board, only evidence relevant to the grounds specified in the petition may be heard. However, the board may request any additional investigation it deems necessary or useful in making its decision. The petitioner bears the burden of showing good cause for removal from the involuntary exclusion list.

**D.** When the board determines that a person should be removed from the involuntary exclusion list, notice of the decision ~~[with]~~ shall be made in the same manner as notice under ~~[section 10 of this rule]~~ 15.1.11.10 NMAC. In addition, in the case of removal proceedings pursuant to ~~[section 12]~~ 15.1.11.12 NMAC, the board ~~[with]~~ shall give notice to all licensed gaming establishments and to the department of public safety for distribution to law enforcement agencies located in the state. [15 NMAC 1.11.12 - N, 12/31/98; 15.1.11.12 NMAC - Rn, 15 NMAC 1.11.12, 2/14/02; A, 10/15/15]

**15.1.11.13 RESTRICTION ON FILING ADDITIONAL PETITIONS AFTER DENIAL:**

**A.** Any person whose petition for removal from the involuntary exclusion list has been denied may not file another such petition with the board until one (1) year has expired from the date of

denial.

**B.** The board may, in its discretion and upon written request for waiver, waive the one (1)-year restriction. [15 NMAC 1.11.13 - N, 12/31/98; 15.1.11.13 NMAC - Rn, 15 NMAC 1.11.13, 2/14/02; A, 10/15/15]

**15.1.11.14 DUTY OF LICENSEE TO EXCLUDE PERSON ON INVOLUNTARY EXCLUSION LIST:**

**A.** The involuntarily excluded person shall be excluded from the area of the gaming establishment designated as the licensed premises.

**B.** Whenever an involuntarily excluded person enters, attempts to enter, or is on the licensed premises, and the licensee or its agent or a gaming employee knows or has reason to know that the person is an involuntarily excluded person, the licensee or its agents or employees shall do the following:

(1) immediately notify the ~~[board]~~ board's enforcement division of the excluded person's presence in the gaming establishment;

(2) ask the person to not enter the licensed premises, or if on the licensed premises, to immediately leave; and

(3) notify the state department of public safety or the appropriate local law enforcement agency and the ~~[board]~~ board's enforcement division if the excluded person fails to comply with ~~[such]~~ a request not to enter the licensed premises or to immediately leave the licensed premises.

**C.** The duty to exclude involuntarily excluded persons requires that each gaming operator licensee does the following:

(1) ~~[ensures]~~ ensure that the gaming operator licensee and its agents and gaming employees have reviewed and are familiar with the involuntarily excluded persons list as developed and updated by the board;

(2) adequately ~~[trains]~~ train its agents and employees as to the requirements of this ~~[rule]~~ part; and

(3) ~~[develops]~~ develop and maintains appropriate security measures to minimize the risk that an involuntarily excluded person will enter or remain on the licensed premises.

**D.** As used in this section, “knows or has reason to know” means the gaming operator licensee, agent, or employee:

(1) has actual knowledge of the fact that the person is an involuntarily excluded person; or

(2) would have obtained that knowledge had the person complied with the duties set forth in this section.

[15 NMAC 1.11.14 - N, 12/31/98; 15.1.11.14 NMAC - Rn, 15 NMAC 1.11.14, 2/14/02; A, 6/30/08; A, 10/15/15]

**15.1.11.15 GROUNDS FOR INVOLUNTARY EXCLUSION OR EJECTION:**

**A.** The board may include on the involuntary exclusion list any person whose presence in a gaming establishment is determined by the board to pose a threat to the public interest or licensed gaming activities.

**B.** In determining whether to include a person on the involuntary exclusion list, the board may consider:

(1) prior conviction of a felony under state or federal law, a crime involving moral turpitude, or a violation of the gaming laws of any jurisdiction;

(2) violation or conspiracy to violate the provisions of the Act or board rules relating to willful evasion of fees, fines, or taxes, or the failure to disclose an interest in a gaming activity for which the person must obtain a license;

(3) notorious or unsavory reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences;

(4) written order of any governmental agency of the state or any other state that authorizes the exclusion or ejection of the person from an establishment at which gaming is conducted; or

(5) any other grounds determined by the board to pose a threat to the public health, safety, morals, or general welfare.

[15 NMAC 1.11.15 - N, 12/31/98; 15.1.11.15 NMAC - Rn, 15 NMAC 1.11.15, 2/14/02; A, 10/15/15]

**15.1.11.16 ENTRY OF NAMES ON SELF-EXCLUSION LIST:**

**A.** Any person may apply to the board to have their name placed on the self-exclusion list.

**B.** A person applying to the board to have their name placed on the self-exclusion list shall file an application on a form supplied and approved by the board, and shall meet the following requirements:

(1) An applicant for self-exclusion shall be required to

submit a written application for self-exclusion on their own behalf.

(2) An applicant for self-exclusion shall be required to submit the written application in person by bringing the application to the board's offices or by meeting with an agent of the board for the purpose of submitting the application.

(3) An applicant for self-exclusion shall be required to provide a photo identification when submitting the written application.

C. Upon submission of the completed application, the board chair shall enter an order placing the applicant's name on the self-exclusion list for the specific facility from which the applicant has self-excluded himself. The self-exclusion order shall specify the term of the self-exclusion order.

[15.1.11.16 NMAC - N, 10/15/15]

**15.1.11.17 CONTENTS AND DISTRIBUTION OF SELF-EXCLUSION LIST:**

A. The self-exclusion list shall not be a public record open to inspection pursuant to the Inspection of Public Records Act.

B. The name of a person on the self-exclusion list shall be confidential and shall only be made available to authorized agents of the board and authorized personnel of a gaming establishment from which the person has self-excluded himself.

C. A gaming operator licensee shall establish written policies and procedures to ensure that the information contained in the self-exclusion list is maintained in a secure manner and is disseminated only to authorized persons on a need-to-know basis.

[15.1.11.17 NMAC - N, 10/15/15]

**15.1.11.18 DUTY OF LICENSEE TO EXCLUDE PERSON ON SELF-EXCLUSION LIST:**

A. A self-excluded person shall be excluded from the area of the gaming establishment designated as the licensed premises.

B. Whenever a self-excluded person enters, attempts to enter, or is on the licensed premises, and the licensee or its agent or a gaming employee knows or has reason to know that the person is a self-excluded person, the licensee or its agents or employees shall do the following:

(1) immediately notify the board's enforcement division of the self-excluded person's presence in the

gaming establishment;

(2) ask the self-excluded person to not enter the licensed premises, or if on the licensed premises, to immediately leave;

(3) notify the state department of public safety or the appropriate local law enforcement agency and the board's enforcement division if the self-excluded person fails to comply with a request not to enter the licensed premises or to immediately leave the licensed premises; and

(4) confiscate the winnings and any gaming machine credits of the self-excluded person; a gaming operator licensee shall dedicate all winnings confiscated to supplement the gaming operator licensee's contributions to fund or support programs for the treatment and assistance of compulsive gamblers.

C. The duty to exclude self-excluded persons requires that each gaming operator licensee do the following:

(1) ensure that the key personnel and surveillance and security personnel of the gaming operator licensee have reviewed and are familiar with the self-excluded persons list as developed and updated by the board;

(2) adequately train its agents and employees as to the requirements of this part;

(3) develop and maintain appropriate security measures to minimize the risk that an self-excluded person will enter or remain on the licensed premises;

(4) remove the self-excluded person's name from any mailing list, e-mail list or other promotional list;

(5) disenroll the self-excluded person from any players club or other promotional activity; and

(6) ensure that no marketing activity is directed toward the self-excluded person.

D. As used in this section, "knows or has reason to know" means the gaming operator licensee, agent, or employee:

(1) has actual knowledge of the fact that the person is an self-excluded person; or

(2) would have obtained that knowledge had the person complied with the duties set forth in this section.

[15.1.11.18 NMAC - N, 10/15/15]

**15.1.11.19 PETITION TO REMOVE NAME FROM THE SELF-EXCLUSION LIST:**

A. Any person who has been placed on the self-exclusion list may petition the board in writing and request that his or her name be removed from the list. The petition shall be verified and state the specific grounds believed by the petitioner to constitute good cause for removal of his or her name.

B. The board shall have ninety (90) days in which to entertain the petition. Within ninety (90) days, the board shall review the petition and make a determination as to whether to remove the self-excluded person's name from the self-exclusion list. The petitioner bears the burden of proving that removal from the self-exclusion list is in the public interest. The board shall not grant a petition for removal if less than one (1) year has passed since entry of the order placing the person on the self-exclusion list.

C. When the board determines that a person should be removed from the self-exclusion list, the board shall give notice to all licensed gaming establishments to which the self-exclusion was applicable and shall remove the person's name from the electronic database maintained by the board pursuant to 15.1.19 NMAC. [15.1.11.19 NMAC - N, A, 10/15/15]

**GAMING CONTROL BOARD**

This is an amendment to 15.1.13 NMAC, Section 8 and 10 effective 10/15/15.

**15.1.13.8 RENEWAL OF LICENSE OR WORK PERMIT:**

A. Licenses issued under the act, other than gaming machine licenses, expire one (1) year from the date of the issuance of the license, and are subject to annual renewal in accordance with the act and this rule.

B. A complete renewal application and payment of all applicable fees for renewal of a license shall be filed with the board not less than sixty (60) days prior to the date the license expires. The renewal application shall be submitted on forms provided by the board. Gaming operator licensees shall submit compulsive gambling plans with the renewal application.

C. In addition to any other information required, the renewal application for a nonprofit organization

gaming operator license shall include a copy of its amended charter, if any, articles of incorporation, bylaws, or rules that establish regular or auxiliary membership requirements, the name, home address, phone number and e-mail address of each member of the governing board, and a copy of its most recent federal income tax return (Form 990). The board may deny a license renewal application if it determines that any amendment has opened, or may open, gaming activity to persons beyond those authorized under the act.

**D.** In addition to any other information required, the renewal application for a racetrack gaming operator license shall include proof that the racetrack holds an active license to conduct pari-mutuel wagering. The application also shall include a copy of the racetrack's schedule of live races on each race day during its licensed race meet for the renewal year. If the schedule of live races for the entire renewal year has not been approved by the date the renewal application is filed with the board, the racetrack gaming operator licensee shall submit a schedule of live race days currently approved by the racing commission, and shall submit a proposed schedule of additional race days for the license year with the renewal application and shall submit a final schedule for the remainder of the license year within fifteen (15) days of approval by the racing commission.

**E.** The board may deny a license renewal application if the applicant is delinquent in the payment of any installment of the gaming tax or the payment of any other fees, fines, costs, or penalties imposed by the state, the liability for which arises out of any previous or current application to conduct, or out of the conduct of, gaming activity in the state.

**F.** A work permit expires three (3) years from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the work permit shall be filed with the board not less than ten (10) days prior to the date the work permit expires. The renewal application shall be submitted on forms provided by the board. [12/31/98; 15.1.13.8 NMAC - Rn & A, 15 NMAC 1.13.8, 3/31/00; A, 1/31/02; A, 11/30/05; A, 12/15/10; A, 10/15/15]

#### **15.1.13.10 LATE RENEWAL OF LICENSE, CERTIFICATION OR WORK PERMIT:**

**A.** The board may, in its discretion, accept and process a renewal

application for a gaming operator's, manufacturer or distributor's license, work permit or certification of finding of suitability filed after the deadlines established in 15.1.13.8 NMAC and 15.1.13.13 NMAC. Any such application for a racetrack gaming operator, manufacturer's or distributor's license, shall be subject to a late renewal fee of two hundred fifty dollars (\$250) plus ten dollars (\$10) per day for each additional day the renewal application is late. Any such application for a nonprofit gaming operator's license shall be subject to a late renewal fee of one hundred fifty dollars (\$150) plus ten dollars (\$10) per day for each additional day the renewal application is late.

**B.** To allow sufficient processing time by the board, no renewal application for a gaming operator's, manufacturer or distributor's license, or for a certification of finding of suitability shall be accepted by the board less than forty five (45) days of the expiration date of the license, regardless of whether the applicant for renewal pays late fees. Any applicant for renewal who fails to submit a complete renewal application at least forty five (45) days before the expiration date of his or her license or certification of finding of suitability shall be required to file a full application for and pay all applicable fees and investigation costs if that person desires to engage in the conduct of gaming activities.

**C.** If an applicant for a racetrack gaming operator's, manufacturer's or distributor's license applies for such license [~~permit or certification~~] within thirty (30) days after the expiration of a previously held license, [~~permit or certification,~~] in addition to initial application fees, the applicant will be charged a fee of two hundred fifty dollars (\$250.00) plus ten dollars (\$10.00) for each day that has passed since the expiration date until the new application is filed. If an applicant for a nonprofit gaming operator's license, or for a work permit or certification of finding of suitability applies for such license, permit or certification within thirty (30) days after the expiration of a previously held license, permit or certification, in addition to initial application fees, the applicant will be charged a fee of one hundred and fifty dollars (\$150.00) plus ten dollars (\$10.00) for each day that has passed since the expiration date until the new application is filed.

[12/31/98; 15.1.13.10 NMAC - Rn & A, 15 NMAC 1.13.10, 3/31/00; Repealed, 1/31/02; 15.1.13.10 NMAC - Rn, 15.1.13.11 NMAC, 1/31/02; A, 5/14/04;

A, 11/30/05; A, 12/15/10; A, 10/15/15]

## **GAMING CONTROL BOARD**

**This is an amendment to 15.1.14 NMAC, Sections, 8 and 18 effective 10/15/15.**

### **15.1.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:**

**A.** All hearings held pursuant to Section 60-2E-32(B) of the act will be conducted by a hearing examiner duly appointed by the board.

**B.** Except for telephonic hearings, the location of the hearing shall be in Albuquerque [~~unless either party makes a written request to have the hearing conducted in the place or area affected~~] except that the hearing examiner may, upon motion of either party, grant a change of venue for good cause shown.

**C.** All hearings held pursuant to the act shall be open to the public.

**D.** The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

**E.** Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution. [12/31/98; 15.1.14.8 NMAC - Rn & A, 15 NMAC 1.14.8, 5/31/00; A, 7/31/02; A, 5/14/04; A, 10/15/15]

### **15.1.14.18 RECOMMENDED ACTION; FINAL DECISION:**

**A.** At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty five (45) days from the date of continuance.

**B.** The hearing examiner shall prepare a written decision containing his or her recommendation of action to be taken by the board. The hearing examiner's recommendation may include any [or] combination, of the following:

- (1) revocation of the license or approval;
- (2) suspension of the license or approval;
- (3) limitation or conditioning of the license or approval; and
- (4) imposition of a fine not to exceed twenty five thousand dollars (\$25,000) for the first violation and fifty thousand dollars (\$50,000) for each subsequent violation.

**C.** Notice of the hearing examiner's recommended action shall be served on the parties within thirty (30) days of the conclusion of the hearing on the matter. Service shall be made by registered or certified mail.

**D.** The board shall accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken, including limiting, conditioning, suspending, or revoking any license or imposing a fine, or any combination thereof. The board shall not impose any sanction or order except within the board's jurisdiction or as authorized by law.

**E.** The board may dismiss an administrative complaint without recommendation of the hearing examiner upon its own motion.

~~[E]~~ **E.** The final decision or order shall be public and shall become a part of the record. [12/31/98; 15.1.14.18 NMAC - Rn, 15 NMAC 1.14.18, 5/31/00; A, 7/31/02; A, 5/14/04; A, 10/15/15]

### GAMING CONTROL BOARD

**This is an amendment to 15.1.15 NMAC, Sections, 8 and 17 effective 10/15/15.**

#### 15.1.15.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:

**A.** All hearings held pursuant to Section 60-2E-59 of the act shall be conducted by a hearing examiner

duly appointed by the board.

**B.** Except for telephonic hearings, hearings shall be conducted in Albuquerque [~~or, upon written request by an aggrieved person, in the place or area affected~~] except that the hearing examiner may, upon motion of either party, grant a change of venue for good cause shown.

**C.** All hearings held pursuant to Section 60-2E-59 of the act shall be open to the public.

**D.** The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

**E.** Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution. [12/31/98; 15.1.15.8 NMAC - Rn & A, 15 NMAC 1.15.8, 5/31/00; A, 7/31/02; A, 5/14/04; A, 10/15/15]

#### 15.1.15.17 RECOMMENDED ACTION; FINAL DECISION:

**A.** At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) days from the date of continuance.

**B.** Not more than thirty (30) days after completion of the hearing, the hearing examiner shall prepare a written decision containing his or her recommendation of action to be taken by the board. The recommendation may propose to sustain, modify, or reverse the initial decision of the board or its agent.

**C.** Notice of the hearing examiner's recommended action shall be served on the parties as promptly as possible but in no event later than fifteen (15) days after the date of the hearing on the matter. Service shall be made by registered or certified mail.

**D.** The board shall accept, reject or modify the hearing examiner's recommendation by majority

vote. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefor, on all material issues of fact, law or discretion involved, together with the specific action taken to sustain, modify, or reverse the initial decision of the board or its agent.

**E.** The board may dismiss an administrative appeal without recommendation of the hearing examiner upon request of the appellant.

~~[E]~~ **E.** The final decision or order will be public and shall become a part of the record.

[12/31/98; 15.1.15.17 NMAC - Rn, 15 NMAC 1.15.17, 5/31/00; A, 7/31/02; A, 5/14/04; A, 10/15/15]

### GAMING CONTROL BOARD

**This is an amendment to 15.1.16 NMAC, Sections 8, 9 and 11, effective 10/15/15.**

#### 15.1.16.8 RESTRICTION ON SALES, DISPLAY, DISTRIBUTION, TRANSPORTATION AND OPERATION OF GAMING DEVICES:

**A.** Except as otherwise provided in this chapter, no person shall sell, display, store, supply, ship, transport, or distribute any gaming device or associated equipment for use or play in the state, and no person shall sell, display, supply, ship, transport or distribute any gaming device or associated equipment out of the state, unless the person is licensed by the board as a distributor or manufacturer.

**B.** No licensee shall sell or transfer a gaming device to any person that could not lawfully own or operate the gaming device.

**C.** No purchaser or transferee shall operate a gaming machine without first obtaining a gaming operator's license in the manner set forth in this title, except that a gaming machine may be operated in a private residence so long as no person makes money for operating the gaming machine except through winnings as a player.

[N, 12/31/98; 15.1.16.8 NMAC - Rn, 15 NMAC 1.16.8, 10/15/00; A, 2/28/05; A, 12/15/10; A, 10/15/15]

#### 15.1.16.9 TRANSPORTATION OF GAMING DEVICES INTO THE STATE:

**A.** No person shall



initiate transport of any gaming device into the state other than a licensed manufacturer or distributor.

**B.** A gaming device is shipped or transported into the state when the starting point for shipping or transporting begins outside the state and terminates in the state.

**C.** A manufacturer or distributor licensee shipping or transporting one (1) or more gaming devices into the state shall notify the board's information systems division of the shipment prior to the time the shipment is made.

**D.** Notice of transportation of gaming device(s) shall be made on forms approved by the board for transportation of the type of gaming device(s) to be transported.

**E.** The transportation form shall, at a minimum, include the following information:

- (1) the full name, address, and license number of the person making the shipment;
- (2) the method of shipment and the name of the carrier, if any;
- (3) the full name, address, and license number of the person to whom the devices are being sent and the destination of the shipment, if different from the address;
- (4) the number of gaming devices in the shipment;
- (5) the serial number of each gaming device;
- (6) the model number and description of each gaming device;
- (7) the expected arrival date of the gaming devices at their destination within the state; and
- (8) such other information as required by the board.

**F.** Transportation forms shall be filled out completely and legibly, signed by the person completing the form and notarized. The completed forms shall be transmitted to the board's information systems division by faxing or e-mailing a copy of the form to the division.

**G.** The board's information systems division shall assign a control number to the transportation form and notify the manufacturer or distributor licensee shipping the device(s) of the assigned control number within three (3) business days of receipt of the completed transportation form.

**H.** The manufacturer or distributor shipping the gaming device to a licensee may ship the gaming device to the receiving licensee upon receipt of

the control number by the board. The shipping licensee shall note the assigned control number on the transportation form for the device and shall include the original transportation form in the shipment.

**I.** A manufacturer or distributor transporting a gaming machine for the purpose of sale for home use shall transport the gaming machine from the manufacturer or distributor's place of business in the state to the residence of the individual purchasing the gaming machine.

**J.** The manufacturer or distributor licensee shall not transport gaming machines with gaming media already installed in the machines.

**K.** A licensee receiving shipment of a gaming device shall notify the board's enforcement division of the receipt of the shipment. Following notification an agent of the board's enforcement division shall inspect the shipment and the transportation form included with the shipment to ensure that the transportation form accurately identifies the gaming device(s) included in the shipment.

**L.** A licensee receiving a shipment of gaming media or other associated equipment shall not remove the gaming media or associated equipment from the packaging in which it was shipped until an agent of the board has inspected the shipment and released it to the receiving licensee. A licensee receiving shipment of a gaming machine shall notify the board upon receipt of the shipment and shall not remove the gaming machine from the transporting vehicle until authorized by the board. A gaming machine transported into the state shall not be placed on the gaming floor for play until an agent of the board has inspected the gaming machine and released it for play.

[N, 12/31/98; 15.1.16.9 NMAC - Rn & A, 15 NMAC 1.16.9, 10/15/00; A, 1/31/02; A, 2/28/05; A, 12/15/10; A, 10/15/15]

**15.1.16.11 TRANSPORTATION OF GAMING DEVICES BETWEEN LOCATIONS IN THE STATE:**

**A.** Manufacturer licensees, distributor licensees, and subject to the limitations set forth in this rule, gaming operators licensees, are authorized to transport gaming devices within the state.

**B.** Except as otherwise provided in this rule, any authorized person transporting a gaming device from one location to another in the state for any purpose shall notify the board

before transporting the gaming device and provide the following information on forms provided or approved by the board:

- (1) the full name, address, and license number of the person transporting the gaming device from its current location;
- (2) the reason for transporting the gaming device;
- (3) the full name, address, and license number of the person to whom the gaming device is being sent and the destination of the gaming device if different from that address;
- (4) the name and address of the carrier and the method of transport;
- (5) the model and serial number of the gaming device;
- (6) the gaming device license number, if any;
- (7) the manufacturer of the gaming device;
- (8) the expected date and time of delivery [and/or] or installation of the gaming machine at the new location;
- (9) such other information as the board may require.

**C.** This section 15.1.16.11 NMAC does not apply to the movement of gaming machines within the same location. Such relocation is subject to board approval pursuant to rule 15.1.16 NMAC.

**D.** A gaming operator licensee shall sell or transfer a gaming machine only to another gaming operator licensee or to a licensed distributor or manufacturer. The gaming operator licensee shall notify the board in advance by providing the information required by this section.

[N, 12/31/98; 15.1.16.11 NMAC - Rn, 15 NMAC 1.16.11, 10/15/00; A, 2/28/05; A, 10/15/15]

**GAMING CONTROL BOARD**

**This is an amendment to 15.1.18 NMAC, Section 9, effective 10/15/15.**

**15.1.18.9 MINIMUM STANDARDS FOR COMPULSIVE GAMBLING ASSISTANCE PLAN:**

**A.** The compulsive gambling assistance plan shall include all of the following elements unless the applicant or gaming operator licensee obtains a written waiver of any element from the board:

(1) identification of a plan manager or other person responsible for ensuring that the plan is implemented and administered as approved by the board and monitored to maintain the minimum standards established by this rule;

(2) a mission statement that identifies the goals of the gaming operator licensee in administering the plan;

(3) policies concerning the handling of compulsive gambling problems, commitment to training, intervention, the employee's role and duties, management's role and duties, and the patron's responsibilities;

(4) specific, detailed procedures to determine appropriate intervention techniques in a given circumstance, and carrying out the intervention techniques;

(5) printed materials to educate patrons about compulsive gambling and inform them of local and statewide resources available to compulsive gamblers and their families; the materials shall include signs or posters located inside the licensed premises and brochures discussing compulsive gambling issues and sources of treatment and information, samples shall be attached; the primary purpose of all such printed material shall be for the purpose of promoting a responsible gambling message; the plan shall also specify the source of the printed materials, the authority for the use of said materials and the proposed distribution methods and location;

(6) policy and procedures that prohibit facilitating, participating in, or allowing the issuance of any loans or extension of credit to a patron for gaming purposes; printed materials provided by racetrack operators shall be in both English and Spanish;

(7) a comprehensive employee training plan satisfactory to the board, including training manuals and other materials necessary to educate employees about compulsive gambling issues; the training plan shall include instruction in the psychology of the compulsive gambler, methods of recognizing compulsive gambling behavior, intervention techniques and other subjects as determined by the board;

(8) form for certifying, to the board's satisfaction, that each employee required to obtain the training has done so within the time period specified by this rule;

(9) details of a

follow-up training program to periodically reinforce employee training;

(10) estimated costs for implementation and administration;

(11) timetable and procedures for implementing the compulsive gambling assistance plan; the plan must be implemented no later than 90 days from the date gaming commences on the licensed premises;

(12) details from licensee on the provider to whom referrals are made;

(13) treatment providers shall provide documentation showing that they are licensed, in good standing and have a documented competency in the field of problem gambling issues; and

(14) any other policies and procedures recommended by the state of New Mexico department of health and approved by the board or established by the board.

**B.** The board shall submit the entire plan to the state of New Mexico department of health for evaluation. The New Mexico department of health shall recommend to the board approval or disapproval of the plan. [4/15/99; 15.1.18.9 NMAC - Rn, 15 NMAC 1.18.9, 3/31/00; A, 2/28/05; A, 10/15/15]

## GAMING CONTROL BOARD

**This is an amendment to 15.1.19 NMAC, Sections 7-10 & 12 and adding Sections 9, 11 & 13, effective 10/15/15.**

**15.1.19.7 DEFINITIONS:**  
Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A.** "Act" means the New Mexico Gaming Control Act.

**B.** [~~"Department"~~ means the New Mexico Human Services Department.] **"Board"** means the New Mexico gaming control board.

**C.** **"Child support enforcement lien list"** means a list of persons subject to a child support enforcement lien by the New Mexico child support enforcement division of the New Mexico department of human services.

**D.** **"Involuntary exclusion list"** means a list of persons who have been excluded from all gaming operator licensee's premises in New

Mexico pursuant to Section 60-2E-34 NMSA 1978.

**[E] E.** "Person" means an individual.

**F.** **"Self-exclusion list"** means a list maintained by the board of persons who have requested to be excluded from gaming at one or more gaming operator licensee's premises pursuant to Section 60-2E-34.1 NMSA 1978.

**[D] G.** "State" means the state of New Mexico.

**[E] H.** "This title" means Title 15, Chapter 1 of the New Mexico Administrative Code (NMAC).

**[F] I.** "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

**[G] J.** **"Winning patron"** means a person [entitled to winnings] who wins a jackpot or other prize based on his or her play on a gaming machine.

**[H] K.** **"Winnings"** means the gaming machine amount due a winning patron as a result of a legitimate wager; "winnings" are based on a single winning transaction on a gaming machine or other single transaction that entitles the winning patron to money, a prize, or other award. [4/30/99; 15.1.19.7 NMAC - Rn & A, 15 NMAC 1.19.7, 10/15/00; A, 1/31/02; A, 10/15/15]

**15.1.19.8 PAYOUT RESTRICTIONS:** A gaming operator licensee shall not pay winnings [~~in excess~~] of twelve hundred dollars (\$1,200.00) or more to any winning patron without following the procedures set forth in this rule. [4/30/99; 15.1.19.8 NMAC - Rn, 15 NMAC 1.19.8, 10/15/00; A, 7/31/02; A, 6/30/08; A, 10/15/15]

**15.1.19.9 MAINTENANCE OF SECURE ONLINE DATABASE:**

**A.** The board shall maintain a secure, password protected online database containing the names of persons on the child support enforcement division of the state human services department list as owing child support in the state, and the names of persons who have self-excluded from gaming establishments within the state.

**B.** A racetrack gaming operator licensee shall designate persons who may access the online database using a form approved by the board. A person identified as having access to the online database shall be provided a unique password by the board, enabling that person to access the database.

C. A racetrack gaming operator licensee shall notify the board's information systems division within twenty four (24) hours of the termination of employment of any person having access to the online database using a form approved by the board.

D. A person having access to the online database is prohibited from accessing the database for any purpose other than as provided for in this rule. Accessing the online database for any purpose other than as provided for in this rule shall be grounds for imposition of a fine or revocation of that person's certification of finding of suitability or work permit, or both.

E. A gaming operator licensee shall develop internal controls to ensure that the database lookup is performed and documented properly. [15.1.19.9 NMAC - N, 10/15/15]

~~[15.1.19.9]~~ **15.1.19.10 VERIFICATION OF WINNINGS; REPORTING PROCEDURES; RACETRACK GAMING OPERATORS:**

A. When the winning patron seeks payment of winnings in the amount of twelve hundred dollars (\$1,200.00) or more, ~~the~~ a racetrack gaming operator licensee shall verify the winnings in accordance with approved minimum internal control standards.

B. Upon verification of the validity of the winnings, and before payment of the winnings, the racetrack gaming operator licensee ~~must~~ shall ensure that the winning patron completes a form provided or approved by the board to report the winnings.

C. The form ~~must~~ shall include the following information and ~~must~~ shall be completed in full:

- (1) the name, address, telephone number, and social security number of the winning patron;
- (2) the exact amount of the winnings;
- (3) the date the winnings were won; and
- (4) the name, address, telephone number, and gaming operator license number of the gaming operator.

D. ~~In addition to providing the information required in Subsection C of 15.1.19.9 NMAC above,~~ the winning patron must sign and date the following statements, under penalty of perjury:

(1) a statement declaring, to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not

delinquent in child support payments in any state; and

(2) a statement attesting to the accuracy of the information provided:

E. After the winning patron completes the form;] After verifying the win, the racetrack gaming operator licensee shall verify the identity of the winning patron and the information provided by the winning patron on the form against at least one (1) of the following forms of photograph identification.

(1) valid driver licensee issued by any state in the United States of America;

(2) valid identification card issued by any state in the United States of America;

(3) valid employment card issued by any state in the United States of America;

(4) valid military identification card or military dependent identification card;

(5) valid passport issued by the United States government ~~and/or~~ or other country recognized by the United States government; and

(6) valid alien resident identification card issued by the United State government.

~~[F]~~ E. The racetrack gaming operator licensee ~~must~~ shall also verify the social security number provided by the winning patron on the form against one (1) of the following documents:

(1) winning patron's social security card; or

(2) by having patron complete internal revenue service (IRS) form W-9.

F. After a racetrack gaming operator licensee verifies the win and the identification of the winning patron, the gaming operator licensee shall enter the winning patron's name and social security number into the secure online database in order to determine whether the winning patron's name is currently on the involuntary exclusion list, self-exclusion list or the child support enforcement lien list. The racetrack gaming operator licensee shall print out the database lookup information and attach it to the jackpot paperwork.

G. If a racetrack gaming operator licensee determines that the winning patron is currently on the child support enforcement lien list the licensee shall:

(1) notify the winning patron that his name appears on

the child support enforcement lien list;

(2) withhold payment of the jackpot;

(3) document the transaction and account for all monies so withheld in accordance with the licensee's internal controls;

(4) within twenty-four (24) hours fill out and fax or e-mail a notification form to the state child support enforcement division of the New Mexico department of human services;

(5) provide a printout of the database lookup page to the winning patron;

(6) the child support enforcement division will notify the racetrack gaming operator licensee within seven (7) days of whether all or part of the jackpot may be released to the winning patron; the gaming operator licensee shall hold any monies claimed by the child support enforcement division until the outcome of any child support lien is determined; upon being notified of the outcome of the child support enforcement division lien, the gaming operator licensee shall either pay the winnings to the winning patron or forward the winnings to the child support enforcement division with the case number attached.

H. If a gaming operator licensee determines that the winning patron is currently on the self-exclusion database, the licensee shall:

(1) notify the patron of his self-excluded status;

(2) withhold the jackpot and confiscate any credits on the gaming machine being played by the self-excluded person for use to supplement the licensee's statutory compulsive gambling monies;

(3) document and account for all monies so withheld in accordance with the licensee's internal controls; and

(4) provide a printout of the database lookup page to the winning patron.

I. If a racetrack gaming operator licensee determines that a winning patron is on both the child support enforcement lien list and the self-exclusion list, the licensee shall use the procedures set forth in Subsection G of 15.1.19.10 NMAC. In the event that there are winnings in excess of any child support enforcement lien, with respect to those monies the licensee shall use the procedures set forth in Subsection H of 15.1.19.10 NMAC.

J. If a racetrack gaming operator licensee determines that a winning patron is on the involuntary

exclusion list, the licensee shall exclude the winning patron from the premises and notify the winning patron that he may be subject to prosecution for criminal trespass. If a winning patron on the involuntary exclusion list is also on the child support enforcement lien list, the licensee shall follow the procedures for forfeiture set forth in Subsection G of 15.1.19.10 NMAC.

**[G] K.** If the winning patron is not involuntarily excluded, self-excluded or subject to a child support enforcement lien, the racetrack gaming operator licensee shall pay the winnings upon verification of the information provided by the winning patron [the gaming operator licensee may pay the winnings].

**L.** In the event the online database is not functioning at the time of a jackpot win, a racetrack gaming operator licensee shall:

(1) ensure that the winning patron completes a form provided or approved by the board to report the winnings; the form shall be completed in full and include the following information:

(a) a statements, under penalty of perjury that to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not delinquent in child support payments in any state; and

(b) a statement, under penalty of perjury attesting to the accuracy of the information provided.

(2) when the online database regains functionality, look up the patron's information on the database; if the patron is found to owe child support, the racetrack gaming operator shall report the patron's information to the child support enforcement division within forty-eight (48) hours.

**[H] M.** If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete [the] any reporting form, the gaming operator licensee [must] shall withhold the winnings until such time as the information is provided.

[4/30/99; 15.1.19.9 NMAC - Rn, 15 NMAC 1.19.9, 10/15/00; A, 1/31/02; A, 7/31/02; A, 5/14/04; 15.1.19.10 NMAC - Rn & A, 15.1.19.9 NMAC; 10/15/15]

**15.1.19.11 VERIFICATION OF WINNINGS; REPORTING PROCEDURES; NON-PROFIT GAMING OPERATORS:**

**A.** When the winning patron seeks payment of winnings in the amount of twelve hundred dollars (\$1,200.00) or more, the non-profit gaming operator licensee shall verify the winnings in accordance with approved minimum internal control standards.

**B.** Upon verification of the validity of the winnings, and before payment of the winnings, the non-profit gaming operator licensee shall ensure that the winning patron completes a form provided or approved by the board to report the winnings.

**C.** The form shall include the following information and must be completed in full:

(1) the name, address, telephone number, and social security number of the winning patron;

(2) the exact amount of the winnings;

(3) the date the winnings were won; and

(4) the name, address, telephone number, and gaming operator license number of the gaming operator.

**D.** In addition to providing the information required in Subsection C of 15.1.19.10 NMAC above, the winning patron shall sign and date the following statements, under penalty of perjury:

(1) a statement declaring, to the best of the winning patron's knowledge and belief, that the winning patron does not owe and is not delinquent in child support payments in any state; and

(2) a statement attesting to the accuracy of the information provided.

**E.** After the winning patron completes the form, the non-profit gaming operator licensee shall verify the identity of the winning patron and the information provided by the winning patron on the form against at least one (1) of the following forms of photograph identification:

(1) valid driver licensee issued by any state in the United States of America;

(2) valid identification card issued by any state in the United States of America;

(3) valid employment card issued by any state in the United States of America;

(4) valid military identification card or military dependent identification card;

(5) valid passport issued by the United States

government or other country recognized by the United States government; and  
(6) valid alien resident identification card issued by the United States government.

**F.** The non-profit gaming operator licensee shall also verify the social security number provided by the winning patron on the form against one of the following documents:

(1) winning patron's social security card; or  
(2) by having patron complete internal revenue service (IRS) form W-9.

**G.** Upon verification of the information provided by the winning patron, the non-profit gaming operator licensee shall pay the winnings.

**H.** If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete the reporting form, the gaming operator licensee must withhold the winnings until such time as the information is provided.

[15.1.19.11 NMAC - N, 10/15/15]

**~~[15.1.19.10]~~ 15.1.19.12 DISTRIBUTION OF REPORTING FORM:**

**A.** The gaming operator licensee [must] shall provide a copy of the reporting [form] forms to the winning patron and retain a copy for the gaming operator's records.

**B.** [The] A non-profit gaming operator licensee [must] shall provide, on a weekly basis, copies of all such reporting forms to the director of child support enforcement or his designee.

**C.** Reports of winnings [may] shall not be made to the department by telephone.

**D.** [The] A non-profit gaming operator licensee is required to report to the department in any week in which the gaming operator licensee makes payments of winnings in the amount of twelve hundred dollars (\$1,200.00) or more.

[4/30/99; 15.1.19.10 NMAC - Rn, 15 NMAC 1.19.10, 10/15/00; A, 1/31/02; A, 7/31/02; A, 5/14/04; 15.1.19.12 NMAC - Rn & A, 15.1.19.10 NMAC; 10/15/15]

**15.1.19.13. MEMORANDA OF UNDERSTANDING WITH TRIBAL GAMING ENTERPRISE; AUTHORITY OF STATE GAMING REPRESENTATIVE:**

The state may allow tribal gaming venues access to the list of persons owing child support by tribal gaming compact or through a memorandum of understanding between

the state tribal gaming representative and the tribe.  
[15.1.19.13 NMAC - N; 10/15/15]

**GAMING CONTROL BOARD**

This is an amendment to 15.1.23 NMAC, Sections 2, 3, 6 thru 11, effective 10/15/15.

**15.1.23.2 SCOPE:** This rule applies to all persons holding or required to hold a work permit or certification of finding of suitability under the Gaming Control Act.  
[15.1.23.2 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.3 STATUTORY AUTHORITY:** Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the Gaming Control Board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Pursuant to Section 60-2E-36 of the Gaming Control Act, a work permit may be revoked as provided in regulations adopted by the Gaming Control Board. Pursuant to Section 60-2E-16(G) of the Gaming Control Act the gaming control board may limit, condition, restrict, revoke or suspend a license, certification or permit for any cause.  
[15.1.23.3 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.6 OBJECTIVE:** The objective of this rule is to provide to persons holding work permits or certifications of finding of suitability issued by the gaming control board notice of the types of circumstances under which the board may revoke the work permit or finding of suitability.  
[15.1.23.6 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:  
A. "Act" means the New Mexico Gaming Control Act.  
B. ["licensee" means a person holding a work permit or certification of finding of suitability issued pursuant to the Act.  
C. "This title" means Title 15, Chapter 1 of the New Mexico Administrative Code (NMAC).  
[15.1.23.7 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.8 REVOCABLE PRIVILEGE:** The holder of a work permit or certification of finding of suitability issued by the board under the act has a revocable privilege only.  
[15.1.23.8 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.9 GROUNDS FOR REVOCATION OF A WORK PERMIT OR CERTIFICATION OF FINDING OF SUITABILITY:**

A. The board may initiate action to revoke a work permit or certification of finding of suitability for any cause deemed reasonable by the board, including but not limited to the following:

(1) the making of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including a background investigation, regardless of when discovered by the board;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of a civil judgment against the licensee that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the conduct of gaming activity;

(6) any aspect of the [licensee's] past conduct, character, or behavior of the holder of the work permit of finding of suitability that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the conduct of gaming activity or licensee's involvement in gaming activity;

(7) failure to timely respond to any request by, or order of, the board or its agent;

(8) revocation or suspension of a work permit or other gaming license or certification in any jurisdiction;

(9) violation of any provision of the act or this title;

(10) failure to notify the board in writing of any criminal conviction or criminal charge pending

against the licensee within ten (10) days of any arrest, summons, or conviction as required in 15.1.10.30 NMAC;

(11) theft or attempted theft;

(12) falsification of, failure to make a required entry in, or destruction of records required to be maintained;

(13) failure to notify the board of any matter requiring notice under the act or rules or failure to obtain approval of the board as required under the act or rules;

(14) termination of employment;

(15) refusal to submit to a background investigation;

(16) failure to appear and testify at the designated time and place, unless excused by the board;

(17) refusal or failure to renew a work permit or certification of finding of suitability;

(18) refusal or failure to notify the board of any change in employment or address;

(19) refusal or failure to possess the licensee's work permit or certification of finding of suitability badge while engaged in the conduct of gaming activities;

(20) failure to follow minimum internal controls; and

(21) any other cause deemed appropriate by the board.

B. Any person whose [work permit] certification of finding of suitability has been revoked by the board may not reapply for a [work permit] certification of finding of suitability or other gaming license in New Mexico.  
[15.1.23.9 NMAC - N, 10/15/00; A, 1/31/02; A, 10/15/15]

**15.1.23.10 REVOCATION PROCEEDINGS; SURRENDER OF WORK PERMIT OR CERTIFICATION OF FINDING OF SUITABILITY:**

A. If after investigation the board determines that sufficient grounds exist to revoke a work permit or certification of finding of suitability, the board will initiate a hearing on the matter by issuing a complaint.

B. The required contents and service of the complaint and all other aspects of the proceeding will be conducted in accordance with board rule 15.1.14 NMAC, "Enforcement Proceedings Under the Gaming Control Act."

C. A work permit or certification of finding of suitability badge

issued by the board is state property and must be returned to the board by the licensee upon revocation of the work permit or certification of finding of suitability.

[15.1.23.10 NMAC - N, 10/15/00; A, 10/15/15]

**15.1.23.11 DELEGATION OF AUTHORITY TO INITIATE WORK PERMIT REVOCATION PROCEEDINGS:**

**A.** At the board's discretion, the board may delegate to the Executive Director authority to make the initial determination to revoke a work permit and to issue a complaint seeking revocation. The initial determination must be based on evidence sufficient to support issuance of a complaint seeking to revoke the work permit.

**B.** The board retains accountability for the authority delegated and retains the authority to make the final decision to revoke a work permit following the initial decision by the Executive Director, public hearing before a duly appointed hearing officer, and receipt of the hearing officer's recommended decision.

[15.1.23.11 NMAC - N, 10/15/00; A, 10/15/15]

**GAMING CONTROL BOARD**

**This is an amendment to 15.1.24 NMAC, Sections 7, 8 and 13, effective 10/15/15.**

**15.1.24.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

**A.** "Act" means the New Mexico Gaming Control Act.

**B.** "Administrator" means a ~~[New Mexico licensed racetrack gaming operator authorized]~~ person holding a certification of finding of suitability authorizing such person to host a multi-link progressive system in which ~~[two or more]~~ a New Mexico licensed racetrack gaming [operators participate] operator participates.

**C.** "Base amount" means the amount of the progressive jackpot before it increases.

**D.** "Central monitoring system" means the hardware and software at the board's central site used to control, monitor, and retrieve information from, all licensed gaming machines.

**E.** "Incremental amount" means the difference between the amount of the progressive jackpot and its base amount.

**F.** "Jackpot pool" means the sum of money from which progressive prize payoffs are made.

**G.** "Media" means any storage device or medium that contains software which can only be used in a gaming device, affects game outcome, and is programmed by the gaming machine manufacturer. "Media" includes but is not limited to EEPROM's, EPROM's compact flash memory, flash RAM, CDROM's or hard drives.

**H.** "Multi-link" means a wide area progressive in which ~~[two or more]~~ a New Mexico licensed gaming [operators participate] operator participates in a linked progressive, and which may include participants licensed in jurisdictions other than New Mexico.

**I.** "Progressive display" means the electronic display designed to show the current amount of a progressive jackpot.

**J.** "Progressive gaming machine" means a licensed gaming machine of one (1) or more linked machines that are played with a potential award that increases based on a percentage of coin, token or credit play.

**K.** "Progressive jackpot" means a gaming machine award that increases automatically over time based on a percentage of coin, token or credit play as the machine or another linked machine is played.

**L.** "Progressive central system" means the hardware and software that controls all communications among the linked machines participating in a multi-link configuration.

**M.** "Progressive controller" means the hardware and software that controls all communications among the linked machines.

**N.** "Progressive tracking log" means a form that documents information about, and changes to, progressive banks.

**O.** "Progressive system" means one (1) or more gaming machines linked to a common progressive jackpot; the system includes an approved electronic configuration consisting of a progressive controller, progressive displays, and gaming machines with progressive capable gaming media.

**P.** "Reserve pool" means the sum of money available for the start of the next progressive jackpot; the start is determined by the restart value, percentage in the reserve pool, and base

amount.

[15.1.24.7 NMAC - N, 5/31/00; A, 5/15/07; A, 10/15/15]

**15.1.24.8 ELIGIBILITY; REQUIREMENTS FOR AN ADMINISTRATOR:**

**A.** Any New Mexico racetrack gaming operator licensee is eligible to operate a progressive system upon approval of the progressive system by the board and compliance with this rule.

**B.** Any person other than a New Mexico racetrack gaming operator licensee may act as an administrator of a multi-link progressive upon issuance of a certification of finding of suitability by the board approving the activity.

**C.** Any New Mexico racetrack gaming operator licensee or other person who intends to act as an administrator of a multi-link progressive system shall submit an application to the board.

~~[C]~~ **D.** The application shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

~~[D]~~ **E.** A New Mexico racetrack gaming operator licensee or other person shall not act as an administrator for a multi-link progressive system unless the board has approved the licensee's application in writing. [15.1.24.8 NMAC - N, 5/31/00; A, 5/15/07; A, 10/15/15]

**15.1.24.13 PARAMETERS; FUNDING; CASH REQUIREMENTS:**

**A.** All or an incremental amount of a progressive jackpot may be transferred to another progressive gaming machine at the same location provided that the progressive liability transfer is immediately documented on the progressive tracking log and the liability is maintained by the licensee offering the progressive until the progressive transfer is completed. Once a progressive award has been offered for play, it shall be permitted to remain until it is won by a player or transferred to other progressive games.

**B.** Any machine offering the jackpot to which all or an incremental amount of another progressive jackpot was distributed shall not require that more money be played on a single play to win the jackpot than the machine from which the incremental amount was distributed, and any machine offering the jackpot to which the incremental amount is distributed shall comply with the

minimum theoretical payout requirement of these rules. The distribution shall be completed within thirty (30) days after the progressive jackpot is removed from play or within such longer period as the board or its designee may for good cause approve

C. The executive director or its designee, upon a showing of exceptional circumstances, may approve a reduction, elimination, distribution, or procedure not otherwise described in this subsection, which approval is confirmed in writing.

D. A licensee may limit a progressive jackpot to an amount that is equal to or greater than the amount of the jackpot when the limit is imposed. The licensee shall post a conspicuous notice of the limit at or near the gaming machine or machines to which the limit applies. The minimum jackpot amount, and the maximum jackpot amount if a maximum has been set, shall be posted.

E. The progressive jackpot and reserve pool shall be funded by the licensee at a contribution rate approved in advance by the board.

F. Unless the board has approved the payment of progressive jackpots by annuity, a licensee who operates a progressive gaming system shall maintain a minimum ~~cash~~ reserve of cash or cash equivalents equal to the total of all progressive jackpots that may be won at the location. The board or its designee shall approve all such cash reserves.

G. Records shall be maintained that record the amount shown on a progressive jackpot meter. Supporting documents shall be maintained to explain any reduction in the pay off amount from a previous entry. [15.1.24.13 NMAC - N, 5/31/00; A, 5/15/07; A, 10/15/15]

## GAMING CONTROL BOARD

This is an amendment to 15.1.26 NMAC, Sections 8, 9, 12 and 13, effective 10/15/15.

### 15.1.26.8 POSSESSION OF GAMING DEVICES:

A. A public post-secondary educational institution upon registration with the board may temporarily possess gaming devices for the limited purposes provided for under the act.

B. A vendor upon

registration with the board may temporarily possess unlicensed gaming devices for the limited purpose of exhibiting, demonstrating and marketing the gaming devices at a trade show approved by the board.

C. A person may temporarily possess gaming devices for use in film or theatrical productions or other non-gaming purposes in accordance with the provisions of this part.

D. Gaming devices possessed pursuant to the requirements of this rule are not required to be connected to the state's central monitoring system. [15.1.26.8 NMAC - N, 10/31/02; A, 10/15/15]

### 15.1.26.9 REGISTRATION [GAMING MACHINE LICENSES; TRADE SHOW PERMITS]:

A. All public post-secondary educational institutions no less than thirty (30) days prior to possessing any unlicensed gaming device must register with the board on forms supplied or approved by the board and must provide all information and documents requested. Registration will only be for the institution and specific gaming devices listed in the registration form. The registration form will require the following information:

(1) the full name and address of the public post-secondary educational institution registering with the board;

(2) the full name, address and title of a contact person;

(3) a course description for each course of instruction that the gaming devices will be utilized;

(4) address where the gaming devices will be shipped;

(5) the beginning and ending dates for the courses; and

(6) any other information deemed necessary by the board.

B. The public post-secondary institution must obtain a license from the board for each gaming machine in accordance with the requirements of the Act and board rules. The board may waive, at the board's discretion, all applicable gaming machine license fees.

C. Gaming devices to be exhibited, demonstrated or marketed at a trade show must be registered with the board no less than thirty (30) days prior to opening of the trade show on forms supplied or approved by the board and must provide all information and documents requested. Registration will only be for the vendor and the specific gaming devices listed in the registration

form. The registration form will require the following information:

(1) the full name, address and title of contact person who will be responsible for the gaming devices while at the trade show;

(2) the trade show name, trade show date, and trade show address or location;

(3) the sponsor name, address, phone number, and contact person;

(4) method of shipment or transport of the unlicensed gaming devices, including the name of the carrier, if any;

(5) the number of gaming devices in the shipment;

(6) the manufacturer and serial number of each gaming device in the shipment;

(7) the model number and description of each gaming device;

(8) the expected arrival and departure date of the gaming devices from the destination location within the State; and

(9) any other information deemed necessary by the board.

D. The board will issue each registered vendor a permit which will authorize the possession of the specific gaming devices listed on the registration form for the specific trade show date. The permit holder must display its permit at its exhibit in full view of the public at all times during the operation of the trade show

E. A person who wishes to temporarily possess gaming machines for film or theatrical productions, or for other non-gaming purposes shall be required to apply for approval from the board prior to possessing such gaming machines. The request for written approval shall include, at a minimum, the following information:

(1) the name of the person making the request;

(2) the full name, address and title of a contact person;

(3) the name of the person who will supply the gaming machines;

(4) the method of shipment or transport of the gaming machines, including the name of the carrier, if any;

(5) the number of gaming devices in the shipment, if applicable;

(6) the expected arrival and departure date of the gaming machines from the destination location

within the state;

(7) all the physical addresses or locations where the gaming machines will be located during the time they are in the state, whether in storage or at other locations;  
(8) the dates and times that the gaming machines will be in each specified location;  
(9) the serial numbers of the gaming machines that will be used; and  
(10) the model numbers or description of the gaming machines that will be used.

**F.** The board may approve the application for temporary possession of gaming machines for film or theatrical productions, or for other non-gaming purposes, upon such terms and conditions as it deems appropriate. [15.1.26.9 NMAC - N, 10/31/02; A, 10/15/15]

**15.1.26.12 RESTRICTIONS ON USE, ACCESS AND MOVEMENT OF GAMING DEVICES IN USE FOR FILM, THEATRICAL OR NON-GAMING PURPOSES:**

**A.** Gaming machines shall be used and operated only for the purpose of film or theatrical productions, or for other non-gaming purposes as specifically approved by the board.

**B.** Gaming machines shall at all times remain in demonstration mode.

**C.** Gaming machines shall not be transported to locations other than those approved by the board.

**D.** Upon board request, the person using the gaming machines shall allow the board or its agents and employees access to all places where the gaming machines are located. [15.1.26.12 NMAC - N, 10/15/15]

**~~15.1.26.12~~ 15.1.26.13 FAILURE TO COMPLY WITH REGISTRATION, TRANSPORT, POSSESSION AND USE REQUIREMENTS:**

**A.** Failure to comply with registration, transport, possession and use requirements of this rule will subject the person to a fine or penalty.

**B.** If after investigation the board determines that sufficient grounds exist to assess a fine or penalty the board will initiate a hearing on the matter in accordance with the act and board rules.

[15.1.26.12 NMAC - N, 10/31/02; 15.1.26.13 NMAC - Rn, 15.1.26.12 NMAC, 10/15/15]

**HIGHER EDUCATION DEPARTMENT**

**TITLE 5 POST-SECONDARY EDUCATION  
 CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES  
 PART 6 HIGHER EDUCATION ENDOWMENT FUND**

**5.3.6.1 ISSUING AGENCY:** State of New Mexico Higher Education Department. [5.3.6.1 NMAC - N, 10/15/2015]

**5.3.6.2 SCOPE:** Provisions for 5.3.6 NMAC apply to all public post-secondary institutions in New Mexico. [5.3.6.2 NMAC - N, 10/15/2015]

**5.3.6.3 STATUTORY AUTHORITY:** Sections 21-1-26 and 21-1-27 NMSA 1978. [5.3.6.3 NMAC - N, 10/15/2015]

**5.3.6.4 DURATION:** Permanent. [5.3.6.4 NMAC - N, 10/15/2015]

**5.3.6.5 EFFECTIVE DATE:** October 15, 2015, unless a later date is cited at the end of a section. [5.3.6.5 NMAC - N, 10/15/2015]

**5.3.6.6 OBJECTIVE:** The objective and purpose of 5.3.6 NMAC is to outline the distribution of monies in the higher education endowment fund. Money in the higher education endowment fund is appropriated by the legislature to the higher education department. The department shall distribute funds to New Mexico public post-secondary educational institutions that submit proposals and receive award determinations from the department to establish endowments at the institutions for purposes outlined in 21-1-27 NMSA 1978 and 5.3.6 NMAC. [5.3.6.6 NMAC - N, 10/15/2015]

**5.3.6.7 DEFINITIONS:**  
**A. "Committee"** means the higher education endowment committee.  
**B. "Department"** means the New Mexico higher education department.  
**C. "Eligible institution"** means a New Mexico public post-secondary institution.  
**D. "Endowment"** means the higher education endowment fund.  
**E. "Non-Government**

**Funds"** as used in Subsection E of 5.3.6.8 NMAC herein means no portion of the matching funds from an eligible institution may be derived from any federal, state or local government grant, allocation or appropriation of any type without limitation.

**F. "Proposal"** means a formal request submitted to the higher education endowment committee to establish endowments at an eligible institution for endowment purposes. [5.3.6.7 NMAC - N, 10/15/2015]

**5.3.6.8 HIGHER EDUCATION ENDOWMENT FUND:**

**A.** The "higher education endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

**B.** The higher education endowment fund shall be administered by the department. Money shall be disbursed only on warrant of the secretary of finance and administration upon receipt of voucher signed by the secretary of higher education or the secretary's authorized representative.

**C.** Money in the higher education endowment fund is appropriated to the department for distribution to the public post-secondary educational institutions listed in Subsection D of 5.3.6.8 NMAC that submit proposals and receive award determinations from the department to establish endowments at the institutions for endowment purposes. Endowment purposes shall include:

**(1)** establishing endowed chairs, lectureships, professorships, research positions, graduate assistantships and faculty development programs that will enhance the quality of public post-secondary education in New Mexico; and

**(2)** addressing one or more of the governor's initiatives, including research and development initiatives; technology transfer initiatives; science, technology, engineering and mathematics initiatives; health, education, water and agriculture initiatives; and work force development initiatives.

**D.** Appropriations to the higher education endowment fund shall be distributed to public post-secondary educational institutions as awards made by the department or the higher education endowment committee pursuant to competitive proposals submitted by institutions, as follows:

**(1)** 62% of the total amount to be distributed may



be awarded to the university of New Mexico, the university of New Mexico health sciences center, New Mexico state university and the New Mexico institute of mining and technology;

(2) 20% of the total amount to be distributed may be awarded to the New Mexico military institute and any independent community college, branch community college and technical and vocational institute; and

(3) 18% of the total amount to be distributed may be awarded to New Mexico highlands university, eastern New Mexico university, western New Mexico university and northern New Mexico college.

E. Following an award determination, a public post-secondary educational institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive matching funds, pursuant to a written gift agreement, for the endowment from non-governmental sources in an amount equal to at least 50% of the award amount. Distributions from the higher education endowment fund are made over a two-year cycle with unmatched balances reverting to the general fund at the end of the second fiscal year. Allocations not matched during the first year of a cycle are made available during the second year of a cycle for supplemental or second round matching by any institution listed in Subsection D of 5.3.6.8 NMAC.

F. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the Uniform Prudent Management of Institutional Funds Act and the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be expended only for endowment purposes. [5.3.6.8 NMAC - N, 10/15/2015]

**5.3.6.9 HIGHER EDUCATION ENDOWMENT COMMITTEE:**

The committee is composed of the secretaries of higher education, economic development and finance and administration or their designees.

A. Additional ex-officio members of the committee may be appointed by the department pursuant to policies and procedures set forth by the committee. Ex-officio members will serve only in an advisory capacity and shall not make any vote or otherwise determine the outcome of any proposal submitted to the committee. The advisory members shall be composed of:

(1) two representatives of the council of university presidents, consisting of one person representing the research institutions and one person representing the comprehensive institutions;

(2) a representative of New Mexico independent community colleges;

(3) a representative of the New Mexico association of community colleges; and

(4) other representatives as appointed by the department.

B. The responsibilities of the committee shall include:

(1) review proposals submitted to the committee for sufficiency, quality and merit;

(2) determine whether the proposals and award determinations meet endowment purposes;

(3) determine whether the endowment funds are being distributed pursuant to the provisions of this section;

(4) recommend ways to support or change the endowment purposes award and distribution processes;

(5) make recommendations to the department for the purpose of distribution of endowment funds; and

(6) give advice or other assistance to the department as requested.

C. The committee shall meet no less than twice per year to review proposals and make award determinations. [5.3.6.9 NMAC - N, 10/15/2015]

**5.3.6.10 PROPOSAL REQUIREMENTS:**

A. To be considered eligible for a distribution from the endowment, a proposal submitted by a public postsecondary institution shall:

(1) demonstrate how the funds will be used to enhance the quality of public post-secondary education in New Mexico;

(2) indicate which of the governor’s initiatives the proposal addresses; and

(3) identify the source and eligibility of matching funds.

B. All proposals shall include a report identifying:

(1) The status of all legislative endowment funds held by the institution, including the value of the corpus and any income from investment of said corpus; and

(2) All activities currently supported by the investment income from the endowment. [5.3.6.10 NMAC - N, 10/15/2015]

**5.3.6.11 SELECTION OF PROPOSALS:**

A. The committee shall develop a timeline of application periods setting forth deadlines for proposal submission and a schedule of review.

B. The committee shall develop a scoring matrix that scores all proposals received pursuant to the requirements of 5.3.6.10 NMAC.

C. No award determination shall be made until all proposals submitted within an application period have been reviewed and scored by the committee.

[5.3.6.11 NMAC - N, 10/15/2015]

**5.3.6.12 REPORTS:** The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include the amounts awarded to each institution, the amount of matching funds and their sources and the purposes of the endowments and awards.

[5.3.6.12 NMAC - N, 10/15/2015]

**HISTORY OF 5.3.6 NMAC:**  
[RESERVED]

**HIGHER EDUCATION DEPARTMENT**

This is an amendment to 5.7.18 NMAC, Sections 3, 7, 9 & 10, effective 10/15/2015.

**5.7.18.3 STATUTORY AUTHORITY:** Section [21-1-4G] 21-1-4.5 NMSA 1978 and 21-1-3 NMSA 1978. [5.7.18.3 NMAC - Rp, 5.7.18.3 NMAC, 8/30/2007; A, 10/15/2015]

**5.7.18.7 DEFINITIONS:**

A. “Armed forces” means the United States army, navy, air force, marine corps or coast guard.

B. “Department” means state of New Mexico higher education department.

C. “Dependent minor” means a person determined to be financially dependent upon a parent or guardian and who has not reached the age of majority (eighteen years of age) or is not an emancipated minor. The legal residence of a dependent minor is that of

their parent(s) or custodial parents; or, if both parents are dead, of their legally appointed guardian(s) or of the adult person with whom he or she lives with for more than one-half of the preceding consecutive twelve months. In the event a non-custodial parent is a legal resident of New Mexico as determined in 5.7.18.9 NMAC the dependent minor shall be accorded resident status.

**D. “Emancipated minor”** means any person sixteen years of age or older shall be regarded as an adult for the purposes of determining residency status for tuition charges, provided they:

(1) have entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

(2) are on active duty with any of the armed forces of the United States of America; or

(3) are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds it in the minors best interest to grant a declaration of emancipation pursuant to Section 32A-21-7 NMSA 1978. Mere absence from parental residence does not prove emancipation.

**E. “Enrollment”** means the first day of the term or semester for the student.

**F. “Financially dependent”** means that dependency will be determined according to Section 152 of the 1954 Internal Revenue Code. This includes any person for whom the parent, guardian, or spouse provides at least one-half of their support.

**G. “General fees”** means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

**H. “New Mexico resident for tuition purposes”** means a person who is a United States citizen or has established permanent residence in the United States and has satisfied the requirement(s) and regulations of 5.7.18.9 NMAC.

**I. “Nonresident”** means a student who enters and remains in this state principally to enroll in postsecondary education, is presumed to

continue to reside outside this state, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

**J. “Tuition”** means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

**K. “Tuition reciprocity participants”** mean any nonresident, undergraduate student participating in a tuition reciprocity agreement. Pursuant to Section 21-1-6 NMSA 1978, these participants are ineligible for residency. Furthermore, students may not begin to establish residency (i.e., twelve 12-month durational requirement) until discontinuing from such a program. Refer to department negotiated reciprocity agreements for additional detail.

**L. “Veteran”** means any person meeting the definition of veteran as used in the Veterans’ Service Department Act and provided in 9-22-3 NMSA. [5.7.18.7 NMAC - Rp, 5.7.18.7 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

**5.7.18.9 REQUIREMENTS TO ESTABLISH NEW MEXICO RESIDENCY:**

To become a legal resident of New Mexico for tuition purposes each of the following requirements must be satisfied.

**A. Twelve (12) month durational requirement.** A person must physically reside in New Mexico for the twelve (12) consecutive months immediately preceding the term for which the resident classification is requested. Exceptions may be granted for student’s participating in an internship or student exchange program (excluding those described in 5.7.18.11 NMAC) and not exceeding one (1) semester in duration.

**B. Financial independence requirement.** . Only persons who are financially independent may establish residency apart from parents or guardians. A student cannot be approved for residency who is financially dependent upon his or her parents or legal guardians who are nonresidents of New Mexico. Dependency will be determined according to the 1954 Internal Revenue Service Code, Section 152 and is always based on the previous tax year for residency purposes. If under the age of 23 at the time the student applies for residency, a copy of his/her parents’ or guardians’ 1040 or 1040A U.S. income tax form for the previous tax year is required. If the student is shown to be a dependent on this tax form, he/she will not be considered financially independent or

eligible for residency during the current year.

**C. Written declaration of intent requirement.** The student or person must sign a written declaration of intent to relinquish residency in any other state and to establish it in New Mexico.

**D. Overt acts requirement.**

(1) Overt acts are required to evidence support of the written declaration of intent to establish permanent residency in New Mexico. Any act considered inconsistent with being a New Mexico resident [~~such as having a valid driver’s license from another state;~~] will cause the request for resident classification to be denied. The required overt acts are evidence of any two (2) of the following:

(a) if the applicant is financially dependent, a copy of the parent or guardians’ previous year income tax showing the applicant as a dependent and the parent address as New Mexico; or

(b) a New Mexico high school transcript issued in the past year confirming attendance at a New Mexico public or private high school within the past twelve (12) months; or

(c) a transcript from an online high school showing a New Mexico address confirming attendance within the past twelve (12) months; or

(d) a New Mexico driver’s license or ID card with an original date of issue or a renewal date issued prior to the first day of the term or semester; or

(e) proof of payment of New Mexico state income tax for the previous year; or

(f) evidence of employment within the state of New Mexico; or

(g) New Mexico vehicle registration; or

(h) voter registration in New Mexico; or

(i) proof of residential property ownership in New Mexico; or

(j) a rental agreement within New Mexico; or

(k) utility bills showing the applicant name and a New Mexico address; or

(l) other evidence which would reasonably support the individual’s intent to establish and maintain New Mexico residency.

(2) The department recognizes that there may be

circumstances in which a student would not be able to fulfill the requirements of an overt act as listed in this section, such as: 1) individual is physically disabled and does not have a driver's license, or 2) individual is a convicted felon and therefore cannot vote, etc. In instances such as these, the institution will afford the student an opportunity to provide other documentary evidence or reasonable explanation which demonstrates that permanent residency in New Mexico has been established by the student.

**E. Exceptions to the twelve (12) month requirement.** If a student has met the requirements of one (1) of the following exceptions, and is granted residency status, the student shall continue to be classified and reported as a resident for subsequent, continuing enrollment.

(1) An individual married to a legal resident of New Mexico and providing appropriate evidence shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(2) Any person, their spouse and dependents who move to New Mexico or who now live in New Mexico and who provide appropriate evidence that they work in a permanent full-time position or practice a profession or conduct a business full-time in New Mexico, shall not be required to complete the twelve 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(3) Any person entering the active service of the United States while a resident of New Mexico and who enters a state institution of postsecondary education in New Mexico after separation from such service may be classified as having been a legal resident in New Mexico during the time spent in the service provided they:

(a) have not while in the service done anything (such as voting in another state) to show abandonment of their New Mexico residency;

(b) have not established residence in some other state subsequent to being separated from service;

(c) return to New Mexico within [one year] three (3) years after separation from service with the intention of maintaining this state as their legal residence;

(d) are not a dependent minor with parent(s) or guardian(s) whose place of residence classifies him or her as a nonresident of New Mexico.

(4) Any person, their spouse and dependents, who move to New Mexico for retirement purposes, and who provide appropriate evidence of retirement shall not be required to complete the twelve 12-month durational requirement. They must, however, satisfy the other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

[5.7.18.9 NMAC - Rp, 5.7.18.11 & 12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

**5.7.18.10 WAIVERS:** If a student has met the requirement of one of the following waivers, the student shall continue to be considered a non-resident for reporting purposes but will receive the benefit of the in-state tuition rates. In receiving such a waiver, the student does not become eligible for state funded student financial aid, unless the regulations for a particular aid program allow for such eligibility.

**A. American Indian nations, tribes and pueblos.** All out of state members of an American Indian nation, tribe and pueblo, located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution shall be eligible to pay the in-state tuition rate. These include members of the following tribes or pueblos: Navajo Nation, Jicarilla Apache, Mescalero Apache, Taos pueblo, Picuris pueblo, Ohkay Owingeh, Santa Clara pueblo, Nambe pueblo, San Ildefonso pueblo, Pojoaque pueblo, Tesuque pueblo, Cochiti pueblo, Jemez pueblo, Santo Domingo pueblo, San Felipe pueblo, Zia pueblo, Santa Ana pueblo, Sandia pueblo, Isleta pueblo, Laguna pueblo, Acoma pueblo, Zuni pueblo, and the Ute Mountain tribe.

**B. Armed forces.** Any person, their spouse or dependent child, not otherwise entitled to claim residence, who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty in the state of New Mexico, will be assessed in-state tuition rates.

(1) Assignment to active duty within New Mexico must be certified by the military person's commanding officer upon the student's initial enrollment. Such students may continue paying resident rates for as long

as they attend consecutive semesters at the same institution.

(2) ~~[Pursuant to Section 21-1-4.5 NMSA 1978, a spouse or child of an active member of the armed forces who dies or is killed becomes a resident of New Mexico within sixty (60) days of the date of death.~~

~~(3) Pursuant to Section 21-1-4.5 NMSA 1978, if an active member of the armed forces is stationed outside New Mexico following assignment to duty in New Mexico, and the member's spouse or child established residence in New Mexico and registers a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be assessed in-state tuition rates.] A spouse or child of a veteran of the armed forces is entitled to pay tuition and fees at the rate provided for New Mexico residents; provided that spouse or child is eligible for benefits pursuant to the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal law authorizing educational benefits for a veteran and the dependents of a veteran.~~

**C. National guard.** Pursuant to Section 20-4-14, NMSA 1978, an active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

**D. Part-time students.** During regular academic year semesters, nonresident tuition may be waived, according to the institution's tuition policy, for students (U.S. citizens and foreign nationals) enrolling for no more than six (6) semester hours during a regular term.

**E. Summer session.** During summer sessions, nonresident tuition may be waived according to the institution's tuition policy.

**F. Certain Texas residents.** Pursuant to Section 21-1-3D, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico (specifically, NMHU, ENMU, NMSU, or WNMU), may determine that any Texas resident who resides within a one hundred thirty-five (135) mile radius of that institution may qualify for in-state tuition rates.

**G. Colorado and Arizona reciprocity.** Tuition reciprocity participants from Colorado and Arizona shall be selected by eligible institutions to

pay in-state tuition rates based on criteria set by forth by each eligible institution. The department will notify each eligible institution of the maximum waivers allocated on an annual basis.

**H. Athletic scholarship recipients.** Pursuant to Section 21-1-3E, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, any student (U.S. citizens and foreign nationals) receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the Constitution of New Mexico (specifically, UNM, NMSU, NMHU, ENMU, [or] WNMU, or NNMC) may qualify for in-state tuition rates.

**I. Competitive scholarship recipients.** Any student participating in this program shall be recognized as a competitive scholar and reported as such, unless the student petitions for and is granted residency status.

**J. Graduate assistants,** including research and teaching assistants, employed at least one-fourth time (ten (10) hours weekly), will be assessed in-state tuition rates. To be eligible, students (U.S. citizens and foreign nationals) must be enrolled full-time, as defined in the graduate catalogue of the public postsecondary institution, during regular terms.

**K. Nondiscrimination principle.** ~~[Any]~~ Notwithstanding the provisions of Subsection H of 5.7.18.7 NMAC, any tuition or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one (1) year and who have either graduated from a New Mexico high school or received a ~~[general educational development certificate]~~ high school equivalency credential (such as a general educational development GED) in New Mexico. State-funded financial aid programs with an employment component may require U.S citizenship or eligible non-citizen status.

[5.7.18.10 NMAC - Rp, 5.7.18.12 NMAC, 8/30/2007; A, 5/30/2008; A, 10/15/2015]

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**End Of Adopted Rules**

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**New Mexico Register**  
**Submittal Deadlines and Publication Dates**  
**Volume XXVI, Issues 19-24, 2015 and**  
**Volume XXVII, Issues 1-16, 2016**

<b>Volume XXVI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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<b>Issue 20</b>	<b>October 16</b>	<b>October 29</b>
<b>Issue 21</b>	<b>October 30</b>	<b>November 16</b>
<b>Issue 22</b>	<b>December 1</b>	<b>November 30</b>
<b>Issue 23</b>	<b>November 17</b>	<b>December 15</b>
<b>Issue 24</b>	<b>December 16</b>	<b>December 30</b>

<b>Volume XXVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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<b>Issue 3</b>	<b>February 1</b>	<b>February 12</b>
<b>Issue 4</b>	<b>February 15</b>	<b>February 29</b>
<b>Issue 5</b>	<b>March 1</b>	<b>March 15</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 31</b>
<b>Issue 7</b>	<b>April 1</b>	<b>April 15</b>
<b>Issue 8</b>	<b>April 18</b>	<b>April 30</b>
<b>Issue 9</b>	<b>May 2</b>	<b>May 13</b>
<b>Issue 10</b>	<b>May 16</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 15</b>
<b>Issue 12</b>	<b>June 16</b>	<b>June 30</b>
<b>Issue 13</b>	<b>July 1</b>	<b>July 15</b>
<b>Issue 14</b>	<b>July 18</b>	<b>July 29</b>
<b>Issue 15</b>	<b>August 1</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 16</b>	<b>August 31</b>

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