

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 20 EMERGENCY ORDERS OF THE GAMING CONTROL BOARD

15.1.20.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[4/30/99; 15.1.20.1 NMAC - Rn, 15 NMAC 1.20.1, 10/15/00]

15.1.20.2 SCOPE: This rule applies to all gaming operators, manufacturers and distributors licensees and persons seeking licensure under the Gaming Control Act.
[4/30/99; 15.1.20.2 NMAC - Rn, 15 NMAC 1.20.2, 10/15/00]

15.1.20.3 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-33 authorizes the board to issue emergency orders before an administrative hearing in certain circumstances.
[4/30/99; 15.1.20.3 NMAC - Rn, 15 NMAC 1.20.3, 10/15/00]

15.1.20.4 DURATION: Permanent.
[4/30/99; 15.1.20.4 NMAC - Rn, 15 NMAC 1.20.4, 10/15/00]

15.1.20.5 EFFECTIVE DATE: April 30, 1999, unless a later date is cited at the end of a section.
[4/30/99; 15.1.20.5 NMAC - Rn, 15 NMAC 1.20.5, 10/15/00; A, 2/14/02]

15.1.20.6 OBJECTIVE: The objective of this rule is to establish guidelines and procedures for the issuance of emergency orders by the board.
[4/30/99; 15.1.20.6 NMAC - Rn, 15 NMAC 1.20.6, 10/15/00]

15.1.20.7 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. “board”** means the gaming control board or its designee;
 - C. “enforcement 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;
 - D. “fee”** includes all license, approval, and investigative costs, all gaming taxes, all payments for charitable and educational purposes and all payments for compulsive gaming and horseman’s purses, and any fines that have been imposed by the board;
 - E. “fine”** means any monetary penalty assessed by the board for a violation of the act after an administration hearing has been held or as negotiated between the board and the applicant or licensee in settlement proceedings;
 - F. “gaming tax”** means the excise tax imposed pursuant to Section 60-2E-47 of the act;
 - G. “willfully”** means knowingly or purposefully.
- [4/30/99; 15.1.20.7 NMAC - Rn & A, 15 NMAC 1.20.7, 10/15/00; A, 5/14/04]

15.1.20.8 BASIS FOR ISSUANCE OF AN EMERGENCY ORDER:

- A. The board or any board member may issue, in accordance with this rule, an emergency order to do any one or more of the following:**
 - (1)** suspend, limit or condition a license, registration, finding of suitability or work permit; a fine may be imposed as a condition of continued operation of the license;
 - (2)** take other action in relation to the licensee, including disabling gaming devices, ordering the licensee to cease all gaming activities or involvement in gaming activities, and stopping the movement of gaming devices;
 - (3)** require a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee’s gaming establishment; or
 - (4)** require a gaming operator licensee not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment.

B. The board or any board member may issue an emergency order only when there is probable cause to believe that:

- (1) a licensee has willfully failed to report, pay or truthfully account for and pay any fee imposed by the provisions of the Act or willfully attempted in any manner to evade or defeat any fee or payment of a fee;
- (2) a licensee or gaming employee has cheated at a game; or
- (3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

C. For purposes of Subsection B of 15.1.20.8 NMAC, failure to pay the gaming tax by the fifteenth of the month following the month in which the taxable event occurs constitutes willful failure to pay the gaming tax.

D. Within ten days of the issuance of the emergency order by an individual board member, the board shall meet in special session to consider whether the emergency order should remain in place or be stayed until an administrative hearing is held.

[4/30/99; 15.1.20.8 NMAC - Rn & A, 15 NMAC 1.20.8, 10/15/00; A, 2/14/02; A, 5/14/04]

15.1.20.9 CONTENTS OF EMERGENCY ORDER: The emergency order shall include the specific grounds upon which the order is issued, a statement of facts that constitute the alleged emergency requiring the action, and the specific enforcement action to be taken.

[4/30/99; 15.1.20.9 NMAC - Rn, 15 NMAC 1.20.9, 10/15/00; A, 5/14/04]

15.1.20.10 SERVICE OF EMERGENCY ORDER; EFFECT:

A. The board shall effect personal service of the emergency order as follows:

- (1) upon the licensee or resident agent of the licensee or gaming employee; or
- (2) in cases involving registration or findings of suitability, upon the person or entity involved or resident agent of the entity involved.

B. Proof of service must be provided by a certificate or affidavit of service signed by the person effecting service and specifying the date and time of service.

C. The emergency order is effective immediately upon issuance and service as set forth in this rule. The emergency order remains in effect until further order of the board or final disposition of the case.

[4/30/99; 15.1.20.10 NMAC - Rn, 15 NMAC 1.20.10, 10/15/00; A, 5/14/04]

15.1.20.11 COMPLAINT; ADMINISTRATIVE HEARING:

A. Within five days after the issuance of an emergency order, the board shall file and serve a complaint upon the person or entity involved in accordance with the provisions in 15.1.14 NMAC, except that the respondent shall have 10 days to file an answer with the board.

B. The board will conduct a hearing on the complaint no later than 30 days after service of the complaint.

[4/30/99; 15.1.20.11 NMAC - Rn, 15 NMAC 1.20.11, 10/15/00; A, 5/14/04]

15.1.20.12 NONPAYMENT OF FEES; SUSPENSION OF GAMING LICENSE AND DISABLING OF GAMING MACHINES:

A. The board may suspend a gaming operator's license and disable gaming machines due to nonpayment of a fee owed by the gaming operator licensee.

B. If the overdue fee is the gaming tax, the board shall contact the taxation and revenue department by telephone, letter or e-mail to verify that the gaming operator licensee has not paid the overdue fee.

C. Following verification that the fee has not been paid, the board shall provide to the gaming operator licensee written notice of the overdue fee. The written notice shall include a demand for payment and shall be sent by certified mail or personally delivered to the licensee.

D. The gaming operator licensee shall pay the overdue fee in full and submit proof of payment satisfactory to the board within five days of receipt of the notice.

E. The board shall issue an emergency order to suspend the gaming operator's license and to disable the gaming machines if the gaming operator licensee fails to submit to the board satisfactory proof of full payment of the fee as set forth above. The gaming operator's license shall be suspended and the gaming machines shall be disabled upon service of the emergency order on the gaming operator licensee.

F. Nothing in this Section 15.1.20.12 NMAC shall be construed as prohibiting the board from taking any other appropriate action in the emergency order in addition to suspending the gaming operator's license and

disabling the gaming machines, including imposing a fine against the licensee as a condition of continued operation of the license.

G. In addition to issuance of an emergency order suspending the gaming operator's license and disabling the gaming machines, the board may initiate enforcement proceedings seeking to revoke, limit, condition or further suspend the license, or impose additional fines against the gaming operator licensee, or both.

H. Provided the gaming operator license has not been revoked, the board shall issue an order to lift the suspension and enable the gaming machines upon proof satisfactory to the board that the gaming operator licensee has:

- (1) paid the overdue fee in full;
- (2) paid any fines or other fees assessed by the board or other agency in connection with the overdue fee;
- (3) completed any period of suspension imposed on the license by the board; and
- (4) complied with any and all other conditions imposed by the board.

[15.1.20.12 NMAC - N, 10/15/00; A, 2/14/02; A, 5/14/04]

HISTORY OF 15.1.20 NMAC:

Pre NMAC History: None.

History of Repealed Material: [Reserved]

Other History:

15 NMAC 1.20, Emergency Orders of the Gaming Control Board, effective 4/30/99.

15 NMAC 1.20, Emergency Orders of the Gaming Control Board (filed 4/16/99) reformatted, renumbered, amended and replaced by 15.1.20, Emergency Orders of the Gaming Control Board, effective 10/15/2000.