

# **TITLE 15: GAMBLING AND LIQUOR CONTROL**

## **CHAPTER 1: GAMES AND GAMING GENERAL PROVISIONS**

### **PART 1: REQUIREMENTS AND PROCEDURES GOVERNING PROCUREMENT BY THE GAMING CONTROL BOARD**

#### **15.1.1.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 9/15/98; 15.1.1.1 NMAC – Rn, 15 NMAC 1.1.1, 3/31/00]

#### **15.1.1.2 SCOPE:**

This rule applies to all parties seeking to furnish property and/or services to the New Mexico Gaming Control Board and includes references to regulations and guidelines issued by the General Services Department and to Sections 13-1-74 and 13-1-93 of the Procurement Code.

[N, 9/15/98; 15.1.1.2 NMAC – Rn, 15 NMAC 1.1.2, 3/31/00]

#### **15.1.1.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the Gaming Control Act [Sections 60-2E-1 to 60-2E-61 NMSA 1978] and the Procurement Code [Sections 13-1-28 to 13-1-117 and 13-1-118 to 13-1-199].

[N, 9/15/98; 15.1.1.3 NMAC – Rn, 15 NMAC 1.1.3, 3/31/00]

#### **15.1.1.4 DURATION:**

Permanent.

[N, 9/15/98; 15.1.1.4 NMAC – Rn, 15 NMAC 1.1.4, 3/31/00]

#### **15.1.1.5 EFFECTIVE DATE:**

September 15, 1998, unless a later date is cited at the end of a section.

[N, 9/15/98; 15.1.1.5 NMAC – Rn, 15 NMAC 1.1.5, 3/31/00; A, 2/14/02]

#### **15.1.1.6 OBJECTIVE:**

The objectives of this rule are to notify potential contractors of the procedures and requirements for furnishing property and/or services to the Gaming Control Board.

[N, 9/15/98; 15.1.1.6 NMAC – Rn, 15 NMAC 1.1.6, 3/31/00]

#### **15.1.1.7 DEFINITIONS:**

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

**A. "board"** means the New Mexico Gaming Control Board.

**B. "contractor"** means any party submitting a bid, proposal, and/or quote to the board for the furnishing of property and/or services.

**C. "controlling interest"** means owning, directly or indirectly, 5% or more of the voting securities in a gaming interest.

**D. "gaming"** means those activities defined as "game" and "gaming activity" in the Gaming Control Act and also includes Class III gaming as that term is defined in an Indian Gaming Compact executed between the State of New Mexico and an Indian nation, tribe, or pueblo.

**E. "gaming interest(s)"** means, but is not limited to, person(s), partnership(s), trust(s), corporation(s), limited liability corporation(s), limited liability partnership(s), joint venture(s), and other legal entities that do any one or combination of the following: (1) own an establishment where gaming activities occur; (2) own or lease a premises where gaming activities occur; (3) operate an establishment where gaming activities occur; (4) manufacture gaming devices, and/or (5) distribute (including leasing) gaming devices.

**F. "personal property"** means that property defined in Section 13-1-93 NMSA 1978 of the Procurement Code as tangible personal property.

**G. "procurement"** means those activities defined as "procurement" in Section 13-1-74 NMSA 1978 of the Procurement Code.

**H. "state purchasing agent"** means the Director of the General Services Department and includes any person(s) receiving a delegation of authority from the Director of the General Services Department.

[N, 9/15/98; 15.1.1.7 NMAC – Rn, 15 NMAC 1.1.7, 3/31/00]

#### **15.1.1.8 GENERAL PROCUREMENT BY THE BOARD:**

The Board shall procure all property and services in accordance with the regulations and guidelines issued by the General Services Department unless, pursuant to the Procurement Code, the Board elects to adopt its own regulations for procurement of items exempted from the State Purchasing Agent's sole procurement authority. Procurement of personal property valued in excess of twenty thousand dollars (\$20,000) is subject to the provisions of section 15.1.1.9 of this rule.

[N, 9/15/98; 15.1.1.8 NMAC – Rn, 15 NMAC 1.1.8, 3/31/00]

**15.1.1.9 PROCUREMENT BY THE BOARD OF PERSONAL PROPERTY VALUED IN EXCESS OF TWENTY THOUSAND DOLLARS (\$20,000):**

Pursuant to Section 60-2E-8(C)(17) of the Gaming Control Act, all procurement by the Board of personal property valued in excess of twenty thousand dollars (\$20,000) shall be made pursuant to General Services Department Regulations and published guidelines and the Procurement Code. Such procurement is also subject to the following:

**A. Board Approval:** All procurement approvals, awards and/or final decisions for personal property valued in excess of twenty thousand dollars (\$20,000) shall be made at duly-noticed open meetings of the Board unless the Board, at a duly-noticed open meeting, delegates approval authority to the Executive Director.

**B. Background Checks Required of Some Contractors:** All contractors that have ties to current or likely gaming interests in New Mexico, including but not limited to, significant contractual relationships, ownership, parent-subsidiary relationships, holding company relationships, employment, and/or controlling interests shall be required, upon submission of a proposal, bid, or quote to furnish personal property in excess of twenty thousand dollars (\$20,000) in response to a procurement request or invitation by the Board, to submit to a background investigation including the completion of all required information on forms and/or complete responses to written and oral questions provided by the Department of Public Safety and/or the Board. At the Board's discretion, contractors covered by this subsection will not receive an award or final approval from the Board, or may be granted a conditional award or approval, until the background investigation is completed and the Board is satisfied that the contractor has the requisite moral character, financial and technical competency, and lack of criminal record necessary to meet the Board's procurement needs consistent with the Gaming Control Act and the public interest. The Board, in its discretion, may require any other contractors not tied to gaming interests and who propose to furnish personal property in excess of twenty thousand dollars (\$20,000) to submit to background investigations.

**C. Refusal to Submit to Background Investigation Constitutes Automatic Disqualification:** Any contractor that refuses to submit to a background check as provided in Subsection B of 15.1.1.9 NMAC shall be automatically disqualified.

[N, 9/15/98; 15.1.1.9 NMAC – Rn & A, 15 NMAC 1.1.9, 3/31/00; A, 2/14/02]

## **PART 2: CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION**

### **15.1.2.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[11/30/98; 15.1.2.1 NMAC - Rn, 15 NMAC 1.2.1, 1/31/02]

### **15.1.2.2 SCOPE:**

This rule applies to information provided to the Gaming Control Board under the New Mexico Gaming Control Act and to the State Gaming Representative pursuant to an approved Indian Gaming Compact with the State of New Mexico.

[11/30/98; 15.1.2.2 NMAC - Rn & A, 15 NMAC 1.2.2, 1/31/02]

### **15.1.2.3 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. Sections 60-2E-8(C)(11) and 60-2E-41 specifically direct the board to adopt regulations restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act.

[11/30/98; 15.1.2.3 NMAC - Rn, 15 NMAC 1.2.3, 1/31/02]

### **15.1.2.4 DURATION:**

Permanent.

[11/30/98; 15.1.2.4 NMAC - Rn, 15 NMAC 1.2.4, 1/31/02]

### **15.1.2.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[11/30/98; 15.1.2.5 NMAC - Rn & A, 15 NMAC 1.2.5, 1/31/02]

### **15.1.2.6 OBJECTIVE:**

This rule establishes criteria for determining the confidentiality of information and data received by the Gaming Control Board and circumstances under which the Gaming Control Board may disclose confidential information in its possession.

[11/30/98; 15.1.2.6 NMAC - Rn & A, 15 NMAC 1.2.6, 1/31/02]

### 15.1.2.7 DEFINITIONS:

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

**A. "compact"** means an approved gaming compact and revenue sharing agreement between a Tribe and the State.

**B. "gaming enterprise"** means the tribal entity created and designated by the tribe as having authority to conduct Class III gaming pursuant to a valid gaming compact with the State of New Mexico.

**C. "proprietary information"** means written processes, data, or other internal records or materials developed by and available exclusively to the owner, the disclosure of which would seriously impair the owner's operations or its ability to operate or compete against similar operations.

**D. "State"** means the State of New Mexico.

**E. "State Gaming Representative"** means the person designated by the Gaming Control Board pursuant to the Gaming Control Act who is responsible for actions of the State set out in the compact.

**F. "Tribe"** means any Indian tribe or pueblo located within the State that has entered into an approved gaming compact and revenue sharing agreement with the State.

[11/30/98; 15.1.2.7 NMAC - Rn & A, 15 NMAC 1.2.7, 1/31/02]

### 15.1.2.8 CONFIDENTIAL INFORMATION:

**A.** Confidential information includes any information, document, or communication that is:

(1) required by law or rules promulgated by the board to be furnished in connection with an application submitted to the board or that may otherwise be obtained by the board in connection with the application;

(2) provided to the members or agents of the board by a licensee when such information is required to be submitted or disclosed under the law or rules promulgated by the board;

(3) provided to the members or agents of the board by a governmental agency or a confidential informant;

(4) compiled by the members or agents of the board from other confidential information, including lists of persons who have been approved for, or denied, work permits by the board;

(5) obtained by the board in connection with an application for self-exclusion;  
or

(6) obtained or compiled by the board or its agents in the course of an investigation of an applicant or licensee; the information, document or communication remains confidential unless and until disclosure is permitted under the act.

**B. Confidential information does not include:**

(1) names and business addresses of applicants or the fact that an applicant has filed an application with the board;

(2) names and business addresses of any and all of an applicant's parent companies, affiliates, subsidiaries, partners, limited partners, major shareholders owning more than five percent of an applicant's stock, trustees, successor trustees, trust beneficiaries, or of any person that controls or is in a position to control or exercise other significant involvement in the operations of the applicant or licensee;

(3) names and business addresses of all officers and key employees of the applicant;

(4) names and business addresses of parties with whom the applicant or licensee contracts or expects to contract to support the operation of gaming establishments, including the names and addresses of landlords owning the premises where gaming will occur;

(5) names and business addresses of manufacturers and distributors with whom the applicant or licensee contracts or expects to contract for the sale, lease, or use of gaming devices;

(6) written order of final board approval or denial of an application and any other final action of the board taken on any other matter involving an applicant or licensee, including but not limited to, enforcement actions, investigations, rulings on motions and requests for legal determinations;

(7) legal documents submitted by applicants or licensees, including but not limited to, motions, requests for legal determinations, comments, briefs, notices of appeal, etc.; *provided*, however, that information contained or attached to such documents that otherwise meets the confidentiality requirements of this section will be treated accordingly pursuant to Subsection A of 15.1.2.8 NMAC and all its subparts above;

(8) documents or information that is available from another state agency, federal agency, or other public source;

(9) an administrative complaint filed by the board; or pleadings filed by any party to such an administrative complaint; or

(10) Any other information ruled by the board, in its discretion not to be confidential.

**C.** The board members or agents will receive, process, store and maintain all confidential information in a manner and location sufficient to ensure that the confidential information is secure and that access is strictly limited to authorized persons. Only members of the board or its agents, including persons designated by the board or authorized by law to conduct investigations of applicants and licensees, may have access to the confidential information, except that designated employees of gaming operator licensees shall have access to the names of persons self-excluded from gaming venues, as necessary to implement the state's self-exclusion program and as provided by rules promulgated by the board.

**D.** Confidential information shall be disclosed upon issuance of a lawful order by a court of competent jurisdiction ordering the board to release such information. Absent such an order, confidential information will be disclosed only with the prior written consent of the subject applicant or licensee, except as required to implement the state's self-exclusion program and as provided by rules promulgated by the board.

[11/30/98; 15.1.2.8 NMAC - Rn & A, 15 NMAC 1.2.8, 1/31/02; A, 1/29/16]

#### **15.1.2.9 REQUESTS FOR DISCLOSURE OF CONFIDENTIAL INFORMATION:**

**A.** Nothing in this rule may be construed as requiring the board to create any document or compilation of any confidential information for the purpose of responding to a request for disclosure.

**B.** Any person seeking access to confidential information in the board's possession may file a request for disclosure by the board. The request must be in writing, must state the purpose of the request and the proposed use of the information, and must be sufficient to adequately identify and limit the documents or information sought. A separate request must be filed for each applicant or licensee about whom information is sought. The procedure for requesting confidential information described herein does not apply to information subject to disclosure pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq NMSA.

**C.** Within ten (10) working days of receipt of the request, the board will make a preliminary assessment whether the request satisfies the requirements of Subsection 15.1.2 9(B). If the request fails to satisfy the requirements of Subsection 15.1.2 9 (B), the board will deny the request on the basis of the deficiencies and will return the

request to the person seeking the information with an explanation of the deficiencies. No further action will be required of the board.

**D.** Within fifteen (15) working days of receipt of the request, if the request meets the requirements of Subsection 15.1.2 9(B), the board will send a consent form and a copy of the request to the relevant applicant or licensee. The applicant or licensee must return the consent form to the board indicating the applicant's or licensee's consent or refusal to consent to disclosure of all or part of the requested information. Failure of the licensee or applicant to return the consent form within ten (10) working days of the date mailed by the board to the applicant or licensee will be deemed refusal of consent to the disclosure of the requested information.

**E.** The applicant's or licensee's refusal to consent to disclosure of the requested information is final and precludes the board from disclosing the requested information, except upon court order as set forth in Section 60-2E-42 of the act.

**F.** If the disclosure request is approved by the applicant or licensee, the board will permit inspection of the requested material as soon as practicable but in no event later than three days after the date approval of the disclosure was received. Before permitting inspection, the board will redact any information that reveals financial institution account numbers, social security numbers, and any other information protected from disclosure by state or federal law. The board may charge a reasonable fee for copying any of the documents subject to the request.

**G.** Any person may, at any time, seek a court order for release of the requested information pursuant to Section 60-2E-42 of the act.

**H.** The board, upon its own motion, may seek the release of confidential information by following the procedures outlined in this section and all its subparts.

**I.** That information described as non-confidential in Subsection 15.1.2.8(B) and in Section 15.1.2.10 is not subject to the disclosure procedures described in this rule.

[11/30/98; 15.1.2.9 NMAC - Rn, 15 NMAC 1.2.9, 1/31/02; A, 5/14/04]

#### **15.1.2.10 INFORMATION PROVIDED UNDER GAMING COMPACTS:**

Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records, and proprietary information regarding the gaming enterprise of the tribe, Class III gaming conducted by the Tribe, or the operation of Class III gaming, are considered confidential information. Such information may not be released without prior written approval of a duly authorized representative of the Tribe.

[11/30/98; 15.1.2.10 NMAC - Rn & A, 15 NMAC 1.2.10, 1/31/02]

## **PART 3: ADOPTION, CONSTRUCTION AND SEVERABILITY OF RULES PROMULGATED BY THE GAMING CONTROL BOARD**

### **15.1.3.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 11/30/98; 15.1.3.1 NMAC – Rn, 15 NMAC 1.3.1, 2/14/02]

### **15.1.3.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Gaming Control Act by the Gaming Control Board.

[N, 11/30/98; 15.1.3.2 NMAC – Rn, 15 NMAC 1.3.2, 2/14/02]

### **15.1.3.3 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.

[N, 11/30/98; 15.1.3.3 NMAC – Rn, 15 NMAC 1.3.3, 2/14/02]

### **15.1.3.4 DURATION:**

Permanent.

[N, 11/30/98; 15.1.3.4 NMAC – Rn, 15 NMAC 1.3.4, 2/14/02]

### **15.1.3.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[N, 11/30/98; 15.1.3.5 NMAC – Rn & A, 15 NMAC 1.3.5, 2/14/02]

### **15.1.3.6 OBJECTIVE:**

This rule clarifies the role of the Gaming Control Board in promulgating regulations and establish the scope and severability of such rules.

[N, 11/30/98; 15.1.3.6 NMAC – Rn & A, 15 NMAC 1.3.6, 2/14/02]

### **15.1.3.7 DEFINITIONS:**

Reserved.

#### **15.1.3.8 ADOPTION, AMENDMENT AND REPEAL:**

The board is authorized to adopt regulations pursuant to the Gaming Control Act, Sections 60-2E-1 through 60-2E-61 NMSA 1978. From time to time as the board deems necessary, the board will adopt, amend and repeal such regulations, consistent with the policy, objectives, and purposes of the Gaming Control Act.

[N, 11/30/98; 15.1.3.8 NMAC – Rn, 15 NMAC 1.3.8, 2/14/02]

#### **15.1.3.9 CONSTRUCTION:**

Nothing contained in Title 15, Chapter 1 will be construed so as to conflict with any provision of the Gaming Control Act or any other applicable statute.

[N, 11/30/98; 15.1.3.9 NMAC – Rn, 15 NMAC 1.3.9, 2/14/02]

#### **15.1.3.10 SEVERABILITY:**

The sections and subsections of the parts in Chapter 1 of Title 15 promulgated by the board are deemed severable. If any section or subsection is found invalid, unconstitutional, or otherwise contrary to the laws of New Mexico by opinion of a court of competent jurisdiction or by legislative enactment, the opinion or enactment will invalidate only that particular section or subsection. All other provisions of Title 15, Chapter 1 will remain in full force and effect.

[N, 11/30/98; 15.1.3.10 NMAC – Rn, 15 NMAC 1.3.10, 2/14/02]

### **PART 4: PARTICIPATION IN GAMING CONTROL BOARD MEETINGS BY TELEPHONE**

#### **15.1.4.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 1/29/99; 15.1.4.1 NMAC – Rn, 15 NMAC 1.4.1, 2/14/02]

#### **15.1.4.2 SCOPE:**

This rule applies to all members of the Gaming Control Board.

[N, 1/29/99; 15.1.4.2 NMAC – Rn, 15 NMAC 1.4.2, 2/14/02]

#### **15.1.4.3 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. Section 60-2E-7 of the Gaming Control Act requires that the Gaming Control Board meet at least once each month. Section 10-15-1(C) of the New Mexico Open Meetings Act allows a member of a public body to participate in a meeting by telephone if the rules of the public body permit such participation.

[N, 1/29/99; 15.1.4.3 NMAC – Rn, 15 NMAC 1.4.3, 2/14/02]

**15.1.4.4 DURATION:**

Permanent.

[N, 1/29/99; 15.1.4.4 NMAC – Rn, 15 NMAC 1.4.4, 2/14/02]

**15.1.4.5 EFFECTIVE DATE:**

January 29, 1999, unless a later date is cited at the end of a section.

[N, 1/29/99; 15.1.4.5 NMAC – Rn & A, 15 NMAC 1.4.5, 2/14/02]

**15.1.4.6 OBJECTIVE:**

The objective of this rule is to ensure that the business of the Gaming Control Board is conducted as expeditiously as possible, even when circumstances do not permit personal attendance of a member at a public meeting, by establishing standards for telephone participation in the meeting.

[N, 1/29/99; 15.1.4.6 NMAC – Rn, 15 NMAC 1.4.6, 2/14/02]

**15.1.4.7 DEFINITIONS:**

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

**A. "board"** means the Gaming Control Board.

**B. "conference telephone"** means a telephone, or similar communications equipment, with a speaker and amplifier capable of picking up and projecting the voices of all participants in the conversation.

[N, 1/29/99; 15.1.4.7 NMAC – Rn, 15 NMAC 1.4.7, 2/14/02]

**15.1.4.8 TELEPHONE CONFERENCES:**

**A.** In all cases where it is possible, board members must attend public meetings of the board in person.

**B.** A member of the board may participate in a meeting of the board by means of a conference telephone when it is difficult or impossible for the member to attend the meeting in person, provided:

(1) each member participating by conference telephone can be and is identified when speaking;

(2) all participants in the telephone conference are able to hear each other at the same time; and

(3) members of the public who are attending the meeting are able to hear any member of the board who speaks during the meeting.

**C.** Whenever circumstances justifying participation by telephone conference arise, the board member requiring the telephone conference must notify board staff as early in advance of the meeting as possible so that arrangements can be made to set up and operate necessary conference telephone equipment.

[N, 1/29/99; 15.1.4.8 NMAC – Rn, 15 NMAC 1.4.8, 2/14/02]

## **PART 5: APPLICATION FOR LICENSURE UNDER THE GAMING CONTROL ACT**

### **15.1.5.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.1.5.1 NMAC - Rp, 15.1.5.1 NMAC, 6/30/16]

### **15.1.5.2 SCOPE:**

This rule applies to all licensees or applicants for licensure, certification, registration, renewal, finding of suitability, or other approval under the New Mexico Gaming Control Act.

[15.1.5.2 NMAC - Rp, 15.1.5.2 NMAC, 6/30/16]

### **15.1.5.3 STATUTORY AUTHORITY:**

Paragraph (3) of Subsection B of Section 60-2E-7 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. Paragraph (1) of Subsection C of 60-2E-8 NMSA 1978 specifically directs the board to adopt regulations prescribing the method and form of application to be filed by the applicant.

[15.1.5.3 NMAC - Rp, 15.1.5.3 NMAC, 6/30/16]

**15.1.5.4 DURATION:**

Permanent.

[15.1.5.4 NMAC - Rp, 15.1.5.4 NMAC, 6/30/16]

**15.1.5.5 EFFECTIVE DATE:**

June 30, 2016, unless a later date is cited at the end of a section.

[15.1.5.5 NMAC - Rp, 15.1.5.5 NMAC, 6/30/16]

**15.1.5.6 OBJECTIVE:**

This rule establishes standards and requirements for licensure, certification, registration, renewal, finding of suitability, and other approval under the Gaming Control Act.

[15.1.5.6 NMAC - Rp, 15.1.5.6 NMAC, 6/30/16]

**15.1.5.7 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. "Auxiliary member"** means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code, Section 501(c)(19) or (23) and applicable regulations; "auxiliary member" does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee's tax exempt status.

**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, erasable programmable read-only memory (EPROM), bill acceptor, progressive system, monitoring system, 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. "Control,"** when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person 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 applicant or licensee; when used as a verb, "control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

**E. "Key executive"** means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds \$250,000.

**F. "Foreign institutional investor"** means a government related pension plan or a person that meets the requirements of a qualified institutional buyer as defined by the governing financial regulatory agency of the country where the company primary operations are located, and is registered or licensed in that country as a bank; an insurance company; an investment company; an investment advisor; collective trust funds; an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or a group comprised entirely of entities specified by this subsection.

**G. "Gaming protection plan"** means a written plan delineating the electronic and physical security measures to be taken by a licensee to insure the integrity of each game and any associated equipment including, if applicable, progressive gaming systems, bonusing or points systems and slot accounting systems. A gaming protection plan shall include a plan for data backup and recovery.

**H. "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.

**I. "Limited use distributor's license"** means a restricted authorization to sell gaming machines or associated equipment.

**J. "Majority interest"** means an ownership interest, whether direct or indirect, of more than fifty percent in the licensee.

**K. "Manage"** means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

**L. "Manufacturer"** means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the state or for sale, lease or distribution outside the state from any location within the state.

**M. "Member"** means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization's charter, articles of incorporation, bylaws, or rules, and who is in good standing.

**N. "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; "modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

**O. "Person"** means a legal entity or an individual.

**P. "Premises"** means the land together with all buildings improvements and personal property located on the land.

**Q. "State"** means the state of New Mexico.

**R. "Technical violation"** means a violation of board rules or the gaming laws and regulations of any jurisdiction that does not reflect adversely on the applicant's moral character, honesty and integrity, business probity or financial viability.

**S. "This title"** means Title 15, Chapter 1 of the New Mexico Administrative Code.

[15.1.5.7 NMAC - Rp, 15.1.5.7 NMAC, 6/30/16]

#### **15.1.5.8 NATURE OF LICENSE AND APPLICATION REQUEST:**

**A.** Any license, certification, registration, renewal, finding of suitability, or other approval issued by the board is deemed a revocable privilege. No person holding such a license, certification, registration, renewal, finding of suitability, or other approval is deemed to have any rights therein.

**B.** Any application submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

**C.** Any application for license, certification, registration, renewal, finding of suitability, or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board. Without limiting the foregoing, the investigation shall include a

background investigation and a credit check of the applicant and all persons having a substantial interest in the applicant.

**D.** By applying for and obtaining any license, certification, registration, renewal, finding of suitability, or other approval from the board, the holder agrees to abide by all provisions of the act and this rule.

**E.** By applying for a license, certification, registration, renewal, finding of suitability, or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.1.5.8 NMAC - Rp, 15.1.5.8 NMAC, 6/30/16]

#### **15.1.5.9 LICENSE CLASSIFICATIONS:**

**A.** Licenses include:

**(1)** manufacturer's license, which authorizes the approved licensee to manufacture, fabricate, assemble, produce, program, make modifications to, or sell to licensed distributors or licensed gaming operators, any gaming machine or associated equipment in accordance with the act and board rules;

**(2)** distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any gaming machine or associated equipment in or outside the State in accordance with the act and board rules;

**(3)** gaming operator's license, which authorizes the approved licensee to acquire, own, lease, possess, and operate gaming devices on its licensed premises; a gaming operator's license may be issued to a nonprofit organization or to a racetrack licensed by the state racing commission pursuant to the New Mexico Horse Racing Act;

**(4)** gaming machine license, pursuant to which an approved gaming machine is licensed for the play of authorized games on a licensed premises under a gaming operator's license; and

**(5)** a limited use distributor's license which authorizes the approved licensee to sell, on a limited basis, gaming machines and associated equipment.

**B.** Certifications, registrations, and other approvals include:

**(1)** certification of finding of suitability, which is a determination by the board that the applicant is suitable to be associated with a licensee for the specific involvement sought;

(2) approval of gaming machine, associated equipment, modification, or game, under which a particular brand and type of gaming device, an equipment modification, or a game, is authorized for sale, distribution, and operation;

(3) if a company applicant or licensee is or becomes a subsidiary, registration of each non-publicly traded holding company and intermediary company with respect to the subsidiary company;

(4) approval to amend a gaming operator's license to show a change in the number of authorized gaming machines on the licensed premises; and

(5) work permit, which authorizes the employment of the holder as a gaming employee.

[15.1.5.9 NMAC - Rp, 15.1.5.9 NMAC, 6/30/16]

#### **15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:**

**A.** Every application, statement, and notice required to be filed under the act or this rule shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

**B.** The applicant shall file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the 10-year period immediately preceding the filing date of the application.

**C.** Upon request of the board, the applicant shall further supplement any information provided in the application. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

**D.** An applicant shall submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board shall consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

**E.** All information required to be included in an application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant shall file a written amendment in accordance with this rule.

**F.** The application and any amendments shall be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

**G.** The applicant shall cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board shall examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

**H.** The board shall automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the act and this rule.

**I.** Neither the state, the board, any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

**J.** All new applications submitted to the New Mexico gaming control board shall be completed within 120 days of receipt of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

[15.1.5.10 NMAC - Rp, 15.1.5.10 NMAC, 6/30/16]

**15.1.5.11 SEPARATE APPLICATIONS REQUIRED; HOLDING OF MULTIPLE LICENSE TYPES PROHIBITED:**

**A.** A licensee shall not be issued more than one type of license. A licensee shall not own a majority interest in, manage, or otherwise control a holder of another type of license issued pursuant to the provisions of the act.

**B.** No affiliate or affiliated company shall hold any type of license except the type held by the affiliated licensee unless the affiliate or affiliated company does not own a majority interest in, manage, or otherwise control the affiliated licensee and the board determines that such licensure shall not unduly impair competition in the state gaming industry or otherwise be contrary to the public health, safety, morals, or general welfare.

**C.** This rule is not intended to prohibit a gaming operator licensee from obtaining licensure of its gaming machines as required by the act and this rule or from transferring or disposing of a gaming machine in accordance with this title.

[15.1.5.11 NMAC - Rp, 15.1.5.11 NMAC, 6/30/16]

**15.1.5.12 ORGANIZATION AND MEMBERSHIP REQUIREMENTS FOR NONPROFIT ORGANIZATIONS; GAMING MACHINES FOR MEMBERS ONLY:**

**A.** Only active members and auxiliary members of a nonprofit organization gaming operator licensee shall play gaming machines on the licensed premises. No guest or member of the public shall play a gaming machine licensed to a nonprofit organization gaming operator licensee. No member of the public shall enter the licensed premises except during the course of authorized business and provided the person remains on the licensed premises no longer than reasonably necessary to conduct such business.

**B.** To qualify to hold and operate a gaming operator's license, the nonprofit organization shall have at least 50 bona fide active, sworn members who pay dues on a monthly, quarterly, annual, or other periodic basis. The organization may have, in addition to its regular members, auxiliary members, but auxiliary members may not be counted in order to meet the minimum membership requirements described in this subsection.

**C.** The applicant shall submit to the board, with the initial application, a copy of the applicant's current charter, articles of incorporation, bylaws, or rules that establish membership requirements. In addition, with the initial application and license renewal applications, the organization shall submit evidence of good standing and the names and addresses of the applicant's current bona fide members and any auxiliary members. In lieu of the membership list, the board may accept, in its discretion, a statement from the highest ranking official of the nonprofit organization attesting to the fact that the organization meets the membership requirements described in this subsection. The applicant shall also submit the name, home address, phone number and email address of each member of the governing board.

[15.1.5.12 NMAC - Rp, 15.1.5.12 NMAC, 6/30/16]

**15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS:**

**A.** To qualify to hold and operate a gaming operator's license, a racetrack shall be licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races.

**B.** The applicant shall submit to the board a copy of the applicant's current license from the horse racing commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current

calendar year. Thereafter, a licensee shall submit to the board, within 10 ten days of issuance by the state horse racing commission, a copy of the licensee's current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year.

**C.** Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed 18 hours and no more than 112 hours in a one-week period, beginning on Tuesday at 8 a.m. and ending at 8 a.m. on the following Tuesday, at the licensee's discretion. "Daily period" means the 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.

[15.1.5.13 NMAC - Rp, 15.1.5.13 NMAC, 6/30/16]

#### **15.1.5.14 BUSINESS PLAN:**

**A.** The applicant for a gaming operator's license shall submit with the application a proposed business plan for the conduct of gaming. The plan shall include the following:

- (1)** an 8-1/2" x 11" drawing to scale of the building in which the applicant proposes to conduct gaming, with the area designated as the proposed licensed premises clearly outlined;
- (2)** a description of the type and number of gaming machines proposed for operation, including details of machine features, such as whether the machines are video versus spinning reel or are coin-in/coin-out versus coin-in/credit-out machines;
- (3)** generic description of the games to be played on the machines and the proposed placement of the machines on the licensed premises;
- (4)** administrative, accounting, and internal control procedures, including monetary control operations;
- (5)** security plan;
- (6)** staffing plan for gaming operations, including identification of key executives and employees;
- (7)** advertising and marketing plan;
- (8)** method to be used for prize payouts;
- (9)** details of any proposed progressive systems;
- (10)** gaming protection plan; and

(11) any other information requested by the board or its agents.

**B.** The business plan must provide for the following accounts:

(1) an escrow account or accounts to be established and maintained in accordance with board requirements for the purpose of holding in reserve large or progressive prizes to be won by participants; and

(2) a depository account exclusively for the collection and payment of the gaming tax in accordance with the provisions of the Tax Administration Act, Chapter 7, Article 1 NMSA 1978.

**C.** The business plan shall provide for payment from gaming machines such that the payouts are not less than eighty percent over the lifetime of the machine.

**D.** A gaming operator's license shall not be granted unless the board first determines that the business plan submitted is suitable for the type of operation proposed and otherwise complies with the requirements of the act and this rule.

[15.1.5.14 NMAC - Rp, 15.1.5.14 NMAC, 6/30/16]

#### **15.1.5.15 COMPULSIVE GAMBLING ASSISTANCE PLAN:**

**A.** An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education, and treatment of compulsive gambling. The plan shall include all information required in 15.1.18 NMAC.

**B.** No gaming operator's application shall be approved unless the board first approves the applicant's compulsive gambling assistance plan.

**C.** Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer the plan once implemented shall be grounds for suspension or revocation of the gaming operator's license, assessment of a fine, or both.

**D.** The board shall establish minimum standards for the content, structure and implementation of, and periodic reporting requirements on, the compulsive gambling assistance plan.

**E.** The board may contract with the state of New Mexico department of health or such other entity deemed qualified by the department of health to provide technical assistance in reviewing and recommending to the board approval of compulsive gambling assistance plans.

[15.1.5.15 NMAC - Rp, 15.1.5.15 NMAC, 6/30/16]

#### **15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:**

**A.** The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

**B.** Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee shall submit an application of finding of suitability within 30 days of the first day of employment as a key executive. The licensee shall send a facsimile or e-mail notice to the board no later than 96 hours after the first day of employment listing the date of employment, name, and title of position of the key executive.

**C.** The following persons are, or may be, subject to that requirement:

**(1)** any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

**(2)** any person who does business on the gaming establishment;

**(3)** any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

**(4)** an officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

**(5)** the key executives of a company licensee or company applicant;

**(6)** if the applicant or licensee is or will be a subsidiary, the holder of five percent or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

**(7)** an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

**(8)** each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

**(9)** each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of ten percent or more of any class of voting securities in a publicly traded corporation certified by the board;

**(10)** the following members of a nonprofit organization gaming operator applicant or licensee:

**(a)** the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee;

**(b)** officers with check-writing authority or other financial responsibility;

**(c)** board members;

**(d)** key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and

**(e)** any person who has access to the internal structure or software of any gaming machine or associated equipment;

**(11)** the person with primary ownership interest in or managerial responsibility for an applicant for a limited use distributor's license, provided, however, that the board may provide for an expedited application process for such an applicant; and

**(12)** any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

**D.** A finding of suitability relates only to the involvement specified in the application. A key executive shall seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

**E.** The board may waive the requirement for finding of suitability of an institutional investor or foreign institutional investor unless the board determines that public policy requires that the institutional investor or foreign institutional investor apply for such a finding. A waiver of certification of finding of suitability shall be valid for three years, after which the institutional investor or foreign institutional investor may reapply for a waiver.

**F.** A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph (8) of Subsection C of 15.1.5.16 NMAC or Paragraph (9) of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

**G.** In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

**H.** The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

**I.** Upon final determination by the board of the applicant's suitability, the board shall issue a certification of such finding to the applicant.

**J.** A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**K.** An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

**L.** No licensee shall employ as a key executive any person who has failed to file an application for finding of suitability as required by this rule. A licensee shall ensure that each key executive has made the required application.

[15.1.5.16 NMAC - Rp, 15.1.5.16 NMAC, 6/30/16]

#### **15.1.5.17 APPLICATION FOR WORK PERMIT:**

**A.** Application for a work permit shall be made in the same manner as set forth in the act or this rule for other applications. At the board's discretion, the board may delegate authority to the executive director or another designee to process and make the initial determination on all work permits. Except as provided for in Subsection I of Section 15.1.5.17 NMAC, no person shall be employed as a gaming employee unless the board, the executive director or the board's designee has first approved the application for such a permit.

**B.** The applicant shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The

photographs shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs shall be taken no earlier than three months before the date the application for work permit was filed.

**C.** In addition to grounds for denial of an application described in the act and this rule, the board shall deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

**D.** A work permit issued to a gaming employee shall have clearly imprinted on the permit a statement that the permit is valid for gaming purposes. A licensee who employs an employee currently holding a valid work permit shall ensure that the employee registers his or her employment with the board in writing within three days of the employee's date of hire.

**E.** A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

**F.** A licensee shall notify the board in writing that a work permittee has terminated his or her employment with the licensee within three business days of the termination.

**G.** Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**H.** Upon the receipt of a completed application, an applicant shall be provided a provisional work permit which shall expire 60 days after the date of issuance, upon the issuance of a permanent work permit or upon the written determination by the board to deny the work permit, whichever occurs first. An applicant whose provisional work permit expires after 60 days may apply for an extension of the provisional work permit not to exceed an additional 60 days. The board or its designee may allow the 60 day extension for good cause shown.

[15.1.5.17 NMAC - Rp, 15.1.5.17 NMAC, 6/30/16]

#### **15.1.5.18 APPLICATION FOR GAMING MACHINE LICENSE:**

**A.** Application for a gaming machine license shall be made, processed, and determined in the same manner as set forth in the act and this rule for other applications. No gaming machine or associated equipment shall be used for gaming by any licensee without prior written approval of the board.

**B.** No gaming machine shall be licensed unless it is of a brand, type, and series that has been approved by the board pursuant to the mandatory testing procedures set forth

in this title. In addition, each individual gaming machine shall be licensed by the board before the gaming machine shall be used in any gaming activity. Such licensure shall include a license number assigned by the board to the individual gaming machine.

**C.** The application for a gaming machine license shall include a detailed description of the gaming machine for which approval is sought, including the manufacturer's name, the model, and the permanent serial number.

**D.** A gaming operator licensee shall license all gaming machines maintained on its gaming premises, up to the maximum number of gaming machines the gaming operator is statutorily permitted to operate, whether or not such machines are in operation on the gaming floor.

**E.** If a gaming operator licensee maintains gaming machines on its licensed premises in excess of the maximum number of gaming machines the gaming operator is statutorily permitted to operate, the gaming operator shall register such machines in accordance with 15.1.16.13 NMAC.

**F.** A gaming operator licensee that maintains one or more gaming machines solely to provide spare parts is not required to license such machines, but shall register such machines in accordance with 15.1.16.13 NMAC.

[15.1.5.18 NMAC - Rp, 15.1.5.18 NMAC, 6/30/16]

#### **15.1.5.19 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:**

**A.** A person may act as a manufacturer, distributor or limited use distributor only if that person has received from the board a license specifically authorizing that person to act as a manufacturer, distributor, or limited use distributor or is a manufacturer of associated equipment that has been issued a waiver pursuant to Subsection D of Section 60-2E-13 of the act.

**B.** Applications for manufacturer's, distributor's or limited use distributor's licenses shall be made, processed, and determined in the same manner as applications for other gaming licenses as set forth in the act and this rule.

**C.** An applicant for a manufacturer's, distributor's or limited use distributor's license may be required to post, as a condition of issuance of the license, a bond or irrevocable letter of credit in a manner and in an amount established by the board. Any such instrument shall be issued by a surety company authorized to transact business in New Mexico and shall be satisfactory to the board.

[15.1.5.19 NMAC - Rp, 15.1.5.19 NMAC, 6/30/16]

#### **15.1.5.20 APPLICATION AMENDMENT AND WITHDRAWAL:**

**A.** If there is any change in the information submitted to the board in the application, the applicant shall file, within 10 days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

**B.** An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board shall establish the new filing date of the application with respect to the time requirements for action on the application.

**C.** An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

**D.** An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board.

[15.1.5.20 NMAC - Rp, 15.1.5.20 NMAC, 6/30/16]

#### **15.1.5.21 LIMITED USE DISTRIBUTOR'S LICENSE; CONDITIONS:**

A limited use distributor's license is subject to the following conditions:

**A.** A limited use distributor shall not maintain an office or physical location within the state. If the limited use distributor opens an office or physical location within the state, the distributor shall apply to convert the license to a distributor's license pursuant to 15.1.5.21 NMAC.

**B.** A limited use distributor shall maintain an office or physical location in another jurisdiction and shall be in good standing with all applicable regulatory agencies within that jurisdiction and any jurisdiction where the limited use distributor is located.

**C.** A limited use distributor shall be limited to selling gaming machines and associated equipment to a person with a distributor's license issued by the board.

**D.** All gaming machines sold by a limited use distributor shall have been manufactured by a manufacturer licensed by the board, shall be approved for use in this state pursuant to all applicable board regulations, shall meet all technical standards established by the board and shall be compatible with the board's central monitoring system.

**E.** Both the limited use distributor and the licensed distributor purchasing gaming machines from the limited use distributor shall be responsible for compliance with all board rules relating to the sale, transportation, technical specifications and licensing of all gaming machines sold and purchased pursuant to the limited use distributor's license.

F. A limited use distributor's license shall not be subject to renewal.

[15.1.5.21 NMAC - N, 6/30/16]

#### **15.1.5.22 LIMITED USE DISTRIBUTOR'S LICENSE; PROCEDURES:**

The application procedures for a limited use distributor's license shall be as follows:

A. The applicant shall complete a licensing application prescribed by the board and shall pay the applicable application fee and costs for any background investigation.

B. The applicant shall not transport any gaming machines into the state until a license is granted by the board.

C. The limited use distributor selling the gaming machines and the distributor purchasing the gaming machines shall notify the board on forms prescribed by the board prior to transporting any gaming machines into the state.

D. In addition to the application fee, a limited use distributor shall pay to the board a transaction fee of \$1,500 for each transaction in which the limited use distributor sells gaming machines to a distributor prior to completing the transaction.

E. A limited use distributor shall not conduct more than two transactions per license year unless the limited use distributor obtains a distributor's license prior to conducting the third transaction.

F. A limited use distributor may request to convert its limited use distributor's license to a distributor's license by submitting an additional fee of \$1,000 plus the costs of conducting a background investigation to the board and completing an application prescribed by the board prior to the expiration of the limited use distributor's license. All fees paid prior to the application for a distributor's license shall be applied to the application.

G. A distributor's license issued as a result of a conversion from a limited use distributor's license shall be valid for one year from the initial limited use licensure.

[15.1.5.22 NMAC - N, 6/30/16]

#### **15.1.5.23 APPLICATION FEES:**

A. The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

- (1) gaming machine manufacturer's license, \$15,000;
- (2) associated equipment manufacturer's license, \$5,000;
- (3) gaming machine distributor's license, \$7,500;
- (4) associated equipment distributor's license, \$1,000;
- (5) gaming operator's license for racetrack, \$25,000;
- (6) gaming operator's license for nonprofit organization, \$100;
- (7) gaming machine license, \$100 per machine;
- (8) work permit, \$75;
- (9) certification of finding of suitability, \$100 for each person requiring investigation;
- (10) limited use distributor's license, \$1,000; and
- (11) replacement fee for identification badge, \$10.

**C.** In addition to any nonrefundable license or approval fee paid, the applicant shall pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack shall pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation; upon completion of the investigation and determination of the actual fees and costs, the board shall refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants shall reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants shall fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

**D.** Investigative fees are charged at the rate of \$50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses shall be reimbursed based on state mileage and per diem rules, and office expenses, document copying

costs, and other reasonable expenses incurred. Checks shall be made payable to the New Mexico gaming control board.

**E.** In addition to any nonrefundable application and supplementary investigation fees and costs, licensed manufacturers and distributors shall pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor shall pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board shall refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor shall fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of \$50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

**F.** The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall be debarred from filing any other application with the board until all such fees and costs are paid in full.

**G.** If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board shall discontinue investigation and processing of the application and shall issue a final, written order denying the application.

**H.** The maximum fee for processing any application shall not exceed \$100,000, regardless of actual costs of supplemental investigations.

**I.** The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

**J.** Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

**K.** Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[15.1.5.23 NMAC - Rp, 15.1.5.21 NMAC, 6/30/2016; A, 5/21/2024]

#### **15.1.5.24 DISCLOSURE OF GAMING CONTRACTS:**

**A.** An applicant or a licensee shall submit to the board copies of all written gaming contracts and summaries of all oral gaming contracts under which the contractor receives, directly or indirectly, any compensation based on earnings, profits, receipts, or net take from gaming in the state. The board may review the contracts and require the applicant or licensee to modify the gaming contracts to conform to the provisions of the act or this title. Failure to modify the contracts as required by the board shall be grounds for denial of the application or for other action against the licensee.

**B.** Every person who is a party to any such contract with an applicant or a licensee shall provide any information requested by the board, including filing an application for finding of suitability, if requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, reputation, and all other information requested by the board.

**C.** Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's gaming contract with any person who failed to provide the requested information.

[15.1.5.24 NMAC - Rp, 15.1.5.22 NMAC, 6/30/16]

#### **15.1.5.25 CONDITIONS OF APPROVAL OF APPLICATION:**

The approval of any application or renewal of licensure is subject to the following conditions and constitutes the following agreements by the licensee:

**A.** The licensee shall at all times make its gaming establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement.

**B.** The licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an affiliate, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its authorized representative, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or representative to examine such documents.

**C.** The licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the board.

**D.** With respect to new license applications, the licensee shall commence the activity approved by the board within 90 days after the date of approval by the board on the application. Failure to commence the approved activity voids the board's approval, and the licensee shall file a new application. The board, in its discretion, may waive the requirements of a new application. The licensee shall make written application for

waiver to the board within 30 days of the date the board's action on the original application becomes void.

**E.** The licensee shall be responsible for all registration, taxation, and licensing imposed by the act or other state law upon the license, gaming machine, or associated equipment. Nothing in this subsection shall be construed as authorizing the imposition of any license fee or tax in contravention of Section 60-2E-39 of the act.

[15.1.5.25 NMAC - Rp, 15.1.5.23 NMAC, 6/30/16]

#### **15.1.5.26      GROUNDS FOR DENIAL OF APPLICATION; CONDITIONAL LICENSES:**

**A.** The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

- (1)** evidence 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 the background investigation;
- (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 applicant 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 proposed activity;
- (6)** any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;
- (7)** failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;
- (8)** failure to demonstrate adequate financing for the operation proposed in the application;
- (9)** failure to satisfy any requirement for application or to timely respond to any request by the board for additional information;

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction; or

(11) approval of the application would otherwise be contrary to New Mexico law or public policy.

B. The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on gaming activities permitted under the license, administrative fines, or such other terms as the board requires.

[15.1.5.26 NMAC - Rp, 15.1.5.24 NMAC, 6/30/16]

#### **15.1.5.27 RESTRICTION ON REAPPLICATION:**

Any applicant whose application has been denied or whose license has been permanently suspended, revoked, or subjected to other limiting action in any jurisdiction shall not reapply for licensing or approval by the board at any time.

[15.1.5.27 NMAC - Rp, 15.1.5.25 NMAC, 6/30/16]

#### **15.1.5.28 CHANGE IN NUMBER OF GAMING MACHINES; APPLICATION TO AMEND GAMING OPERATOR LICENSE:**

A gaming operator licensee shall not increase the number of gaming machines on, or remove a gaming machine from, the licensed premises without prior written approval from the board.

A. If the requested change is an increase in the number of gaming machines on the licensed premises, the applicant shall also submit, in accordance with this rule and with 15.1.18 NMAC, an application for gaming machine license or a registration form for each additional machine. The licensee also shall submit a detailed diagram of the licensed premises showing the proposed location of all gaming machines.

B. If the requested change is a reduction in the number of machines due to the sale, transfer or disposal of one or more machines, the applicant shall ensure that such sale, transfer, or disposal is made in accordance with the procedures set forth in 15.1.16 NMAC.

[15.1.5.28 NMAC - Rp, 15.1.5.26 NMAC, 6/30/16]

#### **15.1.5.29 REGISTRATION OF NONPUBLICLY TRADED HOLDING AND INTERMEDIARY COMPANIES:**

**A.** If a company applicant or company licensee is or becomes a subsidiary, each non-publicly traded holding company or intermediary company with respect to the subsidiary company shall:

- (1)** qualify to do business in the state of New Mexico; and
- (2)** register with the board.

**B.** Registration shall be accomplished by notifying the board in writing of the registrant's status as a nonpublicly traded holding or intermediary company, specifically identifying the company applicant or licensee that is the registrant's subsidiary and specifically describing the relationship between the registrant and the company applicant or licensee, and providing to the board all information required by Paragraph (2) of Subsection A of Section 60-2E-21 of the act.

**C.** If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

**D.** Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection C of 15.1.5.29 NMAC, it is unlawful for the unsuitable person to:

- (1)** receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;
- (2)** exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or
- (3)** receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

**E.** A holding company or intermediary company subject to the provisions of Subsection A of 15.1.5.29 NMAC shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

**F.** This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 of the Gaming Control Act.

[15.1.5.29 NMAC - Rp, 15.1.5.27 NMAC, 6/30/16]

## **PART 6: PREMISES LICENSED UNDER THE GAMING CONTROL ACT**

### **15.1.6.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 11/30/98; 15.1.6.1 NMAC - Rn, 15 NMAC 1.6.1, 10/15/00]

### **15.1.6.2 SCOPE:**

This rule applies to all gaming operator licensees or applicants for gaming operator licenses under the New Mexico Gaming Control Act.

[N, 11/30/98; 15.1.6.2 NMAC - Rn, 15 NMAC 1.6.2, 10/15/00]

### **15.1.6.3 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.

[N, 11/30/98; 15.1.6.3 NMAC - Rn, 15 NMAC 1.6.3, 10/15/00]

### **15.1.6.4 DURATION:**

Permanent.

[N, 11/30/98; 15.1.6.4 NMAC - Rn, 15 NMAC 1.6.4, 10/15/00]

### **15.1.6.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[N, 11/30/98; 15.1.6.5 NMAC - Rn, 15 NMAC 1.6.5, 10/15/00; A, 2/14/02]

### **15.1.6.6 OBJECTIVE:**

This rule establishes standards and requirements for premises on which licensed gaming machines are operated by a gaming operator licensee pursuant to the Gaming Control Act.

[N, 11/30/98; 15.1.6.6 NMAC - Rn, 15 NMAC 1.6.6, 10/15/00; A, 2/14/02; A, 2/28/05]

#### **15.1.6.7 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. "ATM"** means a machine used for banking services, including withdrawals and deposits, balance inquiries, transfers, and other services; "ATM" includes credit card cash advance machines and other devices activated by debit or credit cards.

**C. "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 and conduct all activities associated with the operation of gaming.

**D. "Premises"** means the land together with all building's improvements and personal property located on the land.

[N, 11/30/98; 15.1.6.7 NMAC - Rn & A, 15 NMAC 1.6.7, 10/15/00; A, 2/14/02; A, 2/28/05; A, 1/29/2016]

#### **15.1.6.8 SUITABILITY OF PREMISES:**

The board shall approve any proposed licensed premises prior to commencement of gaming. The licensed premises shall meet the requirements of the act and regulations promulgated under the act. The board shall not approve any proposed licensed premises if the board determines that the proposed licensed premises are unsuitable for the conduct of gaming. Without limiting the generality of the foregoing, the proposed licensed premises shall be unsuitable if:

**A.** it is located in a place where gaming is prohibited by a valid zoning ordinance of the city or county or is otherwise in violation of any fire safety, health or building codes;

**B.** it is owned or controlled by any person that is unqualified or disqualified to hold a gaming license, regardless of the qualifications of the person who has applied for or holds the license to conduct gaming operations on the premises;

**C.** an ATM is located in the licensed premises;

**D.** the area to be used for gaming is not separated from the rest of the premises by a permanent physical barrier; or

**E.** the conduct of gaming on the proposed premises would otherwise be contrary to New Mexico law or public policy.

[N, 11/30/98; 15.1.6.8 NMAC - Rn & A, 15 NMAC 1.6.8, 10/15/00; A, 2/28/05]

**15.1.6.9 AREA OF LICENSED PREMISES; RESTRICTIONS:**

**A.** The area approved as the licensed premises shall be clearly marked. No gaming shall be permitted outside of the licensed premises. All gaming devices shall be located within the licensed premises and such other locations for the storage, display, repair and maintenance of the gaming devices as may be approved in advance by the board.

**B.** Gaming shall not commence until the licensed premises have been constructed and been approved by the board.

**C.** No building shall contain, and no area shall constitute, a licensed premises for more than one licensee.

**D.** No gaming operator's license shall encompass more than one licensed premises.

**E.** The area approved as the licensed premises shall be physically separated by a permanent barrier from all other general areas.

**F.** No area that is a premises licensed under the New Mexico Liquor Control Act shall be designated as a racetrack gaming operator's licensed premises under the act. Alcoholic beverages shall not be sold, served, delivered, or consumed on any racetrack operator's gaming licensed premises.

[N, 11/30/98; 15.1.6.9 NMAC - Rn, 15 NMAC 1.6.9, 10/15/00; A, 2/14/02; A, 7/31/02; A, 2/28/05]

**15.1.6.10 OWNERSHIP OF PREMISES:**

**A.** Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises shall furnish the following information to the board within 30 days of the effective date of the lease:

**(1)** name, address, and brief statement of the nature of business of the lessor of the premises;

**(2)** brief description of the material terms of the lease;

**(3)** copy of all documents by which the applicant or licensee has a right to possess the premises, including the lease;

**(4)** statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and

**(5)** any other information required by the board.

**B.** Every person who is a party to any lease with an applicant or a licensee shall provide any information requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, and reputation.

**C.** Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's lease with any person who failed to provide the requested information.

**D.** If the applicant or licensee owns all or part of the premises on which gaming is proposed to be conducted, the applicant or licensee shall fully disclose to the board complete information about the interest held by any other person, including an interest held under any mortgage, deed of trust, bonds, or any other instrument, and all other information required by the board.

**E.** The licensee shall furnish to the board complete information pertaining to any change in any premises lease or any change of ownership of, or interest in, the premises in which gaming is conducted within 30 days after the effective date of such change.

[N, 11/30/98; 15.1.6.10 NMAC - Rn, 15 NMAC 1.6.10, 10/15/00; A, 2/14/02; A, 2/28/05]

#### **15.1.6.11 MODIFICATION OF LICENSED PREMISES:**

**A.** No gaming operator licensee shall modify its licensed premises in any way without obtaining the prior written approval of the board or its designee, on a form approved by the board.

**B.** Modification of a licensed premises includes but is not limited to changing the location of gaming machines on the licensed premises. Any licensee seeking to change the location of gaming machines on the licensed premises shall notify the board in accordance with the provisions of this rule.

**C.** The board or its designee shall not approve any modification of a licensed premises unless the licensed premises, as modified, meets all the requirements of the act and this rule.

**D.** A gaming operator licensee shall notify the board or its designees in writing prior to modifying the licensed premises. The board or its designee shall approve or disapprove the modification. The written notice shall include a detailed diagram showing the proposed modification.

[N, 11/30/98; 15.1.6.11 NMAC - Rn, 15 NMAC 1.6.11, 10/15/00; A, 2/28/05; A, 5/15/07; A, 1/29/2016]

#### **15.1.6.12 TRANSFER OF LICENSE TO NEW PREMISES:**

**A.** No gaming operator licensee shall transfer its gaming operations or license to an unapproved premises without the prior written approval of the board. An application for such a transfer shall be submitted to the board and shall contain the same information and satisfy the same requirements as required on an original licensing application with respect to approval of the licensed premises.

**B.** Failure of the licensee to obtain the board's prior approval of transfer of the gaming operations or the gaming operator's license may subject the license to suspension or revocation, or the licensee to fines, or both.

[N, 11/30/98; 15.1.6.12 NMAC - Rn, 15 NMAC 1.6.12, 10/15/00; A, 2/28/05]

### **PART 7: GAMING MACHINES, NEW GAMES AND ASSOCIATED EQUIPMENT**

#### **15.1.7.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[11/30/98; 15.1.7.1 NMAC - Rn, 15 NMAC 1.7.1, 3/31/00]

#### **15.1.7.2 SCOPE:**

This rule applies to all licensees or applicants for licensure, registration, certification, renewal, and other approval relating to gaming operations under the New Mexico Gaming Control Act.

[11/30/98; 15.1.7.2 NMAC - Rn, 15 NMAC 1.7.2, 3/31/00]

#### **15.1.7.3 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.

[11/30/98; 15.1.7.3 NMAC - Rn, 15 NMAC 1.7.3, 3/31/00]

#### **15.1.7.4 DURATION:**

Permanent.

[11/30/98; 15.1.7.4 NMAC - Rn, 15 NMAC 1.7.4, 3/31/00]

**15.1.7.5 EFFECTIVE DATE:**

November 30, 1998, unless a later date is cited at the end of a section.

[11/30/98; 15.1.7.5 NMAC - Rn, 15 NMAC 1.7.5, 3/31/00; A, 1/31/02]

**15.1.7.6 OBJECTIVE:**

This rule establishes standards for the evaluation, testing, approval, modification, maintenance, and disposition of gaming machines, games and associated equipment.

[11/30/98; 15.1.7.6 NMAC - Rn, 15 NMAC 1.7.6, 3/31/00; A, 1/31/02]

**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).

**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.

**G. "Event"** means an occurrence of elements or particular combinations of elements that are available on the particular gaming device.

**H. "Game outcome"** means the final result of the wager.

**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.

**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.

**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.

**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.

**N. "Multigame"** means a gaming device that offers a menu of more than one (1) game to the player.

**O. "Multi-station"** means a gaming device that incorporates more than one (1) player-terminal.

**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.

**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.

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

**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.

**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.

**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.

**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]

#### **15.1.7.9 SECURITY AND AUDIT SPECIFICATIONS:**

**A.** A gaming machine shall meet all of the following security and audit specifications:

- (1) be controlled by a microprocessor;
- (2) be connected and communicating to an approved central monitoring system and conform exactly to the protocol and internal control procedures employed by the central monitoring system provider and the board;
- (3) have an internal enclosure for the logic board that is locked or sealed, or both, before game play;
- (4) be capable of continuing a game without loss of data after a power failure;
- (5) have game data recall for the current game and, at a minimum, the previous four games;
- (6) have a random selection process that satisfies the 99% confidence level using any of the following tests: standard chi-squared, runs, serial correlation, or other standard mathematical test for randomness as approved by the board;
- (7) clearly display applicable rules of play and the payout schedule; and
- (8) display an accurate representation of each game outcome utilizing rotating reels, video monitors, or other type of display mechanism that accurately depicts the outcome of the game.

**B.** The gaming machine shall display an external registration tag with the license number issued by the board. The registration tag shall be placed on the approved gaming device at the licensed premises by an agent of the board.

[11/30/98; 15.1.7.9 NMAC - Rn, 15 NMAC 1.7.9, 3/31/00; A, 5/15/07]

#### **15.1.7.10 CONTROL PROGRAM SPECIFICATIONS:**

**A.** Except as otherwise authorized by the board all gaming devices which have control programs residing in storage media that is not alterable through any use of the circuitry or programming of the gaming device itself shall employ a mechanism to verify executable program code and data which may affect payouts or game outcome.

**B.** The mechanism used shall detect 99.99 percent of all possible media failures and shall reside in and execute from storage media that is not alterable through any use of the circuitry or programming of the gaming device.

**C.** All gaming devices that have control programs residing in storage media that are alterable through any use of the circuitry or programming of the gaming device itself shall:

(1) employ a mechanism approved by the board which verifies that all control program components, including data and graphic information, are authentic copies of the approved components; the board may require tests to verify that components used by licensees are approved components; the verification mechanism shall prevent the execution of any control program component if any component is determined to be invalid; any program component of the verification mechanism shall reside in and execute from storage media that is not alterable through any use of the circuitry or programming of the gaming device;

(2) employ a mechanism which tests unused or unallocated areas of any alterable memory for unintended programs or data and tests the structure of the storage media for integrity; the mechanism shall prevent further play of the gaming device if unexpected data or structural inconsistencies are found;

(3) provide a mechanism for keeping a record, anytime a control program component is added, removed, or altered; the record shall contain the date and time of the action, identification of the component affected, the reason for the modification and any pertinent validation information;

(4) provide a mechanism for extracting the validation information for all control program components on demand via a communication port; a separate mechanism shall be provided that tests the integrity of the validation information delivered via the communication port.

**D.** Any gaming device executing control programs from electrically erasable or other volatile memory shall employ a mechanism which verifies on a continuous basis, that all control program components residing therein, including fixed data and graphic information are authentic copies of the approved components. Additionally, control program components, excluding graphics and sound components, shall be fully verified at the time of loading into the electrically erasable or other volatile memory and upon any significant event, including but not limited to door closings, game resets, and power up. The mechanism shall prevent further play of the gaming device if an invalid component is detected.

**E.** Unless otherwise approved any gaming device that allows the adding, removing, or alteration of any control program components through a data communication facility shall employ a mechanism for preventing any change from taking place that would interrupt a game in progress. Any device, technique or network which may be used to

accomplish the adding, removing, or alteration of any control program components may be considered a gaming device that shall receive separate approval.

**F.** Gaming devices with control programs or other security programs residing in conventional read only memory (ROM) devices such as EPROM's or fusible-link PROM's shall have the unused portions of the memory device that contains the program set to zero.

**G.** Gaming device control programs shall check for any corruption of random access memory locations used for crucial gaming device functions including, but not limited to, information pertaining to the play and final outcome of the most recent game, at minimum four games prior to the most recent game, random number generator outcome, credits available for play, and any error states. These memory areas shall be checked for corruption following game initiation but prior to display of the game outcome to the player. Detection of any corruption that cannot be corrected shall be deemed to be a game malfunction and shall result in a tilt condition.

**H.** All gaming devices shall have the capacity to display a complete play history for the most recent game played and four games prior to the most recent game. Retention of play history for additional prior games is encouraged. The display shall indicate the game outcome (or a representative equivalent), intermediate play steps (such as a hold and draw sequence or a double-down sequence), credits available, bets placed, credits or coins paid, and credits cashed out. Gaming devices offering games with a variable number of intermediate play steps per game may satisfy this requirement by providing the capability to display the last 50 play steps. The board may waive this standard for a particular device or modification if the hardware platform on which the device is based was originally approved prior to the adoption of this standard as modified and the manufacturer can demonstrate to the board's satisfaction that the imposition of the full standard would hinder the design of the device or would otherwise pose a hardship due to capacity limitations in the approved platform

**I.** The control program shall provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the gaming device.

**J.** Either the TITO system or TITO-enabled gaming devices shall maintain an audit log that records, at a minimum, the last 25 ticket-in transactions. Upon ticket redemption, the log shall properly update with the ticket redemption information, including the date and time of redemption, amount of ticket, and at least the last four digits of the ticket validation number.

**K.** Either the TITO system or TITO-enabled gaming devices shall maintain an audit log that records, at a minimum, the last 25 ticket out transactions. Upon ticket issuance, the log shall properly update with the ticket issued information, including the date and time of issuance, amount of ticket, and at least the last four digits of the ticket validation number.

[11/30/98; 15.1.7.10 NMAC - Rn, 15 NMAC 1.7.10, 3/31/00; A, 12/15/10]

#### **15.1.7.11 GENERAL TICKETING STANDARDS:**

**A.** Racetrack licensees may offer ticketing systems whereby TITO-enabled slot machines accept and issue tickets in exchange for cash, tokens, or tickets using TITO systems.

**B.** TITO-enabled slot machines shall be capable of issuing and accepting only the casino's tickets. The board must approve the design of all tickets.

**C.** All tickets shall have the following minimum characteristics:

(1) a primary validation number, which must be printed on the leading edge of the ticket;

(2) a secondary validation number, identical to the primary validation number, which shall be printed on the body of the ticket;

(3) at least one unique identifier, such as a barcode;

(4) property name;

(5) date and time the ticket was generated;

(6) dollar value of the ticket printed both numerically and in text;

(7) a statement that the ticket will expire 180 days after issuance; and

(8) sequence number of the ticket printed by the slot machine.

**D.** Validation. TITO systems shall provide for on-line, real-time validation of online tickets. Prior to issuing or authorizing issuance of consideration (whether cash, tokens, credits, or another ticket) in exchange for a ticket, the TITO system shall validate the ticket from the TITO validation component. Casinos shall have at least one TITO validation component which may be located in a cashier cage.

**E.** If a ticket has a value that is not evenly divisible by the wagering denomination, when inserted into a TITO-enabled slot machine, the machine shall either:

(1) return the ticket to the patron;

(2) accept the ticket and allow for insertion of additional wagering consideration if the ticket value is less than the wagering denomination; or

(3) accept the ticket and either display the indivisible portion of the ticket on a credit meter or issue another ticket for that indivisible portion.

F. A TITO-enabled slot machine shall be capable of generating two types of tickets: on-line tickets and delayed tickets.

(1) On-line tickets: If a TITO-enabled slot machine is properly communicating with the TITO system, the machine will be able to generate an on-line ticket. When a patron requests the issuance of a ticket in this situation, the machine will generate a ticket that utilizes the validation information generated by the TITO system or the machine, and communicate to the TITO system that it has successfully completed the transaction.

(2) Delayed tickets: If a TITO-enabled slot machine loses communication with a TITO system before validation information is successfully communicated to the TITO system for the last ticket out transaction, then all subsequent cash out attempts must result in the gaming machine issuing payment to the player via another available means such as, but not limited to, a hopper pay or a hand pay. The gaming machine shall be capable of storing delayed ticket data until such time that it has been successfully communicated to the TITO system.

(a) TITO systems may include a function whereby, prior to the restoration of communications, delayed ticket information may be manually input into the TITO system at a cashier station or other secure location.

(b) When communications are restored, delayed ticket information provided by the machine to the TITO system must be reconciled to the delayed tickets that were manually redeemed.

G. Tickets expire 180 days after issuance which is explicitly stated on each ticket. Upon expiration, the ticket is no longer valid for gaming purposes. TITO systems must recognize expired tickets as invalid and unredeemable.

H. The reporting requirements for ticketing transactions are defined in the minimum internal control procedures established by the board.

I. Ticket redemption kiosks shall perform to the same security standards as TITO-enabled slot machines, and shall include logs as required throughout this rule.

J. Kiosks shall also have a **total in** meter which accumulates the total value of all tickets accepted by the device, and a **total out** meter which accumulates the total value of payments issued by the device.

K. Kiosks redeem valid tickets for cash and tokens only; they may not generate and issue tickets.

[11/30/98; 15.1.7.11 NMAC - Rn & A, 15 NMAC 1.7.11, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.11 NMAC - N, 12/15/10]

#### **15.1.7.12 ACCOUNTING METER SPECIFICATIONS:**

**A.** A gaming machine shall be equipped with both electronic and electromechanical meters.

**B.** A gaming machine's electromechanical meters shall have no less than six digits.

**C.** A gaming machine's electronic meters shall tally totals to eight digits and be capable of rolling over when the maximum value is reached.

**D.** A gaming machine's control program shall provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the machine.

**E.** The required electromechanical meters shall comply with the following and shall count and report data on a basis consistent with the meters described Subsection H of 15.1.7.12 NMAC below:

**(1)** the coin-in meter shall cumulatively count the number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

**(2)** the coin-out meter or amount won meter shall cumulatively count the number of coins, credits, or tokens won as a result of game play including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

**(3)** the hand-pay jackpot meter shall identify the number of coins, credits, or tokens won as a result of game play resulting in a hand-pay jackpot; and

**(4)** the coins-dropped meter shall maintain a cumulative count of the number of coins or tokens diverted into a drop bucket plus the value of the bills inserted that have been inserted into the bill acceptor.

**F.** Electromechanical meters shall meet a reasonable level of accuracy, given the available technology, as approved by the board.

**G.** Electronic meters shall have an accuracy rate of 99.99% or better.

**H.** The required electronic meters shall comply with the following and shall count and report data on a basis consistent with the meters described in Subsection E of 15.1.7.12 NMAC above:

**(1)** the coin-in meter shall cumulatively count the value or number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

**(2)** the coins-out meter or amount won meter shall cumulatively count the value or number of coins, credits, or tokens won as a result of game play, including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

**(3)** the coins-dropped meter shall maintain a cumulative count of the value or number of coins or tokens diverted into a drop bucket plus the value of the bills that have been inserted into the bill acceptor;

**(4)** the games played meter shall display the cumulative number of games played;

**(5)** a cabinet door meter shall display the number of times the front cabinet door was opened; and

**(6)** the drop door meter shall display the number of times the drop door or the bill acceptor door was opened;

**(7)** the ticket/voucher-in meter shall cumulatively count the value or number of all wagering vouchers accepted by the machine;

**(8)** the ticket/voucher-out meter shall cumulatively count the value or number of all wagering vouchers and payout receipts issued by the machine.

**I.** If a gaming device is equipped with a bill acceptor, then the device shall be equipped with a bill acceptor meter that records the following:

**(1)** the total number of bills that were accepted;

**(2)** an accounting of the number of each denomination of bill accepted; and

**(3)** the total dollar amount of bills accepted.

**J.** A gaming machine shall be designed so that the replacement parts or modules required for normal maintenance do not require replacement of the electromechanical meters.

**K.** A gaming machine shall have meters that continuously display all of the following information relating to current play or monetary transaction:

**(1)** the number of coins, tokens, or credits wagered in the current game;

(2) the number of coins, tokens, or credits won in the current game, if applicable;

(3) the number of coins or tokens paid by the hopper for a credit cashout or a direct pay from a winning outcome; and

(4) the number of credits available for wagering, if applicable.

L. Electronically stored meter information required by this rule shall be preserved after a power loss to the gaming device and must be maintained for a period of not less than 180 days.

M. A gaming machine shall not have a mechanism that causes the required electronic accounting meters to clear automatically when an error occurs.

N. The required electronic accounting meters shall be cleared only if approved by the board.

O. Required meter readings shall be recorded before and after the electronic accounting meter is cleared.

[11/30/98; 15.1.7.12 NMAC - Rn, 15 NMAC 1.7.12, 3/31/00; A, 5/15/07; 15.1.7.12 NMAC - Rn, 15.1.7.11 NMAC & A, 12/15/10]

### **15.1.7.13 RANDOMNESS EVENTS AND RANDOMNESS TESTING:**

A. A random event is an event with a given set of possible outcomes that has a given probability of occurrence called the distribution. Two events are called independent if the outcome of one event does not have an influence on the outcome of the other event and the outcome of one event does not affect the distribution of another event.

B. A gaming machine shall be equipped with a random number generator to make the selection process. A selection process is considered random if all of the following specifications are met:

(1) the random number generator satisfies not less than a 99% confidence level using the standard chi-squared analysis;

(2) the random number generator does not produce a statistic with regard to producing patterns of occurrences; the random number generator is considered random if it meets the 99% confidence level with regard to the runs test or any similar pattern testing statistic;

(3) the random number generator produces numbers that are independently chosen without regard to any other symbol produced during that play; this test is the

correlation test; the random number generator is considered random if it meets the 99% confidence level using standard correlation analysis;

(4) the random number generator produces numbers that are chosen without reference to the series of outcomes in the previous game; this test is the serial correlation test; the random number generator is considered random if it meets the 99% confidence level using standard serial correlation analysis;

(5) the random number generator and random selection process shall be impervious to influences from outside the gaming device, including, but not limited to, electromagnetic interference, electrostatic interference, and radio frequency interference; and

(6) a gaming machine shall use appropriate communication protocols to protect the random number generator and random selection process from influence by associated equipment that is conducting data communications with the gaming machine.

[11/30/98; 15.1.7.13 NMAC - Rn, 15 NMAC 1.7.13, 3/31/00; A, 5/15/07; 15.1.7.13 NMAC - Rn, 15.1.7.12 NMAC, 12/15/10]

#### **15.1.7.14 SAFETY AND POWER SUPPLY SPECIFICATION:**

**A.** Electrical and mechanical parts and design principles shall not subject a player to physical hazards. A gaming machine shall be electronically tested to the UL-22 standard for amusement and gaming devices or an equivalent standard. Testing may be done by any nationally or internationally recognized electrical safety testing laboratory.

**B.** Spilling a conductive liquid on the gaming machine shall not create a safety hazard or alter the integrity of the gaming device's performance.

**C.** The power supply used in a gaming machine shall be designed to minimize leakage of current in the event of an intentional or inadvertent disconnection of the alternate current power ground.

**D.** A surge protector shall be installed on each gaming machine. The surge protector may be internal to the power supply or external.

**E.** An on and off switch that controls the electrical current used to operate the gaming machine shall be located in an accessible place in the interior of the gaming machine.

**F.** The gaming machine power supply filtering shall be sufficient to prevent disruption of the gaming machine by a repeated switching on and off of the AC power.

**G.** Except in the case of total memory failure, if the gaming machine is still operable, a gaming machine shall be capable of continuing the current play with all the current play features after a gaming device malfunction is cleared.

[11/30/98; 15.1.7.14 NMAC - Rn, 15 NMAC 1.7.14, 3/31/00; A, 5/15/07; 15.1.7.14 NMAC - Rn, 15.1.7.13 NMAC, 12/15/10]

#### **15.1.7.15 COIN AND TOKEN ACCEPTOR SPECIFICATIONS:**

**A.** At least one electronic coin or token acceptor shall be installed in each gaming machine unless the gaming machine accepts bills only.

**B.** A coin or token acceptor shall be evaluated by an independent testing laboratory approved by the board and approved by the board to indicate that it meets the requirements of this rule.

**C.** The coin or token acceptor shall be designed to accept designated coins or tokens and to reject others.

**D.** The coin or token acceptor on a gaming machine shall be designed to prevent the use of cheating methods, including, but not limited to, slugging, stringing, or spooning.

**E.** A coin or token that is accepted but not credited to the current game shall be returned to the player by activating the hopper or crediting toward the next play of the gaming device. The gaming device control program must be capable of handling rapidly fed tokens so that instances where a token is accepted but not credited to the current game are minimized.

**F.** A gaming device must use a coin or token acceptor that accepts or rejects a token on the basis of metal composition, mass, composite makeup, or equivalent security.

[11/30/98; 15.1.7.15 NMAC - Rn, 15 NMAC 1.7.15, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.15 NMAC - Rn, 15.1.7.14 NMAC, 12/15/10]

#### **15.1.7.16 BILL ACCEPTOR SPECIFICATIONS:**

**A.** A gaming device may have a bill acceptor installed into which a patron may insert currency or a ticket in exchange for an equal value of gaming device credits. The patron shall be able to obtain an equal number of tokens or credits for the amount of currency that was inserted into the bill acceptor.

**B.** A bill acceptor shall have software programs that enable the acceptor to differentiate between genuine and counterfeit bills to a high degree of accuracy. Bill

acceptors may utilize flash technology upon approval of the board after evaluation by an independent testing laboratory.

**C.** A bill acceptor shall be equipped with a bill acceptor drop box to collect the currency inserted into the bill acceptor. The bill acceptor shall:

**(1)** be housed within the gaming machine or, if mounted on the outside of the gaming machine, be contained in a locked compartment; the key to such compartment shall be different from any other key on the gaming machine; and

**(2)** be equipped with a bill acceptor drop box that includes a stacker; the drop box shall be identifiable to the gaming machine from which it was removed and have a separate lock to access the contents of the bill acceptor drop box; the key to the lock shall not access any other area of the gaming machine.

[11/30/98; 15.1.7.16 NMAC - Rn, 15 NMAC 1.7.16, 3/31/00; A, 5/15/07; 15.1.7.16 NMAC - Rn, 15.1.7.15 NMAC, 12/15/10]

#### **15.1.7.17 AUTOMATIC LIGHT ALARM SPECIFICATIONS:**

A light shall be installed on the top of the gaming machine that automatically illuminates when the door to the gaming machine is opened or when associated equipment that may affect the security or operation of the gaming machine is exposed, if the equipment is physically attached to the gaming machine.

[11/30/98; 15.1.7.17 NMAC - Rn, 15 NMAC 1.7.17, 3/31/00; 15.1.7.17 NMAC - Rn, 15.1.7.16 NMAC, 12/15/10]

#### **15.1.7.18 INTERIOR OF GAMING MACHINE; LOGIC BOARDS:**

**A.** The internal space of a gaming device must not be readily accessible when the cabinet door is closed. The cabinet door of the gaming device must be both locked and monitored.

**B.** Access to the area described in Subsection C of 15.1.7.18 NMAC is prohibited without prior notice to the board, including the name of the person seeking access, the person's affiliation with the gaming operator licensee or owner of the gaming device, and the date, time, and purpose of such access. Unauthorized tampering or entrance into the logic area without prior notice is grounds for disciplinary action.

**C.** The logic boards, program storage medium, and RAM or non-volatile memory of a gaming device must be contained in a separate, locked enclosure within the gaming device.

[11/30/98; 15.1.7.18 NMAC - Rn, 15 NMAC 1.7.18, 3/31/00; A, 5/15/07; 15.1.7.18 NMAC - Rn, 15.1.7.17 NMAC & A, 12/15/10]

#### **15.1.7.19 HARDWARE SWITCH SPECIFICATIONS:**

**A.** A hardware switch shall not be installed if it alters the pay tables or payout percentages in the operation of a gaming machine.

**B.** A hardware switch may be installed to control graphic routines, speed of play, sound, or other board-approved cosmetic play features.

[11/30/98; 15.1.7.19 NMAC - Rn, 15 NMAC 1.7.19, 3/31/00; A, 5/15/07; 15.1.7.19 NMAC - Rn, 15.1.7.18 NMAC, 12/15/10]

#### **15.1.7.20 MULTIGAMES:**

**A.** A multigame may have various games with configurable percentages. A multigame may be approved by the board if, in addition to any other requirements in this rule, the following eight-digit electronic meters are available upon display for each game offered on the menu: credits wagered or equivalent, and credits won or equivalent.

**B.** If the method of configuring the game menu may be accomplished by entering a configuration mode of the device, then the method employed shall meet both of the following standards:

(1) the method has sufficient safeguards to prevent unauthorized access; and

(2) the method does not result in data loss or corruption of data sent to the central monitoring system.

[11/30/98; 15.1.7.20 NMAC - Rn, 15 NMAC 1.7.20, 3/31/00; A, 5/14/04; A, 5/15/07; 15.1.7.20 NMAC - Rn, 15.1.7.19 NMAC, 12/15/10]

#### **15.1.7.21 DISPLAY OF RULES OF PLAY:**

**A.** The rules of play for a gaming machine shall be displayed on the face or screen of the gaming device or capable of display at the player's option through use of an easily-accessible help screen.

**B.** The rules of play shall be evaluated by the independent testing laboratory designated by the board and shall be approved by the board. The board may reject the rules if the board determines that the rules are incomplete, conflicting, confusing, or misleading.

**C.** The rules of play shall be kept under glass or other transparent substance.

**D.** The rules of play shall not be altered without prior approval from the board.

**E.** Except for posting of odds pursuant to Section 15.1.10.21 NMAC and the display of the rules of play, stickers or other removable devices shall not be placed on the gaming device face unless their placement is approved by the board.

[11/30/98; 15.1.7.21 NMAC - Rn, 15 NMAC 1.7.21, 3/31/00; A, 5/15/07; 15.1.7.21 NMAC - Rn, 15.1.7.20 NMAC, 12/15/10]

**15.1.7.22 ERROR CONDITIONS AND AUTOMATIC CLEARING:**

**A.** A gaming machine shall be capable of detecting and displaying the following conditions: power reset, door open, and inappropriate coin-in or token-in if the coin or token is not automatically returned to the player.

**B.** The conditions described in Subsection A of 15.1.7.22 NMAC above shall be automatically cleared by the gaming machine upon initiation of a new play sequence.

[11/30/98; 15.1.7.22 NMAC - Rn, 15 NMAC 1.7.22, 3/31/00; A, 5/15/07; 15.1.7.22 NMAC - Rn, 15.1.7.21 NMAC & A, 12/15/10]

**15.1.7.23 ERROR CONDITIONS AND CLEARING BY AN ATTENDANT:**

**A.** A gaming machine shall be capable of detecting and displaying, and an attendant may clear, all of the following error conditions:

- (1) coin- or token-in jam;
- (2) coin- or token-out jam;
- (3) hopper empty or timed-out;
- (4) RAM error;
- (5) hopper runaway or extra coin or token paid out;
- (6) coin- or token-in error conditions;
- (7) reel spin error of any type, including a misindex condition of rotating reels; the specific reel number must be identified in the error indicator; and
- (8) low RAM battery, for batteries external to the RAM itself, or low power source.

**B.** A description of the gaming machine error codes and their meanings shall be contained inside each gaming machine.

[11/30/98; 15.1.7.23 NMAC - Rn, 15 NMAC 1.7.23, 3/31/00; A, 5/15/07; 15.1.7.23 NMAC - Rn, 15.1.7.22 NMAC, 12/15/10]

#### **15.1.7.24 HOPPER MECHANISM SPECIFICATIONS:**

**A.** If a gaming machine is equipped with a hopper, the hopper shall be designed to detect all of the following and force the gaming device into a tilt condition if one of the following occurs:

- (1) jammed coin or token;
- (2) extra coin or token paid out;
- (3) hopper runaway; or
- (4) hopper empty condition.

**B.** The gaming machine control program shall monitor the hopper mechanism for the error conditions specified in Subsection A of 15.1.7.24 NMAC above in all game conditions.

**C.** All coins or tokens paid from the hopper mechanism shall be accounted for by the gaming machine, including, to the extent possible, coins or tokens paid as extra coins or tokens during a hopper malfunction.

**D.** Hopper pay limits shall be designed to permit compliance by a gaming operator licensee with all applicable tax laws, rules and regulations.

[11/30/98; 15.1.7.24 NMAC - Rn, 15 NMAC 1.7.24, 3/31/00; A, 5/15/07; 15.1.7.24 NMAC - Rn, 15.1.7.23 NMAC & A, 12/15/10]

#### **15.1.7.25 TICKET PRINTER SPECIFICATIONS:**

**A.** A ticket printer shall be capable of producing the following:

- (1) date and time;
- (2) identification number of the gaming machine;
- (3) credits and their values; and
- (4) validation number.

**B.** The ticket printer shall be capable of sensing a paper out condition and completing printing of any unprinted tickets after the paper out fault has been cleared.

**C.** The machine shall either keep a duplicate copy or print only one (1) copy to the player but have the ability to retain the last ticket-out information to resolve player disputes. In addition, an approved system shall be used to validate the payout ticket, and the ticket information on the system shall be retained at least as long as the ticket is valid at that location.

**D.** Ticket printers shall be mounted inside a secure area of the TITO-enabled gaming device.

[11/30/98; 15.1.7.25 NMAC - Rn, 15 NMAC 1.7.25, 3/31/00; A, 5/15/07; 15.1.7.25 NMAC - Rn, 15.1.7.24 NMAC & A, 12/15/10]

#### **15.1.7.26 BIDIRECTIONAL COMMUNICATION:**

A gaming machine that is capable of bidirectional communication with internal or external associated equipment shall use a communication protocol that ensures that erroneous data or signals will not adversely affect the operation of the gaming device.

[11/30/98; 15.1.7.26 NMAC - Rn, 15 NMAC 1.7.26, 3/31/00; A, 1/31/02; A, 5/14/04; A, 5/15/07; 15.1.7.26 NMAC - Rn, 15.1.7.25 NMAC, 12/15/10]

#### **15.1.7.27 THEORETICAL PERCENTAGE PAYOUT REQUIREMENTS:**

**A.** During the expected lifetime of the gaming machine, the gaming machine shall not pay out less than 80%.

**B.** The theoretical payout percentage shall be determined using standard methods of the probability theory. The percentage shall be calculated using the highest level of skill where player skill impacts the payback percentage.

**C.** A gaming machine shall have a probability of obtaining the single highest posted maximum payout of more than 1 in 50,000,000.

[11/30/98; 15.1.7.27 NMAC - Rn, 15 NMAC 1.7.27, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.27 NMAC - Rn, 15.1.7.26 NMAC, 12/15/10]

#### **15.1.7.28 REVOCATION OF LICENSE OR APPROVAL:**

**A.** The board may revoke the license or approval of a gaming machine if the board determines, in its discretion, that the gaming machine:

- (1) does not perform in the manner described in the application;
- (2) is defective or malfunctions frequently;
- (3) has a detrimental impact on the conduct of the gaming operation; or

**(4)** adversely affects the computation of taxes due, but not limited to, inaccurate computation, defects, or malfunctions.

**B.** The board shall notify, in writing, the manufacturer or distributor of the gaming machine of the revocation of the license or approval. The board shall advise the manufacturer or distributor of the date on which use of the gaming machine must cease.

**C.** The board shall notify, in writing, the gaming operator licensees that use the gaming machine of the revocation of the license or approval. The board shall advise the licensees of the date on which use of the gaming machine must cease.

**D.** A gaming operator licensee or applicant shall cease using, on the date established by the board, the gaming machine for which the license or approval has been revoked. The licensee shall notify the board, in writing, if the licensee believes it cannot cease use of the gaming machine by the established date and shall request an extension of time. The board shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

[11/30/98; 15.1.7.28 NMAC - Rn, 15 NMAC 1.7.28, 3/31/00; A, 5/15/07; 15.1.7.28 NMAC - Rn, 15.1.7.27 NMAC, 12/15/10]

#### **15.1.7.29 NEW OR MODIFIED GAMING DEVICES; ADDITIONAL NOTICE REQUIREMENTS:**

**A.** The manufacturer or distributor of gaming machine shall notify the board, in writing, of any problems, defects, or malfunctions of any gaming machine that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

**B.** The manufacturer or distributor of a gaming machine shall advise the board, in writing, if any other jurisdiction has revoked the approval of any gaming machine approved or licensed by the board.

**C.** A gaming operator licensee or applicant shall notify the board, in writing, of any problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any gaming machine that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

**D.** A gaming operator licensee or applicant shall notify the board, in writing, if the approval of a gaming machine approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator license applicant, has been revoked by any other jurisdiction.

[11/30/98; 15.1.7.29 NMAC - Rn, 15 NMAC 1.7.29, 3/31/00; A, 5/15/07; 15.1.7.29 NMAC - Rn, 15.1.7.28 NMAC, 12/15/10]

**15.1.7.30 APPROVAL OF ASSOCIATED EQUIPMENT AND MODIFICATION OF PREVIOUSLY APPROVED ASSOCIATED EQUIPMENT; APPROVAL REQUIRED:**

Except as otherwise determined by the board, a manufacturer or distributor of associated equipment shall not distribute associated equipment or any modification thereto to a gaming operator licensee unless the board has approved the associated equipment or modification.

[11/30/98; 15.1.7.30 NMAC - Rn, 15 NMAC 1.7.30, 3/31/00; A, 5/15/07; 15.1.7.30 NMAC - Rn, 15.1.7.29 NMAC, 12/15/10]

**15.1.7.31 ASSOCIATED EQUIPMENT AND MODIFICATIONS; APPLICATION FOR APPROVAL:**

**A.** An applicant for approval of, or modification of existing associated equipment shall; submit an application to the board on forms provided or approved by the board.

**B.** The following information shall be included on the application:

- (1)** the name, business address, and business telephone number of the manufacturer or distributor;
- (2)** the federal identification number and New Mexico taxpayer identification number, or social security number of the manufacturer or distributor;
- (3)** a list of the jurisdictions that have approved the associated equipment and a copy of the document of approval from each jurisdiction; and
- (4)** additional information deemed necessary by the board to enable complete understanding of the operation and function of the associated equipment for which approval is sought.

**C.** The board has the authority to take, authorize, or require each of the following actions:

- (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 associated equipment through any billing mechanism the board deems appropriate for all costs of testing;
- (3)** require transportation of not more than two working models of the associated equipment to a designated independent laboratory for review and inspection. The laboratory may dismantle the associated equipment and may destroy the electronic components in order to fully evaluate the equipment;

**(4)** require that the applicant provide specialized equipment or the services of an independent technical expert to evaluate the associated equipment; and

**(5)** require the manufacturer or distributor seeking approval of the associated equipment to pay all the costs of transportation, review, inspection and testing.

**D.** If the board requires the manufacturer or distributor of associated equipment to submit the associated equipment to an independent laboratory for testing, then the manufacturer or distributor shall provide the following information to the independent laboratory:

**(1)** the information set forth in Paragraphs (1) through (5) of Subsection B of 15.1.7.31 NMAC above;

**(2)** a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language; the document must be signed under penalty of perjury;

**(3)** detailed operating procedures of the associated equipment; and

**(4)** details of all tests previously performed on the associated equipment, the conditions and standards under which the tests were performed, and the person or persons who conducted the tests.

**E.** Upon testing of any associated equipment, the independent laboratory shall provide the board with documentation of the following:

**(1)** details of the tests performed on the associated equipment;

**(2)** results of tests performed on the associated equipment;

**(3)** detailed operating procedures of the associated equipment;

**(4)** percentage calculations of the associated equipment, if applicable, and

**(5)** any other information deemed necessary by the board to ensure compliance with the act and this rule.

**F.** A gaming operator licensee shall only install or use associated equipment that has been approved by the board after determination that the associated equipment is in compliance with the technical standards set forth in this rule.

**G.** After the board determines whether to approve or disapprove the associated equipment, the board shall notify the manufacturer or distributor of its decision, in writing.

**H.** A gaming operator licensee shall not alter the manner in which associated equipment operates or revise or modify the associated equipment without the prior written approval of the board.

[11/30/98; 15.1.7.31 NMAC - Rn, 15 NMAC 1.7.31, 3/31/00; 15.1.7.31 NMAC - Rn, 15.1.7.30 NMAC & A, 12/15/10]

#### **15.1.7.32 WAIVER OF EVALUATION AND TESTING REQUIREMENTS:**

The board may waive, in the board's discretion, the evaluation and testing requirements described in this rule if the applicant provides evidence satisfactory to the board that the gaming device sought to be approved is identical in all material respects to a model that has been specifically tested and approved for current play by gaming officials in Nevada or New Jersey.

[11/30/98; 15.1.7.32 NMAC - Rn, 15 NMAC 1.7.32, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.32 NMAC - Rn, 15.1.7.31 NMAC, 12/15/10]

#### **15.1.7.33 REVOCATION OF APPROVAL OF ASSOCIATED EQUIPMENT OR MODIFICATION:**

**A.** The board may revoke approval of associated equipment or any modification thereto, if the board finds that the associated equipment:

- (1) does not perform in the manner described in the application;
- (2) is defective or malfunctions frequently;
- (3) has a detrimental impact on the conduct of a gaming operation; or
- (4) adversely affects the computation of taxes for reasons including, but not limited to, inaccurate computation, defects, or malfunctions.

**B.** The board shall notify, in writing, the manufacturer or distributor of the associated equipment of the revocation of approval. The board shall advise the manufacturer or distributor of the associated equipment of the date on which use of the associated equipment must cease.

**C.** The board shall notify, in writing, the gaming operator licensees that use, or applicants that propose to use, the associated equipment of revocation of approval. The board will advise the gaming operator licensee or applicant of the date on which the use of the associated equipment must cease.

**D.** A gaming operator licensee or applicant shall cease using the associated equipment for which approval has been revoked by the date established by the board. The licensee shall notify the board, in writing, if the licensee believes it cannot cease

use of the associated equipment by the established date and shall request an extension of time. The board shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

[11/30/98; 15.1.7.33 NMAC - Rn, 15 NMAC 1.7.33, 3/31/00; A, 5/15/07; 15.1.7.33 NMAC - Rn, 15.1.7.32 NMAC, 12/15/10]

#### **15.1.7.34 ASSOCIATED EQUIPMENT; ADDITIONAL NOTICE REQUIREMENTS:**

**A.** The manufacturer or distributor of associated equipment shall notify the board, in writing, of any problems, defects, or malfunctions of any associated equipment that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

**B.** The manufacturer or distributor of associated equipment must advise the board, in writing, if any other jurisdiction has revoked the approval of any associated equipment approved by the board.

**C.** A gaming operator licensee or applicant shall notify the board, in writing, of any material problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any associated equipment that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

**D.** A gaming operator licensee or applicant shall notify the board, in writing, if the approval of associated equipment approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator license applicant, has been revoked by any other jurisdiction.

[11/30/98; 15.1.7.34 NMAC - Rn, 15 NMAC 1.7.34, 3/31/00; A, 5/15/07; 15.1.7.34 NMAC - Rn, 15.1.7.33 NMAC, 12/15/10]

#### **15.1.7.35 RETENTION OF ASSOCIATED EQUIPMENT RECORDS:**

**A.** A manufacturer or distributor of associated equipment shall maintain the following records:

- (1)** all applications for approval of associated equipment submitted to the board;
- (2)** detailed operating procedures of the associated equipment;
- (3)** approvals of associated equipment received from any gaming jurisdiction;
- (4)** a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language;

(5) any alterations, modifications, or revisions and the requisite approvals that have been conducted on associated equipment used by gaming operator licensees or applicants;

(6) details of tests performed on the associated equipment by the manufacturer or distributor of the associated equipment; and

(7) the revocation of any approval for associated equipment issued by any gaming jurisdiction.

**B.** Manufacturer, distributor, and gaming operator licensees shall maintain documentation that indicates problems, defects, or malfunctions of the associated equipment and any other information or records the board deems necessary to ensure compliance with the act and this rule.

[11/30/98; 15.1.7.35 NMAC - Rn, 15 NMAC 1.7.35, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.35 NMAC - Rn, 15.1.7.34 NMAC, 12/15/10]

#### **15.1.7.36 MARKING OF GAMING MACHINES:**

**A.** A manufacturer or distributor shall not distribute a gaming machine in New Mexico unless the machine has:

(1) a unique, permanent serial number, which shall be clearly visible and permanently stamped or engraved on the metal frame or other permanent component of the gaming machine or on a metal plate attached to the metal frame or other permanent component of the gaming machine;

(2) a metal plate that provides the manufacturer's name, model, date of manufacture, and permanent serial number of the machine; the metal plate must be attached to the cabinet of the gaming machine, and

(3) the board-issued license number and any modification approval number affixed to all program storage media placed in the machine.

**B.** Each manufacturer or distributor shall keep a written list of the date of each distribution, the serial numbers of the gaming machines, and the names, addresses, and telephone numbers of the persons to whom the machines have been distributed and shall provide the list to the board immediately upon request.

**C.** In addition to the requirements in Subsection A of 15.1.7.36 NMAC above, no gaming operator shall place a gaming machine in a licensed premises for play unless the gaming machine bears the board-issued license number affixed to the machine. No person other than the board or its authorized employee or other agent shall affix or remove the license number.

[11/30/98; 15.1.7.36 NMAC - Rn, 15 NMAC 1.7.36, 3/31/00; A, 5/15/07; 15.1.7.36 NMAC - Rn, 15.1.7.35 NMAC & A, 12/15/10]

#### **15.1.7.37 SUMMARY SUSPENSION OF APPROVAL OF GAMING DEVICES:**

**A.** The board, with or without prior notice to the manufacturer, distributor, or licensee, may issue a summary order suspending approval of a gaming device if the board determines that the device does not operate, or is not being operated, in the manner certified by the manufacturer or as approved by the board.

**B.** After issuing the summary suspension order, the board may seal or seize all modes of that gaming device and shall thereafter comply with provisions of the act and this rule governing emergency orders of the board.

[11/30/98; 15.1.7.37 NMAC - Rn & A, 15 NMAC 1.7.37, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.37 NMAC - Rn, 15.1.7.36 NMAC, 12/15/10]

#### **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 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 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.

**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.

**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.

**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.

**O.** In addition to the machine entry access log required by Subsection J of 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 . 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 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]

#### **15.1.7.40 RETENTION OF RECORDS:**

The licensee shall maintain all records required pursuant to this rule within New Mexico for a period of five years.

[15.1.7.40 NMAC - Rn, 15.1.7.39 NMAC, 12/15/10]

### **PART 8: ACCOUNTING REQUIREMENTS UNDER THE GAMING CONTROL ACT**

#### **15.1.8.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[12/31/98; 15.1.8.1 NMAC - Rn, 15 NMAC 1.8.1, 10/15/00]

#### **15.1.8.2 SCOPE:**

This rule applies to all gaming operator licensees or applicants for gaming operator licenses under the New Mexico Gaming Control Act.

[12/31/98; 15.1.8.2 NMAC - Rn, 15 NMAC 1.8.2, 10/15/00]

#### **15.1.8.3 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. Sections 60-2E-8(C)(9) and 60-2E-8(C)(12) of the Act require that the Gaming Control Board prescribe accounting procedures and financial reporting and internal control requirements for licensees.

[12/31/98; 15.1.8.3 NMAC - Rn, 15 NMAC 1.8.3, 10/15/00]

**15.1.8.4 DURATION:**

Permanent.

[12/31/98; 15.1.8.4 NMAC - Rn, 15 NMAC 1.8.4, 10/15/00]

**15.1.8.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 15.1.8.5 NMAC - Rn, 15 NMAC 1.8.5, 10/15/00; A, 12/28/01]

**15.1.8.6 OBJECTIVE:**

This rule establishes standards for accounting, financial reporting, and internal control requirements for gaming operator licensees under the Gaming Control Act.

[12/31/98; 15.1.8.6 NMAC - Rn, 15 NMAC 1.8.6, 10/15/00; A, 12/28/01]

**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]

#### **15.1.8.8 BOARD AUDIT PROCEDURES:**

**A.** The board will establish and maintain an audit and compliance services division that shall have the responsibility to:

- (1)** conduct periodic and special audits or reviews of the books and records of licensees;
- (2)** review the accounting methods and procedures used by licensees;
- (3)** review and observe methods and procedures used by licensees to count and handle cash, tokens, and credit slips;
- (4)** examine the licensees' records, procedures, and internal controls for the exchange of cash with a gaming patron;
- (5)** examine and review licensees' internal control procedures;
- (6)** examine accounting and bookkeeping records and ledger accounts of the licensee or an affiliate of the licensee;
- (7)** examine the books and records of any licensee when conditions indicate the need for such action or upon the request of the board; and
- (8)** determine each licensee's compliance with the act and board rules.

**B.** The audit and compliance services division shall conduct each audit in conformity with the statements on auditing standards or compliance standards established by the board. The audit and compliance services division shall prepare a report at the conclusion of each audit and will submit a copy of the report to the board.

**C.** At the conclusion of each audit, the audit and compliance services division shall review the results of the audit with the licensee. The licensee may, within 10 days of receipt of the review report, submit to the board, in writing, reasons why the board should reject the results of the audit. The board shall consider the licensee's submission in determining whether any corrective or disciplinary action is necessary.

**D.** When the audit and compliance services division finds the licensee is required to pay additional taxes or fees or is entitled to a refund, the audit and compliance services division shall report its findings, and the legal basis upon which the findings are made, to the board and to the licensee.

[12/31/98; 15.1.8.8 NMAC - Rn & A, 15 NMAC 1.8.8, 10/15/00; A, 12/28/01; A, 2/28/05]

#### **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.

**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.

**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.

[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]

#### **15.1.8.10 REPORTING AND PAYMENT PROCEDURES:**

**A.** Fees required under the act and all reports relating to taxes and fees shall be received by the board not later than the due date specified by law. In addition, reports relating to taxes shall be received by taxation and revenue not later than the due date specified by law. Fees and reports shall be deemed to be timely filed if the licensee shows, to the board's satisfaction, that the licensee deposited the fees and reports in a United States post office or mailbox, with first-class postage prepaid, properly addressed to the board, and in the case of tax reports, to taxation and revenue, within the time allowed for payment of the fees and filing of the reports.

**B.** All gaming operator licensees shall remit to the state the gaming tax as provided for by the act. Tax payments shall be calculated based on net take from the gaming operator licensee's gaming machines, as verified by the machines' soft meters.

**C.** A gaming operator licensee shall establish and maintain a single gaming tax transfer account exclusively for gaming tax payments to the taxation and revenue. In maintaining such bank account:

**(1)** the gaming operator licensee shall maintain a minimum balance at all times in the gaming tax transfer account; alternatively, the account shall be secured at all times by a letter of credit or bond issued by a bank or security company acceptable to the board; for purposes of this subsection, "bond" includes cash, cash equivalent instruments or such other instruments as the board determines provide immediate liquidity;

**(2)** the minimum balance or the security shall be equivalent to at least 6% of the previous month's net take from all gaming machines of the non-profit gaming operator licensee and at least 15% of the previous month's net take from all gaming machines of the racetrack gaming operator licensee;

**(3)** no withdrawals from the gaming tax transfer account shall cause the account balance to be less than the minimum balance requirement described above;

**(4)** the gaming tax is due on or before the date designated by taxation and revenue; funds in the gaming tax transfer account shall be transmitted no later than the

designated day; any account found with insufficient funds shall constitute a violation of this subsection;

(5) tax liability shall be calculated based on gaming machine polling for the previous month; and

(6) any delinquent monies not available in the bank and account designated by taxation and revenue at the time of any required tax payment shall be subject to an interest penalty as determined by taxation and revenue; the interest penalty is in addition to any other penalties imposed by the board or taxation and revenue.

D. All gaming operator licensees shall be liable for all portions of gaming revenue from such times as the funds are received into the gaming machine until the funds are deposited into the designated bank and account of taxation and revenue.

[12/31/98; 15.1.8.10 NMAC - Rn & A, 15 NMAC 1.8.10, 10/15/00; A, 12/28/01; A, 2/28/05; A, 5/15/07; A, 6/30/08]

#### **15.1.8.11 RECORDS OF OWNERSHIP OF LICENSEE:**

A. Each company licensee that is a corporation shall keep on the premises of its gaming establishment and shall provide to the board or audit and compliance services division, upon request, the following corporate documents:

- (1) a certified copy of the articles of incorporation, and any amendments;
- (2) a copy of the bylaws and any amendments;
- (3) a copy of the certificate of authority issued by the New Mexico secretary of state authorizing the corporation to transact business in the state;
- (4) a list of all current and former officers and directors;
- (5) minutes of all meetings of the corporation's shareholders;
- (6) minutes of all meetings of the corporation's directors;
- (7) a list of all shareholders, including each shareholder's name, address, number of shares held, and the date the shares were acquired;
- (8) the stock certificate ledger;
- (9) a record of all transfers of the corporation's stock; and
- (10) a record of amounts paid to the corporation for issuance of stock and any other capital contributions.

**B.** A company licensee that is a partnership shall keep on the premises of its gaming establishment and provide to the board or audit and compliance services division upon request, the following partnership documents:

- (1) a copy of the partnership agreement and the certificate of limited partnership, if applicable;
- (2) a list of the partners, including names, addresses, percentage of interest held by each, amount and date of each capital contribution of each partner, date the interest was acquired, and salary paid by the partnership to each partner; and
- (3) a record of all withdrawals of partnership funds or assets.

**C.** A company licensee that is a limited liability company shall keep on the premises of its gaming establishment, and provide to the board or audit and compliance services division upon request, the following documents:

- (1) a list of the full name and last known mailing address of all current and former members and managers;
- (2) a copy of the articles of organization and all amendments or restatements of the articles;
- (3) a copy of every current and prior operating agreement, and every amendment thereto;
- (4) a current statement of capital contributions made by each member, including the amount of cash and the agreed value of other property received by the limited liability company and the agreed value of services as a capital contribution rendered by each member to the limited liability company;
- (5) a statement of the cash, property and services that each member has agreed to contribute or render to the limited liability company in the future, and of the principal balance outstanding under any promissory note payable in respect of a capital contribution, and the amount of the capital contribution with which each such member will be credited upon receipt of such cash, property or services by the limited liability company; and
- (6) a statement of the times at which, or events the occurrence of which, will require additional contributions to or withdrawals from capital.

**D.** Each sole proprietorship licensee shall keep on the premises of its gaming establishment, or provide to the board or audit and compliance services division upon request, a schedule that shows the name and address of the proprietorship, the amount and date of the proprietor's original investment and any additions and withdrawals.

[12/31/98; 15.1.8.11 NMAC - Rn & A, 15 NMAC 1.8.11, 10/15/00; A, 2/28/05]

#### **15.1.8.12 RETENTION OF RECORDS:**

The licensee shall maintain all records required pursuant to this rule within New Mexico for a period of five years.

[12/31/98; 15.1.8.12 NMAC - Rn & A, 15 NMAC 1.8.12, 10/15/00; A, 2/28/05; A, 5/15/07]

#### **15.1.8.13 [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]

#### **15.1.8.15 SYSTEM OF INTERNAL CONTROL PROCEDURES FOR LICENSEES:**

**A.** Each licensee shall establish written administrative and accounting procedures for the purpose of verifying the licensee's liability for taxes under the act and for the purpose of exercising effective control over the licensee's internal financial affairs. The procedures shall be designed to satisfy the requirements, and include the provisions, set forth in Section 60-2E-35 of the act. In addition, the gaming operator licensee's or applicant's procedures shall meet the minimum standards established pursuant to board regulations.

**B.** The licensee shall not implement internal control procedures that do not satisfy the minimum standards unless the board, in its sole discretion, determines that the licensee's proposed internal control procedures satisfy the requirements set forth in Section 60-2E-35 of the act and approves the proposed system in writing. Within 30 days after a licensee receives notice of such approval, the licensee shall comply with the approved procedures, amend its written procedures as necessary, and submit to the board a copy of the written procedures as amended and a written description of the variations from the minimum control standards. The licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner shall sign the report.

**C.** Each racetrack licensee shall require its independent certified public accountant to submit to the licensee, on an annual basis, two copies of a written report analyzing the licensee's compliance with approved procedures and minimum control standards. Using the criteria established by the board, the accountant shall report each event and procedure that the accountant believes does not satisfy the minimum standards or

variations that have been approved by the board in writing pursuant to Subsection B of 15.1.8.15 NMAC. Not later than 120 days after the end of the licensee's business year, the licensee shall submit to the board a copy of the accountant's report and any other documentation relating to the licensee's items of noncompliance noted by the accountant and describing the corrective measures taken.

**D.** Before adding any computerized system for monitoring gaming machines or any computerized associated equipment, the licensee shall do the following:

(1) amend its accounting and administrative procedures and internal controls to comply with the minimum standards;

(2) submit to the board a copy of the procedures as amended and a written description of the amended procedures signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner;

(3) comply with any requirements imposed by the board regarding administrative approval of computerized gaming machine monitoring systems or associated equipment; and

(4) after complying with Paragraph (1) of Subsection D of 15.1.8.15 NMAC through Paragraph (3) of Subsection D of 15.1.8.15 NMAC above, implement the procedures as amended.

**E.** If the board determines at any time that the licensee's administrative or accounting procedures do not comply with the requirements of this section, or the licensee is out of compliance with the approved minimum internal controls, the board shall notify the licensee in writing. Within 30 days after the date of such notice, the licensee shall amend its procedures accordingly, submit a copy of the amended procedures, and provide, in writing, a description of any remedial measures taken.

[12/31/98; 15.1.8.15 NMAC - Rn & A, 15 NMAC 1.8.15, 10/15/00; A, 12/28/01; A, 2/28/05; A, 6/30/08]

#### **15.1.8.16 NET TAKE COMPUTATIONS:**

**A.** For each gaming machine, gross revenue equals the total of cash received from patrons for playing a game, cash received in payment for credit extended by a licensee to a patron for playing a game, and compensation received for conducting a game in which the licensee is not a party to the wager. Net take equals gross revenue less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators. In addition, if the licensee retains detailed documentation supporting the deduction, the licensee may deduct the actual cost to the licensee, its agent or employee, or an affiliate of the licensee, of any personal property (other than

costs of travel, food, refreshments, lodging, or services) distributed to a patron as the result of a legitimate wager.

**B.** The difference between the initial hopper load and the total amount that is in the hopper at the end of each business year shall be adjusted accordingly as an addition to or subtraction from the drop. If the licensee does not make, or makes inaccurate, additions to or subtractions from the drop, the audit and compliance services division may compute an estimated total amount in the slot machine hoppers and may make reasonable adjustments to gross revenue during the course of an audit.

**C.** A licensee shall not exclude from gross revenue money paid out on wagers that are knowingly accepted by the licensee in violation of the act, this title, or other state or federal laws.

**D.** If in any month the amount of net take is less than zero, the licensee may deduct the excess in the succeeding months until the loss is fully offset against net take.

[12/31/98; 15.1.8.16 NMAC - Rn & A, 15 NMAC 1.8.16, 10/15/00; A, 2/28/05]

#### **15.1.8.17 [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 shall deposit all gaming funds into their gaming operating account after each drop and count; and, once the deposit is made, shall write a check back to the cashier cage or vault (if applicable) for replenishment;

**(3)** by the end of the month, the required charity and educational funds shall be transferred from the operating account into the charity account;

**(4)** 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

**(7)** the nonprofit licensee shall maintain detailed records of all deposits into, and withdrawals and disbursements from, the operating account.

**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 transfers as identified in this 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;

**(3)** monies in the charity/educational account shall be used exclusively for charitable and educational payments as set forth in 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 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'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]

**15.1.8.21 SLOT ACCOUNTING SYSTEM; RACETRACKS:**

A slot accounting system shall be required for all racetrack gaming premises constructed after September 1, 2003. A racetrack gaming premises constructed prior to September 1, 2003, is not required to obtain a slot accounting system. If a racetrack constructed prior to September 1, 2003, has implemented a slot accounting system, the racetrack shall maintain that slot accounting system or another system acceptable to the board.

[15.1.8.21 NMAC - N, 5/14/04; A, 2/13/09]

**PART 9: INTERNAL CONTROL MINIMUM STANDARDS FOR GAMING DEVICES UNDER THE GAMING CONTROL ACT**

**15.1.9.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 12/31/98; 15.1.9.1 NMAC - Rn, 15 NMAC 1.9.1, 1/31/02]

**15.1.9.2 SCOPE:**

This rule applies to all gaming operator licensees or applicants for gaming operator licenses and other persons involved in gaming activity under the New Mexico Gaming Control Act.

[N, 12/31/98; 15.1.9.2 NMAC - Rn, 15 NMAC 1.9.2, 1/31/02]

**15.1.9.3 STATUTORY AUTHORITY:**

Paragraph (3) of Subsection B of Section 60-2E-7 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. Paragraph (12) of Subsection C of Section 60-2E-8 of the act directs the Gaming Control Board to adopt regulations prescribing internal control requirements for licensees.

[N, 12/31/98; 15.1.9.3 NMAC - Rn, 15 NMAC 1.9.3, 1/31/02; A, 6/30/16]

**15.1.9.4 DURATION:**

Permanent.

[N, 12/31/98; 15.1.9.4 NMAC - Rn, 15 NMAC 1.9.3, 1/31/02]

**15.1.9.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[N, 12/31/98; 15.1.9.5 NMAC - Rn & A, 15 NMAC 1.9.5, 1/31/02]

**15.1.9.6 OBJECTIVE:**

This rule establishes requirements for the establishment of internal controls by gaming operator licensees.

[N, 12/31/98; 15.1.9.6 NMAC - Rn & A, 15 NMAC 1.9.6, 1/31/02]

**15.1.9.7 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. "Bill acceptor"** means the optional assembly on a gaming machine that accepts valid paper currency and causes the machine to either dispense change or issue game credits.

**C. "Coin-in meter"** means an electronic counter that measures total coins placed in the gaming machine for a specified period of time.

**D. "Coin room"** means a separate, secured room or area in which coins are inventoried.

**E. "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.

**F. "Drop area"** means the restricted room or area of the licensed premises where the drop is permitted to be conducted; the drop area may be roped off or otherwise distinctly identified as a restricted area.

**G. "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.

**H. "Hard count"** means the counting of coins generated by gaming operations.

**I. "Hard drop"** means the controlled, secured process of removing coins from gaming machines.

**J. "Hard meter"** means an internal accounting system that is displayed on mechanical meters on a gaming machine.

**K. "Hopper"** means the assembly inside the gaming machine that receives, holds and dispenses coins.

**L. "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, EEPROM, EPROM, compact flash, flash RAM, CD/DVD ROM or hard drive.

**M. "Payout"** means a patron's winnings, including money, tokens, credit to a player's account, and the actual cost to the licensee of personal property, other than travel expenses, food, refreshments, lodging, or services, distributed to a gaming machine patron as a result of a legitimate wager; "payout" also includes cash paid directly to an independent administrator by a licensee for the purchase of annuities to pay a patron's winnings over several years.

**N. "Soft meter"** means the internal accounting system that can be displayed on the screen of an electronic gaming machine or in the coin window on a reel gaming machine.

**O. "This title"** means Title 15, Chapter 1 of the New Mexico Administrative Code.

**P. "Ticket printer"** means a device in place of a coin-out hopper on a gaming machine that prints and dispenses a cash ticket voucher that may be redeemed by a patron for cash or a specified prize.

**Q. "Weigh scale interface"** means a software interface that transfers drop figures by direct line or computer storage media.

[N, 12/31/98; 15.1.9.7 NMAC - Rn, 15 NMAC 1.9.7, 1/31/02; A, 12/15/10]

#### **15.1.9.8 GENERAL REQUIREMENTS:**

**A.** The gaming operator or applicant shall develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the licensed premises which shall be reviewed by the board or board's designated representatives. The procedures and controls shall be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls shall provide at least the level of control described in this rule, and shall, at a minimum conform to the standards established in the minimum internal controls for nonprofits gaming operations licensees dated February, 2014 or the minimum internal controls for racetrack gaming operations, dated April, 2014 as posted on the board's website ([www.nmgcb.org/minimum-internal-controls.aspx](http://www.nmgcb.org/minimum-internal-controls.aspx)), unless a variance has been approved by the board.

**B.** Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls shall identify the employees authorized to perform each function and shall ensure an appropriate level of security for each function.

**C.** Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board shall be acceptable to the board.

**D.** Any amendment to a licensee's internal controls shall be provided in writing to the board or the board's designee before implementation by the licensee.

**E.** Any amendment that does not meet the standards of the minimum internal controls shall come before the board for approval.

**F.** The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security.

[N, 12/31/98; 15.1.9.8 NMAC - Rn & A, 15 NMAC 1.9.8, 1/31/02; A, 2/28/05; A, 5/15/07; A, 6/30/08; A, 6/30/16]

#### **15.1.9.9 METER READINGS:**

Procedures and controls shall be developed and implemented for reading, recording and retaining hard and soft meter readings and for reporting, investigating, and adjusting unusual meter readings.

[N, 12/31/98; 15.1.9.9 NMAC - Rn, 15 NMAC 1.9.9, 1/31/02; A, 2/28/05]

#### **15.1.9.10 DROP, COUNT, AND WRAP PROCEDURES:**

Internal controls shall include procedures and controls for:

**A.** maintaining physical custody of, and restricting and documenting access to, coin drop cabinet keys, bill acceptor drop box release keys, bill acceptor drop box storage rack keys, and bill acceptor drop box contents keys;

**B.** ensuring that access to coin drop boxes and bill acceptor boxes is restricted and that drop, count, and wrap procedures are performed only by authorized personnel;

**C.** ensuring that all drop buckets and bill acceptor boxes are accounted for during the drop, count, and wrap procedures and preventing the commingling of coins or bills before the count is completed;

**D.** securing drop buckets or bill acceptor boxes from the time they are removed from the gaming machine cabinets to the time they are transported to the count room;

**E.** prior to the count, if a weigh scale is to be used, ensuring proper calibration, testing, and securing of the weigh scale, and documentation of those procedures; if a weigh scale interface is used, restricting access to the weigh scale interface to authorized persons;

**F.** securing coin room inventory if the count room serves as a coin room;

**G.** restricting access to the count room to count team members during the count;

**H.** monitoring the drop, count, and wrap procedures and documenting the results; and

**I.** delivering all monies and count documents to the appropriate secured location for safekeeping.

[N, 12/31/98; 15.1.9.10 NMAC - Rn, 15 NMAC 1.9.10, 1/31/02; A, 2/28/05]

#### **15.1.9.11 HOPPER CONTENTS; FILLS; ADJUSTMENTS:**

The gaming operator licensee's internal controls shall include procedures and controls for securing drop and hopper contents when gaming machines are temporarily removed from the floor; refilling an empty hopper; making hopper adjustments; and restricting

access to computerized fill systems in a manner that prevents access by unauthorized persons and fraudulent payouts.

[N, 12/31/98; 15.1.9.11 NMAC - Rn, 15 NMAC 1.9.11, 1/31/02; A, 2/28/05]

#### **15.1.9.12 ACCOUNTING AND AUDITING PROCEDURES:**

**A.** The gaming operator licensee's internal controls shall provide for completion of accounting and auditing procedures on the gaming machine site controller at reasonable intervals. The internal controls shall include procedures to:

- (1)** verify that the site controller is transmitting and receiving data from the gaming machines properly and that coin-in and bill-in meter readings are accurate;
- (2)** compare the bill-in meter reading to the total bill acceptor drop amount or ticket printer amounts and resolve variances before generation and distribution of gaming machine statistical reports;
- (3)** reconcile gross gaming revenue monthly;
- (4)** reconcile tickets printed with payouts for validated tickets; and
- (5)** document and maintain all gaming machine auditing reports and follow-up procedures as required in this title.

**B.** Gaming operator licensees shall retain the audit tape that records an exact duplicate of all tickets printed and transactions recorded for a period of five years. The audit tape shall be identified by gaming machine and stored in a secure area.

[N, 12/31/98; 15.1.9.12 NMAC - Rn, 15 NMAC 1.9.12, 1/31/02; A, 2/28/05]

#### **15.1.9.13 GAMING DEVICE CONTROL; COMPUTER ACCESS:**

**A.** The gaming operator licensee shall develop and maintain internal controls that provide for documented access to gaming devices, limited access to keys, locked cabinets, and counting areas, and maintenance of a readily-accessible device history log in each gaming machine or on file.

**B.** The gaming operator licensee shall maintain a personnel access list that includes, at a minimum, the employee's name, identification number, and a list of functions the employee is authorized to perform and the dates such authority was given. The licensee's internal controls shall ensure that only authorized personnel have physical access to computer hardware and software, that reports and other computer-generated output are available and distributed only to authorized personnel.

[N, 12/31/98; 15.1.9.13 NMAC - Rn, 15 NMAC 1.9.13, 1/31/02; A, 2/28/05]

#### **15.1.9.14 BACKUP AND RECOVERY CONTROL:**

Backup and recovery policies for gaming machines and computerized systems shall be written and distributed to all appropriate personnel. The policies shall include information and procedures that ensure timely restoration of data in order to resume operations after a power outage or hardware or software failure.

[N, 12/31/98; 15.1.9.14 NMAC - Rn, 15 NMAC 1.9.14, 1/31/02; A, 2/28/05]

#### **15.1.9.15 APPLICATIONS CONTROL:**

The gaming operator licensee shall establish procedures that assure the accuracy of data input into the computerized system, the integrity of the processing performed by the system, and the verification and distribution of the output generated by the system. Examples of such controls include establishing passwords or other proper authorization prior to input, using parameters or reasonableness checks, and comparing control totals on reports to amounts input.

[N, 12/31/98; 15.1.9.15 NMAC - Rn, 15 NMAC 1.9.14, 1/31/02; A, 2/28/05]

#### **15.1.9.16 GAMING MEDIA TESTING AND DUPLICATION:**

**A.** Gaming media shall not be duplicated except with board approval, unless the person seeking to duplicate the program is a licensed manufacturer. In either case, the licensee shall ensure compliance with all applicable federal copyright laws. Approval by the board to duplicate game program gaming media does not constitute an opinion as to such compliance.

**B.** The licensee shall develop and maintain procedures for each of the following:

- (1)** removal of gaming media from devices, verification of the existence of errors, and correction of errors by duplication from the master game program;
- (2)** copying one gaming device program to another approved program;
- (3)** verification of duplicated gaming media with electrical failures;
- (4)** destruction, as needed, of gaming media with electrical failures or physical damage; and
- (5)** securing the gaming media duplicator and master game gaming media from unrestricted access.

**C.** Records shall be maintained documenting the procedures described in 15.1.9.16 NMAC. The records include the date, gaming machine number for both source and

destination machines, manufacturer, program number, personnel involved, reason for duplication, disposition of any permanent gaming media, and lab approval number.

**D.** Gaming media returned to gaming devices shall include the date and information that is identical to that shown on the manufacturer's label.

[N, 12/31/98; 15.1.9.16 NMAC - Rn, 15 NMAC 1.9.16, 1/31/02; A, 2/28/05; A, 12/15/10; A, 6/30/16]

## **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, 1/29/2016]

### **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, 1/29/2016]

### **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, 1/29/2016]

### **15.1.10.4 DURATION:**

Permanent.

[15.1.10.4 NMAC - Rp, 15.1.10.4 NMAC, 1/29/2016]

### **15.1.10.5 EFFECTIVE DATE:**

January 29, 2016, unless a later date is cited at the end of a section.

[15.1.10.5 NMAC - Rp, 15.1.10.5 NMAC, 1/29/2016]

**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, 1/29/2016]

**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: license fees, including renewals and gaming machine license fees;
- 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 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 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 state administrative code;

**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, 1/29/2016; A, 5/21/2024]

#### **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, 1/29/2016]

#### **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 one 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, 1/29/2016]

#### **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, 1/29/2016]

#### **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.

[15.1.10.11 NMAC - Rp, 15.1.10.11 NMAC, 1/29/2016]

**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, 1/29/2016]

**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, 1/29/2016]

**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 un-enroll 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 30 days. Temporary removal of a gaming device under this subsection shall not exceed 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 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, 1/29/2016]

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

**A.** Persons under 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 21 YEARS OF AGE OR OLDER."

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

**D.** In the event a person under 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, 1/29/2016]

#### **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, 1/29/2016]

#### **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, 1/29/2016]

#### **15.1.10.18 GAMING MACHINE OWNERSHIP IDENTIFICATION:**

**A.** In addition to any other requirements for identification set forth in this title, a 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 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, 1/29/2016]

#### **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, 1/29/2016]

#### **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 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 NMGCB 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 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, 1/29/2016]

**15.1.10.21 [RESERVED]**

[15.1.10.21 NMAC - Rp, 15.1.10.21 NMAC, 1/29/2016]

**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, 1/29/2016]

### **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 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, a 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, a 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 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 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 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, 1/29/2016]

**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 or more of which may be simulated on a single gaming machine, are 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 gaming machine;

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

(4) multi-station games shall not comprise more than three 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 player terminals shall count as one gaming

machine, each multi-station game having between six and 10 player terminals shall count as two gaming machines and each multi-station game having between 11 and 15 gaming machines shall count as three 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 random number generator;

(3) each multi-station game shall have one 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, 1/29/2016]

#### **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 ten thousand dollars (\$10,000). 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.

(1) Every gaming machine offered for play by a nonprofit operator licensee shall have affixed to it in a prominent fashion, a notice stating the maximum jackpot possible for that machine.

(2) If a gaming machine offered for play by a nonprofit operator awards a jackpot exceeding the maximum jackpot set/posted for that machine, the gaming operator shall immediately remove the machine from play and notify the operations and enforcement divisions of the NMGCB and the licensee's gaming machine distributor. It shall be the responsibility of the distributor to determine in five working days whether the excessive jackpot is a machine malfunction or the result of failed programming on the part of the distributor. A copy of the distributor's findings shall be returned to the

licensee and the operations and enforcement divisions of the NMGCB prior to being returned to play on the nonprofit operator's gaming floor. It shall be an unsuitable method of operation for a distributor to put into play a gaming machine with programming that exceeds the jackpot posted on a gaming machine.

**B.** Except as otherwise provided in this title, a 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, a 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, 1/29/2016; A, 5/21/2024]

#### **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)** another 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 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 15.1.10.26(C)(2) 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 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, 1/29/2016]

#### **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 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 180 days from the date of issuance. The 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, 1/29/2016]

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

In the event a dispute arises with a patron concerning payment of alleged winnings or promotional prizes including any jackpot or credits, the gaming operator licensee ("licensee") and the patron shall abide by the following procedures:

**A.** 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.

**B.** the patron and licensee shall complete the patron dispute form immediately, except for good cause shown.

**C.** within 24 hours of a dispute valued at five hundred dollars (\$500) or more, the licensee shall notify the enforcement division, by contacting the agent assigned to the licensee, via telephone and electronic mail.

**D.** whereas, if the dispute is valued at less than five hundred dollars (\$500), then the initial burden shall be on the patron to notify the enforcement division within 24 hours of the dispute, by contacting the enforcement division at the telephone number or electronic mail address as located on the patron dispute form. The enforcement division shall then contact the licensee so that both parties can comply with the remaining procedures as set forth herein.

**E.** within 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.

**F.** 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 dollars (\$500) or more on a gaming machine, the licensee shall immediately remove the game from play, and secure it until such time as an agent of the board has inspected the machine and released it for further play.

**G.** 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.

**H.** if a critical memory clear is needed, it shall not be performed until the patron dispute is resolved and the reset is authorized by an agent of the board.

**I.** an agent of 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.

**J.** an agent of the board shall complete its investigation within 30 days of having received the patron dispute form from both the licensee and patron.

**K.** an agent of the board shall notify the licensee and patron in writing of the board's decision regarding the dispute within 60 days of receipt of the patron dispute form from both the licensee and patron.

**L.** it is a violation of this rule for a licensee to fail to notify the board of an unresolved patron dispute valued at five hundred dollars (\$500) or more within 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 15 days after an adverse decision by the board unless the licensee appeals the decision.

**M.** failure to follow the above procedures may adversely affect that party's claim.

[15.1.10.28 NMAC - Rp, 15.1.10.28 NMAC, 1/29/2016]

#### **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 15.1.10.29(B) NMAC above, a 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, 1/29/2016]

#### **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 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 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 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 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 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 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 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 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 60 days if it becomes a party to any regulatory or administrative action. Following such written report, a 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 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 30 days of any change to its organizational structure or management responsibilities.

**K.** Each licensee shall notify the board within 30 days if it becomes subject to any tax liens.

[15.1.10.30 NMAC - Rp, 15.1.10.30 NMAC, 1/29/2016]

**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, 1/29/2016]

**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 twenty 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 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 act.

[15.1.10.32 NMAC - Rp, 15.1.10.32 NMAC, 1/29/2016; A, 5/21/2024]

### **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 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, 1/29/2016]

#### **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, 1/29/2016]

#### **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, a 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 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, 1/29/2016]

#### **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 24 hours and apply for a replacement badge on forms approved by the board within three business days.

[15.1.10.36 NMAC - Rp, 15.1.10.36 NMAC, 1/29/2016]

#### **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, 1/29/2016]

#### **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, 1/29/2016]

#### **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, 1/29/2016]

#### **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, 1/29/2016]

#### **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, a 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, 1/29/2016]

#### **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 live race days a week with at least nine live races on each race day during its licensed race meet.

**B.** Maintaining fewer than four live race days or nine 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), NMSA 1978 of the 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), NMSA 1978 of the 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, 1/29/2016]

#### **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 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, 1/29/2016]

#### **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, 1/29/2016]

#### **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 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, shall state the maximum jackpot agreed upon by the parties for each machine being installed, 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 repayment period, are 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 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, 1/29/2016; A, 5/21/2024]

**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, 1/29/2016]

**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, 1/29/2016]

**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 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 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, 1/29/2016]

## **PART 11: LIST OF EXCLUDED PERSONS UNDER THE GAMING CONTROL ACT**

### **15.1.11.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 12/31/98; 15.1.11.1 NMAC - Rn, 15 NMAC 1.11.1, 2/14/02]

### **15.1.11.2 SCOPE:**

This rule applies to all licensees and gaming establishments under the New Mexico Gaming Control Act.

[N, 12/31/98; 15.1.11.2 NMAC - Rn, 15 NMAC 1.11.2, 2/14/02]

### **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]

**15.1.11.4 DURATION:**

Permanent.

[N, 12/31/98; 15.1.11.4 NMAC - Rn, 15 NMAC 1.11.4, 2/14/02]

**15.1.11.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[N, 12/31/98; 15.1.11.5 NMAC - Rn & A, 15 NMAC 1.11.5, 2/14/02]

**15.1.11.6 OBJECTIVE:**

This rule provides for the establishment of a list of persons to be excluded or ejected from gaming establishments and grounds for exclusion or ejection.

[N, 12/31/98; 15.1.11.6 NMAC - Rn, 15 NMAC 1.11.6, 2/14/02]

**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.

**G. "person"** means an individual.

**H. "petitioner"** means a person who files a request for hearing before the board.

**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 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 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.

**C.** Except as otherwise provided in this rule, no person on the involuntary exclusion list 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 shall be open to public inspection and 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 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 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 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 placed on the involuntary exclusion list.

DATED this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

---

Board Member

**C.** If a candidate does not request a hearing, the board 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 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 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 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 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. After ninety (90) days, the board shall either set the petition for hearing or deny the petition. If the board decides to entertain the petition, it shall specify a hearing date and, thereafter, the procedures set forth in 15.1.15 NMAC shall apply. As used in those provisions, "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 shall be made in the same manner as notice under 15.1.11.10 NMAC. In addition, in the case of removal proceedings pursuant to 15.1.11.12 NMAC, the board 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'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's enforcement division if the excluded person fails to comply with 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) 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 train its agents and employees as to the requirements of this part; and

(3) 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]

## **PART 12: USE OF TOKENS UNDER THE GAMING CONTROL ACT**

### **15.1.12.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 12/31/98; 15.1.12.1 NMAC – Rn, 15 NMAC 1.12.1, 2/14/02]

### **15.1.12.2 SCOPE:**

This rule applies to all gaming operator licensees, licensed manufacturers and distributors of gaming devices, and applicants for such licenses under the Gaming Control Act.

[N, 12/31/98; 15.1.12.2 NMAC – Rn, 15 NMAC 1.12.2, 2/14/02]

### **15.1.12.3 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-40 requires that the board approve any tokens to be used in the conduct of gaming.

[N, 12/31/98; 15.1.12.3 NMAC – Rn, 15 NMAC 1.12.3, 2/14/02]

### **15.1.12.4 DURATION:**

Permanent.

[N, 12/31/98; 15.1.12.4 NMAC – Rn, 15 NMAC 1.12.4, 2/14/02]

### **15.1.12.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[N, 12/31/98; 15.1.12.5 NMAC – Rn & A, 15 NMAC 1.12.5, 2/14/02]

### **15.1.12.6 OBJECTIVE:**

The objective of this rule is to establish specifications and operating requirements for the use of tokens in the play of licensed gaming machines.

[N, 12/31/98; 15.1.12.6 NMAC – Rn, 15 NMAC 1.12.6, 2/14/02]

### **15.1.12.7 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. "person"** means a legal entity or individual.

**C. "State"** means the State of New Mexico.

**D. "token"** means a metal representative of value issued and sold by a gaming operator licensee for use in its licensed gaming machines on its licensed premises.

[N, 12/31/98; 15.1.12.7 NMAC – Rn, 15 NMAC 1.12.7, 2/14/02]

#### **15.1.12.8 USE OF TOKENS:**

**A.** No person may sell, distribute, or offer for play any gaming machine that accepts tokens for play, unless the tokens are approved in advance by the board as required in this rule.

**B.** Tokens carry a monetary value evidencing a debt owed to their holder by the licensee that issued them. They are the property of the licensee and no other person.

**C.** A gaming operator licensee that operates gaming machines that use tokens must:

**(1)** issue tokens only to patrons of the gaming operator licensee's gaming establishment;

**(2)** take reasonable steps to prevent the issuance to its patrons of tokens of other gaming operator licensees;

**(3)** post in conspicuous places on the licensed premises signs notifying patrons that federal law prohibits the use of the gaming operator licensee's tokens outside of the gaming establishment for any monetary purpose and that the tokens are the property of the licensee;

**(4)** post in conspicuous places on the licensed premises signs that read, "Tokens issued by another gaming operator may not be wagered or redeemed at this gaming establishment"; and

**(5)** develop and implement a system of internal procedures and controls, satisfactory to the board, for the receipt and storage of tokens. The system must include, but is not limited to, checking tokens upon receipt from the manufacturer, reporting deviations or defects to the board, recording the number and denomination of tokens received, and providing for secured storage of the tokens.

**D.** A gaming operator licensee must not:

- (1) accept tokens as payment for any other goods or services offered by the gaming operator licensee's gaming establishment;
- (2) give tokens in exchange for any transaction other than for use in the play of licensed gaming machines;
- (3) redeem its tokens if presented by any person the gaming operator licensee has reason to believe is not a patron of its gaming establishment, except an employee of another gaming operator licensee who represents that the tokens were unknowingly, inadvertently or unavoidably received by that operator, or an employee of the gaming operator licensee who presents the tokens in the normal course of employment; or
- (4) issue, use, permit the use of, or redeem tokens issued by another gaming operator licensee.

[N, 12/31/98; 15.1.12.8 NMAC – Rn, 15 NMAC 1.12.8, 2/14/02]

#### **15.1.12.9 APPLICATION FOR APPROVAL OF TOKENS:**

**A.** A gaming operator licensee may not issue, sell or redeem any token unless the board has issued written approval of the specifications of the token and of a sample of the token. A gaming operator licensee may not issue, sell or redeem any token that is a modification of a previously approved token unless the board has issued written approval of the modification.

**B.** Applications for approval of tokens and modifications to previously approved tokens must be made on forms provided or approved by the board. Only a gaming operator licensee or a licensed manufacturer may apply for such approval. The application must include:

- (1) an exact drawing of the front, back, and edge of the proposed token, drawn to actual size or to scale larger than actual size showing the measurements of the proposed token. The drawing must show the proposed token's diameter and thickness and any logo, design or wording to be contained on the token, all of which must be depicted on the drawing as they will appear, both as to size and location, on the actual token;
- (2) written specifications for the proposed token;
- (3) the name and address of the manufacturer of the proposed token;
- (4) the intended use for the proposed token; and

- (5) any other information required by the board.

**C.** If the board determines, in the board's discretion, that based on the information provided in the application the proposed token conforms with the requirements of this rule, the board will notify the applicant in writing. The applicant then must submit a sample of the proposed token in final manufactured form to the board. The applicant may be required to conduct a field test of the token in the gaming machine in which the token will be used. If the board determines that the manufactured sample conforms to the requirements of this rule and the information submitted in the application, the board will approve the token and notify the applicant in writing. The board may retain all samples of tokens.

[N, 12/31/98; 15.1.12.9 NMAC – Rn, 15 NMAC 1.12.9, 2/14/02]

#### **15.1.12.10 SPECIFICATIONS FOR TOKENS:**

**A.** Tokens must be designed, manufactured, and constructed in compliance with all applicable statutes, rules, and policies of the United States, the State, and other states to prevent counterfeiting of the tokens. Tokens must not resemble any current or past coinage of the United States or any other country.

**B.** Only one-dollar and five-dollar tokens will be approved. Tokens must meet the following size and content specifications:

- (1) one-dollar tokens must be disk-shaped and must measure from 1.460 through 1.470 inches in diameter and from .098 through .104 inch thick;

- (2) five-dollar tokens must be disk-shaped and must measure from 1.750 inches through 1.760 inches in diameter and from .119 through .125 inch thick;

- (3) tokens must not be manufactured from material possessing sufficient magnetic properties to allow them to be accepted by any coin mechanism other than that of a gaming machine; and

- (4) tokens must not be manufactured from a three-layered material consisting of copper-nickel alloy clad on both sides of a pure copper core nor from a copper-based material unless the total of alloying materials is at least 20 percent of the token's weight.

**C.** Tokens must meet the following inscription specifications:

- (1) the name of the issuing establishment must be inscribed on each side of the token;

- (2) the city in which the gaming establishment is located must be inscribed on one side of the token;

(3) the value of the token must be inscribed on each side of the token;

(4) the words "Not Legal Tender" must be inscribed on one side of the token;  
and

(5) a statement, approved by the board, notifying a patron that the token will be accepted to activate play only in gaming machines operated by the gaming operator licensee that issued the token, must be inscribed on one side.

[N, 12/31/98; 15.1.12.10 NMAC – Rn, 15 NMAC 1.12.10, 2/14/02]

#### **15.1.12.11 ISSUANCE AND REDEMPTION OF TOKENS:**

**A.** Tokens may be issued to a patron only from a cashier's cage, token dispenser, gaming employees on the licensed premises, or from a gaming machine as change or winnings.

**B.** Tokens may be redeemed only at a cashier's cage on the licensed premises of the gaming operator licensee that issued the tokens.

**C.** Each gaming operator licensee must promptly redeem its own tokens from its patrons by cash or check drawn on the gaming operator licensee's account and dated the day of the redemption, except where tokens were obtained or used unlawfully.

**D.** Each gaming operator licensee may demand the redemption of its tokens from any individual in possession of them. Upon such demand, the individual must redeem the tokens upon presentation of an equivalent amount of cash by the gaming operator licensee.

[N, 12/31/98; 15.1.12.11 NMAC – Rn, 15 NMAC 1.12.11, 2/14/02]

#### **15.1.12.12 DISCONTINUED TOKENS:**

**A.** Any gaming operator licensee that permanently removes tokens from use or replaces approved tokens at its gaming establishment or ceases gaming activities must prepare a plan for redeeming discontinued tokens that remain outstanding at the time of discontinuance. The licensee must submit the plan, in writing, to the board at least 30 days before the proposed removal, replacement or closure. The board may approve the plan or require reasonable modifications as a condition of approval. Upon approval, the gaming operator licensee must implement the plan as approved.

**B.** In addition to any other provision required by the board, the plan must provide for:

(1) redemption of outstanding, discontinued tokens for at least 90 days after removal or replacement of the tokens or closure of the gaming establishment, or for such other period as the board requires;

(2) redemption of the tokens at the licensed premises or at such other location as approved by the board;

(3) posting in a conspicuous place on the licensed premises notice of discontinuance of the tokens and redemption and the relevant times and locations at which tokens may be redeemed; and

(4) destruction or such other disposition of the discontinued or replaced tokens as set forth in section 15.1.12.14 of this rule.

[N, 12/31/98; 15.1.12.12 NMAC – Rn, 15 NMAC 1.12.12, 2/14/02]

#### **15.1.12.13 COUNTERFEIT TOKENS:**

**A.** The gaming operator licensee must notify the board immediately upon the discovery of counterfeit tokens indicating a loss in excess of \$500.

**B.** The board or its agent may take possession of the counterfeit tokens. The board will determine the disposition of any counterfeit token, including, but not limited to, destruction of the counterfeit token in accordance with this rule.

**C.** Unless the board or its agent instructs in writing or a court of competent jurisdiction orders otherwise in a particular case, the gaming operator licensee must destroy or otherwise dispose of counterfeit tokens discovered in the gaming establishment as set forth in section 15.1.12.14 NMAC of this rule.

[N, 12/31/98; 15.1.12.13 NMAC – Rn, 15 NMAC 1.12.13, 2/14/02]

#### **15.1.12.14 DESTRUCTION OF DISCONTINUED OR COUNTERFEIT TOKENS:**

**A.** Discontinued and counterfeit tokens must be disposed of in a manner that makes them incapable of use. The gaming operator license must notify the board, in writing, at least 30 days before the discontinued or counterfeit tokens are to be disposed of or destroyed. The notice must include the following information:

(1) the number and denominations of the tokens to be destroyed or otherwise disposed of;

(2) for counterfeit tokens, the date on which the tokens were discovered;

(3) the date, place, and method of destruction or other disposition;

(4) the names of the occupational licensees who will carry out the destruction or other disposition on behalf of the gaming operator licensee; and

(5) any other information deemed necessary by the board.

**B.** Unless the board notifies the gaming operator licensee within 30 days of receipt of the notice required by this section, the method of destruction or other disposition will be deemed approved.

**C.** At least two people, one of whom is an agent of the board, must be present when the discontinued or counterfeit tokens are destroyed, unless otherwise approved by the board.

**D.** The person seeking to dispose of such tokens must submit to the board, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and persons witnessing the disposal.

[N, 12/31/98; 15.1.12.14 NMAC – Rn, 15 NMAC 1.12.14, 2/14/02]

#### **15.1.12.15 RETENTION OF RECORDS:**

Each gaming operator licensee must retain the records required by this rule within the State for at least five years.

[N, 12/31/98; 15.1.12.15 NMAC – Rn, 15 NMAC 1.12.15, 2/14/02]

### **PART 13: LICENSE AND CERTIFICATION RENEWAL REQUIREMENTS UNDER THE GAMING CONTROL ACT**

#### **15.1.13.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[12/31/98; 15.1.13.1 NMAC - Rn, 15 NMAC 1.13.1, 3/31/00]

#### **15.1.13.2 SCOPE:**

This rule applies to all licensees under the Gaming Control Board.

[12/31/98; 15.1.13.2 NMAC - Rn, 15 NMAC 1.13.2, 3/31/00]

#### **15.1.13.3 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)(1) directs the board to adopt regulations

prescribing the method and form of application to be filed by an applicant under the Gaming Control Act. Pursuant to Section 60-2E-14(F), all licenses issued to or for manufacturers, distributors, gaming operators, and gaming machines and all work permits shall be renewed annually.

[12/31/98; 15.1.13.3 NMAC - Rn, 15 NMAC 1.13.3, 3/31/00; A, 11/30/05]

**15.1.13.4 DURATION:**

Permanent.

[12/31/98; 15.1.13.4 NMAC - Rn, 15 NMAC 1.13.4, 3/31/00]

**15.1.13.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 15.1.13.5 NMAC - Rn, 15 NMAC 1.13.5, 3/31/00; A, 1/31/02]

**15.1.13.6 OBJECTIVE:**

The objective of this rule is to establish standards for the annual renewal of licenses issued under the Gaming Control Act.

[12/31/98; 15.1.13.6 NMAC - Rn, 15 NMAC 1.13.6, 3/31/00]

**15.1.13.7 DEFINITIONS:**

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

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

**B. "gaming activity"** means any endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming, including employment as a gaming employee.

**C. "licensee"** means a person to whom a valid license, including a work permit, has been issued.

**D. "person"** means a legal entity or individual.

**E. "State"** means the State of New Mexico.

[12/31/98; 15.1.13.7 NMAC - Rn, 15 NMAC 1.13.7, 3/31/00]

### **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]

#### **15.1.13.9 RENEWAL FEES:**

**A.** Renewal license fees are as follows:

- (1) gaming machine manufacturer's license, \$2,000;
- (2) associated equipment manufacturer's license, \$400.00;
- (3) gaming machine or associated equipment distributor's license, \$400;
- (4) gaming operator's license for racetrack, \$4,000;
- (5) gaming operator's license for nonprofit organization, \$100;
- (6) gaming machine license, \$25 per machine;
- (7) work permit, \$75; and
- (8) certification of finding of suitability, \$75.

**B.** Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

**C.** The board or its designee may prorate the license fee in cases it deems appropriate.

**D.** In addition to the renewal fee paid, an applicant for renewal of a certification of finding of suitability as a key person for a racetrack gaming operator, manufacturer or distributor shall pay all supplementary investigative fees and costs.

**E.** An applicant for renewal of a certification of finding of suitability as a key person for a racetrack gaming operator, manufacturer or distributor shall reimburse the board in an amount sufficient to cover actual fees and costs of any investigation within 30 days of receipt of notice of actual fees and costs incurred by the board in conducting a background investigation of the applicant.

**F.** An applicant for renewal of a certification of finding of suitability for a nonprofit gaming operator shall not be assessed investigative fees and costs.

[12/31/98; 15.1.13.9 NMAC – Rn, 15 NMAC 1.13.9, 3/31/00; A, 11/30/05; A, 5/15/07; A, 8/30/07; A, 12/15/10]

#### **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 within thirty (30) days after the expiration of a previously held license, 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]

#### **15.1.13.11 MANDATORY CESSATION OF GAMING ACTIVITY:**

No licensee shall engage in any gaming activity unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the act and this rule shall cease the gaming activity authorized by the license on the date the license expires. Engaging in any gaming activity without a renewed license shall subject the licensee to fines and penalties as determined by the board.

[12/31/98; 15.1.13.11 NMAC - Rn & A, 15 NMAC 1.13.11, 3/31/00; 15.1.13.11 NMAC - Rn, 15.1.13.12 NMAC, 1/31/02; A, 11/30/05]

#### **15.1.13.12 RENEWAL LICENSE PERIOD:**

All licenses shall expire annually on the anniversary date of the original issuance and will be subject to renewal on an anniversary date basis.

[12/31/98; 15.1.13.12 NMAC - Rn, 15 NMAC 1.13.12, 3/31/00; 15.1.13.12 NMAC - Rn, 15.1.13.13 NMAC, 1/31/02; A, 11/30/05; A, 12/15/10]

#### **15.1.13.13 RECERTIFICATION OF FINDING OF SUITABILITY:**

**A.** A certification of finding of suitability expires three years from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the certification of finding of suitability shall be filed with the board not less than sixty (60) days prior to the date the certification of finding of suitability expires. The renewal application shall be submitted on forms provided by the board.

**B.** The board may require any person previously certified as suitable by the board to apply for recertification of the finding of suitability at any time if the board believes that circumstances warrant such application.

**C.** Any person required by the board to apply for recertification shall apply within 30 days after the date of the board's request and provide such information as the board may direct. The board may find any person failing to apply for recertification as required in this rule unsuitable on that basis.

[12/31/98; 15.1.13.13 NMAC - Rn & A, 15 NMAC 1.13.13, 3/31/00; 15.1.13.13 NMAC - Rn, 15.1.13.14 NMAC, 1/31/02; A, 11/30/05]

### **PART 14: ENFORCEMENT PROCEEDINGS UNDER THE GAMING CONTROL ACT**

#### **15.1.14.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[12/31/98; 15.1.14.1 NMAC - Rn, 15 NMAC 1.14.1, 5/31/00]

#### **15.1.14.2 SCOPE:**

This rule applies to all persons subject to disciplinary or other enforcement action under the Gaming Control Act.

[12/31/98; 15.1.14.2 NMAC - Rn, 15 NMAC 1.14.2, 5/31/00]

#### **15.1.14.3 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-32(B) authorizes the board to initiate hearings against licensees when the board determines that it should limit, condition, suspend or revoke a license or approval or impose a fine.

[12/31/98; 15.1.14.3 NMAC - Rn, 15 NMAC 1.14.3, 5/31/00]

**15.1.14.4 DURATION:**

Permanent.

[12/31/98; 15.1.14.4 NMAC - Rn, 15 NMAC 1.14.4, 5/31/00]

**15.1.14.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 15.1.14.5 NMAC - Rn, 15 NMAC 1.14.5, 5/31/00; A, 2/14/02]

**15.1.14.6 OBJECTIVE:**

The objective of this rule is to establish guidelines and procedures for the conduct of enforcement proceedings initiated by the board under the Gaming Control Act.

[12/31/98; 15.1.14.6 NMAC - Rn, 15 NMAC 1.14.6, 5/31/00]

**15.1.14.7 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. **"Party"** means each person named or admitted as a party to a proceeding before the board or duly appointed hearing examiner.
- C. **"Person"** means a legal entity or individual.
- D. **"Petitioner"** means the board or the board's representative.
- E. **"Respondent"** means a licensee or person to which an approval has been granted and who is the subject of a complaint issued by the board.
- F. **"State"** means the state of New Mexico.

[12/31/98; 15.1.14.7 NMAC - Rn, 15 NMAC 1.14.7 5/31/00; A, 5/14/04; A, 6/30/08]

**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 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]

**15.1.14.9 SUMMONING OF LICENSEE:**

**A.** The board may summon any licensee, or its agents or employees, to appear to testify before the board or its agents concerning the conduct of a licensee or any of the licensee's agents or employees. All such testimony shall be given under oath and may cover any matter the board determines is relevant to the discharge of its duties.

**B.** Any person who is summoned to appear before the board or its agents has the right to be represented by legal counsel. Any testimony taken may be used by the board as evidence in any proceeding or matter then before it or which may later come before it. Failure to appear and testify at the designated time and place, unless excused by the board, constitutes grounds for the revocation or suspension of any license held by the person summoned, his or her principal, or employer.

[12/31/98; 15.1.14.9 NMAC - Rn, 15 NMAC 1.14.9, 5/31/00; A, 5/14/04]

**15.1.14.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:**

**A.** If after investigation the board determines that a license, registration, finding of suitability or other prior approval by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board shall initiate a hearing by issuing a complaint.

**B.** The complaint shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

**C.** The board shall serve the complaint, together with a summary of evidence in the board's possession and a transcript of testimony at any investigative hearing conducted in the matter, upon the licensee. Service and proof of service shall be made in any manner permitted by the New Mexico rules of civil procedure for the district courts.

**D.** The summary of evidence is confidential and shall not be disclosed to any person other than the respondent until public hearing.

**E.** The respondent shall file a written answer with the board within 30 days of service of the complaint.

[12/31/98; 15.1.14.10 NMAC - Rn, 15 NMAC 1.14.10, 5/31/00; A, 5/14/04; A, 2/28/05]

#### **15.1.14.11 RECORD OF PROCEEDING:**

**A.** The record of the proceeding will include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

**B.** A party may request a transcription of the proceedings. The party requesting the transcript will bear the cost of transcription.

[12/31/98; 15.1.14.11 NMAC - Rn, 15 NMAC 1.14.11, 5/31/00]

#### **15.1.14.12 DISCOVERY; SUBPOENAS:**

**A.** The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

**B.** The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

**C.** The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

**D.** Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

**E.** Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

**F.** Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

- (1) the testimony or evidence to be produced does not reasonably relate to any matter in question;
- (2) the testimony or evidence to be produced is unreasonable or oppressive;
- (3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or
- (4) any other reason justifies vacating or modifying the subpoena.

**G.** In any enforcement action, the respondent and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20 including all discrete subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[12/31/98; 15.1.14.12 NMAC - Rn, 15 NMAC 1.14.12, 5/31/00; A, 5/14/04]

#### **15.1.14.13 FAILURE OR REFUSAL TO TESTIFY:**

**A.** If a respondent fails to testify in its own behalf or asserts a claim of privilege with respect to any question presented to the respondent, the hearing examiner may infer from such refusal that the testimony or answer would have been adverse in the respondent's case.

**B.** If any affiliate, holding company, employee, or agent of a respondent fails to respond to a subpoena or asserts a claim of privilege with respect to any question presented, the hearing examiner, after considering all of the circumstances, may infer that such testimony would have been adverse to the respondent.

[12/31/98; 15.1.14.13 NMAC - Rn, 15 NMAC 1.14.13, 5/31/00; A, 6/30/08]

#### **15.1.14.14 PROCEDURES; EVIDENCE:**

**A.** The respondent may be represented by any person licensed to practice law in the state. An individual respondent may represent himself.

**B.** The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

**C.** Documentary evidence may be received in evidence in the form of true copies of the original.

**D.** Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

**E.** The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence. Evidence on which the board may base its decision is limited to the following:

**(1)** all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

**(2)** testimony and exhibits introduced by the parties; and

**(3)** official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge; whenever the hearing examiner takes official notice of any fact, the noticed fact and its source must be stated at the earliest possible time before or during the hearing, and any party must be given, on timely request, an opportunity to show the contrary.

**F.** The record will include all briefs, proposed findings and exceptions and must show the ruling on each finding, exception or conclusion presented.

**G.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[12/31/98; 15.1.14.14 NMAC - Rn & A, 15 NMAC 1.14.14, 5/31/00; A, 5/14/04]

#### **15.1.14.15 CONDUCT OF ENFORCEMENT HEARING:**

**A.** In addition to the procedures prescribed by the act, the following procedures shall apply, when appropriate:

(1) the board will present its opening statement on the merits. The respondent then will be permitted to make an opening statement on defense;

(2) the board will present its case in chief in support of the complaint;

(3) upon conclusion of the board's case in chief, the respondent will present its case in defense;

(4) upon conclusion of the respondent's case, the board may present rebuttal evidence;

(5) the board will present its closing argument, the respondent will present answering argument, and the board may present rebuttal argument. Thereafter, the matter will be submitted for recommendation by the hearing examiner.

**B.** The hearing examiner may ask questions of witnesses and may request or allow additional evidence at any time as determined appropriate by the hearing examiner.

[12/31/98; 15.1.14.15 NMAC - Rn, 15 NMAC 1.14.15, 5/31/00; A, 5/14/04]

#### **15.1.14.16 CONTINUANCES:**

The hearing examiner shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.

[12/31/98; 15.1.14.16 NMAC - Rn, 15 NMAC 1.14.16, 5/31/00; A, 5/14/04]

#### **15.1.14.17 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

**A.** Failure of the respondent either to file an answer to the complaint or to appear at the hearing on the merits personally or by telephone, without having obtained a continuance, shall constitute an admission on all matters and facts contained in the complaint filed with respect to the respondent and shall be deemed a waiver of the right to an evidentiary hearing on the matter.

**B.** If the respondent fails to file an answer to the complaint, the petitioner shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against respondent.

**(1)** The respondent shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served. Failure of the respondent to file a response and to request a hearing shall constitute consent to the granting of the motion.

**(2)** If the respondent timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the respondent additional time to answer the complaint if an accident, illness or other good cause prevented the respondent from timely answering the complaint.

**C.** If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

**D.** If an accident, illness, or other good cause prevents the respondent from requesting a continuance or appearing at the hearing, the respondent may, within 15 days of the date of the hearing, apply to the board to reopen the proceeding. Upon finding sufficient cause, the board shall immediately fix a time and place for the hearing and give the respondent notice as required under this rule.

[12/31/98; 15.1.14.17 NMAC - Rn & A, 15 NMAC 1.14.17, 5/31/00; A, 5/14/04]

#### **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 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.

**F.** 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]

#### **15.1.14.19 EX PARTE COMMUNICATIONS:**

**A.** No party or representative of any other person shall communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

**B.** Neither the hearing examiner nor any member of the board shall communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

**C.** Notwithstanding the provisions of Subsections A and B of 15.1.14.19 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in board rule Subsection B of 15.1.2.8 NMAC is subject to the prohibition on ex parte communications.

**D.** Notwithstanding the provisions of Subsections A and B of 15.1.14.19 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

**E.** Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

**F.** This section does not preclude:

**(1)** the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

**(2)** any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[12/31/98; 15.1.14.19 NMAC - Rn, 15 NMAC 1.14.19, 5/31/00; A, 2/14/02; A, 5/14/04]

#### **15.1.14.20 TELEPHONIC HEARINGS:**

**A.** Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

**B.** Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing

and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

**C.** The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

**D.** The petitioner shall initiate the telephone call. The respondent is responsible for ensuring that the telephone number to the respondent's location for the telephonic hearing is accurate and that the respondent is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the respondent to a default judgment.

**E.** The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[12/31/98; 15.1.14.20 NMAC - Rn, 15 NMAC 1.14.20, 5/31/00; A, 5/14/04]

## **PART 15: ADMINISTRATIVE APPEAL OF GAMING CONTROL BOARD ACTION**

### **15.1.15.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[12/31/98; 15.1.15.1 NMAC - Rn, 15 NMAC 1.15.1, 5/31/00]

### **15.1.15.2 SCOPE:**

This rule applies to all licensees, applicants for licensure, and persons aggrieved by an action of the Gaming Control Board or its agents under the Gaming Control Act.

[12/31/98; 15.1.15.2 NMAC - Rn, 15 NMAC 1.15.2, 5/31/00]

### **15.1.15.3 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-59(B) authorizes the board to adopt procedural regulations to govern the procedures to be followed in administrative appeal hearings conducted pursuant to the Gaming Control Act.

[12/31/98; 15.1.15.3 NMAC - Rn, 15 NMAC 1.15.3, 5/31/00]

**15.1.15.4 DURATION:**

Permanent.

[12/31/98; 15.1.15.4 NMAC - Rn, 15 NMAC 1.15.4, 5/31/00]

**15.1.15.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 15.1.15.5 NMAC - Rn, 15 NMAC 1.15.5, 5/31/00; A, 2/14/02]

**15.1.15.6 OBJECTIVE:**

The objective of this rule is to establish guidelines and procedures for the conduct of hearings under the Gaming Control Act when the hearing is initiated by a person aggrieved by an action of the board or its agent.

[12/31/98; 15.1.15.6 NMAC - Rn, 15 NMAC 1.15.6, 5/31/00]

**15.1.15.7 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. "agent"** means any member or employee of the board or any other person authorized to act on the board's behalf.

**C. "party"** means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.

**D. "person"** means a legal entity or individual.

**E. "appellant"** means a person aggrieved by an action of the board, who files a request for hearing before the board.

**F. "appellee"** means the board, an agent of the board or the board's representative.

**G. "state"** means the state of New Mexico.

[12/31/98; 15.1.15.7 NMAC - Rn, 15 NMAC 1.15.7, 5/31/00; A, 5/14/04]

#### **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 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]

#### **15.1.15.9 REQUEST FOR REVIEW OF BOARD ACTION:**

**A.** Any person aggrieved by an action of the board or one of its agents may request a hearing for the purpose of review of such action. The appellant shall file the request for hearing within 30 days of the date the action is taken. The request shall include the following:

- (1)** a statement of the facts relevant to the review of the action;
- (2)** a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
- (3)** a statement of the arguments that the appellant considers relevant to the review of the action; and
- (4)** any other evidence considered relevant.

**B.** The board will schedule the hearing as soon as practicable but in any event no later than 60 days from the date it receives the appellant's request for hearing. The hearing examiner may extend the 60 day time upon motion for good cause shown, or the parties may extend the 60 day time period by mutual agreement. The board will issue notice of the hearing, which will include:

- (1)** a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted;

(4) notice to any other parties to give prompt notice of issues controverted in fact or law; and

(5) all necessary telephone numbers if a telephonic hearing will be conducted.

C. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.

[12/31/98; 15.1.15.9 NMAC - Rn & A, 15 NMAC 1.15.9, 5/31/00; A, 5/14/04]

#### **15.1.15.10 RECORD OF PROCEEDING:**

A. The record of the proceeding shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript shall bear the cost of transcription.

[12/31/98; 15.1.15.10 NMAC - Rn, 15 NMAC 1.15.10, 5/31/00; A, 5/14/04]

#### **15.1.15.11 DISCOVERY; SUBPOENAS:**

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.

Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

**C.** The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

**D.** Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

**E.** Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

**F.** Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

**G.** In any administrative appeal, the appellant and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20, including all subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[12/31/98; 15.1.15.11 NMAC - Rn, 15 NMAC 1.15.11, 5/31/00; A, 5/14/04]

#### **15.1.15.12 PROCEDURES; EVIDENCE:**

**A.** Any party may be represented by a person licensed to practice law in the state. An individual appellant may represent himself.

**B.** The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

**C.** Documentary evidence may be received in evidence in the form of true copies of the original.

**D.** Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

**E.** The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence.

**F.** Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge. Whenever the hearing examiner takes official notice of any fact, the noticed fact and its source must be stated at the earliest possible time before or during the hearing, and any party must be given, on timely request, an opportunity to show the contrary.

**G.** The record will include all briefs, proposed findings and exceptions and must show the ruling on each finding, exception or conclusion presented.

**H.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[12/31/98; 15.1.15.12 NMAC - Rn & A, 15 NMAC 1.15.12, 5/31/00; A, 5/14/04]

### **15.1.15.13 CONDUCT OF PROCEEDING:**

**A.** Unless the hearing examiner reasonably determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule.

**B.** In addition to any procedures described by the act, the following procedures shall apply:

(1) the appellant may present an opening statement on the merits and the appellee may make a statement of the defense or reserve the statement until presentation of its case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of its petition;

(3) upon conclusion of appellant's case in chief, the appellee may move for dismissal of the petition. The hearing examiner may suspend the hearing and refer the motion to the board, which shall grant, deny, or reserve decision on the motion, with or without argument, as soon as practicable but in no event later than its next regularly scheduled board meeting;

(4) if no motion to dismiss is made, or if the board denies or reserves decision on the motion, the appellee shall present its case in defense;

(5) upon conclusion of the appellee's case, the appellant may present rebuttal evidence;

(6) after presentation of the evidence by the parties, the appellant may present a closing argument. The appellee then may present its closing argument, and the appellant may present a rebuttal argument; and

(7) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

[12/31/98; 15.1.15.13 NMAC - Rn, 15 NMAC 1.15.13, 5/31/00; A, 5/14/04]

#### **15.1.15.14 BURDEN OF PROOF:**

The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the board or an agent of the board should be reversed or modified.

[12/31/98; 15.1.15.14 NMAC - Rn, 15 NMAC 1.15.14, 5/31/00; A, 5/14/04]

#### **15.1.15.15 CONTINUANCES:**

The hearing examiner shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least 10 calendar days before the hearing date.

[12/31/98; 15.1.15.15 NMAC - Rn, 15 NMAC 1.15.15, 5/31/00; A, 5/14/04]

#### **15.1.15.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

**A.** Failure of the appellee to schedule a hearing within 60 days, unless the 60 day time period is extended, or of any party to appear at the hearing on the merits personally or by telephone, without having obtained a continuance may constitute a default and an admission on all matters and facts alleged by the opposing party and shall be deemed a waiver of the right to an evidentiary hearing on the matter. The hearing examiner may proceed to consider the matter, and the board may dispose of it, on the basis of the evidence before it.

**B.** If the appellee fails to schedule a hearing within 60 days, the appellant shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against the appellee.

**(1)** The appellee shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served. Failure of the appellee to file a response and to request a hearing shall constitute consent to the granting of the motion.

**(2)** If the appellee timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the appellee additional time to schedule a hearing on the merits if an accident, illness or other good cause prevented the appellee from timely scheduling a hearing.

**C.** If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

**D.** If an accident, illness, or other good cause prevents any party from requesting a continuance or appearing at the hearing, the party may, within 15 days after the date of the hearing, apply to the board to reopen the proceeding. Upon finding sufficient cause, the board shall immediately fix a time and place for the hearing and give the opposing party notice as required under this rule.

[12/31/98; 15.1.15.16 NMAC - Rn & A, 15 NMAC 1.15.16, 5/31/00; A, 5/14/04]

#### **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.

**F.** 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]

#### **15.1.15.18 EX PARTE COMMUNICATIONS:**

**A.** No party or representative of any other person shall communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

**B.** Neither the hearing examiner nor any member of the board shall communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

**C.** Notwithstanding the provisions of Subsections A and B of 15.1.15.18 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in Subsection B of 15.1.2.8 NMAC is subject to the prohibition on ex parte communications.

**D.** Notwithstanding the provisions of paragraphs Subsections A and B of 15.1.15.18 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

**E.** Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

**F.** This section does not preclude:

**(1)** the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

**(2)** any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[12/31/98; 15.1.15.18 NMAC - Rn, 15 NMAC 1.15.18, 5/31/00; A, 2/14/02; A, 5/14/04]

#### **15.1.15.19 TELEPHONIC HEARINGS:**

**A.** Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

**B.** Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

**C.** The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

**D.** The appellee shall initiate the telephone call. The appellant is responsible for ensuring that the telephone number to the appellant's location for the telephonic hearing is accurate and that the appellant is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and will subject the petitioner to a default judgment.

**E.** The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[15.1.15.19 NMAC - N, 5/31/00; A, 5/14/04]

## **PART 16: TRANSPORTATION, RECEIPT, AND PLACEMENT OF GAMING DEVICES**

### **15.1.16.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 12/31/98; 15.1.16.1 NMAC - Rn, 15 NMAC 1.16.1, 10/15/00]

### **15.1.16.2 SCOPE:**

This rule applies to all persons licensed by the Gaming Control Board to sell, supply, ship, transport, distribute, or receive gaming devices.

[N, 12/31/98; 15.1.16.2 NMAC - Rn, 15 NMAC 1.16.2, 10/15/00]

### **15.1.16.3 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)(8) directs the board to adopt regulations governing the sale and distribution of gaming devices.

[N, 12/31/98; 15.1.16.3 NMAC - Rn, 15 NMAC 1.16.3, 10/15/00]

### **15.1.16.4 DURATION:**

Permanent.

[N, 12/31/98; 15.1.16.4 NMAC - Rn, 15 NMAC 1.16.4, 10/15/00]

**15.1.16.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[N, 12/31/98; 15.1.16.5 NMAC - Rn, 15 NMAC 1.16.5, 10/15/00; A, 1/31/02]

**15.1.16.6 OBJECTIVE:**

The objective of this rule is to establish reporting procedures and standards for the transportation and receipt of gaming devices inside and outside New Mexico.

[N, 12/31/98; 15.1.16.6 NMAC - Rn, 15 NMAC 1.16.6, 10/15/00]

**15.1.16.7 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. "Gaming media"** means any associated equipment that contains software that can only be used in a gaming machine, affects game outcome and is programmed by the gaming machine manufacturer. Gaming media includes, but is not limited to an EEPROM, EPROM, compact flash memory, flash RAM, CDROM or hard drive.

**C. "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.

**D. "Person"** means a legal entity or an individual.

**E. "Premises"** means the land together with all building's improvements and personal property located on the land.

**F. "State"** means the state of New Mexico.

**G. "This title"** means Title 15, Chapter 1 of the state administrative code.

[N, 12/31/98; 15.1.16.7 NMAC - Rn & A, 15 NMAC 1.16.7, 10/15/00; A, 2/28/05; A, 12/15/10]

**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]

#### **15.1.16.10 RECEIPT OF GAMING DEVICES IN THE STATE:**

**A.** Any person in the state that receives a gaming device shall, upon receipt of the gaming device, provide the board with the following information on forms provided or approved by the board:

- (1)** the full name, address, and license number of the person receiving the gaming device;
- (2)** the full name, address, and license number of the person from whom the gaming device was received;
- (3)** the date of receipt of the gaming device;
- (4)** the serial number of each gaming device;
- (5)** the model number and description of each gaming device;
- (6)** the manufacturer of the gaming device;
- (7)** the location where the gaming device will be placed and the license number of the licensed premises;
- (8)** the expected date and time of installation of the gaming device at the new location; and
- (9)** such other information as required by the board.

**B.** If the gaming machine is not to be placed in operation within five days of its receipt, the licensee who received the gaming device shall comply with the requirements of 15.1.16.11 NMAC relating to storage of gaming machines. The location where any gaming machine is stored shall be approved in advance by the board.

**C.** Prior to transporting a stored gaming machine from one location to another location within the state, the licensee shipping the gaming machine shall comply with the requirements of 15.1.16.11 NMAC relating to intra-state transportation of gaming machines.

[N, 12/31/98; 15.1.16.10 NMAC - Rn, 15 NMAC 1.16.10, 10/15/00; A, 2/28/05; A, 12/15/10]

#### **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 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]

**15.1.16.12 APPROVAL TO DISTRIBUTE GAMING DEVICES OUTSIDE OF THE STATE:**

**A.** Manufacturers and distributors located in the state shall not sell, ship, transport, or distribute a gaming device out of the state without the prior approval of the board. Applications for approval to sell, ship, transport, or distribute gaming devices out of the state shall be made, processed, and determined in such manner and using such forms as the board may provide or approve. Each application shall include:

- (1) the full name, state of residence, and address of the purchaser;
- (2) the full name, state of residence, and address of the person to whom shipment is being made, if different than the purchaser;
- (3) the destination;
- (4) the number of gaming devices to be shipped;
- (5) the serial number of each gaming device;
- (6) the model number of each gaming device and year manufactured;
- (7) the denomination of each gaming device, if applicable;
- (8) the expected date and time of shipment;
- (9) the method of shipment and name and address of the carrier; and
- (10) a statement by the purchaser under penalty of perjury that the gaming devices shall be used only for lawful purposes.

**B.** Manufacturers and distributors shall not ship gaming devices to any destination where possession of gaming devices is illegal.

**C.** An agent of the board may inspect all gaming devices before distribution outside of the state. Manufacturers and distributors shall make the gaming devices available for inspection upon request.

**D.** If the board does not deny the application for approval to distribute gaming devices outside of the state within 15 working days of receipt of a complete application, the application shall be deemed approved.

[N, 12/31/98; 15.1.16.12 NMAC - Rn, 15 NMAC 1.16.12, 10/15/00; A, 2/28/05]

#### **15.1.16.13 REGISTRATION AND STORAGE OF GAMING MACHINES:**

**A.** A gaming operator licensee who maintains one or more gaming machines in storage in excess of the number of machines the licensee is statutorily authorized to

operate shall register those machines with the board on forms approved by the board within 72 hours of the receipt of such machine.

**B.** Each machine registered by a gaming operator licensee shall be subject to an annual registration fee equal to the amount of the current gaming machine licensure fee. Registration of each gaming machine shall expire on the December 31st of each year, and shall be renewable by re-registration and payment of a fee equal to the amount of the current gaming machine licensure renewal fee.

**C.** A gaming operator licensee that maintains registered gaming machines in storage shall adhere to the following conditions:

(1) The licensee shall ensure that each stored machine is registered with the board and that registration fees are current.

(2) Gaming media shall be stored in a limited access area separate from stored gaming machines and accessible only by restricted keys

(3) The licensee shall maintain each machine in a safe and secure locked, limited access storage area with restricted keys.

(4) Gaming machine keys for stored machines shall be maintained in an area separate from the stored gaming machine.

(5) The licensee shall supply the with board with a list of individuals having access to the storage areas, and shall update the list if any changes are made.

(6) The licensee shall maintain continuous recorded surveillance of the storage area.

(7) The licensee shall make the storage area available for inspection upon request of the board or one of its agents.

(8) The licensee shall develop internal controls acceptable to the board to ensure the safety and security of stored gaming machines.

**D.** The licensee shall notify the board in writing prior to movement of a gaming machine out of storage for any reason. A gaming machine from storage shall be subject to licensing requirements and fees required by 15.1.5.18 and 15.1.5.21 NMAC except that an additional gaming machine license fee shall not be required until the license is renewed.

**E.** A gaming operator licensee that maintains one or more gaming machines solely for the solely to provide spare parts is not required to license such machines or pay a registration fee, but shall register such machines on forms approved by the board.

**F.** Each racetrack gaming operator shall maintain an inventory of all gaming machines on its premises and shall identify them as operable or non-operable, and in storage or in use. The licensee shall provide such information to the board upon request.

**G.** A distributor or manufacturer that maintains a physical presence in the state and which maintains gaming machines in storage shall not be required to license such machines or pay a registration fee, or to keep its storage facility under surveillance, but shall otherwise comply with Subsection C of this section.

[N, 12/31/98; 15.1.16.13 NMAC - Rn, 15 NMAC 1.16.13, 10/15/00; A, 2/28/05; 15.1.16.13 NMAC - N, 12/15/10]

#### **15.1.16.14 PLACEMENT OF GAMING MACHINES:**

**A.** All gaming machines at a licensed premises shall be physically located as follows:

**(1)** in an area that is at all times monitored by the owner, manager, or a gaming employee to prevent access or play of the gaming machines by persons under the age of 21;

**(2)** in an area that ensures that public access to the gaming machines is restricted to persons legally entitled to play the gaming machines at the licensed premises; and

**(3)** in the sight and control of the owner, manager, or a gaming employee.

**B.** The initial placement of gaming machines on a licensed premises shall be approved by the board in accordance with the business plan submitted by the applicant pursuant to board rule 15.1.5 NMAC.

**C.** Any relocation of the gaming machine within the licensed premises constitutes modification of the licensed premises and requires prior approval by the board pursuant to rule 15.1.6 NMAC.

**D.** Licensed manufacturers and distributors may store and display, and persons certified pursuant to this title shall repair, gaming machines only at locations approved in advance by the board.

[N, 12/31/98; 15.1.16.14 NMAC - Rn, 15 NMAC 1.16.14, 10/15/00; A, 1/31/02; A, 2/28/05; 15.1.16.14 NMAC - Rn, 15.1.16.13 NMAC, 12/15/10]

#### **15.1.16.15 DISPOSAL OF GAMING MACHINES:**

**A.** A gaming machine shall be disposed of only with the board's approval and only if the manner of disposition makes the machine incapable of use or operation. Any person seeking to dispose of a gaming machine shall notify the board in writing prior to disposal and provide the following information:

- (1) the full name, address, and license number of the person seeking to dispose of the gaming machine;
- (2) the serial number of the gaming machine;
- (3) the model number and description of the gaming machine;
- (4) the manufacturer of the gaming machine;
- (5) the gaming machine license number;
- (6) the gaming machine's hard meter readings;
- (7) the location of the gaming machine;
- (8) the proposed manner, time, and place of disposal; and
- (9) any other information required by the board.

**B.** Unless the board notifies the person seeking to dispose of the gaming machine within 30 days of receipt of the notice required by this section, the method of disposal shall be deemed approved.

**C.** The person seeking to dispose of a gaming machine shall submit to the board, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all persons witnessing the disposal.

[15.1.16.15 NMAC - Rn, 15.1.16.14 NMAC, 12/15/10]

## **PART 17: SCHEDULE OF PENALTIES UNDER THE GAMING CONTROL ACT**

### **15.1.17.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[12/31/98; 15.1.17.1 NMAC - Rn, 15 NMAC 1.17.1, 3/31/00]

### **15.1.17.2 SCOPE:**

This rule applies to all licensees and other persons subject to the Gaming Control Act.

[12/31/98; 15.1.17.2 NMAC - Rn, 15 NMAC 1.17.2, 3/31/00]

**15.1.17.3 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-7(C)(1) of the Act authorizes the board to impose civil fines for violation of any prohibitory provision of the Act or rule adopted by the board.

[12/31/98; 15.1.17.3 NMAC - Rn, 15 NMAC 1.17.3, 3/31/00]

**15.1.17.4 DURATION:**

Permanent.

[12/31/98; 15.1.17.4 NMAC - Rn, 15 NMAC 1.17.4, 3/31/00]

**15.1.17.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/98; 15.1.17.5 NMAC - Rn, 15 NMAC 1.17.5, 3/31/00; A, 1/31/02]

**15.1.17.6 OBJECTIVE:**

The objective of this rule is to establish a schedule of violations in which to cite under the Gaming Control Act which penalties could be assessed.

[12/31/98; 15.1.17.6 NMAC - Rn, 15 NMAC 1.17.6, 3/31/00; A, 5/14/04]

**15.1.17.7 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. "associating with" or "association with"** means maintaining, directly or indirectly, a business relationship with a licensed distributor or manufacturer when the business relationship is prohibited by the Act or this title.

**C. "ATM"** means a machine used for banking services, including withdrawals and deposits, balance inquiries, transfers, and other services; "ATM" includes credit card cash advance machines and other devices activated by debit or credit cards.

**D. "license"** means an authorization, including a work permit, required by the board for engaging in gaming activities.

**E. "person"** means a legal entity or individual.

**F. "public nuisance"** means knowingly engaging in, creating, allowing, or maintaining any act or activity that is injurious to public health, safety, morals, or welfare, interferes with the exercise and enjoyment of public rights, or is offensive to the average citizen.

**G. "State"** means the State of New Mexico.

**H. "this title"** means Title 15, Chapter 1 of the State Administrative Code.

[12/31/98; 15.1.17.7 NMAC - Rn & A, 15 NMAC 1.17.7, 3/31/00]

#### **15.1.17.8 BASIS FOR BOARD ACTION:**

**A.** The board may suspend or revoke, or deny renewal of, a license or other approval for any violation of, or noncompliance with, the provisions of the Act or this title.

**B.** The board may impose administrative fines in lieu of or in addition to any other actions taken.

[12/31/98; 15.1.17.8 NMAC - Rn, 15 NMAC 1.17.8, 3/31/00]

#### **15.1.17.9 SCHEDULE OF VIOLATIONS:**

**A.** Licensing violations include.

- (1)** Engaging in gaming activity without valid license.
- (2)** Possession of illegal gaming device.
- (3)** Failure to apply for certification of finding of suitability.
- (4)** Employing persons without work permits or key person certifications.
- (5)** Expired work permit.
- (6)** Unlicensed gaming machine.
- (7)** Selling, offering to sell, or distributing a gaming device to other than a gaming operator licensee.

**(8)** Purchasing, leasing, or otherwise receiving a gaming machine from other than an authorized licensee.

**(9)** Association with distributor or manufacturer with revoked license.

**(10)** Unauthorized transfer of license.

**B.** Operating violations include.

**(1)** Permitting play on an unauthorized gaming machine.

**(2)** Permitting play of an unauthorized game.

**(3)** Possessing or installing a gaming machine at other than an authorized location.

**(4)** Engaging in dishonest or deceptive practices involving gaming activity.

**(5)** Public nuisance.

**(6)** Minor playing a gaming machine.

**(7)** Unauthorized person on licensed premises.

**(8)** Unauthorized person playing a gaming machine.

**(9)** Sale, service, delivery or consumption of alcoholic beverage on licensed premises.

**(10)** Operating or permitting the playing of gaming machine on unauthorized days or times.

**(11)** Operating or permitting the operation of more than maximum number of gaming machines allowed.

**(12)** Failure to pay winnings or award prizes.

**(13)** Failure to maintain adequate security.

**(14)** Unauthorized or improper use of tokens.

**(15)** Unauthorized or improper disposition of tokens.

**(16)** Unauthorized or improper disposal of gaming device.

**(17)** Unauthorized modification of gaming device where the modification changes the manner of operation from that approved by the board or from that represented to patrons.

**(18)** Knowingly associating with, employing, or assisting, directly or indirectly, persons or businesses of disreputable character.

**(19)** Employing a person who has been denied, or failed or refused to apply for, a gaming license, work permit or finding of suitability in any jurisdiction.

**(20)** Failing to comply with all federal, state and local laws and rules governing gaming activity, including payment of fees and taxes due.

**(21)** Conducting, operating, or dealing with any cheating game or device.

**(22)** Unauthorized modification of licensed premises.

**(23)** Facilitating, participating in, or allowing the issuance of any loans or extending credit to a gaming patron for gaming purposes.

**(24)** Misleading or deceptive payoff schedule.

**(25)** Failure to make payments in accordance with payoff schedule.

**(26)** Failure to install or maintain adequate surveillance system.

**(27)** Insufficient funds in gaming tax transfer account.

**(28)** Failure to comply with minimum accounting standards.

**(29)** Commingling of gaming receipts with other monies of nonprofit organization gaming operator licensee.

**(30)** Failure to maintain minimum bankroll required or to notify board of deficiencies.

**(31)** Failure to request excluded person to leave or to prohibit entry on licensed premises or to properly notify board of excluded person on licensed premises.

**(32)** Failure to implement or maintain adequate internal controls for gaming operations.

**(33)** Unlawful or unauthorized operation of progressive system.

**(34)** Unlawful or unauthorized promotion or additional payout.

- (35) Shipment of unapproved gaming device.
- (36) Unauthorized change in minimum internal controls.
- (37) Engaging in other unsuitable method of operation.

**C. Miscellaneous violations include.**

- (1) Interference with investigation, including denying the board or its agent or other authorized person access to, or inspection of, a gaming establishment.
- (2) Providing false or misleading information to the board or the board's agent.
- (3) Failure to file required report or disclose information.
- (4) Failure to renew license while continuing to conduct licensed activity.
- (5) Unlawful gaming operations contract.
- (6) ATM on licensed premises.
- (7) Failure to implement or maintain compulsive gambling assistance plan.
- (8) Failure to disclose gaming contracts.
- (9) Failure to retain required records.
- (10) Felony conviction of licensee, employee or other agent of licensee.
- (11) Failure to be in possession of work permit.
- (12) Failure to post gaming license.
- (13) Failure to post required signs.
- (14) Failure to provide required notice.
- (15) Failure to comply with gaming machine registration, transport, possession and use requirements by public post-secondary educational institution or a trade show vendor.
- (16) Other violation.

[12/31/98; 15.1.17.9 NMAC - Rn & A, 15 NMAC 1.17.9, 3/31/00; A, 1/31/02; A, 7/31/02; A, 10/31/02; A, 5/14/04]

**15.1.17.10 [RESERVED]**

[12/31/98; 15.1.17.10 NMAC - Rn, 15 NMAC 1.17.10, 3/31/00; Repealed, 5/14/04]

**15.1.17.11 COMPROMISE:**

**A.** In the matter of any alleged violation of the Act or this title, the board or the board's agent may do either or both of the following:

(1) determine whether a compromise would be in the best interests of the State; and

(2) suspend any portion of the penalty imposed under circumstances deemed appropriate by the board or its agent.

**B.** The fines and penalties imposed by the board or the board's agent may not exceed those that could be imposed after an administrative hearing.

[12/31/98; 15.1.17.11 NMAC - Rn, 15 NMAC 1.17.11, 3/31/00]

**PART 18: COMPULSIVE GAMBLING ASSISTANCE PLAN STANDARDS**

**15.1.18.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[4/15/99; 15.1.18.1 NMAC - Rn, 15 NMAC 1.18.1, 3/31/00]

**15.1.18.2 SCOPE:**

This rule applies to all gaming operator licensees and applicants for gaming operators' licenses.

[4/15/99; 15.1.18.2 NMAC - Rn, 15 NMAC 1.18.2, 3/31/00]

**15.1.18.3 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-26(A) requires each applicant for licensure as a gaming operator to submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling.

[4/15/99; 15.1.18.3 NMAC - Rn, 15 NMAC 1.18.3, 3/31/00]

**15.1.18.4 DURATION:**

Permanent.

[4/15/99; 15.1.18.4 NMAC - Rn, 15 NMAC 1.18.4, 3/31/00]

**15.1.18.5 EFFECTIVE DATE:**

April 15, 1999, unless a later date is cited at the end of a section.

[4/15/99; 15.1.18.5 NMAC - Rn, 15 NMAC 1.18.5, 3/31/00; A, 1/31/02]

**15.1.18.6 OBJECTIVE:**

The objective of this rule is to establish standards for the development of compulsive gambling assistance plans by applicants for gaming operators' licenses and the implementation and maintenance of such plans by licensed gaming operators.

[4/15/99; 15.1.18.6 NMAC - Rn, 15 NMAC 1.18.6, 3/31/00]

**15.1.18.7 DEFINITIONS:**

Reserved.

[4/15/99; 15.1.18.7 NMAC - Rn, 15 NMAC 1.18.7, 3/31/00]

**15.1.18.8 PLAN REQUIRED FOR LICENSURE:**

An applicant for a gaming operator's license shall submit a compulsive gambling assistance plan with its application. The plan shall meet or exceed the minimum standards set forth in this rule. The development of such a plan by the applicant, and the approval of the plan by the board, are conditions of issuance of the original gaming operator's license. The maintenance of the plan as approved by the board is a condition of annual renewal of the license.

[4/15/99; 15.1.18.8 NMAC - Rn, 15 NMAC 1.18.8, 3/31/00; A, 2/28/05]

**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 ninety (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]

#### **15.1.18.10 EMPLOYEE TRAINING:**

**A.** The compulsive gambling assistance plan shall be designed with employee training and education as fundamental aspects of the plan. The purpose of the training is to develop awareness of compulsive gambling and to provide resources to assist the employee in handling compulsive gambling issues.

**B.** The employee training program shall include training and materials on the following topics:

- (1)** characteristics and symptoms of compulsive gambling behavior;
- (2)** prevalence of compulsive gambling in the general population;
- (3)** relationship of compulsive gambling to other addictions;
- (4)** social costs of compulsive gambling, such as indebtedness, costs for treatment, suicide, criminal behavior, lost jobs, and counseling for family problems;
- (5)** identification of vulnerable populations, including women, low-income patrons, the elderly, and persons who abuse drugs and alcohol;
- (6)** intervention techniques to be employed where a compulsive gambling problem is identified or suspected; and
- (7)** assistance and referral programs, including specific resources and training on how to discuss compulsive gambling with a patron and give advice concerning access to available services.

**C.** Training must be conducted within 60 days of the employee's hire date and re-certification must be done annually. Certification and re-certification of such training shall be submitted on a form provided or approved by the board. Failure to submit the required certification may result in administrative action against the gaming operator licensee.

**D.** This rule shall not be construed as requiring gaming employees to identify compulsive or other problem gamblers.

[4/15/99; 15.1.18.10 NMAC - Rn, 15 NMAC 1.18.10, 3/31/00; A, 2/28/05]

**15.1.18.11 ANNUAL REPORT OF ACTIVITIES:**

Each gaming operator licensee shall submit to the board, no later than March 31 annually, a report detailing the licensee's compulsive gambling activities for the previous 12-month period ending December 31. The report shall be in form and content prescribed or approved by the board.

[15.1.18.11 NMAC - N, 1/31/02; A, 2/28/05]

**15.1.18.12 COMPULSIVE GAMBLING FUNDS DISTRIBUTION:**

A racetrack gaming operator shall spend all funds required by statute to fund or support programs for the treatment and assistance of compulsive gamblers each year within 120 days after the close of the licensees fiscal year.

**A.** Racetracks shall spend no more than 15 % on administrative costs, including the salary of the plan manager or other person responsible for ensuring that the plan is implemented and administered and for marketing of compulsive gambling issues.

**B.** Racetracks shall spend the remainder of the compulsive gambling funds on compulsive gambling training for employees, crisis intervention and prevention programs, gambling assistance and treatment, and a helpline as identified in the plan and approved by the board.

[15.1.18.12 NMAC - N, 5/14/04; A, 2/28/05]

**PART 19: PAYMENT OF WINNINGS OVER \$1,200.00 UNDER THE GAMING CONTROL ACT**

**15.1.19.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[4/30/99; 15.1.19.1 NMAC - Rn, 15 NMAC 1.19.1, 10/15/00]

**15.1.19.2 SCOPE:**

This rule applies to all gaming establishments licensed under the Gaming Control Act.

[4/30/99; 15.1.19.2 NMAC - Rn, 15 NMAC 1.19.2, 10/15/00]

**15.1.19.3 STATUTORY AUTHORITY:**

Sections 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.

[4/30/99; 15.1.19.3 NMAC - Rn, 15 NMAC 1.19.3, 10/15/00]

**15.1.19.4 DURATION:**

Permanent.

[4/30/99; 15.1.19.4 NMAC - Rn, 15 NMAC 1.19.4, 10/15/00]

**15.1.19.5 EFFECTIVE DATE:**

April 30, 1999, unless a later date is cited at the end of a section.

[4/30/99; 15.1.19.5 NMAC - Rn, 15 NMAC 1.19.5, 10/15/00; A, 1/31/02]

**15.1.19.6 OBJECTIVE:**

The objective of this rule is to establish procedures to ensure compliance with Section 60-2E-61 of the Gaming Control Act, which provides for liens on winnings for debts collected by the New Mexico Human Services Department.

[4/30/99; 15.1.19.6 NMAC - Rn, 15 NMAC 1.19.6, 10/15/00]

**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. "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. "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.

**G. "State"** means the state of New Mexico.

**H. "This title"** means Title 15, Chapter 1 of the New Mexico Administrative Code (NMAC).

**I. "Wager"** means a sum of money or thing of value risked on an uncertain occurrence.

**J. "Winning patron"** means a person who wins a jackpot or other prize based on his or her play on a gaming machine.

**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 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]

**15.1.19.10 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, 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 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 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.** 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 or other country recognized by the United States government; and
- (6) valid alien resident identification card issued by the United State government.

**E.** The racetrack gaming operator licensee 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.

**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.

**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.

M. If a winning patron refuses to provide any of the information required by this rule, or fails or refuses to complete any reporting form, the gaming operator licensee 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]

**15.1.19.12 DISTRIBUTION OF REPORTING FORM:**

**A.** The gaming operator licensee shall provide a copy of the reporting forms to the winning patron and retain a copy for the gaming operator's records.

**B.** A non-profit gaming operator licensee 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 shall not be made to the department by telephone.

**D.** 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]

**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]

## **PART 21: ENFORCEMENT OF SECURITY INTERESTS UNDER THE GAMING CONTROL ACT**

### **15.1.21.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[N, 4/30/99; 15 1.21.1 NMAC – Rn, 15 NMAC 1.21.1, 2/14/02]

**15.1.21.2 SCOPE:**

This rule applies to all licensees under the Gaming Control Act and persons in a position to enforce a security interest in gaming property collateral.

[N, 4/30/99; 15.1.21.2 NMAC – Rn, 15 NMAC 1.21.2, 2/14/02]

**15.1.21.3 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.

[N, 4/30/99; 15.1.21.3 NMAC – Rn, 15 NMAC 1.21.3, 2/14/02]

**15.1.21.4 DURATION:**

Permanent.

[N, 4/30/99; 15.1.21.4 NMAC – Rn, 15 NMAC 1.21.4, 2/14/02]

**15.1.21.5 EFFECTIVE DATE:**

April 30, 1999, unless a later date is cited at the end of a section.

[N, 4/30/99; 15.1.21.5 NMAC – Rn & A, 15 NMAC 1.21.5, 2/14/02]

**15.1.21.6 OBJECTIVE:**

The objective of this rule is to establish standards for the taking and enforcement of a security interest in gaming property collateral.

[N, 4/30/99; 15.1.21.6 NMAC – Rn, 15 NMAC 1.21.6, 2/14/02]

**15.1.21.7 DEFINITIONS:**

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

**A. "control,"** when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person 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 applicant or licensee; when used as a verb, "control"

means to exert, directly or indirectly, such power, or to be in a position to exert such power.

**B. "enforce a security interest"** means to transfer possession of ownership or title pursuant to a security interest.

**C. "gaming property collateral"** means property subject to a security interest; gaming property collateral may include a security issued by a company licensee, a security issued by a holding company that is not a publicly traded corporation, or a security issued by a holding company that is a publicly traded corporation, if the enforcement of the security interest will result in the secured party's acquiring control over the holding company.

**D. "license"** means an authorization required by the board for engaging in gaming activities but does not include work permits or certifications of findings of suitability.

**E. "secured party"** means a person who is a lender, seller, or other person who holds a valid security interest.

**F. "security"** means any ownership right or creditor relationship; "security" includes: (i) stock; (ii) bonds; (iii) membership in an incorporated association; (iv) partnership interest in a general or limited partnership; (v) debenture or other evidence of indebtedness; (vi) investment contract; (vii) voting trust certificate; (viii) certificate of deposit for a security; (ix) any other interest or instrument commonly known as a security; (x) any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

**G. "security agreement"** means an agreement that creates or provides a security interest.

**H. "security interest"** means an interest in property that secures the payment or performance of an obligation or judgment.

**I. "State"** means the State of New Mexico.

**J. "this title"** means Chapter 15, Part 1 of the New Mexico Administrative Code.

[N, 4/30/99; 15.1.21.7 NMAC – Rn, 15 NMAC 1.21.7, 2/14/02]

#### **15.1.21.8 APPROVALS REQUIRED; APPLICABILITY; SCOPE OF APPROVAL:**

**A.** A person may not enforce a security interest in gaming property collateral except as set forth in this rule. Any attempt to enforce a security interest is void if the secured party has not complied with the requirements of this rule.

**B.** This rule does not apply to the enforcement of a security interest in property other than gaming property collateral.

**C.** Notwithstanding any other provision of this rule, approval is not required under this rule to enforce a security interest in a security issued by a company licensee if the licensee has ceased all gaming activities and has surrendered the license to the board before enforcement of the security interest.

**D.** The granting of an approval pursuant to this rule does not constitute any of the following:

(1) determination by the board as to the validity or enforceability of a security interest;

(2) licensing, registration, or finding of suitability of the secured party; or

(3) approval of any further sale, transfer, or other disposition of the gaming property collateral after the enforcement of the security interest.

[N, 4/30/99; 15.1.21.8 NMAC – Rn, 15 NMAC 1.21.8, 2/14/02]

#### **15.1.21.9 APPLICATION FOR APPROVAL TO ENFORCE SECURITY INTEREST:**

**A.** Except as otherwise provided in this rule, a secured party must apply for approval to enforce a security interest in gaming property collateral using such forms as the board may require or approve. The application for approval must include:

(1) a complete description of the gaming property collateral that is the subject of the security interest;

(2) copies of the security agreement and documents evidencing the obligation secured by the gaming property collateral;

(3) a statement by the secured party identifying the act of default by the licensee that is the basis for seeking to enforce the security interest, including notice of default sent to the licensee; and

(4) any other information requested by the board.

**B.** The board will investigate the facts and circumstances related to the application for approval to enforce a security interest. The investigation may include:

(1) review of all pertinent documents;

(2) analysis of the impact on the licensee if the board approves enforcement of the security interest, including an evaluation of the effect of enforcement of the security interest upon the continued operation of the licensed gaming establishment;

(3) review of the transaction to determine whether the security interest was given in violation of the Act or this title, or an attempt to evade the requirements of the Act or this title regarding the sale, assignment, transfer or other disposition of an interest in a gaming operation or in the type of property subject to this rule; and

(4) any other data or information the board deems relevant to the application.

[N, 4/30/99; 15.1.21.9 NMAC – Rn, 15 NMAC 1.21.9, 2/14/02]

#### **15.1.21.10 PRIOR LICENSING REQUIREMENT:**

**A.** Where applicable, prior licensing of the secured party seeking to enforce a security interest is required. The board will not approve the enforcement of any security interest in gaming property collateral unless all persons have been licensed, registered, or found suitable by the board, as applicable.

**B.** The board may grant a temporary or permanent waiver of the requirement of prior licensing, registration, or finding of suitability upon written request by the secured party and recommendation by the Executive Director. The board may grant such temporary or permanent waiver only if the board makes a written finding that the waiver of licensing, registration or finding of suitability is consistent with the Act and State policy.

[N, 4/30/99; 15.1.21.10 NMAC – Rn, 15 NMAC 1.21.10, 2/14/02]

## **PART 22: FORFEITURE PROCEEDINGS UNDER THE GAMING CONTROL ACT**

### **15.1.22.1 ISSUING AGENCY: New Mexico Gaming Control Board:**

[15.1.22.1 NMAC – N, 3/15/99]

### **15.1.22.2 SCOPE:**

This rule applies to all persons owning or in possession of property subject to seizure and forfeiture under the Gaming Control Act and Article 19 of the Criminal Code.

[15.1.22.2 NMAC – N, 3/15/99]

### **15.1.22.3 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.

[15.1.22.3 NMAC – N, 3/15/99]

**15.1.22.4 DURATION:**

Permanent.

[15.1.22.4 NMAC – N, 3/15/99]

**15.1.22.5 EFFECTIVE DATE:**

March 15, 1999, unless a later date is cited at the end of a section.

[15.1.22.5 NMAC – N, 3/15/99; A, 1/31/02]

**15.1.22.6 OBJECTIVE:**

The objective of this rule is to establish forfeiture proceedings in connection with the board's seizure of gaming machines and property connected with gaming, unlicensed gaming machines under Section 60-2E-13(D) of the Act, and gambling devices under Article 19 of the Criminal Code.

[15.1.22.6 NMAC – N, 3/15/99]

**15.1.22.7 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. "amusement device"** means any mechanical, electromechanical or electronic contrivance or device designed and manufactured for bona fide amusement or entertainment purposes which, by application of some skill, only entitles the player to replay the game.

**C. "Criminal Code"** mean the New Mexico Criminal Code, Sections 30-1-1 through 30-51-5 NMSA 1978.

**D. "gaming machine"** means:

**(1)** a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any

consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner; or

(2) a contrivance, other than an antique gambling device, that is not licensed for use pursuant to the Act and that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the device; or

(3) an illegal gaming machine.

**E. "illegal gaming machine"** means any unlicensed gaming machine or any mechanical, electromechanical or electronic contrivance or device that is designed and manufactured for operation as a gaming machine, whether or not the contrivance or device is in working order as designed or its use has been adjusted or modified; "illegal gaming machine" does not include an amusement device.

**F. "property"** means gaming machines, gaming devices, and other property connected with gaming.

**G. "this title"** means Title 15 of the New Mexico Administrative Code.

[15.1.22.7 NMAC – N, 3/15/99]

#### **15.1.22.8 AMUSEMENT DEVICES; IDENTIFYING FEATURES:**

**A.** Features used to identify an amusement device include, but are not limited to, the following:

(1) average player—an ordinary person can, with reasonable application to the problem, learn to score and win games consistently;

(2) control by player—the device gives the player the opportunity to exert continuous, effective control the entire duration of the game;

(3) time of play—the game is not operated on a timed cycle, and the player can, depending on skill level, affect the time of play of the game;

(4) single coin feature—the denomination of coins used to activate the machine cannot be varied by the owner;

(5) conversion of machine—the device cannot be easily converted into an actual payout machine;

(6) no accumulation of credits—the device has no credit meter or other means to accumulate credits; and

(7) no knock-off switch or other means to remove credits earned.

**B.** Any device incorporating the features described in Subsection A of 15.1.22.8 NMAC will be presumed to be an amusement device and will not be subject to seizure and forfeiture as an illegal gaming machine.

[15.1.22.8 NMAC – N, 3/15/99; A, 1/31/02]

#### **15.1.22.9 FORFEITURE PROCEEDINGS:**

**A.** Property subject to forfeiture and disposal under the Act and the Criminal Code may be seized by an agent of the board upon an order issued by the district court having jurisdiction or as otherwise provided in this rule.

**B.** Seizure without such an order may be made if:

(1) the property is seized from a person who has made application for a license under the Act or is already licensed by the board;

(2) the seizure is incident to an arrest or search warrant;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon the Act or Criminal Code;

(4) the agent has probable cause to believe that the property is directly or indirectly dangerous to public health or safety; or

(5) the agent has probable cause to believe that the property was used or is intended to be used in violation of the Act.

**C.** Forfeiture proceedings must commence within 30 days of the seizure.

**D.** The board may initiate forfeiture proceedings in its own name when the property is seized under the Act. In the case of property seized under the Criminal Code, the board may notify the District Attorney of the relevant district of the seizure. In the event the District Attorney fails or declines to initiate forfeiture proceedings, the board may seek the assistance of the Attorney General to initiate such proceedings.

**E.** Property taken or detained is deemed to be in the custody of the law enforcement agency seizing it, subject only to the orders and decrees of the district court. When property is seized, the board's agents may:

(1) place the property under seal;

(2) remove the property to a place designated by the board;

(3) remove the property to an appropriate location for disposition in accordance with the law; or

(4) take other action as directed by the board in accordance with the law or this title.

[15.1.22.9 NMAC– N, 3/15/99; A, 3/31/00]

## **PART 23: WORK PERMIT REVOCATION BY THE GAMING CONTROL BOARD**

### **15.1.23.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.1.23.1 NMAC - N, 10/15/00]

### **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]

### **15.1.23.4 DURATION:**

Permanent.

[15.1.23.4 NMAC - N, 10/15/00]

### **15.1.23.5 EFFECTIVE DATE:**

October 15, 2000, unless a later date is cited at the end of a section.

[15.1.23.5 NMAC - N, 10/15/00; A, 1/31/02]

**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.** "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 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 certification of finding of suitability has been revoked by the board may not reapply for a 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]

### **PART 24: PROGRESSIVE GAMES AND GAMING DEVICES**

**15.1.24.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.1.24.1 NMAC - N, 5/31/00]

**15.1.24.2 SCOPE:**

This rule applies to all persons holding a racetrack gaming operator's license, manufacturer's license or distributor's license under the Gaming Control Act.

[15.1.24.2 NMAC - N, 5/31/00]

**15.1.24.3 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. Pursuant to Section 60-2E-8(C)(16) of the Gaming Control Act, the board must adopt a regulation establishing criteria and conditions for the operation of progressive systems.

[15.1.24.3 NMAC - N, 5/31/00]

**15.1.24.4 DURATION:**

Permanent.

[15.1.24.4 NMAC - N, 5/31/00]

**15.1.24.5 EFFECTIVE DATE:**

May 31, 2000, unless a later date is cited at the end of a section.

[15.1.24.5 NMAC - N, 5/31/00; A, 2/14/02]

**15.1.24.6 OBJECTIVE:**

The objective of this rule is to establish requirements for the manufacture, sale, distribution, and operation of progressive systems under the Gaming Control Act and to provide notice of the requirements to any person wishing to manufacture, sell, distribute or operate a progressive system in New Mexico.

[15.1.24.6 NMAC - N, 5/31/00]

**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 person holding a certification of finding of suitability authorizing such person to host a multi-link progressive system in which a New Mexico licensed racetrack gaming 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 electrically erasable programmable read-only memory (EEPROM's), erasable programmable read only memory (EPROM's) compact flash memory, flash RAM, CDROM's or hard drives.

**H. "Multi-link"** means a wide area progressive in which a New Mexico licensed gaming 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.

**D.** The application shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

**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]

#### **15.1.24.9 TESTING:**

All gaming media capable of running a progressive jackpot shall be submitted to the board and to an independent testing laboratory selected by the board before a licensed manufacturer may release the progressive-capable gaming media for distribution in New Mexico.

[15.1.24.9 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.10 MULTIPLE LINKAGE OF PROGRESSIVE GAMING MACHINES;  
TECHNICAL REQUIREMENTS:**

**A.** There is no administrative limit on the number of progressive gaming machines that may be linked at a New Mexico licensed gaming premise. Each linked gaming machine must have the same probability of hitting the combination or other event that will trigger an award of the progressive jackpot. All progressive gaming machines on any link shall be located on the licensed premises of one establishment; or they may be linked across telecommunication lines among more than one licensed establishment provided they comply with the following requirements.

**(1)** The method of communication over the multi-link system shall consist of either dedicated on-line communication lines (direct connect) or dial-tone lines which may be subject to certain restrictions imposed by the board.

**(2)** All communication packets between each multi-link location and the progressive central system shall be encrypted, and encryption keys shall be alterable upon demand.

**(3)** All multi-link systems shall be on-line with a maximum one-way communication time to or from the linked slot machines of no more than 15 seconds.

**(4)** Acceptable method of obtaining meter reading values shall consist of either pulses leading from the slot machine computer board or associated wiring, or the use of communication interface to the gaming device's RAM or other non-volatile memory.

**(5)** Because the polling cycle does cause a delay, the jackpot meter need not precisely show the actual monies in the progressive pool at each instance. In addition, nothing shall prohibit the use of odometer or other "paced" updating progressive displays. In the case of the use of "paced" updating displays, the progressive meter shall display the winning value within 30 seconds of the jackpot being recognized by the progressive central system, if the remote site is communicating to the progressive central system. If a jackpot is recognized in the middle of a system-wide poll cycle, the overhead display may contain a value less than the aggregated jackpot amount calculated by the progressive central system. The coin values from the remaining portion of the poll cycle shall be received by the progressive central system but not the local site, in which case the jackpot amount paid shall always be the higher of the two reporting amounts.

**(6)** Approval by the board of any multi-link system shall occur in two phases: i) initial approval; and ii) on-site testing. The approval of any multi-link system shall include a phase I system approval whereby the underlying progressive gaming machines and communication hardware shall be tested and approved by the board, or

its authorized agents. Phase II approval shall include field inspection at the progressive central computer site to ensure compliance with these rules. Operation of the system shall be authorized only after the board is satisfied that the system meets both the phase I and phase II testing requirements, as well as any other requirements that the board may impose to assure the integrity, security, and legal operation of the multi-link.

(7) The progressive central computer site shall be equipped with non-interruptible power supply and the progressive central computer shall be capable of on-line data redundancy should hard disk peripherals fail during operation.

(8) The progressive central system for the multi-link shall be in a secure location approved by the board. The progressive central system memory device shall be approved for use in the state of New Mexico. The licensee operating the progressive central system shall provide sufficient internal controls to address the security of the equipment.

(9) If all progressive gaming machines connected to a multi-link system do not offer the same maximum bet value, all such gaming machines shall equalize the expected value of winning the progressive jackpot by setting the odds of winning the progressive jackpot in proportion to the amount wagered on each device, or by requiring the same wager value on each device to win the progressive jackpot. The method of equalizing the expected value of winning the progressive jackpot shall be conspicuously displayed on each device connected to the system.

(10) A licensee utilizing a multi-link system shall suspend play on the multi-link at the premises of that licensee if a communication failure in the system cannot be corrected within 24 hours.

[15.1.24.10 NMAC - N, 5/31/00; A, 5/14/04; A, 5/15/07]

#### **15.1.24.11 NORMAL MODE OF PROGRESSIVE SLOT MACHINE GAME PLAY:**

**A.** During the normal operating mode of progressive gaming machines, the progressive controller shall continuously monitor each gaming machine on the link for inserted coins or cash and shall multiply the accepted coins or cash by the rate of progression in order to determine the correct amounts to apply to the progressive jackpot. The progressive display shall be constantly updated as play on the link continues.

**B.** If a progressive gaming machine has been offered for play, the progressive jackpot amount for that game shall not be changed to a lower amount until after the progressive jackpot has been awarded. The amount shall be changed prior to any subsequent play.

**C.** A meter that shows the amount of the progressive jackpot shall be placed in a clearly visible location at or near the progressive gaming machines to which the jackpot

applies and shall be visible to any person playing a machine linked to the progressive system. The licensee shall maintain a daily record of the amount shown on a progressive jackpot meter.

[15.1.24.11 NMAC - N, 5/31/00; A, 5/15/07]

#### **15.1.24.12 REQUIREMENTS FOR PROGRESSIVE CONTROLLER:**

**A.** Each progressive controller linking one or more progressive gaming machines shall be housed in a double-keyed compartment or secured in a manner approved by the board. The licensee offering the progressive game shall establish key control procedures that ensure no one person has access to the controller's configuration data. There shall be a progressive entry authorization log within each controller and the log shall be completed by any person gaining entrance to the controller.

**B.** If more than one progressive gaming machine is linked to the progressive controller, in the event of a progressive jackpot the progressive controller shall automatically reset to the minimum amount and continue normal play and the progressive meter shall display the following information:

- (1) the identity of the progressive gaming machine that caused the progressive meter to activate;
- (2) the winning progressive amount; and
- (3) the new base amount that is used by the other players on the link;
- (4) when a progressive jackpot is awarded, the progressive display or overhead display must indicate, "WIN."

**C.** If this part prescribes multiple items of information to be displayed on a slot machine, it is sufficient to have the information displayed in an alternating fashion.

**D.** A progressive meter or progressive controller shall keep the following information in nonvolatile memory which shall be available upon demand:

- (1) the maximum amount of the progressive payout for each meter displayed;
- (2) the base amount of the progressive payout for each meter displayed; and
- (3) the rate of progression for each meter.

**E.** Neither the progressive jackpot nor the amount displayed on a progressive jackpot meter or display may be reduced unless:

- (1) a player wins the progressive jackpot; or

(2) the progressive jackpot meter is adjusted to correct a malfunction or to prevent the display of an amount greater than a limit imposed pursuant to this rule and the adjustment and reasons for the adjustment are documented;

[15.1.24.12 NMAC - N, 5/31/00; A, 5/15/07]

**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 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]

#### **15.1.24.14 ANNUITIES:**

**A.** Payments of progressive jackpots exceeding \$50,000 may be paid in annual equal installments over periods and in amounts set forth in 15.1.10.26 NMAC or as otherwise approved by the board or its designee. A progressive gaming machine paying by annuity shall have a notice prominently posted on it that the jackpot will be paid over time. The posted notice also shall disclose the number of payments and the time interval between the payments. The first payment shall be made immediately after verification of the jackpot as set forth in this part.

**B.** Progressive jackpots that are to be paid by annuities shall be reviewed and verified in writing submitted to the board by an independent certified public accountant prior to payment of any amount due.

**C.** A racetrack gaming operator licensee that is liable for payment of an annuity, cash, or other prize with a cash value exceeding \$50,000 shall secure the amount by a cash deposit, irrevocable bond, irrevocable letter of credit, irrevocable trust, or other security instrument satisfactory to the board or its designee.

[15.1.24.14 NMAC - N, 5/31/00; A, 5/15/07; A, 12/15/10]

#### **15.1.24.15 DISCONTINUANCE OF PROGRESSIVE GAMING MACHINE:**

**A.** A racetrack gaming operator licensee shall not discontinue availability of a progressive gaming machine until all of the advertised progressive payouts or prizes, or both, have been awarded. The executive director may approve transfer of a progressive payout or prize, or both, from a progressive gaming machine to another progressive device that is licensed to the same or another licensee.

**B.** If a racetrack gaming operator licensee files for bankruptcy or ceases operations permanently, the board may allow the transfer of any progressive gaming machine to another licensee making sure to maintain the integrity of the amount shown on the progressive meter. The amount of the progressed liability must be paid by certified check to the licensee assuming the progressive amount.

**C.** In addition to the requirements outlined for progressive machines, the vendor operating the multi-link progressive system shall submit a written plan for discontinuance and receive approval from the board prior to discontinuing any multi-link progressive system. The plan shall include the projected discontinuance date, detailed accounting of the multi-link progressive system fund including any outstanding expenses and fees due the vendor for operating the system, in accordance with the vendor's written agreement with licensees, the distribution of the fund balance, and the final reporting requirements of the system. The final distribution amount is transferred to another multi-link progressive system operated by the vendor or disbursed in a manner

approved by the board. The final distribution amount is the fund balance less the cost of paying the current jackpot less any outstanding expenses and fees due the vendor for operating the multi-link progressive system.

[15.1.24.15 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.16 RECORDS:**

Licensees shall preserve the records required by this section for at least five years after they are made unless the board or its designee approves otherwise in writing.

[15.1.24.16 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.17 REQUIREMENTS APPLY TO SINGLE MACHINES:**

The requirements of this rule are intended to apply equally to one progressive gaming machine linked to a progressive controller as well as several progressive gaming machines linked to one progressive controller.

[15.1.24.17 NMAC - N, 5/31/00; A, 5/15/07]

**15.1.24.18 INCREASING PROBABILITY AND PROGRESSIVE BONUS SLOT MACHINE GAMES:**

**A.** An increasing probability is an award on a gaming machine game or games of either coins, credits, or free play games, where the chance of winning the award increases as the slot machine game(s) is played.

**B.** A progressive award is a progressive award on one gaming machine that does not use an exterior controller. Progressive awards do not include top and secondary payable progressive awards.

**C.** If an award is greater than \$500, the licensee shall record the date initiated, conditions for the award, and the date removed using the progressive tracking log. The licensee is required to notify the board to transfer the award when a gaming machine game with a award over \$500 is discontinued. If a award is \$500 or less, the licensee is not required to record the amount on a progressive jackpot log or to transfer the award when the game is discontinued. Licensees are required to notify the board when any award is placed into play. Awards can not be altered through the use of any switches or any other means, i.e. shutting the slot machine's power off to reset the award.

[15.1.24.18 NMAC - N, 5/15/07]

**15.1.24.19 GENERAL REQUIREMENTS; JACKPOT VERIFICATION; ACCOUNTING; RECORDKEEPING:**

**A.** Jackpot verification procedures shall include the following: When a jackpot is won, the person operating or controlling, the progressive system shall have the opportunity to inspect the machine, gaming media, the error events received by the progressive central system, and any other data which could reasonably be used to ascertain the validity of the jackpot. The progressive central system shall produce reports that will clearly demonstrate the method of arriving at the payoff amount. This shall include the coins contributed beginning at the polling cycle immediately following the previous jackpot and shall include all coins contributed up to, and including, the polling cycle, which includes the jackpot signal. Coins contributed to the system after the jackpot occurs in real-time, but during the same polling cycle shall be deemed to have been contributed to the progressive amount prior to the jackpot. Coins contributed to the system before the jackpot message is received shall be deemed to have been contributed to the progressive amount prior to the current jackpot. Coins contributed to the system subsequent to the jackpot message being received shall be deemed to have been contributed to the progressive amount of the next jackpot. The jackpot may be paid in installments as long as each machine clearly displays the fact that the jackpot will be paid in installments. In addition, the number of installments and time between installments must be clearly displayed on the face of the machine in a non-misleading manner. Two jackpots that occur in the same polling cycle shall be deemed to have occurred simultaneously; and therefore, each "winner" shall receive the full amount shown on the meter.

**B.** Any person authorized to control or operate a progressive system, shall supply reports to the board or its designee(s) which support and verify the economic activity on the system. Any person authorized to control or operate a multi-link system, shall supply, as requested, reports and information to the board or its designee(s) indicating the amount of, and basis for, the current jackpot amount. Such reports may include an "aggregate report" and a "detail report". The "aggregate report" may show only the balancing of the system with regard to system-wide totals. The "detail report" shall be in such form as to indicate for each machine, summarized by location, the coin-in and coin-out totals as such terms are commonly understood in the industry. In addition, upon the invoicing of any licensee participating in a multi-link system, each such licensee shall be given a printout of each machine owned by the licensee, the coins contributed by each machine to the jackpot for the period for which an invoice is remitted, and any other information required by the board to confirm the validity of the licensee's contributions to the jackpot amount.

**C.** In calculating net win for purposes of calculating gaming tax, a licensee shall deduct its contribution to any progressive jackpot pool during the preceding month. This amount shall be listed on the detailed accounting records provided by the entity authorized to control or operate the progressive system.

**D.** The entity authorized to operate or control a progressive system shall maintain a copy of all lease and contractual agreements with licensees and supply a copy to the board upon request.

**E.** The entity authorized to control or operate a progressive system, shall hold a valid gaming operator license issued by the board and shall obtain approval from the board as to the methods of funding the progressive prize pool and calculating and receiving payments from participating retailers for operating and managing the multi-link system.

**F.** A gaming operator licensee shall transfer all contributions to the progressive jackpot fund no later than the 28th day of the following month to a non-interest bearing bank account or to the administrator of the progressive jackpot fund.

**G.** The progressive system prize fund (the amount of money contributed by the participating licensees) shall be audited, in accordance with generally accepted auditing standards, on the multi-link system operator's year-end basis, by an independent certified public accountant approved by the board. Two copies of this report shall be submitted to the board within 90 days after the end of the multi-link system operator's business year-end.

[15.1.24.19 NMAC - N, 5/15/07]

## **PART 25: MANUFACTURER'S LICENSE WAIVER UNDER THE GAMING CONTROL ACT**

### **15.1.25.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.1.25.1 NMAC - N, 5/15/02]

### **15.1.25.2 SCOPE:**

This rule applies to all persons who manufacture associated equipment who are seeking waiver for licensure as a manufacturer under the New Mexico Gaming Control Act.

[15.1.25.2 NMAC - N, 5/15/02]

### **15.1.25.3 STATUTORY AUTHORITY:**

Section 60-2E-7(B)(3) of the Gaming Control Act authorized the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-13(D) gives the board discretion to waive the licensing requirement for manufacturers of associated equipment.

[15.1.25.3 NMAC - N, 5/15/02]

### **15.1.25.4 DURATION:**

Permanent.

[15.1.25.4 NMAC - N, 5/15/02]

**15.1.25.5 EFFECTIVE DATE:**

May 15, 2002, unless a later date is cited at the end of a section.

[15.1.25.5 NMAC - N, 5/15/02]

**15.1.25.6 OBJECTIVE:**

This rule establishes guidelines and procedures for obtaining a waiver of the license requirement for manufacturers of certain associated equipment.

[15.1.25.6 NMAC - N, 5/15/02]

**15.1.25.7 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. "**Associated equipment**" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming.
- C. "**Board**" means the gaming control board or its designee.
- D. "**Central monitoring system**" means the hardware and software used by the board to control, monitor, and retrieve information from, all licensed gaming machines.
- E. "**Executive director**" means the executive director of the board.
- F. "**EPROM**" means erasable programmable read-only memory used for storing program instructions in a gaming device, including game programs and video graphics.
- G. "**Game outcome**" means the final result of the wager.
- H. "**Modification**" means a change or alteration in the associated equipment or component that affects the manner or mode of its operation or function.
- I. "**Principal**" means a key person directly involved in day-to-day operations of the manufacturer.
- J. "**State**" means the state of New Mexico.

**K. "Tier one associated equipment"** means associated equipment for which waiver of licensure is required to be approved by the board.

**L. "Tier two associated equipment"** means associated equipment for which waiver of licensure is required to be approved by the executive director.

**M. "Waiver"** means a determination by the board to exempt a manufacture of associated equipment from the requirement to obtain a manufacturer's license under the act.

[15.1.25.7 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.8 WAIVER REQUESTS; TIER ONE ASSOCIATED EQUIPMENT; FORM AND GENERAL REQUIREMENTS:**

**A.** Any person who manufactures tier one associated equipment for use or play in the state or for sale, lease or distribution outside the state from any location within the state may request a waiver by filing a written waiver request form with the board.

**B.** Waiver requests shall be submitted in writing on forms supplied or approved by the board and must contain such information and documents as specified. Every waiver request shall include payment of a \$25.00 nonrefundable fee.

**C.** A separate waiver request shall be submitted for each item of associated equipment the manufacturer intends to manufacture, fabricate, assemble, produce, program, or modify.

**D.** All information required to be included in the waiver request shall be true and complete as of the date of board action sought.

**E.** By requesting a waiver or other approval of the board, the manufacturer is requesting review of the equipment and a waiver of licensing requirements as a manufacturer. In addition, by requesting the waiver, the manufacturer accepts all risks of adverse public notice, embarrassment, criticism, or damages relating to the request with the board.

**F.** Any waiver granted by the board is a revocable privilege. No person holding such a waiver shall have any property rights therein.

**G.** By requesting a waiver, the holder agrees to abide by all provisions of the act and board rules.

[15.1.25.8 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.9 EVALUATION OF ASSOCIATED EQUIPMENT:**

**A.** The board shall maintain and publish from time to time a list of tier one associated equipment and tier two associated equipment.

**B.** If the equipment for which a manufacturer seeks waiver of licensure is not listed as tier one or tier two associated equipment no further action is required and the manufacturer may manufacture or distribute the equipment in the state.

**C.** If the equipment is associated equipment the manufacturer shall register as a manufacturer of associated equipment.

[15.1.25.9 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.10 REGISTRATION REQUIREMENTS; TIER ONE ASSOCIATED EQUIPMENT:**

**A.** Registration shall be for a one-year period.

**B.** All manufacturers of tier one associated equipment seeking a waiver of licensure shall register with the board on forms supplied and approved by the board and shall provide all information and documents requested.

**C.** The registration form shall be accompanied by payment of a \$100.00 nonrefundable registration fee.

**D.** The registration form shall require the following information:

- (1)** manufacture's name;
- (2)** manufacturer's business address;
- (3)** name, title, date of birth and social security number for principals directly involved in operations of the manufacturer and owners;
- (4)** disclosure of all other gaming licenses held by manufacturer; and
- (5)** any other information deemed necessary by the board.

**E.** The information and documents provided shall be used by the board for the purpose of conducting a limited background investigation.

**F.** Any information submitted in connection with registration under this section shall be deemed confidential to the same extent as information submitted with an application for licensure.

**G.** Once a manufacturer is registered, it may submit additional waiver requests without re-registration as long as the registration is in effect.

[15.1.25.10 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.11 CRITERIA FOR GRANTING A LICENSE WAIVER; TIER ONE ASSOCIATED EQUIPMENT:**

**A.** The decision to grant a waiver of licensure for the manufacture of tier one associated equipment is within the absolute discretion of the board. Waivers will be granted on the terms and conditions the board deems necessary and provided the waiver is consistent with the purposes of the act.

**B.** The board may consider the following factors, where applicable, in determining whether to grant a waiver:

- (1)** whether the manufacturer is licensed by another jurisdiction with standards for licensure comparable to the standards of the state;
- (2)** whether requiring licensure would inhibit the entry of a particular technology into the state;
- (3)** whether the cost of obtaining a license is disproportionate to the economic benefit the manufacturer would gain from licensure;
- (4)** whether requiring licensure would inhibit economic development in the state;
- (5)** whether the manufacturer or any of its principles has been denied a license or certification in this state or another state, has had a certification, permit or license issued pursuant to the laws of this state, another state or the United States permanently suspended or revoked for cause or is currently under suspension or other limiting action in this state or another state involving gaming activities or licensure for gaming activities;
- (6)** whether the manufacturer or any of its principles have been convicted of a crime in any jurisdiction;
- (7)** whether the associated equipment for which the waiver is sought affects the security of any game or gaming device;
- (8)** whether the associated equipment for which a waiver is sought has been verified by an independent laboratory or approved by another jurisdiction with standards comparable to the standards of the state; and
- (9)** any other factors the board deems appropriate.

**C.** A waiver will not be granted if the manufacturer is manufacturing any of the following:

(1) an EPROM or other storage medium containing game source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in a gaming machine;

(2) any mechanical, electrical, or other device that may be connected to or used with a gaming machine to alter the normal criteria of random selection or affect the outcome of a game;

(3) a system for the accounting or management of any game or gaming machines;

(4) any hardware or software that interfaces directly with the central monitoring system or with a slot accounting system; or

(5) any other component that the board determines by regulation to be a gaming device used directly or remotely in connection with gaming or any game that affects the results of a wager by determining a win or loss.

[15.1.25.11 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.12 FINAL DECISION; EFFECT OF WAIVER OF LICENSURE; TIER ONE ASSOCIATED EQUIPMENT:**

**A.** The board shall make the final decision to either grant or deny the waiver request. If the waiver request is granted, the manufacture will receive a written waiver indicating the specific tier one associated equipment it may manufacture without obtaining a manufacturer's license from the board.

**B.** If the waiver request is denied the manufacture shall obtain a full manufacturer's license pursuant to the provisions of the act and board rules before manufacturing or distributing the associated equipment.

**C.** A manufacture who has been issued a waiver shall only manufacture or distribute the tier one associated equipment or components that are specifically identified in the waiver.

**D.** The manufacture of, distribution of or modification of any other tier one associated equipment not listed on the waiver is a violation of the act and is subject to criminal penalty and imposition of an administrative fine or both.

**E.** Associated equipment for which a waiver is granted is not subject to approval requirements set forth in 15.1.7.30 NMAC.

**F.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall notify the board within 30

days of any change of ownership of the manufacturer or any change of the manufacturer's principles.

**G.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacturer tier one associated equipment shall notify the board within 10 days if the manufacturer or any of the manufacturer's principles has had a license, permit or certification issued in connection with gaming activities or manufacture of gaming machines or associated equipment revoked, suspended or placed under limiting action in another jurisdiction.

**H.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall notify the board within 10 days if the manufacturer or any of the manufacturer's principles has been arrested, charged or convicted of a crime in any jurisdiction. This subsection does not apply to misdemeanor traffic offenses.

**I.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall immediately notify the board in writing of any material problem, defect or malfunction of any associated equipment for which licensure has been waived.

**J.** A manufacturer who has registered with the board and been granted a waiver of licensure to manufacture tier one associated equipment shall immediately notify the board in writing if approval of the associated equipment for which licensure has been waived is suspended or revoked in any other jurisdiction.

[15.1.25.12 NMAC - N, 5/15/02; A, 5/15/07]

**15.1.25.13 WAIVER REQUESTS; TIER TWO ASSOCIATED EQUIPMENT; FORM AND GENERAL REQUIREMENTS:**

**A.** A manufacturer seeking waiver of licensure for tier two associated equipment shall apply for approval of the tier two associated equipment pursuant to the requirements set forth in 15.1.7.30 NMAC.

**B.** The manufacturer shall submit with the application a request for waiver of licensure as a manufacturer of associated equipment.

**C.** Upon approval of the associated equipment pursuant to 15.1.7.30 NMAC, the waiver of licensure for manufacture of tier two associated equipment shall be granted.

**D.** The executive director shall notify the applicant in writing that the waiver has been granted.

[15.1.25.13 NMAC - N, 5/15/02; A, 5/15/07]

## **PART 26: TEMPORARY POSSESSION OF GAMING DEVICES BY PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS AND TRADE SHOWS**

### **15.1.26.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.1.26.1 NMAC - N, 10/31/02]

### **15.1.26.2 SCOPE:**

This rule applies to public post-secondary educational institutions and persons participating in trade shows who are seeking to temporarily possess gaming devices for limited purposes permitted under the New Mexico Gaming Control Act.

[15.1.26.2 NMAC - N, 10/31/02]

### **15.1.26.3 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)(19) authorizes the board to establish criteria and conditions for allowing temporary possession of gaming devices by public post-secondary educational institutions and for trade shows.

[15.1.26.3 NMAC - N, 10/31/02]

### **15.1.26.4 DURATION:**

Permanent.

[15.1.26.4 NMAC - N, 10/31/02]

### **15.1.26.5 EFFECTIVE DATE:**

October 31, 2002, unless a later date is cited at the end of a section.

[15.1.26.5 NMAC - N, 10/31/02]

### **15.1.26.6 OBJECTIVE:**

This rule establishes criteria and conditions for possession of gaming devices by public post-secondary educational institutions and persons participating in trade shows.

[15.1.26.6 NMAC - N, 10/31/02]

#### **15.1.26.7 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. "authorized personnel"** means persons permitted to teach courses of instruction at public post-secondary educational institutions or other activities requiring access to the gaming devices;

**C. "board"** means the Gaming Control Board or its designee.

**D. "person"** means a legal entity or an individual.

**E. "State"** means the State of New Mexico.

**F. "trade show"** means a gaming industry related event where vendors of gaming devices exhibit, demonstrate and market gaming devices at a premises other than a licensed premise.

**G. "vendor"** means a person licensed in any legal jurisdiction authorized to manufacture, sell, lease or otherwise distribute gaming devices.

[15.1.26.7 NMAC - N, 10/31/02]

#### **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:**

**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 contract 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]

**15.1.26.10 RESTRICTION ON USE, ACCESS AND MOVEMENT OF GAMING DEVICES BY PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS:**

A. All courses of instruction or other activities requiring access to the gaming devices must be conducted in a secured classroom.

B. Gaming devices may be used and operated only for the purpose of providing instruction as authorized under the Act.

C. Public post-secondary institutions must submit, or ensure submission of, all EPROMS to the board for testing and approval prior to installation and use in any gaming device.

D. Access to gaming devices must be restricted to authorized personnel and to students enrolled in courses that require access to the gaming devices.

E. Gaming devices may not be moved, modified, disposed of or otherwise tampered with except with the express written consent of the board.

F. Upon board request, the board and its employees or agents must be given access to the classroom or storage room where gaming machines, gaming devices, and related records are located.

G. Storage security measures will include, at a minimum, providing and maintaining:

(1) classroom doors or storage room doors that lock so that access to the classroom or storage room is limited to only authorized personnel;

(2) adequate security personnel; and

(3) electrical shut off to the classroom or storage room.

[15.1.26.10 NMAC - N, 10/31/02]

**15.1.26.11 RESTRICTION ON USE, ACCESS AND MOVEMENT OF GAMING DEVICES AT TRADE SHOWS:**

A. Gaming devices may be used and operated only for the purpose of exhibit, demonstration and marketing at a trade show event.

**B.** Gaming devices must be shipped in demonstration mode with demonstration software.

**C.** Participants in trade shows must submit, or ensure submission of, within 10 days of the trade show, all demonstration EPROMS or software to the board for testing and approval prior to installation and use in any gaming device.

**D.** Access to the gaming devices at the end of the trade show event is restricted to authorized persons participating in or hosting the event.

**E.** Gaming devices may not be moved from the trade show location, modified, disposed of or otherwise tampered with except with the express written consent of the board.

**F.** Upon board request, a trade show vendor must allow the board and its employees or agents access to the trade show event, gaming devices, and related records.

[15.1.26.11 NMAC - N, 10/31/02]

**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]

**15.1.26.13 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]

## **CHAPTER 2: HORSE RACING**

### **PART 1: GENERAL PROVISIONS**

#### **15.2.1.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.1.1 NMAC - Rp, 15 NMAC 2.1.1, 3/15/2001]

#### **15.2.1.2 SCOPE:**

General Public and all persons, firms, or associations participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.2 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC, and 16.47.1 NMAC.

[15.2.1.2 NMAC - Rp, 15 NMAC 2.1.2, 3/15/2001]

#### **15.2.1.3 STATUTORY AUTHORITY:**

Sections 60-1A-1 through 60-1A-30 NMSA 1978 authorizes the New Mexico Racing Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing.

[15.2.1.3 NMAC - Rp, 15 NMAC 2.1.3, 3/15/2001; A, 9/15/2009]

#### **15.2.1.4 DURATION:**

Permanent.

[15.2.1.4 NMAC - Rp, 15 NMAC 2.1.4, 3/15/2001]

#### **15.2.1.5 EFFECTIVE DATE:**

March 15, 2001 unless a later date is cited at the end of a section.

[15.2.1.5 NMAC - Rp, 15 NMAC 2.1.5, 3/15/2001]

#### **15.2.1.6 OBJECTIVE:**

To establish the authority of the racing commission for regulating the horse racing industry; establish procedures for issuance, renewal, suspension, or revocation of licenses for violations of the rules or act; and, achieve the objectives that participants and patrons be protected against all wrongful, unlawful, or unfair conduct and practices on the racetrack.

[15.2.1.6 NMAC - Rp, 15 NMAC 2.1.6, 3/15/2001; A, 12/17/2019]

#### **15.2.1.7 DEFINITIONS:**

##### **A. Definitions beginning with the letter "a":**

(1) **"Act"** means the New Mexico Horseracing Act, New Mexico Statutes Annotated, 1978 Compilation, and Sections 60-1A-1 through 60-1A-30 including any amendments to that statute.

(2) **"Added money"** is the amount added into the purses for a stakes race by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from owners of horses participating in the race.

(3) **"Age"** of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

(4) **"Also eligible"** pertains to a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; in a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(5) **"Allowance race"** is an overnight race for which eligibility and weight to be carried are determined according to specified conditions which include age, sex, earnings and number of wins.

(6) **"Appeal"** is a request for the commission or its designee to investigate, consider and review any decisions or rulings of stewards of a meeting.

(7) **"Arrears"** are all monies owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules and are past due.

(8) **"Association"** is an individual or business entity holding a license from the commission to conduct racing with pari-mutuel wagering.

(9) **"Association grounds"** are all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands offices, barns, stable area, employee housing facilities and parking lots.

(10) "**Authorized agent**" is a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

**B. Definitions beginning with the letter "b":**

(1) "**Beneficial interest**" is profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another.

(2) "**Betting interest**" refers to one or more contestants in a pari-mutuel contest, which are identified by a single program number for wagering purposes.

(3) "**Bleeder**" is any horse, which exhibits symptoms of epistaxis and/or respiratory tract hemorrhage.

(4) "**Bleeder list**" is a tabulation of all bleeders to be maintained by the commission.

(5) "**Board**" means the gaming control board.

(6) "**Breakage**" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten.

(7) "**Breeder**" is the person or entity recorded by the national registry organization for the particular breed of the horse.

**C. Definitions beginning with the letter "c":**

(1) "**Carryover**" refers to non-distributed monies, which are retained and added to a corresponding pool in accordance with these rules.

(2) "**Catastrophic injury**" means an equine injury sustained during racing or training resulting in death or euthanasia of a horse within 72 hours of injury.

(3) "**Claiming race**" is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

(4) "**Classified handicap**" is a free handicap race in which contestants are assigned weights to be carried by the handicapper for the purpose of equaling their respective chances of winning.

(5) "**Commission**" means the state racing commission.

(6) "**Conditions**" are qualifications, which determine a horse's eligibility to be entered in a race.

(7) "**Contest**" is a competitive event on which pari-mutuel wagering is conducted.

(8) "**Contestant**" is an individual participant in a contest.

(9) "**Controlled substance**" is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

(10) "**Course**" is the track over which horses race.

#### **D. Definitions beginning with the letter "d":**

(1) "**Day**" is a 24-hour period ending at midnight.

(a) Dark day - a day during a live or a simulcast race meeting when no pari-mutuel wagering is conducted.

(b) Race day - a day during a race meeting when pari-mutuel wagering is conducted on live racing.

(c) Simulcast race day - a day during a race meeting when pari-mutuel wagering is conducted on simulcast racing.

(2) "**Dead heat**" is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

(3) "**Declaration**" is the act of withdrawing an entered horse from a race prior to the closing of entries.

(4) "**Designated race**" shall mean any stakes race or associated trial as designated by the stewards.

(5) "**Draw**" is the process of assigning postpositions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

#### **E. Definitions beginning with the letter "e":**

(1) "**Entry**" is a horse eligible for and entered in a race; two or more horses entered in the same race, which have common ties of ownership, lease or training (see "coupled entry").

(2) **"Equipment"** as applied to a horse, means riding crop, blinkers, tongue strap, muzzle, hood, nose band, bit, shadow roll, martingale, breast plate, bandage, boot, plates, flipping halter and all other paraphernalia common or otherwise which might be used on or attached to a horse while racing.

(3) **"Exhibition race"** is a race for which a purse is offered but no wagering is permitted.

(4) **"Exotic wagering"** means all wagering other than on win, place or show, through pari-mutuel wagering;

(5) **"Expired ticket"** is an outstanding ticket, which was not presented for redemption within the required time period for which it was issued.

(6) **"Export"** means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location.

#### **F. Definitions beginning with the letter "f":**

(1) **"Financial interest"** is an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity, or other compensation or remuneration from any person. Being the lessee or lessor of a horse shall be construed as having a financial interest.

(2) **"Flat race"** is a race run over a course on which no jumps or other obstacles are placed.

(3) **"Forfeit"** is money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the stewards or the commission.

#### **G. Definitions beginning with the letter "g":**

(1) **"Guarantee purse money"** is the same as a stake with a guarantee by the association that the gross purse shall not be less than the amount stated.

(2) **"Guest association"** is an association, which offers licensed pari-mutuel wagering on contests conducted, by another association (the host) in either the same state or another jurisdiction.

(3) **"Guest state"** means a jurisdiction, other than a jurisdiction in which a horse race is run, in which a horse racetrack, off-track wagering facility or other facility that is a member of and subject to an interstate common pool is located.

(4) **"Guest track"** means a horse racetrack, off-track wagering facility or other licensed facility in a location other than the state in which a horse race is run that is a member of and subject to an interstate common pool.

#### H. Definitions beginning with the letter "h":

(1) **"Handicap"** is a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(2) **"Handle"** is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

(3) **"Horse"** is any horse or mule (including and designated as a mare, filly, stallion, colt, ridgling or gelding) registered for racing.

(4) **"Horse race"** means a competition among racehorses on a predetermined course in which the horse completing the course in the least amount of time generally wins.

(5) **"Host association"** is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

(6) **"Host track"** means the horse racetrack from which a horse race subject to an interstate common pool is transmitted to members of that interstate common pool, also known as a "sending track."

#### I. Definitions beginning with the letter "i":

(1) **"Import"** means to receive a live audiovisual broadcast of a horse race.

(2) **"Inquiry"** is an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

(3) **"Interstate common pool"** means a pari-mutuel pool that combines comparable pari-mutuel pools from one or more locations that accept wagers on a horse race run at a sending track for purposes of establishing payoff prices at the pool members' locations, including pools in which pool members from more than one state simultaneously combine pari-mutuel pools to form an interstate common pool.

(4) **"Invitational handicap"** is a handicap for which the racing secretary or handicapper has selected the contestants and assigned the weights.

#### J. Definitions beginning with the letter "j":

(1) **"Jockey"** is a person licensed to ride in races.

(2) **"Jockey club"** means an organization that administers thoroughbred registration records and registers thoroughbreds.

**K. Definitions beginning with the letter "k": [Reserved]**

**L. Definitions beginning with the letter "l":**

(1) **"Licensee"** is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

**M. Definitions beginning with the letter "m":**

(1) **"Maiden"** is a horse, which shows in *Equibase* and *RTO Incompass* system as never having won a race at a recognized meeting. A maiden, which has been disqualified after finishing first in a race, is still a maiden.

(2) **"Maiden race"** is a race restricted to maidens.

(3) **"Match race"** is a race between two horses under conditions agreed to by their owners.

(4) **"Meeting"** is an entire period of consecutive days an association which is issued a racetrack license, is authorized by the commission to conduct live racing. For purposes of this rule, the commission shall determine the beginning and end dates of the race meet as well as the dates in which live racing will be conducted within the determined consecutive days..

(5) **"Minus pool"** occurs when the payout is in excess of the net pool.

(6) **"Month"** is a calendar month.

(7) **"Mutuel field"** refers to two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

**N. Definitions beginning with the letter "n":**

(1) **"Net pool"** is the amount of gross ticket sales less refundable wagers and statutory commissions.

(2) **"New Mexico bred"** is a horse registered by the New Mexico horse breeders' association.

(3) **"New Mexico bred race"** is a race in which the contestants are registered as New Mexico bred horses.

(4) **"No contest"** is a race cancelled for any reason by the stewards.

(5) **"Nomination"** is the naming of a horse to a certain race or series of races.

(6) **"Nominator"** is the person or entity in whose name a horse is nominated for a race or series of races.

#### **O. Definitions beginning with the letter "o":**

(1) **"Objection"** is a written complaint made to the stewards concerning a horse entered in a race and filed in a timely manner prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

(2) **"Official or racing official"** means assistant racing secretary, chief of security, director of racing or similar position, clerk of scales, clocker, general manager, handicapper, horse identifier, horsemen's bookkeeper, jockey room custodian, official veterinarian, paddock judge, pari-mutuel manager, patrol judge, placing judges, racing secretary, racing veterinarian, stable superintendent, starter, steward, timer, and track superintendent.

(3) **"Official samples"** is a portion of any bodily substance or fluid, including but not limited to, tissue, hair, blood or urine obtained from a horse at the direction of the commission for the purposes of determining the presence of a prohibited substance.

(4) **"Official order of finish"** is the order of finish of the contestants in a contest as declared official by the stewards.

(5) **"Official starter"** is the official responsible for dispatching the horses for a race.

(6) **"Official time"** is the elapsed time from the moment the first horse crosses the starting point until a horse crosses the finish line.

(7) **"Off time"** is the moment, at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

(8) **"Optional claiming race"** is a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less.

(9) **"Out of competition"** is defined as not participating in a race.

(10) **"Out of competition testing"** test(s) that may be conducted on any horse that is on the grounds of a racetrack or training center under the jurisdiction of the commission; or under the care or control of a trainer or owner licensed by the commission; or whose papers are filed in the racing office; or has been nominated to a stakes race.

(11) **"Outstanding ticket"** is a winning or refundable pari-mutuel ticket, which was not cashed during the performance for which it was issued; also known as "outs".

(12) **"Overnight race"** is a race for which entries close at a time set by the racing secretary and for which the owners of the horses do not contribute to the purse.

(13) **"Owner"** is defined as a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

**P. Definitions beginning with the letter "p":**

(1) **"Paddock"** is an enclosure in which contestants scheduled to compete in a contest are confined prior to racing.

(2) **"Pari-mutuel system"** is the manual, electromechanical, or computerized system and all software (including the totalisator, account betting system and offsite betting equipment) that is used to record bets and transmit wagering data.

(3) **"Pari-mutuel wagering"** is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

(4) **"Patron"** is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

(5) **"Payout"** is the amount of money payable to winning wagers.

(6) **"Performance"** is a schedule of races run consecutively as one program.

(7) **"Person"** is one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate, or any other legal entity.

(8) **"Positive test"** means the result of a test, conducted as provided in these rules on an official sample, which indicates the presence of any prohibited substance.

(9) **"Post position"** is the pre-assigned position from which a horse will leave the starting gate.

(10) **"Post time"** is the scheduled starting time for a contest.

(11) **"Prima facie evidence"** is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

(12) **"Private barn"** is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.

(13) **"Profit"** is the net pool after deduction of the amount bet on the winners.

(14) **"Profit split"** is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two or more payout prices.

(15) **"Program trainer"** is a licensed trainer who solely for the purpose of the official race program, is identified as the trainer of the horse that is actually under the control of, and trained by, another person who may or may not hold a current trainer's license in any jurisdiction.

(16) **"Prohibited substance"** is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, including

(a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or

(b) that may interfere with testing procedures; or

(c) that is a therapeutic medication present in excess of established acceptable levels; or

(d) that is present in the horse in excess of levels that could occur naturally;  
or

(e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

(17) **"Program"** is the published listing of all contests and contestants for a specific performance.

(18) **"Protest"** is a written complaint alleging that a horse is or was ineligible to race.

(19) **"Purse"** is the total dollar amount, including but not limited to extra New Mexico horse breeders association money as listed in the official daily program, for which a race is contested whether paid at the time of the race or at a future date.

**Q. Definitions beginning with the letter "q": [Reserved]**

**R. Definitions beginning with the letter "r":**

- (1) **"Race"** is a contest between contestants at a licensed meeting.
- (2) **"Restricted area"** is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.
- (3) **"Result"** is that part of the official order of finish to determine the pari-mutuel payout of pools for each individual contest.

**S. Definitions beginning with the letter "s":**

- (1) **"Scratch"** is the act of withdrawing an entered horse from a contest after the closing of entries.
- (2) **"Scratch time"** is the deadline set by the association for withdrawal of entries from a scheduled performance.
- (3) **"Simulcast"** refers to the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.
- (4) **"Single price pool"** is an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.
- (5) **"Sponsor added money"** is added to a race in return for name and/or advertising recognition and is not added money.
- (6) **"Stable name"** is a name used other than the actual legal name of an owner or lessee and registered with the commission.
- (7) **"Stakes race"** is a contest in which nomination, entry and/or starting fees contribute to the purse. No overnight race shall be considered a stakes race.
- (8) **"Starter"** refers to a horse, which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.
- (9) **"Starter allowance"** is a race in which a horse establishes eligibility by starting for a claimed price pursuant to the conditions of the race.
- (10) **"Steeplechase race"** is a contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.
- (11) **"Steward"** is a duly appointed racing official with powers and duties specified by the act and these rules.

(12) **"Substitute steward"** is a licensed or certified racing official pursuant to 60-1A-12, duly approved by the commission and appointed by the executive director or the presiding steward, with the powers and duties specified by the act and these rules.

**T. Definitions beginning with the letter "t":**

(1) **"Takeout"** is the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.

(2) **"Therapeutic medication"** is any drug, chemical, or chemical agent, that when administered to a horse is calculated to improve or protect the health and soundness of said horse. The promotion of formful racing performance is the intent of administering a therapeutic medication.

(3) **"Totalisator"** is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payout prices to patrons at a pari-mutuel wagering facility.

(4) **"Trainer"** is a person who holds a valid trainer's license and who has a horse eligible to race under his care, custody, or control at the time entry is made.

(5) **"Trial race"** is part of a series of races in which horses participate for the purpose of determining eligibility for a subsequent race.

(6) **"Tubing"** is the administration of any substance via a naso-gastric tube.

**U. Definitions beginning with the letter "u": [Reserved]**

**V. Definitions beginning with the letter "v": [Reserved]**

**W. Definitions beginning with the letter "w":**

(1) **"Walkover"** is a race in which only one contestant starts or in which all the starters are owned by the same interest. To claim the purse the horse(s) must start and go the distance of the race.

(2) **"Week"** is a period of seven consecutive 24-hour periods.

(3) **"Weigh in"** is the presentation of a jockey to the clerk of scales for weighing after a race.

(4) **"Weigh out"** is the presentation of a jockey to the clerk of scales for weighing prior to a race.

**(5) "Weight for age"** is a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.

**(6) "Winner"** is the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

**X. Definitions beginning with the letter "x": [Reserved]**

**Y. Definitions beginning with the letter "y": "Year" shall be a calendar year.**

**Z. Definitions beginning with the letter "z": [Reserved]**

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 3/15/2001; A, 2/14/2002; A, 8/30/2007; A, 12/1/2010; A, 1/1/2013; A, 5/1/2013; A, 8/15/2014; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 12/19/2019; A, 12/28/2021; A, 4/9/2024]

#### **15.2.1.8 COMMISSION:**

##### **A. Purpose:**

(1) The New Mexico racing commission created by the act, Section 60-1A-4, New Mexico Statutes, 1978, Annotated, is charged with implementing, administering and enforcing the act. It is the intent of the commission that the rules of the commission be interpreted in the best interests of the public and the jurisdiction.

(2) Through these rules, the commission intends to encourage agriculture, the horse breeding industry, the horse training industry, tourism and employment opportunities in this jurisdiction related to horse racing and to control and regulate pari-mutuel wagering in connection with that horse racing.

##### **B. General authority:**

(1) The commission shall regulate each race meeting and the persons who participate in each race meeting.

(2) To the extent permitted by the Act the commission may delegate to the agency director and the stewards all powers and duties necessary to fully implement the purposes of the Act.

##### **C. Membership and meetings:**

(1) The state racing commission shall consist of five members, no more than three of who shall be members of the same political party. They shall be appointed by the governor, and no less than three of them shall be practical breeders of racehorses within the state. Each member shall be an actual resident of New Mexico and of such

character and reputation as to promote public confidence in the administration of racing affairs.

(2) The commission shall meet at the call of the chair, as requested by a majority of the members or as otherwise provided by statute. Notice of the meetings must be given and the meetings must be conducted in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA, 1978.

(3) If it is difficult or impossible for a racing commission member to attend a meeting of the racing commissioners, that member may participate in the meeting virtually or by telephone.

(4) A majority of the commission constitutes a quorum. When a quorum is present, a motion before the commission is carried by an affirmative vote of the majority of the commissioners present at the meeting.

(5) A commission member may not act in the name of the commission on any matter without a majority vote of a quorum of the commission.

**D. Annual report:** The commission shall submit an annual report as prescribed by statute.

**E. Employees:**

(1) The commission shall employ an agency director who shall employ other employees necessary to implement, administer and enforce the Act.

(2) The agency director shall maintain the records of the commission and shall perform other duties as required by the commission. Except as otherwise provided by a rule of the commission, if a rule of the commission places a duty on the agency director, the agency director may delegate that duty to another employee of the commission. The commission and the agency director may not employ or continue to employ a person:

(a) who owns a financial interest in an association in this jurisdiction;

(b) who accepts remuneration from an association in this jurisdiction;

(c) who is an owner, lessor or lessee of a horse that is entered in a race in this jurisdiction; or

(d) who accepts or is entitled to a part of the purse or purse supplement to be paid on a horse in a race held in this jurisdiction.

(3) Commission employees shall not wager in any pari-mutuel pool at any facility or through any pari-mutuel system subject to the jurisdiction of the commission.

(4) Commission employees shall not participate in any gaming activity conducted by an association during working hours on scheduled workdays.

**F. Power of entry:**

(1) A member or employee of the commission, a steward, a peace officer or a designee of such a person may enter any area on association grounds or other place of business of an association at any time to enforce or administer the Act or commission rules.

(2) No licensee may hinder a person who is conducting an investigation under, or attempting to enforce, or administer, the Act or commission rules.

**G. Subpoenas:**

(1) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the production of books, records, papers, correspondence and other documents.

(2) Any aggrieved person or any licensee or license holder against whom allegations of violations of racing statutes or rules have been made shall have the right to have subpoenas and subpoenas duces tecum issued as of right prior to the hearing to compel discovery as provided in these rules and to compel the attendance of witnesses and the production of relevant physical evidence upon making written and timely request therefor to the commission or hearing officer; the issuance of such subpoenas after the commencement of the hearing rests in the discretion of the commission or the hearing officer.

(3) A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(4) If a person fails to comply with a subpoena issued on behalf of the commission, the commission or agency director may invoke the aid of the appropriate court in requiring compliance with the subpoena. For a person compelled to appear before the commission under this section, the commission shall pay expenses in accordance with the statutory provisions for state employees. The commission reserves the right to bill the expenses to parties requiring the appearance of the subpoenaed person.

**H. Organization's financial requirements:**

(1) The New Mexico horse breeders' association shall establish interest-bearing accounts, designated as gaming funds for purses.

(2) The New Mexico horse breeders' association shall ensure all accounting of funds deposited with and paid out or distributed by the New Mexico horse breeders' association pursuant to the Horse Racing Act is in accordance with or exceeds generally accepted accounting principles.

(3) The New Mexico horse breeders' association shall provide at a minimum the following insurance policies:

(a) \$1,000,000 cyber liability

(b) \$1,000,000 directors, officers, and employment practices

(c) \$1,000,000 employee theft

(4) The New Mexico horse breeders' association will provide the New Mexico racing commission with a copy of their yearly independent audits, and proof of insurance.

(5) The associations and the New Mexico horse breeders' association with regard to gaming monies shall keep accurate, complete, and legible records with reports to the commission to include:

(a) monthly reconciliation of amounts collected to account statements;

(b) copy of account authorizing signatures;

(c) any changes in authorizing signatures; and

(d) detail of disbursements from the accounts.

#### **I. Records:**

(1) Inspection and copying of commission records are governed by the provisions of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) Except as otherwise authorized by statute, or regulation, all original records of the commission shall be maintained in the offices of the commission. No person may remove an original record from the offices of the commission without the approval of the agency director.

(3) To inspect commission records, a person must make a written request to the appointed records official and to receive copies must pay all costs for copying within the limits set by the Public Records Act.

#### **J. Issuance of license to conduct a race meeting and allocation of race dates:**

(1) The commission shall allocate race dates to each association in accordance with the act and these rules. An association shall apply to the commission for a license and racing dates not later than June 1st for all proposed racing meets and dates to be run in the succeeding calendar year. Applications shall not be received or amended after this date except by approval of a majority of the commission. The application must contain the information required by statute and the commission. After the request is filed, the commission may require the association to submit additional information. The commission may limit, condition or otherwise restrict any license to conduct horse racing or a horse race meeting in the state of New Mexico.

(2) The burden of proof is on the association to demonstrate that its receipt of a license to conduct a race meet and the allocation of the race dates will be in the public interest and will achieve the purposes of the act.

(3) In issuing licenses for race meetings and allocating race dates under this section, the commission may consider the following factors: public interest, health of the industry, safety and welfare of participants, and the criteria for licensure to conduct a race meet set forth in the act and in these rules.

(4) Prior to approving an application for a new license for a horse racetrack, other than the licenses in existence as of January 1, 2007, or an application by a licensed horse racetrack to move its racing and gaming facilities to a new location, the commission shall solicit and consider the views on the application by the Indian tribes, nations and pueblos in the following manner:

(a) provide written notice to all federally recognized Indian tribes, nations or pueblos that are authorized by law to enter into a gaming compact with the state of New Mexico under the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et seq., ("Indian Tribes") that such an application has been filed with the commission within 15 days of such filing and provide a copy of all non-confidential documents submitted by an applicant to an Indian tribe upon request, at the Indian tribe's expense;

(b) allow Indian tribes 45 days to respond to the application by submitting written comments to the commission prior to holding any public hearing at which final action on the application may be considered; such comments shall be immediately forwarded to the applicant by the commission, but no later than 15 days prior to holding any public hearing at which final action on the application may be considered; the views of the Indian tribes may include, but are not limited to, the following:

(i) potential economic impact of approval of said license on a specific Indian tribe's government or gaming facility, including impact on revenue sharing with the state of New Mexico; the number of miles from the nearest tribal gaming facility; the potential impact on the nearest tribal gaming facility's market share; and the potential impact on the Indian tribe's income from gaming facilities;

(ii) identification of other significant impacts on the Indian tribe;

(c) any public hearing at which final action on the application may be considered must be at least 15 days after the 45 day comment period for Indian tribes set forth above;

(d) the commission shall consider and evaluate the Indian tribes' views prior to taking any final action on the application; to "consider and evaluate" means to think about carefully and seriously;

(e) the above procedures for notification to Indian tribes shall not apply to the annual renewal of a horse racetrack license.

(5) The association shall be obligated to conduct pari-mutuel racing, except in the case of emergencies, on each race date allocated. Any change in race dates must be approved by the commission. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

(6) All applicants for an initial license to conduct horse racing or a horse race meeting in the state of New Mexico shall submit the following information to the commission in the form of a verified application, including an original and six copies.

(a) The name of the applicant and indicate whether it is an individual, firm, association, partnership, corporation or other legal entity.

(b) The names, residences, and nationalities of individual applicants or members of a partnership, association or firm.

(c) If the applicant is a corporation, the following information must be furnished, and if the applicant is a parent or subsidiary of another corporation, the following information must be furnished for each entity.

(i) The year in which the corporation was organized, its form of organization and the name of the state under the laws of which it was organized. Articles of incorporation and bylaws must also be submitted.

(ii) The classes of capital stock authorized, the amount authorized, and the amount outstanding as of the date not less than 15 days prior to the filing of the application.

(iii) The name and address of each person who owns of record or is known by the applicant to own beneficially, ten percent or more of any class of capital stock. This can be indicated as name and address; class of stock owned; type of ownership whether of record or beneficial; amount owned; percent of the class of stock.

(iv) Outline briefly the dividend rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions. If the rights of holders

of such stock may be modified other than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(v) If organized as a corporation within the past five years, furnish the names of the promoters, the nature and amount of anything of value received or to be received by each promoter directly or indirectly from the applicant and the nature and amount of any assets, services, or other consideration therefore received or to be received by the applicant.

(vi) List the names of all directors and executive officers and all persons chosen to become directors or executive officers. Indicate all other positions and offices held by each such person, and the principal occupation during the past five years of each person to become a director or executive officer. For the purposes of this subparagraph, "executive officer" means the president, vice-president, secretary and treasurer, and any other person who performs policy-making, supervisory, administrative, or financial functions for the applicant.

(vii) Describe in detail the financial arrangements, which have been made for acquisition and operation of racing facilities, including the nature and source of any funds or other property, real or personal, which may be used in this connection.

(viii) Identify in detail the source(s) and terms of any loans, loan commitments, lines of credit, pledges, stock subscriptions, and any other source of funds which may be used in the acquisition or operation of racing facilities.

(ix) State in detail the terms of any proposed purchase of stock or assets in a current licensee.

(x) State whether a substantial portion of the assets or of the capital stock is encumbered by any short-term or long-term debt. Explain fully and state the names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and outline the terms of and submit the agreements creating the security interests.

(xi) Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year.

(xii) Applicant must submit with application a current financial statement for each director, executive officer, manager, and stockholders owning ten percent or more of the outstanding shares in any corporate applicant.

(xiii) All financial information shall be accompanied by an unqualified opinion of a duly licensed certified public accountant, or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

(xiv) For applicants other than corporation, list the names and addresses of all executive officers and managerial officers. Indicate positions and offices held by each person named and their principal occupation(s) during the past five years.

(xv) State whether any director, executive officer, manager, or stockholder has ever been convicted of a crime and describe the circumstances of the convictions.

(xvi) Describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporations is involved, or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted and the principal parties thereto.

(xvii) State in complete detail whether the applicant, or any director, executive officer, stockholder or manager has owned an interest in or has been employed by any firm, partnership, association or corporation previously licensed to conduct a race meeting in any jurisdiction.

(xviii) State actual legal description of a proposed site for racing facilities, names and addresses of the titleholders to the real property and names and addresses of all personal holding mortgages or other security interests in the property.

(xix) State the number of miles from the nearest population center, and describe briefly the transportation facilities serving that population center.

(xx) State the exact dimensions of the track proposed. Submit at least one copy of the architect's drawings showing detail of the proposed construction. If a grandstand is in existence, describe the size and type of construction.

(xxi) Describe the efforts to be made to ensure the security safety and comfort of patrons and license holders.

(xxii) State the availability of fire protection and adequacy of law enforcement and police protection.

(xxiii) State the parking lot capacity and describe the construction and type of parking facilities.

(xxiv) State the number and type of construction of stables, other barn areas, forecourt and paddock areas, indicating capacities and fire prevention facilities for all areas.

(xxv) Describe the facilities for owners, trainers, jockeys, grooms and other racing personnel.

(xxvi) State the arrangements for food and drink concessions indicating the names and addresses of concessionaires and the terms of the concession contracts.

(xxvii) Describe any concessions, clubs or other special facilities, existing or proposed, for patrons.

(xxviii) Indicate by actual dates the racing days requested by applicant.

(xxix) Indicate the kind of racing to be conducted.

(xxx) Describe the proposed pari-mutuel operation in general and indicate in particular the terms of the pari-mutuel ticket sales.

(xxxi) Describe climatic conditions prevalent during the proposed racing season.

(xxxii) Indicate the population of the local area, and the growth trend. Indicate the potential market including tourists, transients and patrons from neighboring areas.

(xxxiii) Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional services, military and other governmental sources.

(xxxiv) Describe the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area.

(xxxv) Indicate what effect opposition from area residents may have on the economic outlook for the proposed track.

(xxxvi) Describe a strategic plan to be proactive in an effort to prevent contagious equine diseases, and biosecurity measures to be put in place in the event of an outbreak including permanent quarantine facilities.

(7) A new complete primary application as required in Paragraph (6) of Subsection J of 15.2.1.8 NMAC is also required if any of the following events occur:

(a) if the effective controlling interest of any licensee is transferred or conveyed;

(b) if any involuntary transfer of either tangible real or personal property or corporate stock gives the effective control of the licensee to the transferee;

(c) in the event that a transfer under Subparagraphs (a) and (b) occurs after the granting of racing dates, the transferee shall immediately apply to the commission for a hearing to show cause why the transferee should be permitted to continue racing under the current grant of racing dates;

(d) failure to make application within 90 days of the date of the proposed transfer shall be grounds for revocation of license.

(8) A race meet licensee that has been licensed for the previous year, must submit to the commission a renewal application, on a form provided by the commission, containing the following information:

(a) complete listing of officers, directors of corporation, and secondary lender affiliates;

(b) proposed race dates and simulcast race dates;

(c) at the time of annual request for racing dates, when the commission in its discretion determines that the licensee should supply current information;

(d) current financial statements;

(e) changes to articles of incorporation and bylaws;

(f) list of concessionaires and contract services;

(g) changes from original application, or last renewal application, in mortgagee of real property;

(h) insurance policies;

(i) any other changes from original primary application.

(9) The commission in addition to any other legally sufficient reason, may disapprove, deny, refuse to renew, suspend, or revoke a license to conduct horse racing or a horse race meeting in the state of New Mexico if any person having any direct or indirect interest in the applicant or in the licensee, or any nature whatsoever, whether financial, administrative, policy-making or supervisory:

(a) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the commission;

(b) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the commission;

(c) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the commission;

(d) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the commission;

(e) is consorting or associating with bookmakers, touts or persons of similar pursuits;

(f) is financially irresponsible as found or determined by the commission; or,

(g) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the commission.

[15.2.1.8 NMAC - Rp, 15 NMAC 2.1.8, 3/15/2001; A, 8/30/2001; A, 1/31/2008; A, 4/30/2012; A, 6/1/2016; A, 2/25/2020; A, 5/24/2022; A, 4/9/2024]

#### **15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:**

##### **A. Proceedings before the stewards:**

(1) Rights of the licensee. A person who is the subject of the disciplinary hearing conducted by the stewards is entitled to: proper notice of all charges; confront the evidence presented including: the right to counsel at the person's expense; the right to examine all evidence to be presented against them; the right to present a defense; the right to call witnesses; the right to cross examine witnesses; and waive any of the above rights.

##### (2) Complaints.

(a) On their own motion or on receipt of a complaint from a racing official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's actions.

(b) A complaint made by someone other than a racing official must be in writing and filed with the stewards not later than 72 hours after the action that is the subject of the complaint.

(c) In case of a notice from the state of New Mexico human services department that a licensee is in non-compliance with the Parental Responsibility Act, the licensee shall be notified by the board of stewards. Thereafter the licensee shall have 30 days to provide documentation of compliance to the board of stewards and failure to do so will result in the suspension of the licensee's license.

##### (3) Summary suspension.

(a) If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, integrity or welfare of the horseracing industry, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the 10th day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the 10-day limit.

(c) At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(4) Notice.

(a) Except as provided by these rules regarding summary suspension, jockey riding infractions and trial races, the stewards or a racing commission designee shall provide written notice, at least 10 days before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive their right to 10 days notice by executing a written waiver.

(b) Notice given under this section must include: a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes or rules involved; a short, plain description of the alleged conduct that has given rise to the disciplinary hearing; the possible penalties that may be imposed.

(c) The stewards or the racing commission designee shall send the written notice of the disciplinary hearing to the person who is the subject of the hearing either by hand delivery, certified or regular mail to the licensee's last provided address or by email. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the stewards or a racing commission designee shall provide notice of the hearing to the owner of the horse in the manner provided by this subsection.

(d) Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards. The stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent, in compliance with this subsection.

(5) Continuances.

(a) Upon receipt of a notice, a person may request a continuance of the hearing.

(b) The stewards may grant a continuance of any hearing for good cause shown.

(c) The stewards may at any time order a continuance on their own motion.

(6) Evidence.

(a) Each witness at a disciplinary hearing conducted by the stewards must be sworn by the presiding steward.

(b) The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The stewards may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards. Hearsay evidence alone is insufficient basis for a ruling.

(c) The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence that the licensee has violated or is responsible for a violation of the act or a commission rule.

(d) The stewards may record a disciplinary or summary suspension hearing and make a copy of the recording available on request, at the expense of the requesting person.

(7) Ruling.

(a) The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reasons for the dissent.

(b) A ruling by the stewards must be on a form prescribed by the commission and include: the full name, license type, license number, and applicant ID number of the person who is the subject of the hearing; a statement of the charges against the person, including a reference to the specific section of the Racing Act or rules of the commission that the licensee is found to have violated; the date of the hearing and the date the ruling was issued; the penalty imposed; any changes in the order of finish or purse distribution; other information required by the commission.

(c) A ruling must be signed by a majority of the stewards.

(d) The stewards or their designee shall send the ruling to the person who is the subject of the ruling either by hand delivery, certified or regular mail to licensee's last provided address or by email.

(e) At the time the stewards inform a person who is the subject of the proceeding of the ruling, the stewards shall inform the person of the person's right to appeal the ruling to the commission and apply for a stay.

(f) All fines imposed by the stewards shall be paid to the commission within 14 days after the ruling is issued, unless otherwise ordered.

## **B. Proceedings by the commission:**

### (1) Party designations.

(a) A person who is the subject of a disciplinary hearing, who filed an appeal from a stewards' ruling or who otherwise seeks relief from the commission is a party to that proceeding.

(b) A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

(c) A party summoned to appear at a hearing must appear unless the party is excused by the commission presiding officer. Parties may appear with counsel or other representatives of their choice. Counsel must be an attorney licensed to practice law in this state or with the permission of the commission is associated with an attorney licensed to practice law in this state and must submit an entry of appearance no later than 10 days prior to the hearing date.

(d) A non-party to a proceeding who wishes to appear in a contested case pending before the commission must prove that they have an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

### (2) Notice.

(a) Not less than 20 days before the date set for a hearing, the agency director, or acting agency director, shall serve written notice on each party of record to the proceeding. The person may waive their right to said notice by executing a written waiver.

(b) The agency director shall mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail. If a party is being represented by an attorney or other representative, notice will be provided to the attorney or representative instead of on the party and is deemed properly served.

(c) A notice of the hearing must include: statement of time, place and nature of hearing; statement of the legal authority and jurisdiction under which the hearing is to

be held; reference to the particular section of the statutes and rules involved; short, plain statement of the matters asserted; and any other statement required by law.

(d) If the commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued; the commission shall issue a revised notice. The party who has caused the change or error requiring revised notice shall bear the expense of giving revised notice.

(e) A party to a proceeding may move to postpone the proceeding. The motion must be in writing, set forth the specific grounds on which it is sought and be filed with the commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the commission shall cause new notice to be issued.

(f) After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

(3) Subpoenas and depositions.

(a) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

(b) A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(c) Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by this jurisdiction's civil procedures statute.

(d) On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

(e) The Administrative Procedures Act, Civil Statutes, Article 8, Section 12-8-15 governs the taking and the use of depositions. Rule 1-036 of the New Mexico Rules of Civil Procedure governs admissions of fact and genuineness of documents.

(4) Pleadings.

(a) Pleadings filed with the commission include appeals, applications, answers, complaints, exceptions, replies and motions. Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A pleading or brief filed with the commission must be typewritten or printed on 8 1/2 inch by 11 inch white paper with one-inch margins. Exhibits, unless prepared according to other commission rules pertaining to maps, plats, or similar documents, must be folded to the same size. Unless printed, the impression must be on one side of the paper only. The documentation must be double-spaced, except for footnotes and lengthy quotations, which may be single-spaced. Reproductions are acceptable, provided all copies are clear and permanently legible. The original copy of each pleading must be signed in ink by the pleader or the pleader's representative.

(d) If the commission staff prepares a form for a pleading, the commission staff shall furnish the form on request. A pleading for which an official form has been developed must conform substantially to the form. A pleading for which the commission staff has not prepared an official form must contain: the name of the pleader; the telephone number and street address of the pleader's residence or business and the telephone number and street address of the pleader's representative, if any; a concise statement of the facts relied on by the pleader; a request stating the type of commission action desired by the pleader; the name and address of each person who the pleader knows or believes will be affected if the request is granted; any other matter required by statute or commission rule; a certificate of service.

(e) A party filing a pleading shall mail or deliver a copy of the pleading to each party of record. If a party is being represented by an attorney or other representative, service must be made on the attorney or representative instead of on the party.

(f) An objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented not later than the prehearing conference if one is held and not later than 15 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file an objection under this subsection waives the objection.

(g) Except as otherwise provided by this subsection, a pleader may amend or supplement a pleading at any time before the 21st day after the date the pleading was filed, but not later than five days before the date of the hearing. A pleader may amend or supplement a pleading at any time: on written consent of each party of record; or, as permitted by the presiding officer for the proceeding, when justice requires the

amendment or supplementation and when the amendment or supplementation will not unfairly surprise another party.

(h) A pleading may adopt or incorporate by specific reference any part of a document in the official files and records of the commission. This subsection does not relieve the pleader of the duty to allege in detail all facts necessary to sustain the pleader's burden of proof.

(5) Filing pleadings.

(a) Except as otherwise provided by this section, an original of each pleading must be filed with the commission. An original of each pleading relating to discovery must be filed with the commission. A pleading is considered filed only when actually received by the commission. Each pleading must include a certification that a copy has been mailed or delivered on each party of record, stating the name of each party served and the date and manner of service.

(b) If a pleading is sent to the commission by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one day or more before the last day for filing the pleading, the pleading is considered received and filed in time if the pleading is actually received not more than 10 days after the deadline. A legible postmark affixed by the United States postal service is prima facie evidence of the date of mailing. For purposes of responsive pleadings for which the deadline for filing is set by the filing of another pleading, the pleading to be filed first is considered filed when actually received by the commission.

(c) Unless otherwise provided by statute, the presiding officer for a proceeding may extend the time for filing a pleading on a motion made by a party before the filing deadline if the presiding officer determines that there is good cause for the extension and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of a motion made under this section must be served on all parties of record contemporaneously with the filing of the motion.

(d) A pleading may be filed by facsimile, provided an original and the required number of copies are received in the commission's office not later than 5:00 p.m. of the third day after the date the document was filed by facsimile. The inability to transmit a document due to equipment malfunction or any other cause does not relieve the person attempting to file the document of the filing deadline.

(e) If the deadline for filing a pleading falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(f) The failure to file a pleading in accordance with this section may result in the pleading being struck.

(6) Place and nature of hearings.

(a) A hearing in a commission proceeding is open to the public.

(b) A hearing shall be held in Albuquerque unless: for good cause stated, the commission designates another place for the hearing; or, the act require otherwise.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes, but is not limited to, disposition by stipulation, agreed settlement, consent order, dismissal, and default.

(7) Presiding officers.

(a) One or more members of the commission, an administrative law judge, or a duly designated hearing officer may serve as the presiding officer for a commission proceeding. Objections to the presiding officer must be made in writing to the agency director at least 20 calendar days prior to the hearing. If in any case a combination of objections to a presiding officer(s) would result in the matter not being heard, the removal of the hearing officer shall not be effective.

(b) The presiding officer may: authorize the taking of depositions; issue subpoenas to compel the attendance of witnesses and the production of papers and documents; administer oaths; receive evidence; rule on the admissibility of evidence and amendments to pleadings; examine witnesses; set reasonable times within which a party may present evidence and within which a witness may testify; permit and limit oral argument; issue interim orders; recess a hearing from day to day and place to place; request briefs before or after the presiding officer files a report or proposal for decision; propose findings of fact and conclusions of law; propose orders and decisions; perform other duties necessary to a fair and proper hearing.

(c) An administrative law judge designated as the presiding officer must be an attorney licensed to practice in this state.

(d) A person may not serve as the presiding officer of a proceeding in which the person has an economic interest. A person is considered to have an economic interest in a proceeding if the person, a member of the person's immediate family, or a dependent, business partner, or client of the person has an economic interest in the proceeding.

(8) Conferences.

(a) On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following: simplifying issues; amending the pleadings; making admissions of fact or stipulations to

avoid the unnecessary introduction of proof; designating setting the order of procedure at a hearing; identifying and limiting the number of witnesses; resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute.

(b) The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate order concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

(c) During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.

(9) Discovery.

(a) On written request by a party, the presiding officer or the agency director may issue a subpoena to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding.

(b) A motion for a subpoena to compel the production of books, records, papers, or other objects shall be addressed to the appropriate person, shall be sworn to and shall specify the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

(c) Discovery on behalf of commission shall only be provided to the licensee or to counsel who has submitted an entry of appearance.

(10) Order of hearing.

(a) The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.

(b) When a hearing has begun a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.

(c) Each appearance by a party, a party's representative, or a person who may testify must be entered on the record.

(d) The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.

(e) Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the commission or if several proceedings are heard on a consolidated record.

(f) After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross-examine each witness.

(g) After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross-examination.

(h) The presiding officer may allow nonparty participants to cross examine a witness if the presiding officer determines that the cross examination may lead to significantly fuller disclosure of the facts without unduly delaying the hearing or burdening the record.

(i) At the conclusion of all evidence and cross-examination, the presiding officer shall allow closing statements.

(j) Before writing a report or proposal for decision if required by law, the presiding officer may call on a party for further relevant and material evidence on an issue. The presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

#### (11) Behavior.

(a) Each party, witness, attorney, or other representative shall behave in all commission proceedings with dignity, courtesy and respect for the commission, the presiding officer and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the code of professional responsibility.

(b) An individual who violates this section may be excluded from a hearing by the presiding officer for a period and on conditions that are just, or may be subject to other just, reasonable and lawful disciplinary action prescribed by the presiding officer.

#### (12) Evidence.

(a) All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The presiding officer may, unless precluded by statute, admit evidence of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law in this jurisdiction apply in commission proceedings.

(c) A party may object to offered evidence and the objection shall be noted in the record. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary. A party, at the time a ruling is made or sought, shall make known to the presiding officer the action the party desires.

(d) When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination is preserved without making an offer of proof.

(e) The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the commission's specialized knowledge. The commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

(f) The special skills and knowledge of the commission and the commission staff may be used in evaluating the evidence.

(g) The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.

(h) The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the

witness being sworn and identifying the writings as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

(i) Documentary exhibits must be of a size, which will not unduly encumber the record. Whenever practicable, exhibits must conform to the size requirements in these rules for pleadings. The first sheet of the exhibit must briefly state what the exhibit purports to show and the pages of the exhibit must be numbered consecutively. Exhibits may include only facts material and relevant to the issues of the proceedings. Maps or drawings must be rolled or folded so as not to encumber the record. Exhibits not conforming to this subsection may be excluded.

(j) The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded, and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.

(k) The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.

(13) Reporters and transcripts.

(a) If necessary, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person.

(c) A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the 15th day after the date the corrections were filed with the commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

(14) Findings of fact and conclusions of law.

(a) The presiding officer may direct a party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision that includes proposed findings of fact and conclusions of law. The presiding officer may limit the request for proposed findings to a particular issue of fact.

(b) Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

(15) Proposal for decision.

(a) Where a hearing officer conducts a hearing, the hearing officer shall complete a report containing his or her findings of fact, conclusions of law and recommendations for commission action.

(b) Any commissioner who did not hear the case may not participate in a decision in which the commission rejects, modifies, adds to, or makes substitutions for the findings of fact in a hearing officer's report unless the commission has reviewed all portions of the record that pertain to such findings of fact.

(c) Where the commission itself is the hearing body, the commission shall complete a report containing findings of fact and conclusions of law. No commissioner may participate who has not either heard the case or reviewed the entire record.

(d) The person preparing a proposal for decision under this section shall initiate service of a copy of the hearing officer's report or commission's report on each party of record no later than 31 calendar days after the close of the hearing.

(e) A party of record may, not later than 10 business days after the date of service of a hearing officer's report or commission's report, file exceptions to the report. A reply to an exception filed under this subsection must be filed no later than five business days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.

(f) After the expiration of time for filing exceptions and replies, the commission shall consider the proposal for decision in open or closed session. The commission may: adopt the proposal for decision, in whole or in part; decline to adopt the proposal for decision, in whole or in part; modify the recommendations or the hearing officer's report, in whole or in part based on aggravating or mitigating factors or inaccuracies; remand the proceeding for further examination by the same or a different presiding officer; or direct the presiding officer to give further consideration to the proceeding with or without reopening the hearing.

(g) If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared, unless a majority of the commission, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

(16) Dismissal. On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including: failure to timely pay all required fees to the commission; unnecessary duplication of proceedings; withdrawal; moot questions or obsolete petitions; and lack of jurisdiction.

(17) Orders.

(a) Except as otherwise provided by these rules, the commission shall issue its final order not later than 30 days after the date the commission votes on the ultimate issues in the proceeding. A final order of the commission must be in writing and be signed by at least one member of the members of the commission who voted in favor of the action taken by the commission. A final order must include findings of facts and conclusions of law, separately stated.

(b) The commission staff shall mail or deliver a copy of the order to each party or the party's representative.

(c) A final order of the commission takes effect on the date the order is issued, unless otherwise stated in the order.

(d) If the commission finds that an imminent peril to the public health, safety, or welfare requires an immediate final order in a proceeding, the commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

(18) Rehearing.

(a) Within 10 days following issuance of a final commission order, a party adversely affected by the order may file a petition for a rehearing stating the reasons for requesting a rehearing. The commission shall grant a rehearing only in cases of newly discovered material evidence, which the party could not reasonably have discovered at an earlier time, or other good cause.

(b) An order granting a motion for rehearing vacates the preceding final order. The order granting a motion for rehearing may direct that the hearing be reopened or may incorporate a new final decision. Except as otherwise provided by these rules, if the commission renders a new decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

(19) Ex parte communications. No party to a proceeding before the commission shall, at any time prior to the issuance of a final commission decision, discuss or otherwise communicate with a hearing officer assigned to hear the case or with any commission member who will or may participate in the commission's decision in the case, regarding any issue in the case, without at the same time making the same communication to all other parties, including the commission's administrative prosecutor. This rule shall not apply to communications limited to such items as ascertaining the time or place of a hearing or the procedures to be followed at a hearing.

(20) Administrative penalties.

(a) If the commission determines that a person regulated under the act has violated the act or a rule or order adopted under the act in a manner that constitutes a ground for disciplinary action under the act, the commission may assess an administrative penalty against that person as provided by this section.

(b) The commission delegates to the agency director the authority to prepare and issue preliminary reports pursuant to the act. If, after examination of a possible violation and the facts relating to that possible violation, the agency director determines that a violation has occurred, the agency director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed and the amount to be assessed. The amount of the penalty may not exceed \$1,000 for each violation. Each day/occurrence that a violation continues may be considered a separate violation. In determining the amount of the penalty, the agency director shall consider the seriousness of the violation.

(c) If the commission finds based on the evidence that an appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious, the license holder may be fined in the amount up to \$2,500.

(d) Not later than the 10th day after the date on which the agency director issues the preliminary report, the agency director shall provide a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty. If possible, the agency director shall hand deliver the preliminary report. If hand delivery is not possible, the agency director shall mail the preliminary report to the person's last known address, as found in the commission's files, by regular mail and by certified mail, return receipt requested.

(e) Not later than the 20th day after the date on which the agency director delivers or sends the preliminary report, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty. If the person charged requests a hearing, the

hearing shall be conducted in the same manner as other hearings conducted by the commission.

(f) If it is determined after the hearing that the person has committed the alleged violation, the commission shall give written notice to the person of the findings established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty.

(g) Not later than the 30th day after the date on which the above notice is received, the person charged shall pay the administrative penalty in full or exercise the right to appeal to the appropriate court either the amount of the penalty or the fact of the violation. If a person exercises a right of appeal either as to the amount of the penalty or the fact of the violation, the amount of the penalty is not required to be paid until the 30th day after the date on which all appeals have been exhausted and the commission's decision has been upheld.

(21) Exclusion.

(a) The steward, agency director, or commission may order an individual ejected or excluded from all or part of any premises under the regulatory jurisdiction of the commission if the stewards, agency director, or commission determine that the individual's presence on association grounds is inconsistent with maintaining the honesty and integrity of racing.

(b) An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the stewards or commission. If exclusion is ordered separately, the excluded individual is entitled to a hearing before the stewards or commission. A hearing on exclusion shall be conducted in the same manner as other hearings conducted by the stewards or commission.

(c) If an individual is excluded under this section, a race animal owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction.

(22) Rulings in other jurisdictions.

(a) Reciprocity. The stewards shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

(b) Appeals of reciprocal rulings. Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the commission to show cause why such ruling should not be enforced in this jurisdiction. Any request for such hearing must clearly set forth in writing the reasons for the appeal.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003; A, 5/30/2003; A, 6/15/2004; A, 6/30/2009; A, 9/15/2009; A, 12/1/2010; A, 5/1/2013; A, 1/1/2014; A,

3/16/2015; A, 5/1/2015; A, 9/16/2015; A, 3/15/2016; A/E, 6/28/2016; A, 9/16/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 4/9/2019; A, 12/28/2021; A, 5/24/2022; A, 4/9/2024]

#### **15.2.1.10 RULEMAKING PROCEDURES:**

**A.** The provisions of this section shall be applicable to proceedings of the commission to adopt, amend or repeal rules and regulations of general applicability, which implement or interpret a law administered or enforced by the commission. These procedures shall not apply to: statements, policies, procedures or regulations concerning only internal management of the commission and not affecting the rights of or procedure available to licensees, applicants or the public generally; declaratory rulings and directives issued pursuant to provisions of this section; decisions, statements or interpretations issued or actions taken in the course of disciplinary proceedings against a licensee; formal or informal opinions of the attorney general pursuant to requests of the commission or the commission staff.

#### **B. Proceedings by Commission:**

**(1)** No rule or regulation, or amendment or repeal thereof, shall be adopted by the commission until after a public hearing by the commission, except as provided herein for emergency regulations. The commission shall allow all interested persons reasonable opportunity to present written materials and to speak in favor of their positions as they pertain to proposed rules. The commission may designate a hearing officer to take evidence. The commission may hold more than one hearing on proposed rules and may hold hearings at any location in the state. A record, consisting of at least written minutes or a tape recording, shall be made of all proceedings at the hearing.

**(2)** Notice of rulemaking hearings shall be provided to the public not later than 30 days prior to the hearing date. The notice shall include:

- (a)** a summary of the full text of the proposed rule;
- (b)** a short explanation of the purpose of the proposed rule;
- (c)** a citation to the specific legal authority authorizing the proposed rule and the adoption of the proposed rule;
- (d)** information on how a copy of the full text of the proposed rule may be obtained;
- (e)** information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (f)** information on where and when a public rule hearing will be held and how a person may participate in the hearing; and,

**(g)** a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained. The notice shall be published in a newspaper of general circulation in the state and the commission shall send by electronic mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings. The notice must also be published in the New Mexico register.

**(3)** Rules are effective the date they are published in the New Mexico register unless a later date is otherwise provided by law or in the rule. The agency shall file the adopted rule with the state records administrator or the administrator's designee within 15 days from the date of the adoption. This provision does not apply to emergency rules.

**(4)** If the commission finds that the time required to complete the rulemaking procedure would cause an imminent peril to the public health, safety or general welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law, then the agency shall provide to the public a record of any such finding and detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

**(5)** Any interested person may request in writing that the commission adopt, amend or repeal a rule. The commission shall either initiate formal proceedings to consider the proposed rule or issue a written statement of its reason for denial of the request to consider it.

### **C. Declaratory rulings:**

**(1)** Any licensee of the commission whose rights may be affected by the application of any statute administered or enforced by the commission or by any rule of the commission may request in writing a declaratory ruling from the commission concerning the applicability of the statute or rule to a particular set of facts. The facts stated must be stated with such specificity as to allow a ruling to be made and the situation stated must be sufficiently concrete to justify issuance of a declaratory ruling.

(2) The purpose of declaratory rulings is to allow a licensee to conform his future actions or behavior to the parameters of the law. Declaratory rulings shall not be used for any other purpose. The commission may refuse to consider a request if it determines that its purpose or effect would be contrary to the purposes stated herein for declaratory rulings. In no case shall the commission consider a request, which directly or indirectly affects a pending action or disciplinary proceeding, or appeal thereof, before the stewards or the commission.

(3) The commission may issue directives to its employees, stewards, licensees or racing officials. Directives may be utilized to direct the performance of an act, to provide an interpretation of a statute or rule or for other purposes.

(4) The commission may on its own motion issue declaratory rulings and directives.

(5) The effect of a declaratory ruling shall be limited to the commission and the licensee, if any, requesting it.

[15.2.1.10 NMAC - Rp, 15 NMAC 2.1.10, 03/15/2001; A, 03/14/2018]

## **PART 2: ASSOCIATIONS**

### **15.2.2.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.2.1 NMAC - Rp, 15 NMAC 2.2.1, 03/15/2001]

### **15.2.2.2 SCOPE:**

General Public and any person, firm, association, or corporation, desiring to hold a horse race, or to engage in horse race meetings. Additional regulations may be cross-referenced in 15.2.1 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC, and 16.47.1 NMAC.

[15.2.2.2 NMAC - Rp, 15 NMAC 2.2.2, 03/15/2001]

### **15.2.2.3 STATUTORY AUTHORITY:**

Section 60-1A-4 NMSA 1978 empowers the state racing commission to make rules and regulations for the holding, conducting and operating of all race meets and races. Section 60-1A-20 NMSA 1978 empowers the racing commission to establish such qualifications for licenses to conduct horse race meets as it deems to be in the public interest.

[15.2.2.3 NMAC - Rp, 15 NMAC 2.2.3, 03/15/2001; A, 09/15/2009; A, 12/01/2010]

**15.2.2.4 DURATION:**

Permanent.

[15.2.2.4 NMAC - Rp, 15 NMAC 2.2.4, 03/15/2001]

**15.2.2.5 EFFECTIVE DATE:**

March 15, 2001 unless a later date is cited at the end of a section.

[15.2.2.5 NMAC - Rp, 15 NMAC 2.2.5, 03/15/2001]

**15.2.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 2 is to establish such regulations for qualifications for licensees to conduct horse race meets.

[15.2.2.6 NMAC - Rp, 15 NMAC 2.2.6, 03/15/2001]

**15.2.2.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.2.7 NMAC - Rp, 15 NMAC 2.2.7, 03/15/2001]

**15.2.2.8 ASSOCIATIONS:**

**A. General duty:**

(1) An association, its officers, directors, officials and employees shall abide by and enforce the Horse Racing Act and the rules and orders of the commission and stewards.

(2) An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The commission may grant an exemption if the commission determines that: the association's proposal substantially satisfies the purpose of the requirement; the exemption is in the best interests of the race horses, the racing industry and the citizens of this jurisdiction.

**B. Financial requirements: insurer of the race meeting:**

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

**(2)** An association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

**(3)** An association shall provide the commission with a certificate of liability insurance as required by the commission.

**(4)** An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Horse Racing Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. treasury bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this rule shall apply to such instrument.

**(5)** An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

**(6)** An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

**(7)** An association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

**(8)** An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest to those for whom the funds are held with the exception of administrative costs pursuant to section 60-2E-47(E) NMSA.

**(9)** An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Horse Racing Act and commission rules and not otherwise.

**(10)** An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Horse Racing Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

(12) An association shall insure that funds for the payment of the ten percent track breeder's awards on New Mexico bred winners, that have been requested by the New Mexico horse breeders' association and whose purses have been cleared by the New Mexico racing commission, will be sent via wire transfer to the designated bank account set up for that purpose within five business days after the request.

### **C. Bond requirements:**

(1) An association shall file with the commission a bond or other security payable to the New Mexico racing commission in an amount determined by the commission for pari mutuel racing and in either case not more than the financial liability of the association license throughout the race meeting for which the association license is requested.

(2) The bond shall be executed by the applicant and a surety company or companies authorized to do business in this jurisdiction, and conditioned upon the payment by the association licensee of all taxes and other monies due and payable pursuant to statutory provisions and all monies due from horsemen's accounts and payable, presentation of winning tickets, the licensee will distribute all sums due to the patrons of pari mutuel pools.

(3) The financial liabilities incurred by the association licensee in the form of real estate mortgages shall not be included in the determination of the bond amount.

### **D. Financial reports:**

(1) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Horse Racing Act, commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

(2) An association shall file a copy of all tax returns, a balance sheet and a profit and loss statement.

(3) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format, which conforms to the requirements set out in the association license application.

(4) An association shall file an annual audit with the commission within 90 days after the association's fiscal year-end. The commission, upon good cause shown, may extend the time for filing.

#### **E. Facilities and equipment: facilities for patrons and licensees:**

- (1)** An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.
- (2)** An association shall provide and maintain adequate restroom facilities for the patrons and licensees.
- (3)** An association shall provide an adequate supply of free drinking water.
- (4)** An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.
- (5)** During a race performance, the association shall provide a first aid room equipped with at least two beds and other appropriate equipment; the services of at least one physician or certified emergency medical technician.
- (6)** An association shall provide two properly equipped ambulances, ready for immediate duty at any time the racetrack is open for racing or exercising. The ambulance shall be staffed with one certified paramedic or an intermediate emergency medical technician (as long as physician is on the grounds). The other staff will be certified EMTs. If the ambulance is being used to transport an individual, the association may not conduct a race until a properly equipped and staffed ambulance is in place, or a physician is on duty.
- (7)** Unless otherwise approved by the commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.
- (8)** The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.
- (9)** An association shall provide adequate office space for the use of the stewards and other commission personnel as required by the commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the commission. An association shall provide a designated steward read only access to the incompass rto system as prescribed by the racing office as well as e-mail notification for all entry clerk overrides for horses on stewards', veterinarian's and starter's lists.
- (10)** An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees.
- (11)** An association shall ensure that all concessions provide prompt and efficient service to the public at all race meets or simulcast performances. The

associations shall specifically ensure that concessions have adequate staff and inventory to provide prompt and efficient service to the public.

**F. Officials' Stands:** An association shall provide adequate stands for officials to have a clear view of the racetrack. The location and design of the stands must be approved by the commission.

**G. Audio and visual equipment:**

(1) An association shall provide and maintain in good working order a communication system between the: stewards' stand; racing office; tote room; jockeys' room; paddock; test barn; starting gate; weigh in scale; video camera locations; clocker's stand; racing veterinarian; track announcer; location of the ambulances (equine and human); other locations and persons designated by the commission.

(2) An association shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

(3) An association shall provide two electronic photofinish devices with mirror image to photograph the finish of each race and record the time of each horse in at least hundredths of a second. The location and operation of the photofinish devices must be approved by the commission before its first use in a race. The association shall promptly post a photograph of each photofinish for win, place or show in an area accessible to the public. The association shall ensure that the photofinish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the association shall provide, without cost, a print from a negative of a photofinish to the commission. Photofinish negatives of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

(4) An association shall provide a videotaping system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

(5) A camera and a timer, designated by the commission, shall be at the starting gate and shall videotape and show to the public the pre-race loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the starter.

(6) One camera, designated by the commission, shall videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted and the equipment has been removed from the horse.

(7) The stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(8) Races run on an oval track must be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

(9) An association shall, upon request, provide to the commission, without cost, a copy of a videotape of a race.

(10) Videotapes recorded prior to, during and following each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

(11) An association shall provide a viewing room in which, on approval by the stewards, an owner, trainer, jockey or other interested individual may view a videotape recording of a race.

(12) Following any race in which there is an inquiry or objection, the association shall display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the stewards in making their decision.

#### **H. Racetrack:**

(1) The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the jockeys and horses.

(2) Prior to the first race meeting at an association racetrack, a licensed surveyor shall provide to the commission a certified report of the grade and measurement of the distances to be run.

(3) Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

(4) The surveyor's report must be approved by the commission prior to the first race day of the meeting.

(5) An association shall provide an adequate drainage system for the racetrack.

(6) An association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The association shall provide back-up equipment for maintaining the track surface.

(7) An association that conducts races on a turf track shall maintain an adequate stockpile of growing medium; provide a system capable of adequately watering the entire turf course evenly.

**I. Rails:**

(1) Racetracks, including turf tracks, shall provide inside and outside rails, including gap rails, designed constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 42 inches above the top of the cushion. The inside rail shall be no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

**J. Starting gates:**

(1) During racing hours, an association shall provide at least two operable padded starting gates, which have been approved by the commission.

(2) An association shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(3) If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

**K. Distance markers:**

(1) An association shall provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand.

(2) The starting point markers and distance poles must be marked as follows:

1/4 poles	Red and white horizontal stripes
1/8 poles	Green and white horizontal stripes
1/16 poles	Black and white horizontal stripes
220 yards	Green and white
250 yards	Blue

300 yards	Yellow
330 yards	Black and white
350 yards	Red
400 yards	Black
440 yards	Red and white
550 yards	Black and white horizontal stripes
660 yards	Green and white horizontal stripes
770 yards	Black and white horizontal stripes
870 yards	Blue and white horizontal stripes

**L. Lighting:**

(1) An association shall provide lighting for the racetrack and the patron facilities that are adequate to ensure the safety and security of the patrons, licensees and horses. Lighting to ensure the proper operation of the videotape and photofinish equipment must be approved by the commission.

(2) An association shall provide adequate additional lighting in the stable area as required by the commission.

(3) If an association conducts racing at night, the association shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

**M. Equine ambulance:**

(1) An association shall provide a minimum of two properly equipped ambulances staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.

(2) The ambulances must be properly ventilated and kept at an entrance to the racing strip when not in use.

(3) The ambulances must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulances must be able to navigate on the racetrack during all weather conditions; transport a horse off the association grounds.

(4) The ambulances must be equipped with large, portable screens to shield a horse from public view; ramps to facilitate loading a horse; adequate means of loading a horse that is down; a rear door and a door on each side; a padded interior; a movable partition to initially provide more room to load a horse and to later restrict a horse's

movement; a shielded area for the person who is attending to the horse; an adequate area for the storage of water and veterinary drugs and equipment.

**(5)** An association may not conduct a race unless a minimum of one equine ambulance or an official veterinarian-approved substitute is readily available.

**(6)** The properly equipped equine ambulances, its supplies and attendants and the operating procedures for the properly equipped ambulances must be approved by the official veterinarian.

#### **N. Barns:**

**(1)** An association shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The association's stable area configuration and facilities must be approved by the commission.

**(2)** An association shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.

**(3)** An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 feet by 10 feet.

**(4)** An association shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse is kept separate.

**(5)** For new barn construction, an association shall comply with the commission's minimum barn requirements:

**(a)** Two wash racks per 24 stalls with drains a minimum of 8 feet by 10 feet.

**(b)** One cold water faucet within 48 inches of all stalls.

**(c)** Dimensions of stalls are 12 feet by 12 feet, with a slanted to minimum of 10 foot roof at all points and 8 foot walls.

**(d)** One room 10 feet by 12 feet per eight stalls.

**(e)** Twelve shed rows.

**(f)** Twelve foot ends.

(g) Building material must be one hundred percent fire retardant and 26 gauge metal covered composite.

(h) Two 110 electrical outlets per four stalls placed a minimum six foot height centered at four foot.

(i) Overhead lighting down shedrow so as to illuminate the stalls and shedrow.

**O. Test barn:**

(1) An association shall provide a test barn for taking specimens of urine, blood or other bodily substances or tissues for testing.

(2) The test barn must be equipped with a walk ring that is large enough to accommodate 10 horses; at least three enclosed stalls that permit observation of the collection process and provide for the protection of collection personnel; facilities and equipment for the collection, identification and storage of samples; a wash rack that is large enough to accommodate three horses at the same time; hot and cold running water; clean water buckets supplied by the trainer for each horse.

(3) An association shall limit access to the test barn to persons, authorized by the official veterinarian, for the conduct of commission authorized tasks such as practicing veterinarians in the performance of their obligations, employees of the official veterinarian, commissioners and their designees. In addition, no more than two persons representing the stable of a horse required to be tested may accompany that horse into the test barn. All persons entering the test barn must wear a valid license in plain view. All entrances shall be locked or guarded at all times.

**P. Isolation area:**

(1) By January 1, 2017, an association shall provide a minimum eight stall, perimeter fenced isolation facility for the care and treatment of a horse that is ordered isolated by the racing veterinarian or the official veterinarian.

(2) The isolation facility must be approved by the official veterinarian.

**Q. Operations: security:**

(1) An association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the commission.

(2) An association shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

**(3)** An association shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

**(4)** Unless otherwise authorized by the commission, an association shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display valid credentials issued by the commission or a visitor's pass issued by the association (See Paragraph (1) of Subsection R of 16.47.1 NMAC). An association shall provide security fencing around the stable area in a manner that is approved by the commission.

**(5)** On request by the commission, an association shall provide a list of the security personnel, including the name, qualifications, training, duties, duty station and area supervised by each employee.

**(6)** Each day, the chief of security for an association shall deliver a written report to the stewards regarding occurrences on association grounds on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the stewards a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

#### **R. Fire prevention:**

**(1)** An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

**(2)** Not later than three days before the first day of a race meeting, an association shall deliver to the commission a copy of the state or local fire marshal's certification regarding the association's compliance with fire safety regulations or the fire marshal's plan of corrections. The certification or plan must be based on an inspection of the association grounds conducted by the fire marshal not more than 30 days before the first day of a race meeting.

**(3)** No person shall:

**(a)** smoke in stalls, feed rooms or under shed row;

**(b)** burn open fires or oil and gas lamps in the stable area;

(c) use or leave unattended, any electrical appliance that is plugged-in to an electrical outlet, that is not in safe working order and does not meet the manufacturer's recommendations;

(d) use extension cords that are not approved to meet OSHA standards, nor should extension cords be fastened with staples, hung from nails or suspended by wire;

(e) use worn, cracked, frayed or otherwise damaged electric cords or cables;

(f) permit horses to come within reach of electrical outlets or cords;

(g) store flammable materials such as cleaning fluids or solvents in the stable area; or

(h) lock a stall which is occupied by a horse.

(4) An association shall post a notice in the stable area which lists the prohibitions outlined in Paragraph (3) of Subsection R of 15.2.2 NMAC above.

**S. Insect and rodent control:** An association and the licensees occupying the association's barn area shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

**T. Performances:**

(1) The hours of racing, the number of races per race day and the post time for the first race of each race day are subject to the approval of the commission.

(2) An association shall deliver to the commission for approval a copy of the proposed stakes schedule, proposed purse schedule and first condition book for a race meeting at least 60 days before the first day of the race meeting. Following commission approval, any changes to the purse or stakes schedules, or condition book must be approved by the commission. The association shall deliver to the commission, upon publication, a copy of each subsequent condition book.

**U. Complaints:**

(1) An association shall designate a location and provide personnel who shall be readily available to the public to provide information or receive complaints.

(2) An association shall promptly notify the commission of a complaint regarding an alleged violation of the Horse Racing Act or a rule of the commission; an alleged violation of ordinances or statutes; accidents or injuries; unsafe or unsanitary conditions for patrons, licensees or horses.

**V. Ejection and exclusion:**

(1) An association shall immediately eject from the association grounds a person who is subject to such an exclusion order of the commission or stewards and notify the commission of the ejection.

(2) An association may eject or exclude a person for any lawful reason. An association shall immediately notify the stewards and the commission in writing of any person ejected or excluded by the association and the reasons for the ejection or exclusion.

#### **W. Stakes and escrow requirements:**

(1) The association shall provide the commission with a copy of written race conditions for stakes races prior to distribution and a copy of the job description of the nomination secretary assigned to the stakes races program. [The job description shall be acknowledged and signed by the nomination secretary and filed with the commission.]

(2) The original race conditions nomination blank for stakes races shall be considered a binding contract between the association or sponsor and the nominator. [The approved nomination blank must be signed by the nominator and filed with the association.] The nomination blank must contain all conditions under which fees are due and payable; the race will be conducted, providing for trials or divisions, if any; supplemental purses are added; monies will be retained by the association for advertisement, administration and commissions; terms or conditions which refunds, if any, will be made; and all other conditions pertaining thereto.

(3) Unless otherwise approved by the commission, prior to the closing of nominations, the association shall file with the commission a copy of escrow provisions made by the association or sponsor with the horsemen's bookkeeper or other person(s) authorized to receive payments on behalf of the nominators utilizing a federally insured financial institution to maintain the escrow account for all payments made to the stakes race. Any added or supplemental purse monies advertised or otherwise stated in the written race conditions shall be deposited in the escrow account no later than the deadline date for the first eligibility payment for that stakes race, unless otherwise approved by the commission.

(4) If the deadline for a nomination payment falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(5) Within 30 days after each eligibility or payment date, and the date horses pass the entry box, the association shall provide a copy of the escrow report to the commission. The escrow report shall include the financial institution representative; the names and nominators; the total number of entries; the names of horses remaining eligible; an itemization of the amount of payments and added money received including totals; the amount of interest accrued to date; the name(s) of the person(s) currently

authorized to make withdrawals; the amount and date of each withdrawal, if any; each deduction from monies received (e.g. uncollected checks, advertising, administrative and commissions costs); and the stated reason for each withdrawal or deduction. Notice of not less than two persons, whose signatures are required for a withdrawal, shall be filed with the commission.

(6) In all cases the association shall be responsible for the payment of purse monies for any stakes race conducted at its licensed facility.

**X. Emergency track warning system:** All tracks, including training tracks, under the jurisdiction of the commission shall install an emergency track warning system approved by the commission with the controls located in the stewards' and clockers' stands on all racing and training tracks.

[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 3/15/2001; A, 8/30/2001; A, 11/14/2002; A, 8/30/2007; A, 1/1/2013; A, 6/1/2016; A, 12/16/2016; A, 9/26/2018; A, 4/20/2021; A, 5/24/2022]

#### **15.2.2.9 GAMING:**

##### **A. Associations' financial requirements:**

(1) An association who is a gaming operator shall pay twenty percent of the net take to purses.

(2) An association shall provide a weekly report of the previous week's daily net take payment to purses every Monday to the commission and the New Mexico horsebreeders' association each week except for legal holidays which will be submitted on the next business day.

(3) All monies remitted by the association to the gaming account shall be reconciled and settled within 30 days of the generation of monthly reports from the gaming control board.

(4) An association will be liable for all portions of the gaming funds for purses from such time as the funds are received into the gaming machines until the funds are deposited into the designated interest bearing accounts. The commission may take whatever action is available under the existing rules regarding fines, suspension or revocation of license should the association fail to deposit the funds in accordance with Paragraph (1) of Subsection B of Section 15.2.2.9 NMAC.

(5) The twenty-percent of the net take to purses shall be distributed as follows:

Nineteen and three tenths percent of the net daily take deposited by the association will be distributed weekly by the associations to the New Mexico horsebreeders' association

to the purse fund; eighty and seven tenths percent of the net daily take deposited by the associations will be distributed to the existing purse structures determined and approved by the commission.

**B. Organizations' financial requirements:**

(1) The associations shall establish interest-bearing accounts, designated as gaming funds for purses. The associations shall deposit, by 1:00 o'clock p.m. Monday of each week except for legal holidays which will be deposited on the next business day, twenty percent of the daily net take as defined in the gaming control act.

(2) The associations and the New Mexico horsebreeders' association shall keep accurate, complete, and legible records with reports to the commission to include:

- (a) monthly reconciliation of amounts collected to account statements;
- (b) copy of account authorizing signatures;
- (c) any changes in authorizing signatures; and
- (d) detail of disbursements from the accounts.

[15.2.2.9 NMAC - Rp, 15 NMAC 2.2.9, 3/15/2001; A, 12/30/2003; A, 5/24/2022]

**15.2.2.10 CAPITAL IMPROVEMENTS:**

**A. General authority:**

(1) Capital improvements made on licensed racing premises with state funds offset from the amount of taxes due pursuant to Section 60-1A-20 NMSA 1978, shall be utilized only for the improvement of horse racing facilities for the benefit of the public, breeders and horse owners and shall be intended to increase the revenue to the state from the increases in pari mutuel wagering and tourism which result from the improvements.

(2) No capital improvement for which an offset from state taxes is requested shall be made unless it is a capital investment subject to depreciation under the United States Internal Revenue Code and is approved in advance by the commission.

(3) It is the responsibility of the licensee requesting the offset of state taxes to establish that the proposed capital improvement qualifies as a capital investment subject to depreciation under the United States Internal Revenue Code.

**B. Commission requirements:**

(1) Each commission member and the agency director shall inspect all facilities, grounds and areas of each licensed racetrack in New Mexico annually for the purpose of identifying the need for capital improvements for those areas.

(2) The commission shall annually adopt or revise a schedule of priorities of areas in need of immediate capital improvements for each licensed racetrack. Licensees and any other individuals or organizations may submit to the commission recommendations for the schedule of priorities. The commission chairman may appoint committees as are necessary to prepare the schedule of priorities. All committee meetings shall be open meetings.

(3) In adoption of the schedule of priorities, the commission shall give due consideration to the needs of the public, breeders and horse owners and shall balance those needs in the allocation of priorities.

(4) The commission shall adhere to the schedule of priorities in the approval of capital improvement projects applied for by the licensees.

### **C. Procedures:**

(1) A licensee shall submit to the commission, on application forms provided by the commission, proposals for capital improvement projects for which an offset of state taxes will be requested. Applications shall contain, but are not limited to, the following information:

(a) licensed racetrack at which project is proposed;

(b) person(s) supervising the proposal and project;

(c) total cost of project;

(d) amount of total cost to be offset by state tax revenues;

(e) amount of total cost to be paid by other funds and sources of those funds;

(f) complete description of project and timetable for construction;

(g) estimated timetable of requests for offsets by state tax revenues; and

(h) proof of compliance with Section 60-1A-20 NMSA 1978 that the project qualifies under the Internal Revenue Code as a capital investment subject to depreciation.

(2) For any capital improvement project in which the requested offset from state taxes equals or exceeds fifty percent of the total purchase or construction price,

the licensee shall obtain and submit to the commission at least three written bids from suppliers or licensed contractors, where applicable.

(3) At the next regularly scheduled commission meeting, the commission shall review, reject, modify or condition each proposal, or return the application for additional information. Then, at the subsequent scheduled commission meeting, the commission shall approve each capital improvement proposal reviewed.

(4) The commission shall approve only the bid of the lowest bidder, unless the licensee requests in writing that a particular bid be accepted, in which case the commission may approve the licensee's recommended bidder if it finds extraordinary circumstances which call for the acceptance of that bidder and additionally finds that acceptance of that bidder would be in the best interests of racing in New Mexico. The commission shall give preference to New Mexico contractors and suppliers, as defined in Section 13-4-2 NMSA 1978, in selecting bids, provided that the bid for a project of the New Mexico contractor or supplier does not exceed ten percent over the amount of the lowest bid.

(5) When special circumstances warrant, or when unexpected cost overruns are incurred, the commission may consider a capital improvement retroactively.

(6) When the licensee's in-house maintenance work force is accepted as the low bidder in a capital improvement project, any cost overrun beyond the highest bid price may not be allowed as an offset and must be paid by the licensee. A cost overrun performed by in-house maintenance above the original bid price and below the highest bidder price must be approved by the commission before the work is accomplished.

(7) Following the completion of any capital improvement project for which an offset of state taxes was requested and approved, the commission, or designee, shall inspect the project and any recommended future projects.

**D. Tax liabilities:** All taxes assessed pursuant to the provisions of Section 60-1A-20 NMSA 1978, shall be paid to the racing commission at the time set by law, unless a capital expenditure project or the financing of term investment in capital improvements has been previously approved by the commission and the licensee is entitled by such previous approval to offset the amount of the taxes then due. If no previous approval for a project or financing has been made, the full amount of taxes due shall be paid. If previous approval for a project or financing has been made and the licensee is entitled to offset the amount of the taxes then due, the licensee may offset such taxes due and shall account to the commission for such offset from taxes due.

[15.2.2.10 NMAC; N, 08/30/2001; A, 12/01/2010]

## **PART 3: FLAT RACING OFFICIALS**

### **15.2.3.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.3.1 NMAC - Rp, 15 NMAC 2.3.1, 04/13/2001]

**15.2.3.2 SCOPE:**

All persons engaged in racing, or employed on a licensee's racetrack premises. Additional regulations may be cross-referenced in 15.2.1 NMAC, 15.2.2 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC and 16.47.1 NMAC.

[15.2.3.2 NMAC - Rp, 15 NMAC 2.3.2, 04/13/2001]

**15.2.3.3 STATUTORY AUTHORITY:**

Sections 60-1A-1 through 60-1A-30 NMSA 1978 provide that the New Mexico racing commission has the authority to promulgate rules and regulations deemed necessary to enforce Chapter 60 NMSA 1978 pertaining to horse racing.

[15.2.3.3 NMAC - Rp, 15 NMAC 2.3.3, 04/13/2001; A, 09/15/2009]

**15.2.3.4 DURATION:**

Permanent.

[15.2.3.4 NMAC - Rp, 15 NMAC 2.3.4, 04/13/2001]

**15.2.3.5 EFFECTIVE DATE:**

April 13, 2001 unless a later date is cited at the end of a section.

[15.2.3.5 NMAC - Rp, 15 NMAC 2.3.5, 04/13/2001]

**15.2.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 2 is to establish the qualifications of persons to receive licenses for engaging in horse racing in New Mexico as deemed in the public interest.

[15.2.3.6 NMAC - Rp, 15 NMAC 2.3.6, 04/13/2001]

**15.2.3.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.3.7 NMAC - Rp, 15 NMAC 2.3.7, 04/13/2001]

### 15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

**A. Racing Officials:** Officials at a race meeting include the following: assistant racing secretary; assistant starters; chief of security; director of racing, or similar position; claims clerk; clerk of scales; clocker; digital or lip tattoo technician; general manager; handicapper; horse identifier; horsemen's bookkeeper; state investigators; special agents of the commission; jockey room custodian; official veterinarian; outrider; paddock judge; pari-mutuel manager; patrol judge, absent video replay equipment; placing judge, if duty not performed by stewards; racing secretary; racing veterinarian; stable superintendent; starter; stewards; timer; track superintendent; any other person designated by the commission.

**(1) Eligibility:** To qualify as a racing official, the applicant shall: be of good character and reputation; demonstrate experience in flat racing; be familiar with the duties of the position and with the commission's rules of flat racing and show an ability to fulfill the requirements of the position. Stewards must be accredited by the racing officials accreditation program and be current with continuing education requirements.

**(2) Approval and licensing:** The commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing. An association shall submit to the commission its request for approval of racing officials 60 days prior to the first day of the race meet.

**(3) Prohibited practices:** While serving in an official capacity, racing officials and their assistants shall not: participate in the sale or purchase, or ownership of any horse racing at the meeting; sell or solicit horse insurance on any horse racing at the meeting; be licensed in any other capacity without permission of the commission, or in case of an emergency, the permission of the stewards; wager on the outcome of any race under the jurisdiction of the commission; consume or be under the influence of alcohol or any prohibited substances while performing official duties.

**(4) Report of violations:** Racing officials and their assistants shall report immediately to the stewards every observed violation of these rules and of the laws of this state governing racing.

**(5) Complaints against officials:** Complaints against any steward shall be made in writing to the commission and signed by the complainant.

(a) Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the commission by the stewards, together with a report of the action taken or the recommendation of the stewards.

(b) A racing official may be held responsible by the stewards or the commission for their actions, and the actions of their assistants and employees.

**(6) Appointment:**

(a) A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the commission.

(b) The commission shall appoint or approve the stewards at each race meeting.

**(7) Appointment of substitute officials:** Where an emergency or prolonged vacancy exists among the association's employed racing officials, the stewards or the association, with the stewards' approval, shall make reasonable efforts to fill the vacancy. Such appointment shall be reported to the commission and shall be effective until the vacancy is filled in accordance with these rules.

**(8) Appointment of substitute steward:** Should any steward be absent due to an emergency or prolonged vacancy the executive director or the presiding steward may appoint a substitute steward. If a substitute steward is appointed, the commission and the association shall be notified by the stewards. The director or any racing commissioner are prohibited from serving as a substitute steward.

**B. Stewards:**

**(1) General authority:** The stewards for each meeting shall be responsible to the commission for the conduct of the race meeting in accordance with the laws of this state and these rules.

(a) The stewards shall enforce these rules and the racing laws of this state.

(b) The stewards' authority includes supervision of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to ensure compliance with the act and these rules.

(c) The stewards shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

(d) The stewards have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules. Whenever the stewards find any person culpable for any act or omission in violation of these regulations or any violation of the Horse Racing Act, the person shall be subject to disciplinary action, which could include a fine, suspension, or revocation/denial of license or any combination of these penalties.

(e) The stewards shall have the authority to amend, revoke, rescind or modify any ruling that they issued in error in accordance with the laws of this state and these rules.

**(2) Period of authority:** The stewards' period of authority shall commence up to ten days prior to the beginning of each meeting and shall terminate with the completion of their business pertaining to the meeting.

**(3) Disciplinary action:** The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

(a) The stewards shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

(b) The stewards may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

(c) The stewards may at any time inspect license documents, registration papers, and other documents related to racing.

(d) The stewards have the power to administer oaths and examine witnesses.

(e) The stewards may impose any of the following penalties on a licensee for a violation of the act or these rules: issue a reprimand; assess a fine; require forfeiture or redistribution of purse or award, when specified by applicable rules and at their discretion; place a licensee on probation; suspend a license or racing privileges; revoke a license; exclude from grounds under the jurisdiction of the commission.

(f) The stewards may order that a person be ineligible for licensing; or they may deny a license to an applicant on grounds set forth in the act or these rules.

(g) The stewards shall submit a written report to the commission of every inquiry and hearing.

(h) A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

(i) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a steward's referral shall not preclude commission action in any matter.

(j) Purses, prizes, awards, and trophies shall be redistributed if the stewards or commission order a change in the official order of finish.

(k) All fines imposed by the stewards shall be paid to the commission within 30 days after the ruling is issued, unless otherwise ordered.

**(4) Protests, objections, and complaints:** The stewards shall investigate promptly and render a decision in every protest, objection and complaint made to them.

They shall maintain a record of all protests, objections and complaints. The stewards shall file daily with the commission a copy of each protest, objection or complaint and any related ruling.

**(5) Stewards' presence:** Three stewards shall be present in the stewards' stand either physically or through any other electronic means during the running of each race subject to the discretion and approval of the executive director.

**(6) Order of finish for pari-mutuel wagering:**

(a) The stewards shall determine the official order of finish for each race in accordance with 15.2.5 NMAC.

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

**(7) Cancel wagering:** The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

**(8) Records and reports:**

(a) The stewards shall prepare a daily report, on a form approved by the commission, detailing their actions and observations made during each day's race program. The report shall contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report shall be signed by each steward and be filed with the commission not later than 24 hours after the end of each race day.

(b) The stewards shall maintain a detailed log of the stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations and rulings made by the stewards. The log shall be available at all times for inspection by the commission or its designee.

(c) Not later than seven days after the last day of a race meeting, the stewards shall submit to the commission a written report regarding the race meeting. The report shall contain: the stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; any recommendations for improvement by the association or action by the commission.

**(9) Stewards' list:**

(a) The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance behavior on the racetrack that endangers the health or safety of other participants in racing or for positive tests pursuant to Subsection C of 15.2.6.9 NMAC.

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse.

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification or ownership has been established.

(e) A horse that has been placed on the steward's list for a positive test pursuant to Subsection C of 15.2.6.9 NMAC may only be removed if the criteria set forth in that subsection are met or in the event of a split sample result which does not confirm the official laboratory's original finding of a positive test.

### **C. Racing secretary:**

**(1) General authority:** The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, and declarations.

### **(2) Foal, health and other eligibility certificates:**

(a) The racing secretary or their designee shall be responsible for receiving, inspecting and safeguarding the digital or paper foal and health certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds.

(b) The racing secretary shall ensure that the foal certificates for all thoroughbred horses entered to race that were foaled in 2018, or thereafter, have a digital tattoo. This digital tattoo shall indicate that the thoroughbred racing protective bureau has confirmed the identity of the horse and uploaded updated digital photographs to the breed registry database.

### **(3) Allocation of stalls:**

(a) The racing secretary shall assign stall applicants such stabling as is deemed proper and maintain a record of arrivals and departures of all horses stabled on association grounds.

(b) Allocation of stalls shall be determined by each association's screening process. Preference shall be given to stables that are balanced and consist of New Mexico bred.

**(4) Conditions:**

(a) The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office.

(b) Any conditions that are based on a participating horse's use or non-use of a drug substance or medication, or the presence or lack of presence of a drug substance or medication in a biological test sample taken from a participating horse, shall be approved by the commission before entries are taken for the race. If such conditions are based on the results of a biological test sample other than an official test sample collected by the commission, a description of the testing methods and procedures the racing association will use to collect and analyze the biological test samples shall be submitted to the commission for approval. For purposes of this section, "biological test sample" refers to any biological sample, including, but not limited to, blood, urine, hair, tissue, or saliva that is taken from a horse.

(c) For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.

(d) Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

(e) A minimum of three races restricted to registered New Mexico bred horses shall be offered daily in the condition book excluding trials.

(f) The racing secretary shall not offer any races or accept entries for two year olds in New Mexico prior to March 1.

**(5) Listing of horses:** The racing secretary shall: examine all entry blanks and declarations to verify information as set forth therein; select the horses to start and the also eligible horses from the declarations in accordance with these rules.

**(6) Posting of entries:** Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in their office and make the list available to the media. If the racing secretary declares a race off, the names of entrants in that race shall be posted on the official bulletin board that day, identifying the race by number as it appears in the condition book.

**(7) Daily program:** The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

- (a) sequence of races to be run and post time for the first race;
- (b) purse, conditions and distance for each race, and current track record for such distance;
- (c) the name of the licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;
- (d) the name of the trainer and the name of the jockey named for each horse together with the weight to be carried;
- (e) the post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;
- (f) identification of each horse by name, color, sex, age, sire and dam;
- (g) a notice shall be included in the daily program stating that all jockeys may carry approximately three pounds more than the published and announced weights to account for inclement weather clothing and equipment when weighing in; and
- (h) such other information as may be requested by the association or the commission.

**(8) Nominations and declarations:** The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

**(9) Stakes and entrance money records:** The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid prior to entry for races conducted at the meeting.

#### **D. Horsemen's bookkeeper:**

**(1) General authority:** The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and commission may prescribe.

#### **(2) Records:**

(a) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of

each horse owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(b) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

(c) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association.

(d) All records of the horsemen's bookkeeper including records of accounts and monies and funds kept on deposit are subject to inspection by the commission at any time.

(e) The association licensee is subject to disciplinary action by the commission for any violations of or non-compliance with the provisions of this rule.

**(3) Monies and funds on account:**

(a) All monies and funds on account with the horsemen's bookkeeper shall be maintained: separate and apart from monies and funds of the association; in a trust account designated as "horsemen's trust account"; in an account insured by the federal deposit and insurance corporation or the federal savings and loan insurance corporation.

(b) The horsemen's bookkeeper shall be bonded in accordance with commission stipulations.

(c) The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be no appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.

**(4) Payment of purses:**

(a) Upon approval of the commission the horsemen's bookkeeper shall receive, maintain and disburse only the following from the purse accounts: the purses earned for each race; entry, nomination, supplemental and starter fees in stakes races; jockey fees; lasix fees; win picture fees; and purchase money in claiming races, along with all applicable taxes that properly come into their possession in accordance with the provision of commission rules.

(b) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

(c) The horsemen's bookkeeper shall disburse only the purse earned for each race, entry, nomination, supplemental and starter fees in stakes races, jockey fees, lasix fees, win picture fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of the completion of the race with respect to all horses not tested and when no timely appeal has been filed, and where a horse has been tested within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

(d) Absent a prior request, the horsemen's bookkeeper shall disburse monies to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(e) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final non-appealable order disposing of such protest or appeal.

#### **E. Paddock judge:**

**(1) General authority:** The paddock judge shall:

(a) supervise the assembly of horses in the paddock before the scheduled post time for each race;

(b) maintain a written record of all equipment;

(c) ensure all horses running are properly equipped with a nylon rein or a safety rein (a safety rein is a rein with a nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp)

(d) inspect all equipment of each saddled and report any change thereof to the stewards;

(e) prohibit any change of equipment without the approval of the stewards;

(f) ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence;

(g) supervise paddock schooling of all horses approved for such by the stewards; and

(h) report to the stewards any observed cruelty to a horse; ensure that only properly authorized persons are permitted in the paddock; report to the stewards any unusual or illegal activities.

**(2) Paddock judge's list:**

(a) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(b) At the end of each race day, the paddock judge shall provide a copy of the list to the stewards.

(c) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

**F. Horse identifier:**

**(1) General authority:** The horse identifier shall: when required, ensure the safekeeping of digital or paper registration certificates and racing permits for horses stabled or racing on association grounds; inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting; examine every starter in the paddock for sex, color, markings lip tattoo or microchip (ISO11784), freeze brand or other approved method of positive identification, for comparison with its registration certificate to verify the horse's identity; supervise the tattooing, micro chipping, freeze branding or other approved method of positive identification, for identification of any horse located on association grounds. Positive identification may include verification that the breed registration certificate has been submitted for correction or verification that the tattooing process has been initiated.

**(2) Report violations:** The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

**G. Clerk of scales:** The clerk of scales shall: verify the presence of all jockeys in the jockeys' room at the appointed time; verify that all such jockeys have a current jockey's license issued by the commission; verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately; oversee the security of the jockeys' room including the conduct of the jockeys and their attendants; promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct; record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day; maintain the record of applicable winning races on all apprentice certificates at the meeting; release apprentice jockey certificates, upon the jockey's

departure or upon the conclusion of the race meet; assume the duties of the jockey room custodian in the absence of such employee.

**H. Jockey room custodian:** The jockey room custodian shall: supervise the conduct of the jockeys and their attendants while they are in the jockey room; keep the jockey room clean and safe for all jockeys; ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses; keep a daily film list as displayed in plain view for all jockeys; keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available; allow only authorized or licensed persons access to the jockey room; for the purposes of this subsection, authorized persons are jockeys, jockey attendants, jockey room employees, starting gate personnel, track physician, stewards, commissioners and their duly authorized representatives, and such other persons who in the determination of the stewards have a legitimate purpose or need related to the conduct of racing that requires that they have access to the jockey room; report to the stewards any unusual occurrences in the jockey room; and, ensure all jockey's whips are in compliance with Paragraph (1) of Subsection A of 15.2.5.13 NMAC.

**I. Starter:**

**(1) General authority:** The starter shall: have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start; appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate; in emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters; assign the starting gate stall positions to assistant starters by lot and notify the assistant starters prior to post time for the first race of their respective stall positions which will remain that assistant starter's position throughout the day; there shall be no changes except with permission of the stewards; assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; load horses into the gate in any order deemed necessary to ensure a safe and fair start.

**(2) Assistant starters:** With respect to an official race, the assistant starters shall not: handle or take charge of any horse in the starting gate without the expressed permission of the starter; impede the start of a race; apply any device, without the approval of the stewards to assist in loading a horse into the starting gate; slap, boot or otherwise dispatch a horse from the starting gate; strike or use abusive language to a jockey; accept or solicit any gratuity or payment other than their regular salary, directly or indirectly, for services in starting a race.

**(3) Starter's list:** No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has

demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the supervision of the starter.

**(4) Report violations:** The starter and assistant starter shall report all unauthorized activities to the stewards.

**J. Timer/clocker:**

**(1) General authority (timer):**

(a) The timer shall accurately record the time elapsed between the start and finish of each race.

(b) The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

(c) At the end of a race, the timer shall post the official running time on the infield totalisator board on instruction by the stewards.

(d) At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(e) For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that three stopwatches are used by the stewards or their designees.

(f) The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or the commission on request.

**(2) General authority (clocker):**

(a) The clocker shall be present during training hours at each track on association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout.

(b) Each day, the clocker shall prepare a list of workouts that describes the name of each horse which worked along with the distance and time of each horse's workout.

(c) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

**K. Patrol judge:** The patrol judge, when utilized, is responsible for observing the race and reporting information concerning the race to the stewards. If the track's video replay system is deemed adequate, use of patrol judges is optional.

**L. Gate judge:** The commission may require each track to employ a gate judge whose duties shall include being present at the starting gate just prior to the running of each race to observe and report any violations of the rules to the stewards, and to otherwise assist the stewards as they may so order.

**M. Placing judge:**

**(1) General authority:** The placing judges shall determine the order of finish in a race as the horses pass the finish line, and with the approval of the stewards, may display the results of the totalisator board.

**(2) Photo finish:**

(a) In the event the placing judges or the stewards request a photo of the finish, the photo finish shall be posted on the totalisator board.

(b) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalisator board.

(c) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the placing judges as an aid in determining the correct order of finish.

(d) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the stewards shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the racetrack.

**(3) Dead heats:**

(a) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(b) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalisator board and cause the numbers of the horse or horses involved to blink on the totalisator board.

**N. Official veterinarian:** The official veterinarian shall

- (1) be employed by the commission;
- (2) be a graduate veterinarian and be licensed to practice in the state;
- (3) recommend to the stewards any horse deemed unsafe to be raced, or a horse that it would be inhumane to allow to race;
- (4) supervise the taking of all specimens for testing according to procedures approved by the commission;
- (5) provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion or contamination;
- (6) have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure;
- (7) report to the commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;
- (8) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the commission;
- (9) place horses on the bleeder list and remove horses from the bleeder list;
- (10) place horses on the veterinarian's list that have been treated for a therapeutic purpose for any medication pursuant to Paragraph (9) of Subsection C of 15.2.6.9 NMAC and remove horses from the veterinarian's list when the criteria for removal pursuant to that subsection have been met; and
- (11) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of racing the horse to so act.

**O. Racing veterinarian:**

- (1) The racing veterinarian shall be employed by the association.
- (2) The association may employ an additional racing veterinarian in order to further ensure the safety of racing.
- (3) The racing veterinarian shall:
  - (a) be directly responsible to the official veterinarian;
  - (b) be a graduate veterinarian and be licensed to practice in the state;

(c) be available to the racing secretary and the stewards prior to scratch time each racing day, at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards;

(d) be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(e) inspect any horse when there is a question as to the physical condition of such horse;

(f) recommend scratching a horse to the stewards if, in the opinion of the racing veterinarian, the horse is physically incapable of exerting its best effort to win;

(g) inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with their opinion as to the cause of the distress to the stewards and to the official veterinarian;

(h) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the commission;

(i) refrain from directly treating or prescribing for any horse scheduled to participate during their term of appointment at any recognized meeting except in cases of emergency, accident or injury;

(j) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of racing to so act;

(k) conduct soundness inspections on horses participating in races at the meeting; and

(l) with approval of the official veterinarian, place horses on the bleeders list.

(4) The official veterinarian or racing veterinarian shall maintain the veterinarian's list of all horses which are determined to be unfit to compete in a race due to illness, unsoundness, injury, infirmity, voluntary administration of a medication invoking a mandatory stand down time, administration of shock-wave therapy or any other assessment or determination by the official or racing veterinarian that the horse is unfit to race.

(a) Horses so listed are ineligible to enter in a race in any jurisdiction until released by the official veterinarian or racing veterinarian except when there is an administrative issue in releasing the horse from a veterinarian's list of another racing jurisdiction.

(b) A horse placed on the veterinarian's list due to illness, injury or infirmity unrelated to the racing soundness of the horse may be released from the list when a minimum of seven calendar days has passed from the time the horse was placed on the list.

(c) A horse placed on the veterinarian's list for unsoundness or lameness shall be released from the list only after the following has been met:

(i) A minimum of seven calendar days has elapsed;

(ii) the horse demonstrates to the satisfaction of the official veterinarian or racing veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race;

(iii) the horse completes a published work after the seven calendar days has elapsed of four furlongs at 0:52 for thoroughbreds or better; or 220 yards at 13.3 seconds for quarter horses or better while being observed by the official veterinarian or racing veterinarian, and;

(iv) the horse submits to a post work official sample collection for laboratory confirmation for compliance with 15.2.6.9 NMAC at the expense of the current owner. Samples shall be subjected to the same testing as conducted for post race official samples. The presence of a prohibited substance in the post work sample shall result in the horse remaining on the veterinarian's list.

(d) A horse placed on the veterinarian's list for voluntary administration of a medication invoking a mandatory stand down time shall be released from the list subject to the provisions and restrictions set forth in Subsection C of 15.2.6.9 NMAC.

(e) A horse placed on the veterinarian's list for the administration of shock-wave therapy shall be released from the list subject to the provisions and restrictions set forth in Subsection C of 15.2.6.8 NMAC.

(5) The racing veterinarian shall be present at the office of the racing secretary or stewards prior to scratch time each racing day at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards.

(6) The restrictions of Paragraph (3) of Subsection O of 15.2.3.8 NMAC may be waived for a temporary appointment to replace an absent racing veterinarian or in the event of an emergency situation with prior approval from the director of the commission.

(7) Veterinarian's list:

(a) The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

(b) A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of performing in a race.

**P. Any other person designated by the commission:** The commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Subsection A of 15.2.3 NMAC.

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 4/13/2001; A, 11/15/2001; A, 8/30/2007; A, 6/15/2009; A, 6/30/2009; A, 12/1/2010; A, 5/1/2015; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 9/26/2018; A, 5/1/2019; A, 12/19/2019; A, 12/28/2021; A, 5/24/2022; A, 4/9/2024]

## **PART 4: TYPES OF RACES**

### **15.2.4.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.4.1 NMAC - Rp, 15 NMAC 2.4.1, 3/15/2001]

### **15.2.4.2 SCOPE:**

All persons participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.1 NMAC, 15.2.2 NMAC, 15.2.3 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC and 16.47.1 NMAC.

[15.2.4.2 NMAC - Rp, 15 NMAC 2.4.2, 3/15/2001]

### **15.2.4.3 STATUTORY AUTHORITY:**

Sections 60-1A-1 through 60-1A-30 NMSA 1978 provides the authority of the New Mexico Racing Commission to establish rules and regulations deemed necessary to carry out the purposes of Chapter 60 NMSA 1978 pertaining to horse racing.

[15.2.4.3 NMAC - Rp, 15 NMAC 2.4.3, 3/15/2001; A, 9/15/2009]

### **15.2.4.4 DURATION:**

Permanent.

[15.2.4.4 NMAC - Rp, 15 NMAC 2.4.4, 3/15/2001]

**15.2.4.5 EFFECTIVE DATE:**

March 15, 2001 unless a later date is cited at the end of a section.

[15.2.4.5 NMAC - Rp, 15 NMAC 2.4.5, 3/15/2001]

**15.2.4.6 OBJECTIVE:**

To achieve the objective that all horse races be conducted fairly and honestly.

[15.2.4.6 NMAC - Rp, 15 NMAC 2.4.6, 3/15/2001; A, 4/9/2024]

**15.2.4.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.4.7 NMAC - Rp, 15 NMAC 2.4.7, 3/15/2001]

**15.2.4.8 CLAIMING RACES:**

**A. General Provisions:**

(1) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(2) A filly or mare that has been bred is ineligible to enter into a claiming race unless a licensed veterinarian's certificate dated at least 25 days after the last breeding of that mare is on file with the racing secretary's office stating that the mare or filly is not in foal. However, an in-foal filly or mare shall be eligible to enter into a claiming race if the following conditions are fulfilled:

(a) full disclosure of such fact is on file with the racing secretary and such information is posted in the racing secretary's office;

(b) the stallion service certificate has been deposited with the racing secretary's office (although all information obtained on such certificate shall remain confidential);

(c) all payments due for the service in question and for any live progeny resulting from that service are paid in full;

(d) the release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.

(3) The stewards may void a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of this rule. Should the stewards order a claim void, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

(4) The successful claimant of a horse shall be notified of a medication violation. Once notified, the successful claimant has 72 hours in which to request the stewards to void the claim. If the claim is voided the stewards may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate. If the claim is not voided, all applicable time requirements and procedures pursuant to Subsection C of 15.2.6.9 NMAC shall follow the horse.

(5) Title to a horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the horse becomes a starter.

(6) All claimed horses shall go to the test barn for observation by the official or racing veterinarian.

(7) The claim shall be voided, and ownership of the horse retained by the original owner if:

(a) the horse dies on the racetrack;

(b) the horse is euthanized before leaving the racetrack;

(c) the horse is vanned off the racetrack by discretion of the official or racing veterinarian.

(d) the official or racing veterinarian determines within 60 minutes of the race that the horse will be placed on the veterinarians' list as bled, physically distressed, medically compromised, unsound, or lame before the horse is released to the successful claimant.

(8) The claim shall not be voided, if prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the official or racing veterinarian determines the horse will be placed on the veterinarians' list as bled or unsound or the horse tests positive for a prohibited substance.

## **B. Claiming Option Entry:**

(1) At the time of entry into a claiming race, the owner may opt to declare a horse ineligible to be claimed provided:

(a) the horse has been laid off and has not started for a minimum of 120 days since its last race; and

(b) the horse is entered for a claiming price equal to or greater than the claiming price of the horse's last start; and

(c) the horse's last race as an official starter was one in which the horse was eligible to be claimed.

(2) Failure to declare the horse ineligible at the time of entry may not be remedied.

(3) Ineligibility shall apply only to the first start following each such layoff.

### **C. Claiming of Horses:**

(1) Any horse entered in a claiming race that is not present in the paddock at least 10 minutes to post will be scratched.

(2) Any horse in a race for claiming may not wear into the paddock anything it will not race in except for a blanket, rain sheet or halter and lead shank for control.

(3) Any horse starting in a claiming race is subject to be claimed for its entered price by any: licensed owner; holder of a valid claim certificate; licensed authorized agent acting on behalf of an eligible claimant.

(4) Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse is determined by the stewards to be a starter in a race. The successful claimant shall become the owner of the horse.

### **D. Claim Certificate:**

(1) An applicant for a claim certificate shall submit to the commission: an application for an owner's license and the required fee; the name of a licensed trainer, or person eligible to be a licensed trainer, who will assume the care and responsibility for any horse claimed.

(2) The stewards shall issue a claim certificate upon satisfactory evidence that the applicant is eligible for an owner's license.

(3) The claim certificate shall expire 30 days after the date of issuance, or upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(4) A claim certificate may be renewed by the stewards during the same year.

#### **E. Prohibitions:**

(1) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer.

(2) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(3) A person shall not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race.

(4) A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

(5) A person shall not claim more than one horse in a race. No authorized agent shall submit more than one claim for the same horse in a race, even if the authorized agent represents several owners.

#### **F. Procedure for Claiming:**

(1) To make a valid claim for a horse, an eligible person shall:

(a) have on deposit with the horsemen's bookkeeper an amount equal to the amount of the claim, plus all transfer fees and applicable taxes; and for all quarter horse claims shall also have on deposit in their horsemen's account all fees for a rush transfer, not to exceed \$100.00, prior to entering;

(b) accurately complete, without the use of nicknames, a written claim slip in a manner that is consistent with how the claimant is licensed with the commission on a form furnished by the association and approved by the commission;

(c) identify the horse to be claimed by the spelling of its name on the certificate of registration or as spelled on the official program, including the country of origin;

(d) place the completed claim form inside a sealed envelope furnished by the association and approved by the commission;

(e) have the time of day that the claim is entered recorded on the envelope;

(f) have the envelope deposited in the claim box no later than 10 minutes prior to post time of the race for which the claim is entered.

(2) After a claim has been deposited in the claim box, it is irrevocable and shall not be withdrawn from the claim box.

(3) Officials and employees of the association shall not provide any information as to the filing of claims until after the horses have entered the track to post.

(4) If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

(5) Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse shall be solely responsible for the determination of the sex or age of any horse claimed.

#### **G. Transfer of Claimed Horses:**

(1) Upon successful claim, the stewards shall issue, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees.

(2) A person shall not refuse to deliver a properly claimed horse to the successful claimant.

(3) Transfer of possession of a claimed horse shall take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the original trainer or their representative shall maintain physical custody of the claimed horse and shall observe the testing procedure and sign the test sample tag. The successful claimant or their representative shall also accompany the horse to the test barn.

(4) When a horse is claimed out of a claiming race, the horse's engagements are transferred, with the horse, to the claimant.

(5) Ownership interest in any horse claimed from a race shall not be resold or transferred for 30 days after such horse was claimed, except by claim from a subsequent race.

(6) A claimed horse shall not race elsewhere, except within state, or out of state stake races for a period of 30 days or the end of the meet, whichever occurs first.

(7) A claimed horse shall not remain in the same stable or under the control or management of its former owner.

[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 3/15/2001; A, 10/31/2006; A, 6/15/2009; A, 6/30/2009; A, 1/1/2013; A, 6/1/2016; A/E, 6/28/2016; A, 12/16/2016; A, 5/1/2019; A, 4/20/2021; A, 4/9/2024]

#### **15.2.4.9 OTHER TYPES OF RACES:**

**A.** Classified handicap is a free handicap race which contestants are assigned weights to be carried by the handicapper for the purpose of equalling their respective chances of winning. Assigned weights must be posted by 4:00 p.m. on the day prior to entry. In addition, all contestants must qualify for the race by starting for a specified claiming price or less within a specified time period (as stated in the conditions of the race). (For eligibility this race will be considered as a starter race for said claiming price.).

**B.** Optional claiming race is a contest restricted to horses entered to be claimed for a stated claiming price and to those, which have started previously for that claiming price or less. In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of these rules, a claiming race. In the case of horses not entered to be claimed the race shall be considered an allowance race.

[15.2.4.9 NMAC - Rp, 15 NMAC 2.4.9, 3/15/2001; A, 3/30/2007]

### **PART 5: HORSE RACE - RULES OF THE RACE**

#### **15.2.5.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.5.1 NMAC - Rp, 15 NMAC 2.5.1, 3/15/2001]

#### **15.2.5.2 SCOPE:**

All persons, firms, or associations participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.1 NMAC, 15.2.2 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.6 NMAC, 15.2.7 NMAC, and 16.47.1 NMAC.

[15.2.5.2 NMAC - Rp, 15 NMAC 2.5.2, 3/15/2001]

#### **15.2.5.3 STATUTORY AUTHORITY:**

Sections 60-1A-1 through 60-1A-30 NMSA 1978 provides the authority of the New Mexico Racing Commission to establish rules and regulations deemed necessary to carry out the purposes of Chapter 60 NMSA 1978 pertaining to horse racing.

[15.2.5.3 NMAC - Rp, 15 NMAC 2.5.3, 3/15/2001; A, 9/15/2009]

**15.2.5.4 DURATION:**

Permanent.

[15.2.5.4 NMAC - Rp, 15 NMAC 2.5.4, 3/15/2001]

**15.2.5.5 EFFECTIVE DATE:**

March 15, 2001, unless a later date is cited at the end of a section.

[15.2.5.5 NMAC - Rp, 15 NMAC 2.5.5, 3/15/2001]

**15.2.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 2 is to achieve the objective that all horse races be conducted fairly and honestly.

[15.2.5.6 NMAC - Rp, 15 NMAC 2.5.6, 3/15/2001; A, 3/14/2018]

**15.2.5.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.5.7 NMAC - Rp, 15 NMAC 2.5.7, 3/15/2001]

**15.2.5.8 ENTRIES AND NOMINATIONS:**

**A. Entering:** No horse shall be qualified to start unless it has been and continues to be entered.

**B. Procedure:**

(1) Entries and nominations shall be made with the racing office and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's owner and made by the trainer or an assistant trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven separate wagering interests, it may be called off.

(4) An entry must be made either in person in writing on an entry blank provided by the association, or by telephone call to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.

(8) No horse may be entered to run at two different tracks on the same day on which pari-mutuel wagering is conducted.

(9) Any permitted medication must be declared on the original entry at each race meet. No further declaration will be required at that meet unless there is a change.

(10) Any approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

(11) An entry clerk or any other person taking an entry shall indicate on the entry form that they took the entry on a horse.

(12) An entry clerk or any other person taking an entry shall indicate on the entry form who they took the entry from by way of either the person's name, or last four digits of their social security numbers, or date of birth, or telephone number, or New Mexico racing commission license number.

(13) An entry clerk or any other person taking an entry shall not divulge any information regarding a race with the exception of the entered number of horses already entered.

(14) An entry clerk or any other person taking an entry shall not override any warning in the RTO Incompass system for a horse that is on the veterinarian's, stewards', starter's or paddock judge's lists, or has inadequate published workouts pursuant to Subsection A of 15.2.5.11 NMAC or is ineligible based on the horse's past performances.

### **C. Nominations:**

(1) Any nominator to a stakes race may transfer or declare such nomination prior to closing.

(2) Joint nominations and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the nominator or transferee from liability for all stakes fees due. No fees paid in connection with a nomination to a stakes race that is run shall be refunded except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator to a stakes race shall not render void any subscription, entry or right of entry. All rights, privileges and obligations shall be attached to the legal heirs of the decedent or the successor owner of the horse.

(5) When a horse is sold privately or at public auction or claimed, stakes engagements shall be transferred automatically to its new owner; except when the horse is transferred to a person whose license is suspended or who is otherwise unqualified to race or enter the horse, then such nomination shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated as provided by the conditions for the race. If a stakes race is not run for any reason, all such nomination fees paid shall be refunded.

#### **D. Closings:**

(1) Entries for purse races and nominations to stakes races shall close at the time designated by the association in previously published conditions for such races. No entry, nomination or declaration shall be accepted after such closing time; except in the event of an emergency or if an overnight race fails to fill, the racing secretary may, with the approval of a steward, extend such closing time.

(2) Except as otherwise provided in the conditions for a stakes race, the deadline for accepting nominations and declarations is midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

**E. Number of starters in a race:** The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of starters may be further limited by the number of horses, which, in the opinion of the stewards, can be afforded a safe, fair and equal start.

#### **F. Split or divided races:**

(1) In the event a race is cancelled or declared off, the association may split any overnight race for which postpositions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split races.

**G. Post positions:** Post positions for all races shall be determined by lot and shall be publicly drawn in the presence of a steward or steward designee.

**H. Also-eligible list:**

(1) If the number of entries for a race exceeds the number of horses permitted to start, the racing secretary may create and post an also-eligible list.

(2) If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference. If none is preferred, a horse shall be drawn into the race from the also-eligible list by public lot. Horses which gain a position in a race from the also-eligible list take the outside post position in the order drawn from the also-eligible list.

(3) Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in such race shall so notify the racing secretary prior to scratch time for the race, thereby forfeiting any preference to which the horse may have been entitled in that race.

(4) If a scratch card is deposited for a horse listed as also-eligible, and if that horse is offered an opportunity to run by being drawn at scratch time, the horse shall lose its position on the preferred list.

**I. Preferred list:** The racing secretary shall maintain a list of each horse's registration date, entry date, and racing date. Preference will be given to the best date. A registration date can only be established when the foal certificate is on file with a racing secretary. An entry date is any time a horse passes the entry box, whether or not the race is in the condition book, or an extra, is used or eliminated. Entry dates have preference over race or registration dates of the same date. Any horse, which is scratched, will lose its date and must re-establish a date. All horses placed on the steward's, veterinarian's, starter's or identifier's list will be posted on the bulletin board, they will not lose their date, but they must meet the necessary requirements to be removed from a list.

[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 3/15/2001; A, 5/15/2001; A, 11/15/2001; A, 12/14/2001; A, 3/31/2003; A, 5/30/2003; A, 6/13/2003; A, 9/29/2006; A, 10/31/2006; A, 1/1/2013; A, 6/1/2016; A, 12/16/2016; A, 9/26/18; A, 4/9/2024]

**15.2.5.9 DECLARATIONS AND SCRATCHES:**

Declarations and scratches are irrevocable except with permission of the stewards.

## **A. Declarations:**

(1) A "declaration" is the act of withdrawing an entered horse from a race prior to the closing of entries.

(2) The declaration of a horse before closing shall be made by the owner, trainer or their licensed designee in the form and manner prescribed in these rules.

## **B. Scratches:**

(1) A "scratch" is the act of withdrawing an entered horse from a contest after the closing of entries subject to approval of the stewards.

(2) The stewards have sole authority to scratch a horse if any situation involves a rule violation or is recommended by a veterinarian or concerns of track condition. The scratch of a horse after closing of entries may be submitted by the owner, trainer or designated assistant trainer, subject to approval from the stewards.

(3) A horse may be scratched from a stakes race for any reason at any time up until 45 minutes prior to post time for that race subject to approval from the stewards.

(4) No horse may be scratched from an overnight race without approval of the stewards.

(5) In overnight races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than eight betting interests in the daily double or exotic wagering races, or horses representing more than eight betting interests in any other overnight race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum numbers for such races. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(6) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness may not be accepted until the expiration of seven calendar days after such horse was scratched or excused and the horse has been removed from the veterinarian's list.

[15.2.5.9 NMAC - Rp, 15 NMAC 2.5.9, 3/15/2001; A, 10/31/2006; A, 3/14/2018; A, 4/9/2024]

## **15.2.5.10 WEIGHTS:**

### **A. Allowances:**

(1) Weight allowance including apprentice allowances must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(3) Horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify it unless protest is made in writing and lodged with the stewards at least one hour before post time for that race.

(5) A horse shall not be given a weight allowance for failure to finish second or back in any race.

(6) No horse shall receive allowance of weight nor be relieved extra weight for having been beaten in one or more races, but this rule shall not prohibit maiden allowances or allowances to horses that have not won a race within a specified period or a race of a specified value.

(7) Except in handicap, quarter horse races and races which expressly provide otherwise, two-year-old fillies shall be allowed three pounds, and fillies and mares, three-years-old and upward, shall be allowed five pounds before September 1 and three pounds thereafter in races where competing against male horses.

(8) A three pound weight allowance shall be allowed a registered New Mexico bred horse in all open races and in stakes races when included in the condition of the race. This allowance must be claimed at time of entry.

#### **B. Penalties:**

(1) Weight penalties are obligatory.

(2) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race.

(3) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race.

(4) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(5) The reports, records and statistics as published by Daily Racing Form, Equibase or other recognized publications shall be considered official in determining eligibility, allowances and penalties, but may be corrected.

(6) When a race in dispute involves the winner of the race, both the horse that finished first and any horse claiming the win shall be liable to all penalties attaching to the winner of that race, until the matter is decided. In case of a positive test of the winner of a race, no horse other than the winner shall be liable to penalty of weight or condition until the case has been adjudicated; the ruling disqualifying the horse with the positive test issued; and all appeals exhausted.

**C. Weight conversions:** For the purpose of determining weight assignments and allowances for imported horses, the following weight conversions shall be used:

- (1) one kilogram equals two and one-fourth pounds, and
- (2) one stone equals 14 pounds.

**D. Scale of Weights:**

(1) With the exception of apprentice allowances, handicaps, three years old horses entered to run in races against horses four year olds and upwards, and the allowance provided in paragraph (2) of this subsection, no jockey shall be assigned a weight of less than 118 pounds. For three years old horses entered to run in races against horses four year olds and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.

(2) Except in handicaps, fillies two years old shall be allowed three pounds, and fillies and mares three years old and upward shall be allowed five pounds before September 1, and three pounds thereafter in races where competing against horses of the opposite sex.

(3) Quarter horses, minimum scale weights shall be 124 pounds for two years old, 126 pounds for three years old and 128 pounds for four year olds and older with the exception of handicap races.

(4) A notice shall be included in the daily program that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, upon stewards' approval, jockeys may weigh in with an additional three pounds for inclement weather gear.

**E. Distance conversions:** For the purpose of determining eligibility, weight assignments and allowances for imported horses, the racing secretary shall convert metric distances to English measures by reference to the following scale:

### Comparative table of distances

200 Meters	Equals	1 Furlong
1,000 Meters	Equals	5 Furlongs
1,200 Meters	Equals	6 Furlongs
1,400 Meters	Equals	7 Furlongs
1,600 meters	Equals	1 Mile
1,700 Meters	Equals	1 1/16 Miles
1,800 Meters	Equals	1 1/8 Miles
2,000 Meters	Equals	1 ¼ Miles
2,200 Meters	Equals	1 3/8 Miles
2,400 Meters	Equals	1 ½ Miles
2,600 Meters	Equals	1 5/8 Miles
3,000 Meters	Equals	1 7/8 Miles
3,200 Meters	Equals	2 Miles
3,600 Meters	Equals	2 ¼ Miles
4,800 Meters	Equals	3 Miles

[15.2.5.10 NMAC - Rp, 15 NMAC 2.5.10, 3/15/2001; A, 1/1/2013; A, 6/1/2016; A, 5/1/2019; A, 5/1/2019; A, 02/25/2020]

#### 15.2.5.11 WORKOUTS:

##### A. Requirements:

(1) A non-starter must have had within 60 days prior to time of entry, one approved official schooling race or at least two workouts recorded at a pari mutuel or commission recognized facility and posted with the racing secretary prior to time of entry, one of the two workouts shall be from the starting gate, and be gate approved. It shall be the trainer's responsibility to establish validity as to workouts and gate approvals.

(2) Any horse which has started, but not within 60 days, must have at least one workout within 60 days prior to time of entry. Horses that have not started within six months of entry must have at least two approved workouts within the 60 days prior to time of entry.

(3) Horses that have never raced around the turn will be required to have within 30 days prior to time of entry, at least one workout at 660 yards or farther.

(4) Gate approvals at a licensed facility must be made by a licensed starter on a commission approved form.

**B. Identification:**

(1) Each horse must be properly identified prior to its participation in an official timed workout.

(2) The trainer or exercise rider shall bring each horse scheduled for an official workout to be identified by the clocker or clocker's assistant immediately prior to the workout.

(3) A horse may be properly identified by its lip tattoo or its digital tattoo immediately prior to participating in an official timed workout. A horse may also be properly identified by other approved methods of positive identification as described in Subsection F of 15.2.3.8 NMAC.

(4) The owner, trainer or rider shall be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

**C. Information dissemination:** Information regarding a horse's approved timed workout(s) shall be furnished to the public prior to the start of the race for which the horse has been entered.

**D. Restrictions:** A horse shall not be taken onto the track for training or a workout except during hours designated by the association.

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 3/15/2001; A, 3/30/2007; A, 6/15/2009; A, 7/5/2010; A, 1/1/2013; A, 3/15/2016; A, 12/16/16; A, 8/26/2017; A, 3/14/2018; A, 12/19/2019; A, 2/25/2020; A, 4/20/2021]

**15.2.5.12 HORSES INELIGIBLE:**

**A. A horse shall be ineligible to enter in a race when:**

(1) it is wholly or partially owned by a disqualified person or a horse is under the direct or indirect training or management of a disqualified person;

(2) it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;

(3) its name appears on the starter's list, stewards' list, veterinarian's list or paddock judge's list;

(4) it is a first time starter and has not been approved to start by the starter;

(5) it is owned in whole or in part by an undisclosed person or interest;

(6) it lacks sufficient official published workouts or race past performance(s);

(7) it is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper;

(8) it is subject to a lease not filed with the stewards;

(9) it is not in sound racing condition;

(10) it has had a surgical neurectomy performed on a heel nerve, which has not been approved by the official veterinarian;

(11) it has been trachea tubed to artificially assist breathing;

(12) it has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;]

(13) it has impaired eyesight in both eyes;

(14) it is barred or suspended in any recognized jurisdiction;

(15) it does not meet the eligibility conditions of the race;

(16) its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;

(17) it is by an unknown sire or out of an unknown mare.

**B. A horse shall be ineligible to be start when:**

(1) it is the subject of a positive test for a prohibited substance in an official sample based on a final certificate of analysis received from the official laboratory during the period in which the adjudication process involving the violation is ongoing.

(a) In the event the horse is claimed in the race in which the horse allegedly ran with the prohibited substance, the new owner may enter the horse, unless the horse is ordered to go on the stewards' list pursuant to Subsection C of 15.2.6.9 (8)(a-e) NMAC.

(b) Should the horse be claimed thereafter by the owner of the horse in the race in which there was a positive test for a prohibited substance, the horse shall not be allowed to enter unless the adjudication process involving the prior violation is complete.

(2) It is not stabled on the grounds of the association or present by the time established by the commission;

(3) its breed registration certificate is not on file with the racing secretary or horse identifier; unless the racing secretary has submitted the certificate to the appropriate breed registry for correction or in the case of thoroughbred horses foaled in 2018 or thereafter, the horse does not have a digital tattoo; the stewards may waive this requirement if the information contained on the registration certificate is otherwise available; and the horse is otherwise correctly identified to the stewards' satisfaction;

(4) if a quarter horse or a thoroughbred foaled before 2018, is not fully identified and tattooed on the inside of the upper lip, freeze brand or identified by any other method approved by the breed registry and commission; however, there may be extenuating circumstances where a horse will be eligible to start in a race without the tattoo as referenced above, as long as the horse identifier has written verification that the tattooing process has been initiated; if a thoroughbred foaled in 2018 or thereafter, is not microchipped with a unique microchip (ISO11784), freeze brand or identified by any other method approved by the breed registry and commission;

(5) it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate, altered lip tattoo, altered or manipulated microchip (ISO11784), or freeze brand;

(6) the stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race;

(7) it has been entered in a stakes race and has subsequently been transferred with its engagements, unless the racing secretary has been notified of such prior to the start;

(8) it is not in sound racing condition;

(9) it has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;

(10) it does not meet the eligibility conditions of the race;

(11) its owner(s), lessor(s) or trainer have not completed the licensing procedures required by the commission; or

(12) there is no current negative test certificate for equine infectious anemia on file with the racing office, as required by the commission.

[15.2.5.12 NMAC - Rp, 15 NMAC 2.5.12, 3/15/2001; A, 7/15/2002; A, 8/30/2007; A, 6/15/2009; A, 1/1/2014; A, 9/15/2016; A, 12/19/2019; A, 4/9/2024]

### **15.2.5.13 RUNNING OF THE RACE:**

#### **A. Equipment:**

(1) All riding crops are subject to inspection and approval by the stewards and the clerk of scales. This rule will become effective December 10, 2010.

(a) All riding crops shall have a shaft and a flap and will be allowed in flat racing including training. No riding crop shall weigh more than eight ounces nor exceed 30 inches in length, including the flap. No riding crop shall be used unless the shaft is a minimum of three-eighths inch in diameter; and the shaft contact area must be smooth, with no protrusions or raised surface and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

(b) The flap is the only allowable attachment to the shaft and must meet the following specifications. The length beyond the end of the shaft shall be a maximum of one inch with a minimum width of eight-one hundredths inch and a maximum of one and six-tenths inches. There shall be no reinforcements or additions beyond the end of the shaft. There shall be no binding within seven inches of the end of the shaft and the flap must include shock absorbing characteristics similar to those of the contact area of the shaft.

(2) No bridle shall exceed two pounds.

(3) Reins. No jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein. A safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp.

(4) Toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(5) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(6) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(7) No licensee may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(8) Any licensed assistant starter and any licensee mounted on a horse or stable pony on the association grounds must wear a properly fastened New Mexico racing commission approved protective helmet and safety vest.

(a) The approved protective helmet and safety vest shall be worn when:

- (i) racing, parading or warming up a horse prior to racing; or
- (ii) jogging, training or exercising a horse at any time.

(b) The helmet worn must comply with one of the following minimum safety standards or later revisions:

- (i) American society for testing materials (ASTM 1163); or
- (ii) UK standards (EN-1384 and PAS-015); or
- (iii) Australian/New Zealand standard (AS/NZ 3838).

(c) The safety vest worn by a jockey shall weigh no more than two pounds and must comply with one of the following minimum standards or later revisions:

- (i) British equestrian trade association (BETA):2000 level 1; or
- (ii) euro norm (EN) 13158:2000 1; or
- (iii) American society for testing and materials (ASTM) F2681-08 or F1937; or

(iv) shoe and allied trade research association (SATRA) jockey vests document M6 Issue 3; or

- (v) Australian racing board (ARB) standard 1.1998.

(d) A safety helmet or safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

**B. Racing numbers:**

(1) Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(2) In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

(3) Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

### **C. Jockey requirements:**

(1) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as approved by the stewards.

(2) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(3) Except as otherwise provided by this subsection, a jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards. Failure to fulfill riding engagements may result in disciplinary action.

(4) A jockey may be excused by the stewards from fulfilling the jockey's riding engagement if the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe, or the jockey is ill or injured, or other extenuating circumstances. No jockey may take off a mount for reasons of safety without first mounting and taking that horse to the track and/or commission veterinarian unless that horse is unruly in the paddock. In that event a jockey's fee is not earned.

(5) Any jockey unseated or thrown from their mount in the saddling paddock, during the parade to post, while being loaded in the starting gate, during the race, or after the race, may be required by the stewards to be examined by the paramedic, doctor or registered nurse before being allowed to ride. Refusal to be examined or receive medical treatment may be grounds for the stewards to take the rider off their mount for that race and any other races on that day. In the event the jockey is injured or unable to ride they shall be required to provide a doctor's medical release before they are allowed to resume participation in racing or training.

(6) The stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.

(7) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

(8) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race.

(9) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards. All jockey protests must be filed prior to the race.

(10) A jockey's fee shall include any extra monies added to the purse.

(11) Only valets employed by the association shall assist jockeys in weighing out.

(12) A jockey's weight shall include their clothing, boots, saddle and its attachments and any other equipment except the whip, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles and number cloth. Upon the stewards' approval, jockeys may be allowed up to three pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(13) Five pounds is the limit of overweight any horse is permitted to carry.

(14) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

#### **D. Paddock to post:**

(1) Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the stewards' stand, unless excused by the stewards. The post parade shall not exceed 12 minutes, unless otherwise

ordered by the stewards. It shall be the duty of the stewards to ensure that the horses arrive at the starting gate as near to post time as possible.

(2) In the post parade, all pony persons, or trainers who pony horses, must wear upper body apparel in accordance with the policy of the commission.

(3) After the horses enter the track, no jockey may dismount nor entrust his horse to the care of an attendant unless, because of accident occurring to the jockey, the horse or the equipment, and with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the jockey, an assistant starter, the official veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.

(4) If a jockey is seriously injured on the way to the post, the horse may be returned to the paddock and a replacement jockey obtained.

(5) After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the stewards. Once at the post, the horses shall be started without unnecessary delay.

(6) In case of accident to a jockey or their mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

(7) If a jockey is thrown on the way from the paddock to the post, the horse must be remounted, returned to the point where the jockey was thrown and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

(8) If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the stewards.

(9) No person shall willfully delay the arrival of a horse at the post.

(10) The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start. An appointed representative may tail the horse with the starter's consent. In case of an emergency, the starter may grant approval for a horse to be tailed. In any case, the stewards shall be notified of who is tailing horses.

#### **E. Post to finish:**

(1) The start.

(a) The starter is responsible for assuring that each participant receives a fair start.

(b) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

(c) Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a non-starter by the stewards.

(d) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, excluding individual horses from all pari-mutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(2) Interference, jostling or striking.

(a) A jockey shall not ride carelessly or willfully so as to permit their mount to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

(c) No jockey shall unnecessarily cause their horse to shorten its stride so as to give the appearance of having suffered a foul.

(3) Maintaining a straight course.

(a) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

(b) The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(c) If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

(d) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its

lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

(4) Disqualification.

(a) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horse as in their judgment it interfered with, or they may place it last.

(b) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(c) When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(d) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and trial qualification.

(e) In determining the extent of disqualification, the stewards in their discretion may: declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry; affirm the placing judges' order of finish and suspend or fine a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; disqualify the offending horse and not penalize a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(5) Horses shall be ridden out: All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) No electrical, mechanical or other expedient object or device utilized to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone or applied by anyone to the horse at any time on the grounds of the association during the meet, whether in a race or otherwise.

(7) Use of riding crops.

(a) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(b) In all races where a jockey will ride without a riding crop, an announcement of such fact shall be made over the public address system.

(c) Riding crops shall not be used on two-year-old horses before March 1 of each year.

(d) The position of the riding crop should always be at or below helmet level of the jockey.

(e) The riding crop shall only be used for safety, correction, and encouragement.

(f) After the race, the horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or breaks in the skin. Any adverse findings shall be reported to the stewards.

(g) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

(8) Indiscriminate use of the whip is prohibited including whipping a horse: on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse; during the post parade or after the finish of the race except when necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; persistently even though the horse is showing no response under the riding crop; or striking another rider or horse. Excessive use of the crop includes:

(a) Riders cannot use the riding crop more than three times in succession during a race, excluding showing or waiving the crop.

(b) Riders cannot use the crop more than three times in succession without giving the horse a chance to respond before using the crop again.

(c) The horse has cuts, welts or breaks in the skin.

(9) Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the finish line, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the finish line because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales or may be excused from weighing in by the stewards.

(10) Unsaddling. No person shall assist a jockey with unsaddling except with permission of the stewards and no one shall place a covering over a horse before it is unsaddled.

(11) Weighing in.

(a) A jockey shall weigh in at no less than the same weight at which he or she weighed out, and if under that weight by more than two pounds and after consideration of mitigating circumstances by the board of stewards, his or her mount may be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c) If any jockey weighs in at more than three pounds over the proper or declared weight, the jockey may be fined, suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the commission for such action, as it may deem proper.

(d) Upon approval of the stewards, the jockeys may be allowed up to three pounds more than published and announced weights to account for inclement weather clothing and equipment when weighing in.

(e) The post-race weight of jockeys includes any sweat, dirt and mud that have accumulated on the jockey, jockey's clothing and jockey's safety equipment. This accounts for additional weight, depending on specific equipment, as well as weather, track and racing conditions.

(12) Dead heats.

(a) When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.

(b) When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(c) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(d) When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses, which ran a dead heat, shall be deemed to have run a dead heat for first place.

(e) If the dividing owners cannot agree as to which of them is to have a cup or other prize, which cannot be divided, the question shall be determined by lot by the stewards.

(f) On a dead heat for a match, the match is off for pari-mutuel payoffs and mutuels are refunded.

[15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 3/15/2001; A, 8/30/2007; A, 12/1/2008; A, 6/30/2009; A, 9/15/2009; A, 8/16/2010; A, 9/1/2010; A, 10/15/2014; A, 6/1/2016; A, 12/16/2016; A, 12/19/2019; A 4/9/2024]

#### **15.2.5.14 PROTESTS, OBJECTIONS AND INQUIRIES:**

**A. Stewards to inquire:** The stewards shall take cognizance of foul riding and, upon their own motion or that of any racing official or person empowered by this chapter to object or complain, shall make diligent inquiry or investigation into such objection or complaint when properly received.

#### **B. Race objections:**

(1) An objection to an incident alleged to have occurred during the running of a race shall be received only when lodged with the clerk of scales, the stewards or their designees, by the owner, the authorized agent of the owner, the trainer or the jockey of a horse engaged in the same race.

(2) An objection following the running of any race must be filed before the race is declared official, whether all or some riders are required to weigh in, or the use of a "fast official" procedure is permitted.

(3) The stewards shall make all findings of fact as to all matters occurring during an incident to the running of a race; shall determine all objections and inquiries, and shall determine the extent of disqualification, if any, of horses in the race. Such findings of fact and determination shall be final for pari-mutuel payout purposes.

#### **C. Prior objections:**

(1) Objections to the participation of a horse entered in any race shall be made to the stewards in writing, signed by the objector, and filed later than one hour prior to post time for the first race on the day which the questioned horse is entered.] no later than post time for the race in which the objection was filed. Any such objections shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter.

(2) An objection to a horse which is entered in a race may be made on, but not limited to, the following grounds or reasons:

(a) a misstatement, error or omission in the entry under which a horse is to run;

(b) the horse, which is entered to run, is not the horse it is represented to be at the time of entry, or the age was erroneously given;

(c) the horse is not qualified to enter under the conditions specified for the race, or the allowances are improperly claimed or not entitled the horse, or the weight to be carried is incorrect under the conditions of the race;

(d) the horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a racehorse as provided in these rules;

(e) the horse was entered without regard to a lien filed previously with the racing secretary;

(f) the horse is subject of a rule violation.

(3) The stewards may scratch any horse from the race, which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

#### **D. Protests:**

(1) A protest against any horse, which has started in a race, shall be made to the stewards in writing, signed by the protestor, and must be accompanied by a fee in the amount of \$1000 in the form of a cashier's check or money order within 48 hours of the race. If the incident upon which the protest is based occurs within the last two days of the meeting, such protest may be filed with the commission within 48 hours exclusive of Saturdays, Sunday or official holidays. Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for the protest.

(2) A protest may be made on any of the following grounds:

(a) any grounds for objection as set forth in this chapter;

(b) the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers of the horses, which started the race;

(c) a jockey, trainer, owner or lessor was ineligible to participate in racing as provided in this chapter;

(d) the weight carried by a horse was improper, by reason of fraud or willful misconduct;

- (e) an unfair advantage was gained in violation of the rules;
- (f) the disqualification of a horse(s).

(3) Notwithstanding any other provision in this article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged provided that the stewards are satisfied that the allegations are bona fide and verifiable.

(4) No person shall file any objection or protest knowing the same to be inaccurate, false, untruthful or frivolous.

(5) The commission may fine any license holder an amount of up to \$2,500 after considering protest, if based on the evidence they determine that the protest is frivolous, unreasonable or unnecessary.

(6) If a license holder who appealed fails to appear for any scheduled hearing without providing five days prior notice, the stewards or the commission may impose costs.

(7) The stewards may order any purse, award or prize for any race withheld from distribution pending the determination of any protest. In the event any purse, award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse, award or prize, the stewards or the commission may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be subject to fines and suspension.

#### **E. Race review committee:**

(1) If a timely objection concerning a race is filed in accordance with the rules, the agency director may refer the objection to the race review committee who shall consist of three members appointed by the commission. The agency director shall issue and send, or deliver, to the objecting party a notice of hearing stating the date, time and place at which the race review committee will hear the appeal. The notice of hearing shall also be sent, or delivered, to any trainer or owner the placement of whose horse may be affected by the outcome of the appeal. The race review committee shall review the official tape or tapes of the race. Affected parties shall be given the opportunity to state their positions to the committee.

(2) The committee shall state its conclusions as to the merits of the objection and shall make a recommendation to the commission as to whether to uphold the stewards' determination, or to revise the order of finish. The commission shall then make the final determination as to the order of finish. The race review committee and the commission may only address the issues raised in the appeal filed.

[15.2.5.14 NMAC - Rp, 15 NMAC 2.5.14, 3/15/2001; A, 8/30/2001; A, 6/15/2004; A, 9/15/2009; A, 4/20/2021; A 4/9/2024]

## **PART 6: VETERINARY PRACTICES, EQUINE HEALTH, MEDICATION, AND TRAINER RESPONSIBILITY**

### **15.2.6.1 ISSUING AGENCY:**

New Mexico Racing Commission

[15.2.6.1 NMAC - Rp, 15 NMAC 2.6.1, 4/13/2001]

### **15.2.6.2 SCOPE:**

All persons participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15 NMAC 2.1, 15 NMAC 2.2, 15 NMAC 2.3, 15 NMAC 2.4, 15 NMAC 2.5, 15 NMAC 2.7 and 16.47.1 NMAC.

[15.2.6.2 NMAC - Rp, 15 NMAC 2.6.2, 4/13/2001]

### **15.2.6.3 STATUTORY AUTHORITY:**

Sections 60-1A-1 through 60-1A-30 NMSA 1978 provides the authority for the state racing commission to promulgate rules and regulations for enforcing Chapter 60 pertaining to horse race meetings in the state of New Mexico.

[15.2.6.3 NMAC - Rp, 15 NMAC 2.6.3, 4/13/2001; A, 9/15/2009]

### **15.2.6.4 DURATION:**

Permanent.

[15.2.6.4 NMAC - Rp, 15 NMAC 2.6.4, 4/13/2001]

### **15.2.6.5 EFFECTIVE DATE:**

April 13, 2001 unless a later date is cited at the end of a section.

[15.2.6.5 NMAC - Rp, 15 NMAC 2.6.5, 4/13/2001]

### **15.2.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 2 is to describe requirements and procedures used to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

[15.2.6.6 NMAC - Rp, 15 NMAC 2.6.6, 4/13/2001; A, 7/31/2012]

**15.2.6.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.6.7 NMAC - Rp, 15 NMAC 2.6.7, 4/13/2001]

**15.2.6.8 VETERINARY PRACTICES:**

**A. Veterinarians under authority of official veterinarian:** Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of the official veterinarian and the stewards.

**B. Treatment restrictions:**

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) Use of physical or veterinary procedures to mask the effects or signs of injury so as to allow training or racing to the detriment of the horse's health and welfare are prohibited.

(3) This subsection does not apply to the administration of the following substances pursuant to the restrictions set forth in 15.2.6.9 NMAC or as they may interfere with post-race testing:

(a) a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(b) a non-injectable substance on the direction or by prescription of a licensed veterinarian;

(c) a non-injectable non-prescription medication or substance.

(4) No person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission, or a veterinary assistant licensed by the commission acting under the direct supervision of a licensed veterinarian, shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

(a) any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe, or hypodermic needle;

(b) any hypodermic syringe, hypodermic needle or any equipment associated with the aid of intravenous administration.

(c) No veterinary assistant licensed by the commission shall be allowed to administer a prohibited item pursuant to Subsection B of 15.2.6.8 NMAC.

(5) At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission.

(6) If a licensee has a medical condition which makes it necessary to possess or use a prohibited substance, prescribed, or controlled substance pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that person shall provide to the stewards:

(a) A letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of the licensee, to include but not limited to reaction time and the ability to judge time and distance. The letter must certify that the prohibited, prescribed, or controlled substance will not affect a licensee's ability to carry out their responsibilities properly and safely while in the performance of their duties which includes being in actual physical control of a large equine animal or operating mechanical equipment on the grounds of the association and will not jeopardize the health, safety and welfare of the other individuals participating.

(b) A licensee must comply with any conditions and restrictions set by the stewards or the commission.

(7) The recommended penalty (in absence of mitigating circumstances) for a violation of Paragraph (3) of Subsection B of 15.2.6.8 NMAC is a \$1,500 fine and a six month suspension. Additionally, the commission may order all horses under the trainer's care that are entered to race to be tested with the cost of testing borne by the trainer.

(8) Veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide under the guidelines set forth in Subsection D of 15.2.6.9 NMAC unless approved by the official veterinarian or in an emergency situation. Should an emergency occur during evening hours, the veterinarian shall notify the official veterinarian as soon as possible the following morning.

(9) Veterinarians may employ persons licensed by the commission as veterinary assistants to work under their direct supervision. Veterinary assistants shall not inject, directly treat, or diagnose any animal. The practicing veterinarian must be present on the grounds if a veterinary assistant has access to injection devices or injectable substances. The practicing veterinarian shall assume all financial and regulatory responsibility for the actions of their licensed veterinary assistant.

(10) Veterinarians who possess any pre-drawn injectable syringes containing any substance must also possess the partially filled or empty labeled source container from which the injectable substance was drawn. Pre-drawn syringes and the labeled source container from which it was drawn are subject to confiscation by the commission and are subject to testing by the official laboratory. The injectable substance must be clearly identified on each pre-drawn syringe.

(11) Veterinarians may possess and dispense compounded medications on association grounds under the following conditions:

(a) The medication is prepared and prescribed in a manner that meets the criteria for compounding established by the federal "Animal Medicinal Drug Use Clarification Act of 1994" (21 CFR 530) and any current food and drug administration compliance policy guides.

(b) The medication is prepared and prescribed in a manner that meets the criteria established in 16.19.30 NMAC by the New Mexico board of pharmacy.

(c) The medication is labeled in accordance with Subsection H of 15.2.6.9 NMAC.

**C. Extracorporeal shock wave therapy or radial pulse wave therapy:** The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

(1) Any extracorporeal shock wave therapy or radial pulse wave therapy machine, whether in operating condition or not, must be registered with and approved by the commission or its designee before such machine is brought to or possessed on any racetrack or training center within the jurisdiction of the commission.

(2) The use of extracorporeal shock wave therapy or radial pulse wave therapy within the jurisdiction shall be limited to veterinarians licensed to practice by the commission. Extracorporeal shock wave therapy or radial pulse wave therapy may only be performed with machines that are registered and approved for use by the commission; used at a previously disclosed location that is approved by the commission; and must be reported within 24 hours prior to treatment on a prescribed form to the official veterinarian.

(3) Any treated horse shall not be permitted to race or breeze for a minimum of 10 days following treatment.

(4) Any horse treated with extracorporeal shock wave therapy or radial pulse wave therapy shall be added to a list of ineligible horses. This list shall be kept in the race office and accessible to the jockeys and their agents during normal business hours and be made available to other regulatory jurisdictions.

(5) A horse that receives any such treatment without full compliance with this section and similar rules in any other jurisdiction in which the horse was treated shall be placed on the stewards' list.

(6) Any person participating in the use of extracorporeal shock wave therapy or the possession of extracorporeal shock wave therapy machines in violation of this rule shall be considered to have committed a prohibited practice and is subject to a class A penalty.

#### **D. Veterinarian's reports:**

(1) Every veterinarian who treats a race horse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, report to the official veterinarian the name of the horse treated, any medication, drug or substance administered or prescribed or administered, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian.

(3) The report will be made available to racing officials on request within a 48-hour period. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.

**E. Veterinary compliance:** The official veterinarian, racing veterinarian, and each practicing veterinarian shall comply with all federal and state statutes and applicable rules regulating veterinary practices as may be promulgated by the New Mexico board of veterinary medicine and the New Mexico board of pharmacy.

[15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 4/13/2001; A, 7/15/2002; A, 2/15/2012; A, 7/31/2012, A, 5/16/2014; A, 12/16/16; A; 9/26/2018; A, 5/1/2019; A, 12/28/2021; A, 4/9/2024]

#### **15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:**

The classification guidelines contained within the December 2020 version 14.4 and "association of racing commissioners international controlled therapeutic medication schedule for horses", version 4.2 revised December, 2020 by the association of racing commissioners international,] "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule" December 2023 version 17.0 and "Association of Racing Commissioners International Controlled Therapeutic Medication Schedule for Horses", version 4.2.1 – December 2020 Update are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

#### **A. Penalties:**

(1) In issuing penalties against individuals found guilty of medication and drug violations, a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and those drugs that have no reason to be found at any concentration in the test sample on race day.

(2) The stewards or the commission will use the association of racing commissioner's international recommended penalty as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the association of racing commissioners international uniform classification guidelines for foreign substances.

(3) If a licensed veterinarian is administering or prescribing a drug not listed in the association of racing commissioners international uniform classification guidelines for foreign substances, the identity of the drug shall be forwarded to the New Mexico racing commission designee to be forwarded to the racing medication and testing consortium for classification.

(4) Any drug or metabolite thereof found to be present in a pre- or post-race sample which is not classified in the association of racing commissioners international uniform classification guidelines for foreign substances shall be assumed to be an association of racing commissioners international class 1 drug and the trainer and owner shall be subject to those penalties as set forth in penalty category A unless satisfactorily demonstrated otherwise by the racing medication and testing consortium, with a penalty category assigned.

(5) The penalty categories and their related schedules, if applicable, shall be based on the following criteria:

(a) whether the drug is approved by the United States food and drug administration for use in the horse;

(b) whether the drug is approved by the United States food and drug administration for use in any species;

(c) whether the drug as approved has any legitimate therapeutic application in the equine athlete;

(d) whether the drug was identified as "necessary" by the racing medication and testing consortium veterinary advisory committee;

(e) whether legitimate, recognized therapeutic alternatives exist; and

(f) the association of racing commissioner's international classification of the drug.

(6) The recommended penalty for a violation involving a drug that carries a category "D" penalty is a written warning to the trainer and owner. Multiple violations may result in fines or suspensions.

(7) If a positive test arises in a trial race, the horse subject to the positive test is to be placed on the stewards list. The purse for both the trial and the race for which the trial was conducted will be held until the case has been fully adjudicated.

(8) When the penalty assessed against a licensee for a medication or drug violation in a trial race results in a disqualification and loss of purse, the licensee is subject to the same penalties for any race for which the trial race was conducted.

(9) Any licensee of the commission, including veterinarians, found responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

(10) The licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition, their presence may be required at any and all hearings relative to the case.

(11) Any veterinarian found to be involved in the administration of any drug carrying the penalty category of "A" shall be referred to the state licensing board of veterinary medicine for consideration of further disciplinary action or license revocation. This is in addition to any penalties issued by the stewards or the commission.

(12) Any person who the stewards or the commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the stewards or the commission does not prohibit a prosecution for a criminal act, nor does a potential criminal prosecution stall administrative action by the stewards or the commission.

(13) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended.

This includes, but is not limited to, ensuring that horses are not transferred to a licensed person within the first degree of affinity (marriage relationship) or first degree of consanguinity (blood relationship):

**(a)** first degree of affinity shall mean the licensee's spouse or spouse's mother, father, brother, sister, son or daughter;

**(b)** first degree of consanguinity shall mean the licensee's mother, father, brother, sister, son or daughter.

**(c)** No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that, if the license of a jockey has been suspended for a routine riding offense, the stewards may waive this rule.

**(14)** Aggravating and Mitigating Factors:

**(a)** In reaching a decision on a penalty for a violation for the New Mexico horse racing act or New Mexico racing commission rules and regulations, the commission, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in paragraph (2) of this subsection and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors for which a greater penalty is appropriate.

**(b)** Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

**(i)** The past record of the licensee regarding violations of the New Mexico horse racing act or New Mexico racing commission rules;

**(ii)** the potential of the drug(s) to influence a horse's racing performance and the amount of the drug present;

**(iii)** the legal availability of the drug and whether the drug was prescribed to the horse by a New Mexico racing commission licensed veterinarian;

**(iv)** whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

**(v)** the steps taken by the trainer to safeguard the horse;

**(vi)** the steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer. An "unaffiliated trainer" means a trainer or an assistant trainer who

is not related by blood, marriage or domestic partnership, or who is not or was never employed to the trainer from whose case such horse(s) were transferred;

(vii) the probability of environmental contamination or inadvertent exposure due to human drug use or other facts;

(viii) the purse of the race;

(ix) whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined and documented by an New Mexico racing commission licensed veterinarian;

(x) whether there was any suspicious wagering pattern on the race; or

(xi) whether the licensed trainer was acting under the advice of an New Mexico racing commission veterinarian.

(c) The stewards shall consider the classification of a drug substance and the "uniform classification guidelines for foreign substances" if a determination is made that an official test sample from a horse contained;

(i) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this section, or

(ii) any drug substance, medication or chemical authorized by this section in excess of the authorized level or other restrictions as set forth in this section.

(d) Penalties for violation of each classification level are listed in Subsection B of 15.2.6.9 NMAC.

#### **B. Penalty recommendations:**

(1) Category A penalties will be assessed for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations are as follows:

##### **Licensed trainer:**

###### **1st offense:**

A minimum one-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum three-year suspension. A minimum fine of \$10,000 or ten percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

**2nd lifetime offense in any jurisdiction:**

A minimum three-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. A minimum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$50,000 or fifty percent of the total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

**3rd lifetime offense in any jurisdiction:**

A minimum five-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. A minimum fine of \$50,000 or fifty percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$100,000 or one hundred percent of the total purse (greater of the two), and may be referred to the commission for any further action deemed necessary by the commission.

**Licensed owner:**

**1st offense:**

Disqualification and loss of purse. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered.

**2nd lifetime offense in owner's stable in any jurisdiction:**

Disqualification and loss of purse. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered.

**3rd lifetime offense in owner's stable in any jurisdiction:**

Disqualification, loss of purse, \$50,000 fine. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

**(2)** Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (5) of Subsection N of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:

**Licensed trainer:**

**1st offense:**

A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A

minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.

**2nd offense (365-day period) in any jurisdiction:**

A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.

**3rd offense (365-day period) in any jurisdiction:**

A minimum 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

**Licensed owner:**

**1st offense:**

Disqualification, loss of purse (in the absence of mitigating circumstances)\* and horse must pass a commission-approved examination before becoming eligible to be entered.

**2nd offense (365-day period) in owner's stable in any jurisdiction:**

Disqualification, loss of purse (in the absence of mitigating circumstances)\* and horse must pass a commission-approved examination before becoming eligible to be entered.

**3rd offense (365-day period) in owner's stable in any jurisdiction:**

Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine\* and horse must be placed on the veterinarian's list for 45 days and must pass a commission-approved examination before becoming eligible to be entered.

**(3)** Category C penalties will be assessed for violations due to the presence of a drug carrying a category C penalty.

- (a)** phenylbutazone > 0.3 mcg/ml or
- (b)** flunixin > 5.0 ng/ml or
- (c)** ketoprofen > 2.0 ng/ml or
- (d)** penalty class C drugs.

Recommended penalties for category C violations are as follows:

**Licensed trainer:**

**1st offense (365-day period)** in any jurisdiction, the penalty is a minimum fine of \$1,000 absent mitigating circumstances.

**2nd offense (365-day period)** in any jurisdiction, the penalty is a minimum fine of \$1,500 and 15 day suspension absent mitigating circumstances.

**3rd offense (365-day period)** in any jurisdiction, the penalty is a minimum fine of \$2,500 and a 30 day suspension absent mitigating circumstances.

**Licensed owner:**

**1st offense (365-day period)** in any jurisdiction, the penalty is disqualification, loss of purse in the absence of mitigating circumstances and the horse must pass a commission-approved examination before being eligible to run.

**2nd offense (365-day period)** in any jurisdiction, the penalty is disqualification, and loss of purse in the absence of mitigating circumstances. If same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run.

**3rd offense (365-day period)** in any jurisdiction, the penalty is disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run.

(4) Category C penalties will be assessed for violations due to the presence of:

(a) furosemide >100 ng/ml; or

(b) no detectable furosemide concentration when identified as administered.

Recommended penalties for category C violations are as follows:

**Licensed trainer:**

**1st offense (365-day period)** in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of \$500.

**2nd offense (365-day period)** in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of \$750.

**3rd offense (365-day period)** in any jurisdiction, the penalty is a minimum fine of \$500 to a maximum fine of \$1,000.

**Licensed owner:**

**1st offense (365-day period)** in any jurisdiction, the horse may be required to pass a commission-approved examination before being eligible to run.

**2nd offense (365-day period)** in any jurisdiction, the horse may be required to pass a commission-approved examination before being eligible to run.

**3rd offense (365-day period)** in any jurisdiction, the penalty is disqualification, loss of purse, and the horse must pass a commission-approved examination before being eligible to run.

(5) Any violation subsequent to a third violation will carry the same terms as imposed for a third violation. Penalties will run consecutively for a trainer or owner.

(6) If the trainer has not had more than one violation involving a drug that carries a category C penalty within the previous two years, the stewards are encouraged to issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter absent of aggravating factors.

(7) After a two-year period, if a licensee has had no further violations involving a drug that carries a category C penalty, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter range for phenylbutazone will be expunged from the licensee's record for penalty purposes.

**C. Medication restrictions:**

(1) A finding by the commission approved laboratory of a prohibited substance in an official post-race or out-of-competition sample of a horse is prima facie evidence that the prohibited substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race.

(2) Subject to the approval of the commission nothing in this part shall prevent a racing association from setting eligibility conditions for individual races, or for its entire race meet, that prohibit the use or the presence of drug substances or medications in biological test samples collected from participating horses or detection levels lower than what is authorized by the commission. Such conditions if established in accordance with Paragraph (4) of Subsection C of 15.2.3.8 NMAC shall not be deemed in conflict with the rules and regulations of the commission.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

**(4)** There is no permissible concentration of clenbuterol or albuterol that is allowed to appear in any official sample. This includes samples collected from Quarter Horses and Thoroughbreds.

**(5)** The restrictions set forth in Paragraph (3) above do not apply to the following substances:

**(a)** Topical applications, such as antiseptics, ointments, salves, leg rubs and leg paints which may contain antibiotics (excluding procaine, penicillin and chloramphenicol) but which shall not contain ethanol, benzocaine, dimethylsulfoxide, lidocaine, steroids or other medications.

**(b)** Vitamins and electrolytes, provided the vitamins and electrolytes are administered orally and do not contain any medications.

**(c)** Mentholated products designed to be used and administered topically to the nostril areas.

**(d)** Products containing eucalyptus oil and peppermint oil, such as Wind-Aid, provided the products are administered orally and do not contain any medications.

**(6)** Commission personnel may at any time confiscate any material or devices used for the administration of any substance identified in Paragraph (5) above and submit it to the official laboratory for testing in order to ensure the contents are accurately identified.

**(7)** The use of a nebulizer or any similar device used to administer a drug or other substance by inhalation to a horse is not permitted on the day the horse is scheduled to race.

**(8)** Any horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward's list:

**(a)** any drug categorized by the association of racing commissioner's international "uniform classification guidelines for foreign substance and recommended penalties and model rule" incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;

**(b)** any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection G of 15.2.6.9 NMAC;

**(c)** clenbuterol, albuterol, or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs (specifically Quarter Horses or Thoroughbreds);

**(d)** other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

**(e)** cobalt in excess of the allowable concentration specified pursuant to Subsection L of 15.2.6.9 NMAC.

**(9)** Horses placed on the steward's list for a positive test for any of the substances listed in Paragraph (8) of Subsection C above shall remain on the steward's list for 60 days. The first day shall be considered the day following the date of the signed report from the official laboratory.

**(10)** In order to be removed from the steward's list and prior to entry, the following conditions shall be met:

**(a)** a minimum of 60 days must have elapsed;

**(b)** the horse must be presented to the test barn on or after day 60 for the official veterinarian to obtain blood, urine or hair samples;

**(c)** the collected samples must test negative for any substance identified in Paragraph (8) of Subsection C above;

**(d)** the cost of the testing, including applicable shipping costs, shall be borne by the licensed owner and must be paid in full at the time of shipment.

**(11)** If a split sample obtained under Subsection D of 15.2.6.10 NMAC does not confirm the original finding of the official laboratory of a positive test, the horse shall be removed from the steward's list.

**(12)** A practicing veterinarian that is licensed by the commission may prescribe a drug identified by Paragraph (8) of Subsection C above under the following conditions:

**(a)** the diagnosis justifying the prescribed drug, the dosage, the expected duration of treatment, the name of the horse and the name of the trainer must be submitted to the official veterinarian on a form prescribed by the commission;

**(b)** only FDA label-approved drugs for use in the horse may be prescribed;

**(c)** the horse shall be placed on the veterinarian's list for a period of time not less than 30 days after the last administration of the drug as prescribed;

**(d)** the horse must be presented to the test barn once eligible to be removed from the list for the official veterinarian to obtain blood or urine samples;

**(e)** the collected samples must test negative for the prescribed substance and any other substance identified in Paragraph (8) of Subsection C above:

**(f)** the cost of testing, including applicable shipping costs shall be borne by the licensed owner and must be paid in full at the time of shipment;

**(g)** horses placed on the veterinarian's list for the therapeutic use of any substance identified in Paragraph (8) of Subsection C above will be exempt from hair sampling for a six-month period following the last day of the reported treatment. Horses will be subject to out of competition blood and urine sampling during the treatment period pursuant to Subsection J of 15.2.6.9 NMAC to ensure that the concentration of drug found is within the range expected for the recognized therapeutic dose of the drug and will be subject to enhanced out of competition blood and urine sampling during the period exempt from hair sampling.

#### **D. Furosemide:**

**(1)** Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the trainer enters the horse on furosemide on the entry card and only after the official veterinarian has placed the horse on the furosemide list. In order for a horse to be placed on the furosemide list, the following process must be followed:

**(a)** After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide the official veterinarian or their designee shall be notified using the prescribed form that the horse is to be put on the furosemide list.

**(b)** The form must be received by the official veterinarian or their designee by the proper deadlines so as to ensure public notification.

**(c)** A horse placed on the official furosemide list must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or their designee, on the proper form, no later than the time of entry.

**(d)** After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official furosemide list a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

**(e)** Furosemide shall only be administered on association grounds.

(f) Furosemide shall be the only authorized bleeder medication.

(2) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide shall be administered by the official veterinarian, the racing veterinarian, or practicing veterinarian no less than four hours prior to post in which the horse is entered. A horse qualified for furosemide administration must be brought to the detention barn one hour prior to the four-hour administration requirement specified above. After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association or commission security supervision until called to the saddling paddock.

(3) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide shall be administered by the official veterinarian, the racing veterinarian, or practicing veterinarian no less than four hours prior to post in which a horse is entered; the horse must be logged in at the stable gate with time and location no less than one hour prior to administration; the furosemide dosage administered shall not exceed 500 milligrams nor be less than 150 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or their designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide was administered to the entered horse; the dosage amount of furosemide administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide.

(4) Any veterinarian or veterinarian technicians participating in a third-party furosemide administration process under association requirements must be prohibited from working as private veterinarians or technicians on the racetrack or with participating licensees.

(5) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed.

(6) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

#### **E. Bleeder list:**

(1) The official veterinarian shall maintain a bleeder list of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage from

one or both nostrils during or after a race or workout as observed by the official or racing veterinarian.

(2) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - 10 days;

(b) Second incident within 365-day period - 30 days;

(c) Third incident within 365-day period - 180 days;

(d) Fourth incident within 365-day period - barred for racing lifetime.

(3) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(4) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

(5) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(6) A horse, which has been placed on a bleeder list in another jurisdiction pursuant to these rules, shall be placed on a bleeder list in this jurisdiction.

**F. Permissible medications with acceptable levels:** The official urine or blood test sample may contain one of the following drug substances listed below or the drugs listed on "association of racing commissioners international inc. controlled therapeutic medication schedule", their metabolites or analogs, in any amount that does not exceed the specified levels.

(1) **Atropine:** The use of atropine shall be permitted under the following conditions: any horse to which atropine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine.

(2) **Benzocaine:** The use of benzocaine shall be permitted under the following conditions: any horse to which benzocaine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs,

which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine.

**(3) Dipyrone:** The use of dipyrone shall be permitted under the following conditions: any horse to which dipyrone has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine.

**(4) Flumethasone:** The use of flumethasone shall be permitted under the following conditions: any horse to which flumethasone has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine.

**(5) Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: any horse to which isoxsuprine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine.

**(6) Pentoxifylline:** The use of pentoxifylline shall be permitted under the following conditions: any horse to which pentoxifylline has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine.

**(7) Pyrilamine:** The use of pyrilamine shall be permitted under the following conditions: any horse to which pyrilamine has been administered shall be subject to having a blood sample or a urine sample or both taken at the direction of the official veterinarian to determine the quantitative level(s) or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine.

#### **G. Androgenic-anabolic steroids (AAS):**

**(1)** No AAS shall be permitted in official samples collected from racing horses except for endogenous concentrations of the naturally occurring substances boldenone, nandrolone, and testosterone at concentrations less than the indicated thresholds.

**(2)** Concentrations of these AAS shall not exceed the following free (i.e., not conjugated) steroid concentrations in plasma or serum:

**(a)** Boldenone - a confirmatory threshold not greater than 25 picograms/milliliter for all horses, regardless of sex;

**(b)** Nandrolone - a confirmatory threshold not greater than 25 picograms/milliliter for fillies, mares and geldings; male horses other than geldings shall be tested for nandrolone in urine (see Subparagraph (b) of Paragraph (3) of this subsection below):

**(c)** Testosterone - a confirmatory threshold not greater than 100 picograms/milliliter for fillies, mare and geldings.

**(3)** Total concentrations of these AAS shall not exceed the following total concentrations in urine after hydrolysis of conjugates;

**(a)** Boldenone – a confirmatory threshold not greater than one nanogram/milliliter for fillies, mares and geldings; a confirmatory threshold not greater than 15 nanograms/milliliter in male horses other than geldings;

**(b)** Nandrolone - a confirmatory threshold not greater than one nanogram/milliliter for fillies, mares, and geldings; a confirmatory threshold not greater than 45 nanograms/milliliter (as 5 $\alpha$ -estrane-3 , 17 $\alpha$  -diol) of urine in males horses other than geldings;

**(c)** Testosterone - a confirmatory threshold of not greater than 55 nanograms/milliliter of urine in fillies and mares (unless in foal); a confirmatory threshold of not less than 20 nanograms/milliliter in geldings.

**(4)** Any other AAS are prohibited in racing horses.

**(5)** The presence of more than one of the three AAS identified in Paragraph (2) and (3) of this subsection at concentrations greater than the individual thresholds indicated above shall not be permitted.

**(6)** The sex of the horse must be identified to the laboratory on all pre-race and post-race samples designated for androgenic-anabolic steroids testing.

**(7)** If an AAS has been administered to a horse in order to assist in its recovery from illness or injury, that horse may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine or blood. After the

concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.

#### **H. Medical labeling:**

**(1)** No person on association grounds where horses are lodged or kept, excluding veterinarians licensed by the commission, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effect or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

**(2)** Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached to the medication container and clearly ascribed to show the following:

- (a)** name, address, and telephone number of the pharmacy or veterinarian;
- (b)** prescription number when dispensed by a pharmacy if required by law;
- (c)** date prescription filled;
- (d)** name of the prescribing veterinarian;
- (e)** name of the horse for whom the medication is prescribed or dispensed;
- (f)** name of the trainer or owner of the horse for whom the product was dispensed;
- (g)** dose, dosage, route of administration, and duration of treatment of the prescribed product (instructions for use);
- (h)** name, active ingredient, quantity prescribed, expiration date (if applicable), beyond use date (if applicable), and lot number if applicable); and
- (i)** cautionary statements (if any), and if applicable, withdrawal time.

**(3)** The use of an expired medication is considered a violation of this rule.

**(4)** Any medication that has a label that is missing, illegible, tampered with or altered, or in any other way does not comply with this section shall be considered a violation of these rules.

(5) Any licensee that voluntarily surrenders any non-compliant medication shall not be considered to be in violation of the medication rules described in this section. A surrender shall not be deemed voluntary after a licensee has been advised or it is apparent that an investigatory search has commenced.

**I. Alkalinizing substances:** The use of agents that elevate the horses TCO<sub>2</sub> above those existing naturally in the untreated horse at normal physiological concentrations is prohibited. The following levels also apply to blood gas analysis:

(1) the regulatory threshold for TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample.

(2) the decision level to be used for the regulation of TCO<sub>2</sub> is 37.0 millimoles per liter of plasma/serum plus the measurement uncertainty of the laboratory analyzing the sample.

(3) such violation is that of a penalty class B drug.

**J. Out of competition testing:**

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission;  
or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race; or

(e) on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC.

(2) This rule applies to the detection of prohibited substances in out of competition official samples as follows:

(a) penalty class A drugs as listed with the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC;

**(b)** blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxyglobin, hemopure, aranasep or any substance that abnormally enhances the oxygenation of body tissues;

**(c)** gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia

**(d)** clenbuterol or albuterol present in any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph (10) of Subsection C of 15.2.6.9 NMAC; and

**(e)** androgenic-anabolic steroids present in any official sample in a horse not previously placed on the veterinarian's list pursuant to Paragraph (10) of Subsection C of 15.2.6.9 NMAC.

**(3)** The penalty for a positive test resulting from an out of competition blood or urine sample will be determined by the penalty class of the drug listed in the association of racing commissioners international "uniform classification guidelines for foreign substances and recommended penalties and model rule" and incorporated by reference under 15.2.6.9 NMAC.

**(4)** A horse with a positive test in an out of competition official sample for any substance identified under Paragraph (6) of Subsection C of 15.2.6.9 NMAC will be placed on the steward's list as per the conditions set forth in that subsection. Horses already on the steward's list for violations of Subsection C of 15.2.6.9 NMAC that have a positive out of competition test in a blood or urine sample for one of the substances identified in the referenced paragraph shall be placed on the steward's list for an additional, consecutive 60-day period.

**(5)** Horses to be tested may be selected at random, with probable cause or as determined by the commission or an agent of the commission.

**(6)** The commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take an official sample from a horse for this purpose.

**(7)** Split samples shall be collected in accordance with Subsection B of 15.2.6.10 NMAC and shall be secured and made available for further testing in accordance with Subsection D of 15.2.6.10 NMAC.

**(8)** All horses selected for testing must be presented to the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, at the time designated, unless the trainer or owner provides verification of an extenuating circumstance that makes it impossible. Penalties for violations of this subsection include:

(a) any horse not presented for testing upon notification absent extenuating circumstances will be placed immediately on the steward's list for a minimum of 60 days and shall be subject to all the requirements set forth in Paragraph (8) of Subsection C of 15.2.6.9 NMAC; and

(b) the licensed trainer of a horse not presented for testing upon notification and absent extenuating circumstances is a minimum license suspension of one year.

(9) Any licensee who does not comply with the rule or the commission veterinarian for a sample may be subject to disciplinary action.

(10) Cooperation with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, includes:

(a) assisting in the immediate location and identification of the horse selected for out of competition testing; and

(b) assisting the veterinarian in properly procuring the samples.

(11) Out of competition samples will be sent to the official laboratory of the commission, or another laboratory as designated by the commission, with reports made in accordance with the provisions of the medication rules and the penalty provisions therefore.

#### **K. Contraband:**

(1) No person on association grounds or any premises under the jurisdiction of the New Mexico racing commission where horses are lodged or kept, excluding licensed veterinarians, shall have in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with Subsection H of 15.2.6.9 NMAC. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's personal property, effects or vehicle.

(2) The New Mexico racing commission may confiscate any contraband in violation of Subsection H of 15.2.6.9 NMAC and any drug or illegal substance that is found on association premises or any premises under the jurisdiction of the New Mexico racing commission which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property, effects or vehicle in that trainer's care, custody or control.

(3) Upon finding a violation of this subsection, the stewards shall consider the classification level as it is listed in the uniform classification guidelines for foreign substances and recommended penalties as promulgated by Subsection A of 15.2.6.9 NMAC.

**(4)** If the contraband is required to be tested by the official laboratory, payment of all costs for testing shall be borne by the licensee upon final decision by the stewards that the substance is prohibited pursuant to these rules.

**L. Environmental contaminants and substances of human use:**

**(1)** Environmental contaminants are either endogenous to the horse or can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.

**(2)** Substances of human use and addiction which may be found in the horse due to its close association with humans.

**(3)** If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination, including inadvertent exposure due to human drug use, or dietary intake, or is endogenous to the horse, those factors should be considered in mitigation of any disciplinary action taken against the affected trainer. Disciplinary action shall only be taken if test sample results exceed the regulatory thresholds listed below:

- (a)** Arsenic - 0.3 micrograms per milliliter total arsenic in urine;
- (b)** Benzoyllecgonine - 150 nanograms per milliliter in urine;
- (c)** Caffeine - 100 nanograms per milliliter of plasma or serum;
- (d)** Cathinone - 10 nanograms per milliliter in urine;
- (e)** Cobalt - 25 ppb in blood plasma or serum (penalties for cobalt vary depending on the concentration; see uniform classification guidelines for foreign substances for recommended penalty for concentrations of 25 parts per billion or greater of blood plasma or serum).
- (f)** Estranediol - 0.045 micrograms per milliliter, free + conjugated 5 $\alpha$  - estrane-3 $\beta$ , 17  $\alpha$ -diol, in the urine of male horses other than geldings;
- (g)** Gamma Aminobutyric Acid - 110 nanograms per milliliter of plasma or serum;
- (h)** Hydrocortisone - 1 microgram per milliliter of urine;
- (i)** Methoxytyramine - 4 micrograms per milliliter, free + conjugated in urine;
- (j)** Morphine/morphine glucuronides - 100 nanograms per milliliter in urine;

(k) Salicylate/Salicylic Acid - 750 micrograms per milliliter of urine or 6.5 micrograms per milliliter of serum or plasma;

(l) Scopolamine - 75 nanograms per milliliter of urine;

(m) Strychnine - 100 nanograms per milliliter of urine;

(n) Theobromine - 2 micrograms per milliliter of urine or 0.3 micrograms per milliliter of serum or plasma; and

(o) Theophylline - 400 nanograms per milliliter of urine.

**M. Suspension of authorized medication:**

(1) After a public meeting that has been noticed in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978, the commission may, for any cause, temporarily suspend the authorized administration to a horse of any drug, substance or medication that is otherwise permitted under the commission rules.

(2) The temporary suspension of the authorized administration of a drug, substance or medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions.

(3) The commission shall notify in writing the racing association, the trainer's organization, and licensed veterinarians of any temporary suspension of authorization to administer a drug, substance or medication to a horse entered to race. The written notification shall include at minimum:

(a) the authorized medication is temporarily suspended,

(b) the period of time for which the use of the authorized medication is temporarily suspended; and

(c) whether the temporary suspension is for a specific breed or a race meeting.

(4) A suspension of authorization to administer a drug, substance or medication to a horse entered to race shall not exceed 12 months.

**N. Non-steroidal anti-inflammatory drugs (NSAIDs):** The use of NSAIDs shall be governed by the following conditions:

(1) No NSAID may be administered at less than 48 hours to the scheduled post time of the race in which the horse is entered.

(2) Evidence of an NSAID administration at less than 48 hours to the scheduled post time of the race in which the horse is entered constitutes a Class C violation.

(3) NSAIDs included in the "association of racing commissioner's international incorporated controlled therapeutic medication schedule for horses" are not to be used in a manner inconsistent with the restrictions contained herein. NSAIDs not included on the "association of racing commissioner's international incorporated controlled therapeutic medication schedule for horses" are not to be present in a racing horse's official sample above the official laboratory limit of detection.

(4) Notwithstanding the above, the presence of one of the following does not constitute a violation:

(a) Phenylbutazone at a concentration of less than 0.3 micrograms per milliliter of plasma or serum;

(b) Flunixin at a concentration less than 5.0 nanograms per milliliter of plasma or serum; or

(c) Ketoprofen at a concentration less than 2.0 nanograms per milliliter of plasma or serum.

(5) The detection of two or more NSAIDS in blood and/or urine constitutes a NSAID Stacking Violation (Penalty Class B).

#### **O. Multiple Medication Violations (MMV):**

(1) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a class 1-5 medication with penalty class A-C, as provided in the version of the ARCI "uniform classification guidelines for foreign substances" listed in 15.2.6.9 NMAC, or similar state regulatory guidelines, shall be assigned points as follows:

<b>Penalty Class</b>	<b>Points If Controlled Therapeutic Substance</b>	<b>Points if Non-Controlled Substance</b>
Class A	6	6
Class B	2	4
Class C	1/2 point for first violation with an additional 1/2 point for each additional violation within 365 days	1 for first violation with an additional 1/2 point for each additional violation with 365 days
Class D	0	0

Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation. If the

stewards or the commission determine that the violation is due to environmental contamination, they may assign lesser or no points against the trainer based upon the specific facts of the case.

**(2)** The points assigned to a medication violation by the stewards or commission shall be included in the ARCI official database. The ARCI shall record points consistent with Paragraph (1) of this Subsection including when appropriate, a designation that points have been suspended for the medication violation. Points assigned by such commission ruling shall reflect, in the case of multiple positive tests as described in Paragraph (4), whether they constitute a single violation. The stewards or commission ruling shall be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

**(3)** A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the commission in its determination to subject the trainer to the mandatory enhanced penalties by the stewards or commission as provided in this rule.

**(4)** Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the stewards may treat each substance found as an individual violation for which points will be assigned, depending upon the facts and circumstances of the case.

**(5)** The official ARCI record shall be used to advise the stewards or commission of a trainer's past record of violations and cumulative points. Nothing in this administrative regulation shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

**(6)** The stewards or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

**(7)** In addition to the penalty for the underlying offense, the following enhancements shall be imposed upon a licensed trainer based upon the cumulative points contained in their official ARCI record:

<b>POINTS</b>	<b>SUSPENSION IN DAYS</b>
5 - 5.5	15 to 30
6 - 8.5	30 to 60
9 - 10.5	90 to 180
11 or more	180 to 360

MMV penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

- (a) Has more than one medication violation for the relevant time period, and
- (b) exceeds the permissible number of points.

The stewards and commission shall consider aggravating and mitigating circumstances, including the trainer's prior record for medication violations, when determining the appropriate penalty for the underlying offense. The multiple medication penalty is intended to be a separate and additional penalty for a pattern of violations.

(8) The suspension periods as provided in this subsection shall run consecutive to any suspension imposed for the underlying offense.

(9) The stewards or commission ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon a stewards or commission review of the trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(10) Points shall expire as follows:

Penalty Classification	Time to Expire
A	3 years
B	2 years
C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 4/13/2001; A, 8/30/2001; A, 7/15/2002; A, 8/15/2002; A, 9/29/2006; A, 10/31/2006; A, 8/30/2007; A, 1/31/2008; A, 3/01/2009; A, 6/15/2009; A, 6/30/2009; A, 9/15/2009; A, 12/15/2009; A, 3/16/2010; A, 7/05/2010; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 4/30/2012; A, 7/31/2012; A, 12/14/2012; A, 5/1/2013; A/E, 5/2/2013; A, 9/30/2013; A, 4/1/2014; A, 5/16/2014; A, 8/15/2014; A, 9/15/2014; A, 3/16/2015; A, 9/16/15; A, 3/15/2016; A, 6/15/2016; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 10/31/17; A, 3/14/2018; A; 9/26/2018; A, 5/1/2019; A, 12/19/2019; A, 4/20/2021; A, 12/28/2021; A, 4/9/2024]

#### 15.2.6.10 TESTING:

##### A. Reporting to the test barn:

(1) The official winning horse, as well as any other horses ordered by the commission or the stewards shall be taken to the test barn to have an official sample taken at the direction of the official veterinarian.

(2) The association shall assign an employee to escort horses ordered by the commission or the stewards to go to the test barn.

(3) Random or extra testing may be required by the stewards or the commission at any time on any horse.

(4) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(5) A security guard, employed by the association, shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 18-years-old, be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area.

#### **B. Sample collection:**

(1) The official veterinarian shall determine a minimum sample volume requirement for the primary testing laboratory. A primary testing laboratory must be accredited by ISO 17025 and approved by the commission.

(2) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the primary testing laboratory.

(3) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(4) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the primary testing laboratory shall be secured as the split sample.

(5) No split samples will be collected for determination of TCO<sub>2</sub> levels.

(6) No split samples will be collected for determination of TCO<sub>2</sub> levels.

#### **C. Alkalinizing substances:**

(1) Blood samples for TCO<sub>2</sub> and base excess testing should be collected 45 minutes (+ or - 15 min) pre-race and approximately three hours after furosemide administration. The samples must be handled in a consistent manner and cannot be

frozen. If samples are obtained pre-furosemide a lower regulatory threshold is necessary and the horse must be kept in a secure barn until race time.

(2) The provisions of this rule pertaining to sample collection shall not apply to blood samples drawn for TCO<sub>2</sub> analysis.

(3) Blood samples must be processed and tested within 120 hours using standardized, reproducible, validated procedures.

#### **D. Storage and shipment of split samples:**

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer or other secured mechanism at a secure location as provided by state statute or approved by the commission.

(2) A trainer, owner or designee of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another testing laboratory that is accredited by ISO 17025 and approved by the commission. The ISO 17025 requirement may only be waived by the commission for the purpose of a split sample test involving a hair sample. The request must be made and confirmed with the commission not later than 48 hours excluding weekends and holidays after the trainer of the horse receives notice of the findings of the primary laboratory. The trainer's first choice, second choice and third choice of laboratories, for the split sample to be sent to, shall be listed within that 48 hours and kept on file with the horsemen's association. Any request not received within the specified deadline shall be considered a positive test. Any split sample so requested must be shipped within seven working days after the trainer's 48 hour deadline or the New Mexico horsemen's association may be subject to disciplinary action.

(3) The owner, trainer or designee requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the commission or the commission's designee shall constitute a waiver of all rights to split sample testing. Prior to shipment, the owner, trainer or designee shall confirm the split sample laboratory's willingness to provide the testing requested, the laboratory's willingness to send results to both the person requesting the testing and the commission, and arrangements for payment satisfactory to the split sample laboratory.

(4) Prior to opening the split sample freezer or any other secure split sample storage mechanism, the commission shall ensure that the standard operating procedure

for the handling and shipping of the split sample are followed and documented. Standard operating procedure for the handling and shipping of a split sample shall include documentation of the following at a minimum:

(a) the date and time the sample is removed from the split sample freezer or other secured mechanism;

(b) the sample number;

(c) the address where the split sample is to be sent;

(d) the name of the carrier and the address where the sample is to be taken for shipment;

(e) verification the owner, trainer or designee received the split sample from the freezer or other secured mechanism;

(f) verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and,

(g) the date and time custody of the sample is transferred to the carrier.

(5) A split sample shall be removed from the split sample freezer or other secured mechanism by a commission representative in the presence of the owner, trainer or designee.

(6) The owner, trainer or designee shall pack the split sample for shipment in the presence of the representative of the commission, in accordance with the packaging procedures recommended by the commission. A form shall be signed by both the horsemen's representative and the commission representative to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package.

(7) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission-approved laboratory selected by the owner or trainer.

(8) The owner, trainer or designee and the commission representative shall inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(9) All documents verifying the handling and shipping of the split sample chain of custody shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep all original documents and provide copies for the owner, trainer or designee.

**E. Official state racing chemist:** The state racing commission may hire or contract with a qualified chemist to act as the official state racing chemist. The duties of the official state racing chemist may include, but shall not be limited to the following:

(1) review and evaluate scientific data submitted by the official testing laboratory concerning any race horse's positive drug test;

(2) submit a written report to the agency director of the racing commission concerning a positive test, certifying the positive test as such, or that the test does not constitute a positive test based on the scientific data submitted by the official testing laboratory; if the test does not constitute a positive test it may be referred back to the laboratory for further testing;

(3) in the event that a split sample is sent for independent testing and the result of that test does not confirm with the results of the primary testing laboratory, the official state racing chemist shall review all scientific data submitted by the laboratory which tested the split and make recommendations to the agency director;

(4) appear before the racing commission as an expert witness, as needed in matters concerning chemical testing for drugs and medications;

(5) consult with the racing commission in matters concerning chemical testing for drugs and medication as the need arises;

(6) at the request of the commission, inspect the official testing laboratory and the racetrack collection facilities to insure their compliance with, and use of, proper scientific techniques and procedures.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 4/13/2001; A, 3/30/2007; A, 9/1/2010; A, 7/31/2012; A, 5/1/2013; A, 5/16/2014; A, 6/15/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A 4/9/2024]

#### **15.2.6.11 TRAINER RESPONSIBILITY:**

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and wellbeing of horses in their care.

**A.** The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer is responsible.

**B.** A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

**C.** A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

**D.** The trainer is responsible for: maintaining the assigned stable area in a clean, neat and sanitary condition at all times; using the services of those veterinarians licensed by the commission to attend horses that are on association grounds.

**E.** Additionally, with respect to horses in their care or custody, the trainer is responsible for:

- (1)** the proper identity, custody, care, health, condition and safety of horses;
- (2)** having each horse in their care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;
- (3)** immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;
- (4)** promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;
- (5)** promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in their charge;
- (6)** promptly reporting the serious injury or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this part governing postmortem examinations;
- (7)** maintaining knowledge of the medication record and status;
- (8)** immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;
- (9)** ensuring the fitness to perform creditably at the distance entered;
- (10)** ensuring that every horse entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this part;
- (11)** ensuring proper bandages, equipment and shoes;

(12) presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(13) personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards;

(14) attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so;

(15) immediately reporting to the stewards any administration of any medication or drugs, except as provided, within 24 hours of post time of the race in which the horse has been entered;

(16) immediately submitting to the official veterinarian and the racing secretary the necessary forms to scratch any horse treated with any medication, or drug, within 24 hours of the post time of the race in which the horse has been entered unless such treatment is permitted herein.

[15.2.6.11 NMAC - Rp, 15 NMAC 2.6.11, 4/13/2001; A, 8/30/2007; A, 7/31/2012]

#### **15.2.6.12 PHYSICAL INSPECTION OF HORSES:**

##### **A. Assessment of racing condition:**

(1) Every horse entered to participate in an official race may be subjected to a veterinary inspection prior to starting in a race for which it is entered.

(2) The inspection shall be conducted by the official veterinarian or the racing veterinarian.

(3) The agency or the association employing the examining veterinarian(s) should provide a staffing level of not less than two veterinarians.

(4) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by the examining veterinarian. Horses presented for examination must have bandages removed and the legs must be clean. Prior to examination horses may not be placed in ice nor shall any device or substance be applied that impedes veterinary clinical assessment.

(5) The assessment of a horse's racing condition shall be based on the recommendations of the American association of equine practitioners and shall include: proper identification of each horse inspected; observation of each horse in motion; manual palpation and passive flexion of both forelimbs; clinical observation in the paddock and saddling area, during the parade to post and at the starting gate; any other inspection deemed necessary by the official veterinarian and the racing veterinarian or the stewards.

(6) Every horse shall be observed by the racing veterinarian during and after the race.

(7) The official veterinarian or the racing veterinarian shall maintain a permanent continuing health and racing soundness record of each horse inspected.

(8) The official veterinarian or the racing veterinarian are authorized access to any and all horses housed on association grounds regardless of entry status.

(9) If, prior to starting, a horse is determined to be unfit for competition, or if the veterinarian is unable to make a determination of racing soundness, the veterinarian will recommend to the stewards the horse be scratched.

(10) Horses scratched upon the recommendation of the official veterinarian or the racing veterinarian, are to be placed on the veterinarian's list.

(11) All pre-race examination reports on each horse selected for a pre-race examination will be submitted to the commission on a monthly basis. In addition, these reports will be made available to the commission upon request within a 48-hour period.

#### **B. Veterinarian's list:**

(1) The official veterinarian or racing veterinarian shall maintain the veterinarian list of all horses which are determined to be unfit to compete in a race due to illness, physical distress, medical compromise, heat exhaustion, unsoundness, injury, infirmity, voluntary administration of a medication invoking a mandatory stand down time, administration of shock-wave therapy or any other assessment or determination by the official veterinarian or racing veterinarian that the horse is unfit to race.

(2) Horses listed pursuant to this rule and on HISA's veterinarians' list are ineligible to enter to race in any jurisdiction until released by the official veterinarian or racing veterinarian except when there is an administrative issue in releasing the horse from a veterinarian's list of another racing jurisdiction.

(3) A horse placed on the veterinarian's list due to illness, injury or infirmity unrelated to the racing soundness of the horse may be released from the list when a minimum of seven calendar days has passed from the time the horse was placed on the list.

(4) A horse placed on the veterinarian's list for unsoundness or lameness shall be released from the list only after the following has been met:

(a) A minimum of seven calendar days has elapsed;

(b) the horse demonstrates to the satisfaction of the official veterinarian or racing veterinarian that the horse is serviceably sound and in fit physical condition to exert its best effort in a race;

(c) the horse completes a published work after the seven calendar days has elapsed of four furlongs at 0:52 seconds or better for thoroughbreds; or 220 yards at 13.3 seconds or better for quarter horses while being observed the official veterinarian or racing veterinarian, and;

(d) the horse submits to a post work official sample collection for laboratory confirmation for compliance with 15.2.6.9 NMAC at the expense of the current owner. Samples shall be subjected to the same testing as conducted for post race official samples. The presence of a prohibited substance in the post work sample shall result in the horse remaining on the veterinarian's list.

(5) A horse placed on the veterinarian's list for voluntary administration of a medication invoking a mandatory stand down time shall be released from the list subject to the provisions and restrictions set forth in Paragraph (1) of C of 15.2.6.9 NMAC.

(6) A horse placed on the veterinarian's list for administration of shock-wave therapy shall be released from the list subject to the provisions and restrictions set forth in Subsection C of 15.2.6.8.

### **C. Postmortem examination:**

(1) The commission may require a postmortem examination of any horse that dies or is euthanized on association grounds.

(2) The commission may require a postmortem examination of any horse that dies or is euthanized at recognized training facilities within this jurisdiction.

(3) If a postmortem examination is to be conducted, the commission shall take possession of the horse upon death for a postmortem examination. All shoes and equipment on the horse's legs shall be left on the horse.

(4) If a postmortem examination is to be conducted, the commission or its representative shall collect blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization. The commission may submit blood, urine, bodily fluid, or other biologic specimens collected during a postmortem examination for testing analysis. The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation.

(5) Requests for each postmortem examination shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a necropsy submission form entitled New Mexico racing commission necropsy submission form, hereby incorporated by reference and which is

available at all official veterinarian offices and all stable gates. The trainer or their designee is responsible to supply all information to complete this form.

(6) All licensees shall be required to comply with postmortem examination requirements as a condition of licensure. In proceeding with a postmortem examination the commission or its designee shall coordinate with the owner or the owner's authorized agent to determine and address any insurance requirements.

(7) Postmortem examinations shall be conducted according to the most recent edition of the American association of equine practitioners' guidelines for the necropsy of racehorses.

(8) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the racing commission's agency director and official veterinarian.

(9) The owner or the owner's authorized agent will be responsible for all costs of a postmortem examination, i.e., testing fees, transportation of the horse, disposal, etc., when the results of a postmortem examination constitute a violation of the New Mexico racing commission rules.

[15.2.6.12 NMAC - Rp, 15 NMAC 2.6.12, 4/13/2001; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 7/31/2012; A, 12/19/2019; A, 4/9/2024]

## **PART 7: PARI MUTUEL WAGERING**

### **15.2.7.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[15.2.7.1 NMAC - Rp, 15 NMAC 2.7.1, 3/15/2001]

### **15.2.7.2 SCOPE:**

General Public and all persons, firms, or associations participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.1 NMAC, 15.2.2 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, and 16.47.1 NMAC.

[15.2.7.2 NMAC - Rp, 15 NMAC 2.7.2, 3/15/2001]

### **15.2.7.3 STATUTORY AUTHORITY:**

Section 60-1A-1 through 60-1A-4 NMSA 1978 created the state racing commission and delegated its powers for the promulgation of rules for holding, or engaging in, horse race meetings in the state of New Mexico; mandates the commission regulate the pari mutuel system of wagering; Section 60-1A-15 NMSA 1978 provides that within the

enclosure where any horse races are conducted, either as live on-track horse races or as horse races simulcast, and where the licensee has been licensed to use the pari mutuel method of system of wagering on races, the pari mutuel system is lawful, but only within the enclosure where races are conducted; and Section 60-A-16 NMSA 1978 and Section 60-1A-17 NMSA 1978 allow the racing commission to permit interstate and intrastate simulcasting of races and common pooling.

[15.2.7.3 NMAC - Rp, 15 NMAC 2.7.3, 3/15/2001; A, 9/15/2009]

**15.2.7.4 DURATION:**

Permanent.

[15.2.7.4 NMAC - Rp, 15 NMAC 2.7.4, 3/15/2001]

**15.2.7.5 EFFECTIVE DATE:**

March 15, 2001 unless a later date is cited at the end of a section.

[15.2.7.5 NMAC - Rp, 15 NMAC 2.7.5, 3/15/2001]

**15.2.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 2 is to achieve the objectives that all pari mutuel wagering is lawful and licensed; establish procedures for interstate/intrastate simulcasting and interstate common-pool wagering.

[15.2.7.6 NMAC - Rp, 15 NMAC 2.7.6, 3/15/2001]

**15.2.7.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[15.2.7.7 NMAC - Rp, 15 NMAC 2.7.7, 3/15/2001]

**15.2.7.8 GENERAL PROVISIONS:**

**A. General:** Each association shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalisator shall be tested prior to and during the meeting as required by the commission. Each association shall make reasonable provisions for providing a backup system in case of a mechanical failure. The association is required to report to the commission on the backup system so provided.

**B. Records:**

**(1)** The association shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each association and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

**(2)** The association shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

### **C. Pari-Mutuel Tickets:**

**(1)** A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the association and is evidence of the obligation of the association to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The association shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a 60 day period after the last day of the meeting.

**(2)** To be deemed a valid pari-mutuel ticket, such ticket shall have been recorded by a pari-mutuel ticket machine operated by the association and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

- (a)** the name of the association operating the meeting;
- (b)** a unique identifying number or code;
- (c)** identification of the terminal at which the ticket was issued;
- (d)** a designation of the performance for which the wagering transaction was issued;
- (e)** the contest number for which the pool is conducted;
- (f)** the type or types of wagers represented;
- (g)** the number or numbers representing the betting interests for which the wager is recorded;
- (h)** the amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

**(3)** No pari-mutuel ticket recorded or reported as previously paid, cancelled, or non-existent shall be deemed a valid pari-mutuel ticket by the association. The

association may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in Subsection D of 15.2.7 NMAC of these general provisions.

**D. Pari-Mutuel Ticket Sales:**

(1) Pari-mutuel tickets shall not be sold by anyone other than an association licensed to conduct pari-mutuel wagering.

(2) No pari-mutuel ticket may be sold on a contest for which wagering has already been closed and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalisator is closed for wagering on such contest.

(3) Claims pertaining to a mistake on an issued ticket, or a mistake involving failure to issue a ticket, must be made by the bettor prior to leaving the seller's window. Cancellation or exchange of tickets issued shall not be permitted after a patron has left a seller's window except in accordance with written policies established by the association and approved by the commission.

(4) Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official". Any subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission shall in no way affect the pari-mutuel payout. If an error in the posted order of finish or payout figures is discovered, the official order of finish or payout prices may be corrected and an announcement concerning the change shall be made to the public.

(5) The association shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization of the commission.

(6) The association shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

(7) No person under eighteen (18) years of age is permitted to purchase or cash a pari-mutuel ticket. It shall be the duty of the pari-mutuel employees to demand proof of age from any person whose age, as it pertains to this rule, is doubtful.

**E. Advance Performance Wagering:** No association shall permit wagering to begin more than four days before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the commission.

**F. Claims for Payment from Pari-Mutuel Pool:**

(1) At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the association in any case where the association has

withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the commission, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the commission within 48 hours.

(2) In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in Subsection C Paragraph (2) of 15.2.7 NMAC of these general provisions, the association shall make a recommendation to accompany the claim forwarded to the commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

(3) In the case of a claim made for payment on a pari-mutuel wager, the commission shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the association, or may deny the claim, or may make such other order as it may deem proper.

**G. Payment for Errors:** If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed; and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

(1) verification is required to show that the amount of the commission, the amount in breakage, and the amount in payouts is equal to the total gross pool; if the amount of the pool is more than the amount used to calculate the payout, the underpayment shall be added to the corresponding pool of the next contest; if underpayments are discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the commission until being added, together with accrued interest, to the corresponding pool of the next meeting;

(2) any claim not filed with the association within 60 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived; and the association shall have no further liability therefore;

(3) in the event the error results in an overpayment to winning wagers, the association shall be responsible for such payment.

**H. Betting Explanation:** A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on association grounds and available upon request through association representatives.

**I. Display of Betting Information:**

(1) Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

(2) The probable payout or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the commission.

(3) Official results and payouts must be displayed upon each contest being declared official.

**J. Cancelled Contests:** If a contest is cancelled or declared "no contest", refunds shall be granted on valid wagers in accordance with these rules.

**K. Refunds:**

(1) Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(a) win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two (2);

(b) place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three (3);

(c) show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four (4).

(2) Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

**L. Coupled Entries and Mutuel Fields:**

(1) Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

(2) For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading

contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**M. Pools Dependent upon Betting Interests:** Unless the commission otherwise provides, at the time the pools are opened for wagering, the association:

(1) may offer win, place, and show wagering on all contests with six (6) or more betting interests;

(2) may be allowed to prohibit show wagering on any contest with five (5) or fewer betting interests scheduled to start;

(3) may be allowed to prohibit place wagering on any contest with four (4) or fewer betting interests scheduled to start;

(4) may be allowed to prohibit quinella wagering on any contest with three (3) or fewer betting interests scheduled to start;

(5) may be allowed to prohibit quinella double wagering on any contests with three (3) or fewer betting interests scheduled to start;

(6) may be allowed to prohibit exacta wagering on any contest with three (3) or fewer betting interests scheduled to start;

(7) may prohibit trifecta wagering on any contest with seven (7) or fewer betting interests scheduled to start;

(8) may prohibit superfecta wagering on any contest with seven (7) or fewer betting interests scheduled to start;

(9) may be allowed to prohibit twin quinella wagering on any contests with three (3) or fewer betting interests scheduled to start;

(10) may prohibit twin trifecta wagering on any contests with seven (7) or fewer betting interests scheduled to start;

(11) may prohibit tri-superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start;

(12) may prohibit twin superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.

**N. Prior Approval Required for Betting Pools:**

(1) An association desiring to offer new forms of wagering must apply in writing to the commission and receive written approval prior to implementing the new betting pool.

(2) The association may suspend previously approved forms of wagering with the prior approval of the commission. Any carryover shall be held until the suspended form of wagering is reinstated. An association may request approval of a form of wagering or separate wagering pool for specific performances.

**O. Closing of Wagering in a Contest:**

(1) A commission representative shall close wagering for each contest after which time no pari-mutuel tickets shall be sold for that contest.

(2) The association shall maintain, in good order, a system approved by the commission for closing wagering.

**P. Complaints Pertaining to Pari-Mutuel Operations:**

(1) When a patron makes a complaint regarding the pari-mutuel department to an association, the association shall immediately issue a complaint report, setting out:

(a) the name of the complainant;

(b) the nature of the complaint;

(c) the name of the persons, if any, against whom the complaint was made;

(d) the date of the complaint;

(e) the action taken or proposed to be taken, if any, by the association.

(2) The association shall submit every complaint report to the commission within 48 hours after the complaint was made.

**Q. Licensed Employees:** All licensees shall report any known irregularities, wrong doings by, or dismissal of, any person involving pari-mutuel wagering immediately to the commission and cooperate in subsequent investigations.

**R. Unrestricted Access:** The association shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the association that relate to pari-mutuel wagering.

**S. Emergency Situations:** Should an emergency arise in connection with the operation of the pari-mutuel department not covered by these rules and an immediate

decision is necessary, the manager of the pari-mutuel department shall make the decision and render a full report to the commission within 48 hours.

[15.2.7.8 NMAC - Rp, 15 NMAC 2.7.8, 3/15/2001; A, 10/29/2004; A, 2/14/2005]

#### **15.2.7.9 ACCOUNT WAGERING:**

**A. General:** The association may offer a system of account wagering to its patrons whereby wagers are debited and payouts credited to a sum of money, deposited in an account by the patron, that is held by the association. The association shall notify the patron, at the time of opening the account, of any rules the association has made concerning deposits, withdrawals, average daily balance, user fees, interest payments and any other aspect of the operation of the account. The association shall notify the patron whenever the rules governing the account are changed, such notification occurring before the new rules are applied to the account and including the opportunity for the patron to close or cash in the account. The patron shall be deemed to have accepted the rules of account operation upon opening or not closing the account. The association shall request authorization from the commission before a system of account wagering is offered.

**B. Account Opening:** The association may offer to open for its patrons:

(1) short-term accounts that are operational only for the performance during which they were opened and only at the site where they were opened, whereby wagers are placed by the account holder at a self-service terminal;

(2) long-term accounts that are operational for any performance offered by the association, whereby wagers are placed by the account holder at a self-service terminal or by telephone within the enclosure of the racetrack;

(3) voucher accounts that are operational for any performance offered by the association, whereby wagers are placed by the account holder at any ticket issuing terminal operated by the association; the patron may choose to credit winning payouts in cash and may choose to close or cash-in the account at any time.

**C. Refusals:** The association may reserve the right at any time to refuse to open an account, to accept a wager, or to accept a deposit.

**D. Patron Information:** Each short-term or long-term account holder shall provide such personal information as the association and the commission require, including an address to which communications are to be delivered. The association shall provide, for each short-term or long-term account holder, a confidential account number and password to be used by the patron to confirm validity of every account transaction.

**E. Deposits:** Deposits may be made in cash or by check, whereby the proceeds of the check may first need banker's clearance. Holding periods will be determined by the

association and advised to the account holder. A receipt for the deposit must be issued to the account holder, but does not need to reflect the current account balance.

**F. Sufficient Account Balance:** Each account holder shall be deemed to be aware of the status of that account at all times. Wagers will not be accepted which would exceed the available balance of that account. Any account not updated when a transaction is completed shall be inoperable until the transaction is posted and the account balance updated.

**G. Account Credits:** When an account is entitled to a payout or refund, said monies will be credited to the respective accounts, thus increasing the credit balance. It is the responsibility of the account holder to verify proper credits and, if in doubt, notify the association within the agreed upon time frame for consideration. Unresolved disputes may be forwarded to the commission by the association or the account holder. No claim will be considered by the commission unless submitted in writing and accompanied by supporting evidence.

**H. Account Operation:**

(1) The association must maintain complete records of every deposit, withdrawal, wager and winning payout for each short and long-term account. Voucher accounts shall be recorded in a manner similar to a ticket. These records shall be made available to the commission upon request.

(2) For wagers made for an account by telephone, the association shall make a voice recording of the entire transaction and shall not accept any such wager if the voice recording system is inoperable.

(3) Any account wagering system must provide for the account holder's review and finalization of a wager before it is accepted by the association. Neither the account holder nor the association shall change a wager after the account holder has reviewed and finalized the wager. In the case of a wager made by telephone, the voice recording of the transaction shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system.

**I. Account Closure:** The association may close any account when the holder thereof attempts to operate with insufficient balance or when the account is dormant for a period approved by the commission. In either case, the association shall refund the remaining balance of the account.

[15.2.7.9 NMAC - Rp, 15 NMAC 2.7.9, 3/15/2001]

**15.2.7.10 SIMULCAST WAGERING:**

**A.** Interstate simulcasting shall be conducted in accordance with the "Interstate Horseracing Act of 1978."

**B. Duties of Simulcast Host:** Every host association simulcasting its performance, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast.

(1) A host association is responsible for content of the simulcast and shall use all reasonable effort to present a simulcast, which offers the viewers an exemplary depiction of each performance.

(2) Unless otherwise permitted by the commission, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from where it emanates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

(3) The host association shall maintain such security controls including encryption over its uplink and communications systems as directed or approved by the commission.

(4) In the event that the host association fails to link with any guest association, or loses a link and is unable to re-establish that link, the tote operator at the host association will immediately call tote at all New Mexico guest associations to close pools on the racetrack in question. The tote operator at the guest association(s) will notify the manager on duty and supply a written report of the event to the commission and the simulcast coordinator at once. This report must include, but not be limited to the following: a detailed incident report, name of manager on duty, time and person contacted at the guest association(s) and any other pertinent information. In no event will a guest association take a simulcast race, which the host association is not taking. If the link is re-established by the host association, the tote operator will call the guest association(s) and advise them that they may link up. In the event of a total telephone outage at the host association, the tote operator will contact the other tote company by cellular phone. In the event that a guest association fails to establish or loses a link, the tote operator will notify the manager on duty of his track and supply a written report of the event to the commission and the simulcast coordinator at once. This report must include, but not be limited to the following: a detailed incident report, name of manager on duty, time and person contacted at the host association(s), and any other pertinent information.

**C. Duties of Authorized Receiver:** An authorized receiver conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host associations and with the approval of the commission.

(1) An authorized receiver shall provide:

(a) adequate transmitting and receiving equipment of acceptable broadcast quality, which shall not interfere with the closed circuit TV system of the host association for providing any host facility patron information;

(b) pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmission, and data communications between the host and guest associations;

(c) a voice communication system between each guest association and the host association providing timely voice contact among the commission designees, placing judges and pari-mutuel departments.

(2) The guest association and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

(3) The commission may appoint at least one designee to supervise all approved simulcast facilities and may require additional designees as is reasonably necessary for the protection of the public interest.

(4) Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests for each day or night, the guest association shall initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system.

(5) The guest association shall, in conjunction with the host association or associations for which it operates pari-mutuel wagering, provide the commission with a certified report of its pari-mutuel operations as directed by the commission.

(6) Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

[15.2.7.10 NMAC - Rp, 15 NMAC 2.7.10, 3/15/2001, A, 6/11/2024]

#### **15.2.7.11 INTERSTATE/INTRASTATE COMMON POOL WAGERING:**

**A. General:** All contracts governing participation in interstate/intrastate common pools shall be submitted to the commission for approval.

(1) Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payouts and breakage, but will be held separate for auditing and all other purposes.

(2) Any surcharges or withholdings in addition to the takeout shall only be applied in the jurisdiction otherwise imposing such surcharges or withholdings.

(3) In determining whether to approve an interstate/intrastate common pool which does not include the host track, the commission shall consider and may approve use of a bet type which is not utilized at the host track, application of a takeout rate not in effect at the host track, or other factors which are presented to the commission.

(4) The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate/intrastate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

#### **B. Guest State Participation in Interstate/Intrastate Common Pools:**

(1) With the prior approval of the commission, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state, or with corresponding pools established by one or more other jurisdictions.

(2) The commission may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that at the host track, or identical to that of other jurisdictions participating in a merged pool.

(3) Where takeout rates in the merged pool are not identical, the net price calculation shall be the method by which the differing takeout rates are applied.

(4) Rules of racing as established for the contest in the host state shall apply to the merged pool.

(5) The commission shall approve agreements made between the association and other participants in interstate/intrastate common pools governing the distribution of breakage between the jurisdictions.

(6) If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate/intrastate common pool, the association shall make payouts in accordance with payout prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; except that, with permission of the commission, the association may alternatively determine to either pay winning tickets at the payout prices at the host track, or declare such accepted bets void and make refunds in accordance with the applicable rules.

#### **C. Host State Participation in Merged Pools:**

(1) With the prior approval of the commission, an association licensed to conduct pari-mutuel wagering may determine that one or more of its contest be utilized for pari-mutuel wagering at guest facilities in other states, and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host track or comparable wagering pools established by two or more states.

(2) Where takeout rates in the merged pool are not identical, the net price calculation shall be the method by which the differing takeout rates are applied.

(3) Rules of racing established for races held in this state shall also apply to interstate/intrastate common pools unless the commission shall have specifically otherwise determined.

(4) The commission shall approve agreements made between the association and other participants in interstate/intrastate common pools governing the distribution of breakage between the jurisdictions.

(5) Any contract for interstate/intrastate common pools entered into by the association shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate/intrastate common pool formed by the association, or if, for any reason, the commission's or the association's representative determines that attempting to effect transfer of pool data from the guest state may endanger the association's wagering pool, the association shall have no liability for any measures taken which may result in the guest's wagers not being accepted into the pool.

#### **D. Takeout Rates in Interstate/Intrastate Common Pools:**

(1) With the prior approval of the commission, an association wishing to participate in an interstate/intrastate common pool may change its takeout rate (within the limits permitted by state law) so as to achieve a common takeout rate with all other participants in the interstate/intrastate common pool.

(2) An association wishing to participate in an interstate/intrastate common pool may request that the commission approve a methodology whereby host and guest states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate/intrastate common pool.

[15.2.7.11 NMAC - Rp, 15 NMAC 2.7.11, 3/15/2001]

#### **15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:**

##### **A. General:**

(1) All permitted pari-mutuel wagering pools shall be separately and independently calculated and distributed. Takeouts shall be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool shall constitute the net pool for distribution as payout on winning wagers.

(2) For each wagering pool, the amount wagered on the winning betting interest or betting combinations is deducted from the net pool to determine the profit; the profit is then divided by the amount wagered on the winning betting interest or combinations, such quotient being the profit per dollar.

(3) Either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools.

### Standard Price Calculation Procedure

<p><b>Single Price Pool</b> <b>(Win Pool)</b></p>	<p>Gross pool = Sum of wagers on all betting interest - Refunds.</p> <p>Takeout = Gross pool x percent takeout.</p> <p>Net pool = Gross pool - takeout.</p> <p>Profit = Net pool - Gross amount bet on winner.</p> <p>Profit per dollar = Profit/gross amount bet on winner.</p> <p>\$1 unbroken price = profit per dollar + \$1.</p> <p>\$1 broken price = \$1 unbroken price rounded down to the break point.</p> <p>Total payout = \$1 broken price x gross amount bet on winner.</p> <p>Total breakage = net pool - total payout</p>	
<p><b>Profit Split</b> <b>(Place Pool)</b></p>	<p>Profit is net pool less gross amount bet on all place finishers</p>	<p>Finishers split profit <math>\frac{1}{2}</math> and <math>\frac{1}{2}</math> (place profit), then divide by gross amount bet on each place finisher for two unique prices.</p>
<p><b>Profit Split</b> <b>(Show Pool)</b></p>	<p>Profit is net pool less gross amount bet on all show finishers</p>	<p>Finishers split profit <math>\frac{1}{3}</math> and <math>\frac{1}{3}</math> and <math>\frac{1}{3}</math> (show profit), then divide by gross amount bet on</p>

		each show finisher for three unique prices.
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**Net Price Calculation Procedure**

<p><b>Single Price Pool</b> <b>(Win Pool)</b></p>	<p>Gross pool = Sum of wagers on all betting interests - refunds.</p> <p>Takeout = gross pool x percent takeout for each source.</p> <p>Net pool = gross pool - takeout.</p> <p>Net bet on winner = gross amount bet on winner x (1 percent takeout).</p> <p>Total net pool = sum of all sources net pools total net bet on winner = sum of all sources net bet on winner.</p> <p>Total profit = total net pool - total net bet on winner.</p> <p>Profit per dollar = total profit/total net bet on winner.</p> <p>\$1 unbroken base price = profit per dollar + \$1* for each source.</p> <p>\$1 unbroken price = \$1 unbroken base price x (1 percent takeout).</p> <p>\$1 broken price = \$1 unbroken price rounded down to the break point.</p> <p>Total payout = \$1 broken price x gross amount bet on winner.</p> <p>Total breakage = net pool - total payout.</p>	
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<b>Profit Split</b> <b>(Place Pool)</b>	Total profit is the total net pool less the total net amount bet on all place finishers.	Finishers split total profit $\frac{1}{2}$ and $\frac{1}{2}$ (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.
<b>Profit Split</b> <b>(Show Pool)</b>	Total profit is the total net pool less the total net amount bet on all show finishers.	Finishers split total profit $\frac{1}{3}$ and $\frac{1}{3}$ and $\frac{1}{3}$ (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

(4) If a profit split results in only one covered winning betting interest or combinations it shall be calculated the same as a single price pool.

(5) Minimum payouts and the method used for calculating breakage shall be established by the commission.

(6) The individual pools outlined in these rules may be given alternative names by each association, provided prior approval is obtained from the commission.

**B. Win Pools:**

(1) The amount wagered on the betting interest which finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:

(a) to those whose selection finished first; but if there are no such wagers, then

(b) to those whose selection finished second; but if there are no such wagers, then

(c) to those whose selection finished third; but if there are no such wagers, then

(d) the entire pool shall be refunded on Win wagers for that contest.

(3) If there is a dead heat for first involving:

(a) contestants representing the same betting interest, the win pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the win pool shall be distributed as a profit split.

### **C. Place Pools:**

(1) The amounts wagered to place on the first two betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two equal portions, one being assigned to each winning betting interest and divided by the amount wagered to place on that betting interest, the resulting quotient is the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) if contestants of a coupled entry or mutuel field finished in the first two places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise

(b) as a profit split to those whose selection is included within the first two finishers; but if there are no such wagers on one of those two finishers, then

(c) as a single price pool to those who selected the one covered betting interest included within the first two finishers; but if there are no such wagers, then

(d) as a single price pool to those who selected the third-place finisher; but if there are no such wagers, then

(e) the entire pool shall be refunded on place wagers for that contest.

(3) If there is a dead heat for first involving:

(a) contestants representing the same betting interest, the place pool shall be distributed as a single price pool;

(b) contestants representing two or more betting interests, the place pool shall be distributed as a profit split.

**(4)** If there is a dead heat for second involving:

**(a)** contestants representing the same betting interest, the place pool shall be distributed as if no dead heat occurred;

**(b)** contestants representing two or more betting interests, the place pool is divided with one-half of the profit distributed to place wagers on the betting interest finishing first and the remainder is distributed equally amongst place wagers on those betting interests involved in the dead heat for second.

**D. Show Pools:**

**(1)** The amounts wagered to show on the first three betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three equal portions, one being assigned to each winning betting interest and divided by the amount wagered to show on that betting interest, the resulting quotient being the profit per dollar wagered to show on that betting interest.

**(2)** The net show pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** if contestants of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise;

**(b)** if contestants of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds distributed to those who selected the coupled entry or mutuel field and one-third distributed to those who selected the other betting interest included within the first three finishers; otherwise

**(c)** as a profit split to those whose selection is included within the first three finishers; but if there are no such wagers on one of those three finishers, then;

**(d)** as a profit split to those who selected one of the two covered betting interests included within the first three finishers; but if there are no such wagers on two of those three finishers, then;

**(e)** as a single price pool to those who selected the one covered betting interest included within the first three finishers; but if there are no such wagers, then;

**(f)** as a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then;

**(g)** the entire pool shall be refunded on show wagers for that contest.

**(3)** If there is a dead heat for first involving:

(a) two contestants representing the same betting interest, the profit is divided with two-thirds distributed to those who selected the first-place finishers and one-third distributed to those who selected the betting interest finishing third;

(b) three contestants representing a single betting interest, the show pool shall be distributed as a single price pool;

(c) contestants representing two or more betting interests, the show pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving:

(a) contestant representing the same betting interest, the profit is divided with one-third distributed to those who selected the betting interest finishing first and two-third distributed to those who selected the second-place finishers;

(b) contestants representing two betting interests, the show pool shall be distributed as a profit split;

(c) contestants representing three betting interests, the show pool is divided with one-third of the profit distributed to show wagers on the betting interest finishing first and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for second.

(5) If there is a dead heat for third involving:

(a) contestants representing the same betting interest, the show pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the show pool is divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder is distributed equally amongst show wagers on those betting interests involved in the dead heat for third.

#### **E. Double Pools:**

(1) The double requires selection of the first-place finisher in each of two specified contests.

(2) The net double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) as a single price pool to those whose selection finished first in each of the two contests; but if there are no such wagers, then

**(b)** as a profit split to those who selected the first-place finisher in either of the two contests; but if there are no such wagers, then

**(c)** as a single price pool to those who selected the one covered first-place finisher in either contest; but if there are no such wagers, then

**(d)** as a single price pool to those whose selection finished second in each of the two contests; but if there are no such wagers, then

**(e)** the entire pool shall be refunded on double wagers for those contests.

**(3)** If there is a dead heat for first in either of the two contests involving:

**(a)** contestants representing the same betting interest, the double pool shall be distributed as if no dead heat occurred;

**(b)** contestants representing two or more betting interests, the double pool shall be distributed as a profit split if there is more than one covered winning combination.

**(4)** Should a betting interest in the first-half of the double be scratched prior to the first double contest being declared official, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

**(5)** Should a betting interest in the second-half of the double be scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

**(6)** Should a betting interest in the second-half of the double be scratched after the close of wagering on the first double contest, all wagers combining the winner of the first contest with the scratched betting interest in the second contest shall be allocated a consolation payout. In calculating the consolation payout the net double pool shall be divided by the total amount wagered on the winner of the first contest and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first contest combined with the scratched betting interest to obtain the consolation payout. Breakage is not utilized in this calculation. The consolation payout is deducted from the net double pool before calculation and distribution of the winning double payout. Dead heats including separate betting interests in the first contest shall result in a consolation payout calculated as a profit split.

**(7)** If either of the double contests is cancelled prior to the first double contest, or the first double contest is declared "no contest", the entire double pool shall be refunded on double wagers for those contests.

**(8)** If the second double contest is cancelled or declared "no contest" after the conclusion of the first double contest, the net double pool shall be distributed as a single price pool to wagers selecting the winner of the first double contest. In the event of a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

**F. Pick Three Pools:**

**(1)** The pick three requires selections of the first-place finisher in each of three specified contests.

**(2)** The net pick three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** as a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then

**(b)** as a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then

**(c)** as a single price pool to those who selected the first-place finisher in any one of the three contest; but if there are no such wagers, then

**(d)** the entire pool shall be refunded on pick three wagers for those contests.

**(3)** If there is a dead heat for first in any of the three contests involving:

**(a)** contestants representing the same betting interest, the pick three pool shall be distributed as if no dead heat occurred;

**(b)** contestants representing two or more betting interests, the pick three pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

**(4)** Should a betting interest in any of the pick three contest be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as the result of the substitution, in addition to the normal winning combinations.

**(5)** If all three pick three contests are cancelled or declared "no contest"; the entire pool shall be refunded on pick three wagers for those contests.

**(6)** If one or two of the pick three contests are cancelled or declared "no contest", the pick three pool will remain valid and shall be distributed in accordance with Subsection F Paragraph (2) of 15.2.7 NMAC.

### **G. Pick (n) Pools:**

**(1)** The pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the commission concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in Subsection G, Paragraph (2) of 15.2.7 NMAC, and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission.

**(2)** The pick (n) pool shall be apportioned under one of the following methods:

**(a)** method 1, pick (n) with carryover: the net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order or finish; if there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; and the remainder shall be added to the carryover;

**(b)** method 2, pick (n) with minor pool and carryover: the major share of the net pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the net pick (n) pool shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of pick (n) contests; and the major share shall be added to the carryover;

**(c)** method 3, pick (n) with no minor pool and no carryover: the net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, based upon the official order of finish; if there are no winning wagers, the pool is refunded;

**(d)** method 4, pick (n) with minor pool and no carryover: the major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if the

greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool; if there are no winning wagers, the pool is refunded;

**(e)** method 5, pick (n) with minor pool and no carryover: the major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish; the minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) contests, based upon the official order of finish; if there are no wagers selecting the first-place finisher in all pick (n) contests, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests; if there are no wagers selecting the first-place finisher in a second greatest number of pick (n) contests, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) contests; if there are no winning wagers, the pool is refunded.

**(f)** method 6, pick (n) with "unique winning ticket" provision: The net pick (n) pool and carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the pick (n) contests, based upon the official order of finish. If there is no unique ticket selecting the first-place finisher in each of the pick (n) contests, or if there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) contests, and the major share shall be added to the carryover. Association may suspend previously approved unique winning ticket wagering with the prior approval of the commission. Any carryover shall be held until the suspended unique winning ticket wagering is reinstated.

**(3)** If there is a dead heat for first in any of the pick (n) contests involving:

**(a)** contestants representing the same betting interest, the pick (n) pool shall be distributed as if no dead heat occurred;

**(b)** contestants representing two or more betting interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

**(4)** Should a betting interest in any of the pick (n) contest be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combinations.

**(5)** The pick (n) pool shall be cancelled and all pick (n) wagers for the individual performance shall be refunded if:

**(a)** at least two contests included as part of a pick 3 are cancelled or declared "no contest";

**(b)** at least three contests included as part of a pick 4, pick 5 or pick 6 are cancelled or declared "no contest";

**(c)** at least four contests included as part of a pick 7, pick 8 or pick 9 are cancelled or declared "no contest";

**(d)** at least five contests included as part of a pick 10 are cancelled or declared "no contest".

**(6)** If at least one contest included as part of a pick (n) is cancelled or declared "no contest", but not more than the number specified in Subsection G Paragraph (5) of 15.2.7 NMAC, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

**(7)** The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) contests for that performance.

**(8)** A written request for permission to distribute the pick (n) carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

**(9)** Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) contests. The pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

**(a)** upon written approval from the commission as provided in Subsection G Paragraph (8) of 15.2.7 NMAC of this section;

(b) upon written approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;

(c) on the closing performance of the meet or split meet.

(10) If, for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool of the following meet on a date and performance so designated by the commission.

(11) With the written approval of the commission, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

(12) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

(13) The association may suspend previously approved pick (n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific performances.

#### H. Solo 6:

(1) The *solo 6* requires selection of the first place finisher in each of six designated contests. The entire net *solo 6* pool and carryover, if any, shall be distributed to the holder of a unique wager selecting the first place finisher in each of the selected six contests. If there is no unique wager selecting the first place finisher in all six contests, the minor share of the *solo 6* shall be distributed as a single price pool to those who selected the first place finisher in the greatest number of contests. The major share shall be added to the carryover. The designated percentage of minor and major pools must be approved by the New Mexico racing commission and posted in the official racing program.

(2) Unique wager, as used in this subsection, shall be defined as having occurred when the total amount wagered on a winning combination selecting the first place finisher in each of the six contests **is equal to the minimum allowable wager.**

(3) If there is a dead heat for first in any of the *solo 6* contests involving:

(a) contestants representing the same betting interest, the *solo 6* pool shall be distributed as if no dead heat occurred;

**(b)** contestants representing two or more betting interests, the *solo 6* pool shall be distributed as a single price pool with each winning wager receiving an equal share of that day's pool if there is more than one winning ticket.

**(4)** Should a betting interest in any of the *solo 6* contests be scratched or determined to be a non-starter, the actual favorite, as evidenced by the total amounts wagered in the win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

**(5)** The *solo 6* pool shall be cancelled and all *solo 6* wagers for the individual performance shall be refunded if at least three contests included as part of the *solo 6* are cancelled or declared a no contest.

**(6)** If at least one contest of the *solo 6* is cancelled or declared a no contest, but not more than three contests, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of *solo 6* contests for that performance. Such distribution shall include the portion ordinarily retained for the *solo 6* carryover, but not the carryover from previous performances.

**(7)** The *solo 6* carryover may be capped at a designated level approved by the New Mexico racing commission so that if, at the close of any performance, the amount in the carryover equals or exceeds the designated cap, the *solo 6* carryover will be frozen until it is won or distributed under other provisions of this rule. After the *solo 6* carryover is frozen, one hundred per cent of the net pool, part of which ordinarily would be added to the *solo 6* carryover, shall be distributed to those whose selections finished first in the greatest number of *solo 6* contests for that performance.

**(8)** A written request for permission to distribute the *solo 6* carryover on a specific date shall be submitted to the New Mexico racing commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date of the distribution.

**(9)** Should the *solo 6* be designated for distribution on a specific date, the unique wager provision of this subsection shall be suspended, and the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of *solo 6* contests. The *solo 6* carryover shall be designated for distribution on a specific date and performance only under the following circumstances:

**(a)** upon written approval from the New Mexico racing commission as provided in Paragraph (8) of Subsection H of 15.2.7.12 NMAC;

**(b)** when the *solo 6* is discontinued; or

**(c)** on the closing day of the meet.

**(10)** If for any reason the *solo 6* carryover must be held over to the corresponding *solo 6* pool or subsequent meet, the carryover shall be deposited into an interest bearing account approved by the New Mexico racing commission. The *solo 6* carryover, plus accrued interest, shall then be added to the net *solo 6* pool of the following meet. Following meet would be defined as next racing season of the racetrack where the carryover occurred.

**(11)** Association may suspend previously approved *solo 6* wagering with the prior approval of the New Mexico racing commission. Any carryover shall be held until the suspended *solo 6* wagering is reinstated.

*Solo 6*, as used in this rule, shall mean the selection of winners in six contests during the course of an official racing program.

#### **I. Place Pick (n) Pools:**

**(1)** The place pick (n) is a separate pari-mutuel pool established by the association on a designated number of races. The pool consists of amounts wagered on a horse to finish first or second in each of the races. It is not a parlay and has no connection with or relation to other pools conducted by the association, except for the provisions in Paragraph (5) of Subsection H of 15.2.7.12 NMAC, or to rules governing the distribution of other pools.

**(2)** A valid place pick (n) ticket shall be evidence of a binding contract between the holder of the ticket and the association and shall constitute an acceptance of place pick (n) provisions and rules contained herein.

**(3)** A place pick (n) may be given a distinctive name by the association conducting the meeting, subject to commission approval.

**(4)** A wager on a coupled entry or mutuel field is considered a wager on the remaining part of the coupled entry or mutuel field if any part of such entry starts for pari-mutuel purposes in accordance with Subsection L of 15.2.7.8 NMAC.

**(5)** If a ticket in any place pick (n) race designates a selection that is scratched, excused or determined by the stewards to be a nonstarter in the race, the association may designate the actual favorite, which is determined by the amounts wagered in the win pool at the time of the start of the race. The actual favorite will be substituted for the nonstarting selection for all purposes.

**(6)** Except as provided in Subparagraph (a) of Paragraph (6) of Subsection H of 15.2.7.12 NMAC, in a dead heat for win between two or more horses, only the horses in such dead heat shall be considered winning horses.

**(a)** In a dead heat for win between two or more coupled horses, all such horses together with the horse(s) which finishes next in order shall be considered winning horses.

**(b)** Except as provided in Paragraph (6) of Subsection H 15.2.7.12 NMAC, a dead heat for second between two or more horses, all such horses together with the horse which finished first shall be considered winning horses.

**(7)** The association shall distribute the net pool to holders of valid tickets that correctly selected the most first or second place finishers.

**(8)** All tickets shall be refunded if all races comprising the place pick (n) are cancelled or declared as no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to Paragraph (7) of Subsection H of 15.2.7.12 NMAC.

**(9)** After wagering closes on the first race comprising of the place pick (n) no ticket shall be sold, exchanged or cancelled.

**(10)** If the racing surface changes from turf to dirt or dirt to turf in any race of a place pick (n), and such change is not announced to the public before the close of wagering on the place pick (n) pool, all wagers on such race shall be considered winning wagers for the purposes of the place pick (n).

#### **J. Grand Slam Pools:**

**(1)** The grand slam requires selection of the official first, second or third place finisher in each of the first three races in a series of four designated grand slam races. A completed winning grand slam wager requires the selection of the official first place finisher in the fourth and final event in this same series of races. The association must obtain written approval from the commission for the initial scheduling or specific performances of grand slam races or any other name used to characterize this bet type and identify the pari-mutuel pool and any required distribution percentages. Changes to the approved grand slam format, or suspension of previously approved grand slam wagering, require prior approval from the commission.

**(2)** The grand slam pool shall be apportioned under the following method:

**(a)** Grand slam wager with no carryover; the net grand slam pool shall be distributed from a single betting pool to participants who selected the first, second or third place finisher in the first three races of a series of four grand slam races completing a winning wager with the selection of the first place finisher in the fourth and final grand slam event in this same series, based upon the official order of finish.

**(b)** Grand slam wager with no carryover; if there are no winning wagers taking into account all four segments of the grand slam wager, the pool shall be distributed as

a single price pool to those who selected the first place finisher in the fourth and final grand slam event in this series of races along with the greatest number of first, second or third place finishers each of which had an accompanying show pari-mutuel payout, in accordance with Subsection M of 15.2.7.8 NMAC in each of the first three races in the series of four designated grand slam races. All results are based upon the official order of finish for each race.

**(3)** If there is a dead heat for the first in any of the grand slam segments involving:

**(a)** Official program numbered horses representing the same betting interest, the grand slam pool shall be distributed as if no dead heat occurred.

**(b)** Official program numbered horses representing two or more betting interests, the grand slam pool shall be distributed from a single betting pool with a winning wager including each betting interest participating in the dead heat provided each entrant has a pari-mutuel show payout within its race.

**(4)** If there is a dead heat for second and/or third in any of the first three races in a series of four designated grand slam contests involving:

**(a)** Horses representing the same betting interest, the grand slam pool shall be distributed as if no dead heat occurred.

**(b)** Horses representing two or more betting interests, the grand slam pool shall be distributed from a single betting pool with a winning wager including the betting interest which finished first or any betting interest involved in the dead heat for second or third providing the horse has a show pari-mutuel payout.

**(5)** Should a betting interest in any of the grand slam contests be scratched:

**(a)** The actual favorite, as evidenced by total amounts wagered in the win pool at the association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculation. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the greatest amount of money in the place pool. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

**(b)** Should a scratch or scratches occur in any of the first three races in a series of four designated grand slam contests and subsequently show wagering is cancelled due to an insufficient number of remaining betting interests, this race for winning grand slam wagering purposes would include the win and place horse only.

**(6)** The grand slam pool shall be canceled and all grand slam wagers for the individual performance shall be refunded if at least two contests included as part of a grand slam wager are cancelled or declared "no contest".

**(7)** If at least one race included as part of a grand slam wager is canceled or declared "no contest", but not more than the number specified in Paragraph (6) of Subsection I of 15.2.7.12 NMAC, the net pool shall be distributed from a single betting pool to those bettors whose selections finished first, second or third in the greatest number of grand slam contests in the first three races in a series of four designated grand slam contests. In determining a pari-mutuel distribution under this section, a finish of first in the final and fourth designated grand slam contest race for the performance in question shall have the same weight as a finish of first, second or third in the greatest number of grand slam contests in the first three races in a series of four designated grand slam contests.

**(8)** When the condition of the turf course warrants a change of racing surface in any of the legs of the grand slam races, and such change has not been made known to the betting public prior to the close of wagering for the grand slam pool, the stewards shall declare the changed leg(s) a "no contest" for grand slam wagering purposes and the pool shall be distributed in accord with Paragraph (7) of Subsection I of 15.2.7.12 NMAC.

**(9)** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining prior to the third segment of the wager being made official is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

#### **K. Quinella Pools:**

**(1)** The quinella requires selection of the first two finishers, irrespective of order, for a single contest.

**(2)** The net quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** if contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry of mutuel field combined with the next separate betting interest in the official order of finish; otherwise

**(b)** as a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

**(c)** as a profit split to those whose combination included either the first or second-place finisher; but if there are no such wagers on one of the two finishers, then

(d) as a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then

(e) the entire pool shall be refunded on quinella wagers for that contest.

(3) If there is a dead heat for first involving:

(a) contestants representing the same betting interest, the quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish;

(b) contestants representing two betting interests, the quinella pool shall be distributed as if no dead heat occurred;

(c) contestants representing three or more betting interests, the quinella pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving contestants representing the same betting interest, the quinella pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving contestants representing two or more betting interests, the quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:

(a) as a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then

(b) as a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then

(c) as a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then

(d) as a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then

(e) the entire pool shall be refunded on quinella wagers for that contest.

#### **L. Quinella Double Pools:**

(1) The quinella double requires selection of the first two finishers, irrespective of order, in each of two specified contests.

**(2)** The net quinella double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** if a coupled entry or mutuel field finishes as the first two contestants in either contest, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest, as well as the first two finishers in the alternate quinella double contest; otherwise

**(b)** as a single price pool to those who selected the first two finishers in each of the two quinella double contests; but if there are no such wagers, then

**(c)** as a profit split to those who selected the first two finishers in either of the two quinella double contests; but if there are no such wagers on one of those contests, then

**(d)** as a single price pool to those who selected the first two finishers in the one covered quinella double contest; but if there were no such wagers, then

**(e)** the entire pool shall be refunded on quinella double wagers for those contests.

**(3)** If there is a dead heat for first in either of the two quinella double contests involving:

**(a)** contestants representing the same betting interest, the quinella double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest;

**(b)** contestants representing two betting interests, the quinella double pool shall be distributed as if no dead heat occurred;

**(c)** contestants representing three or more betting interests, the quinella double pool shall be distributed as a profit split.

**(4)** If there is a dead heat for second in either of the quinella double contests involving contestants representing the same betting interest, the quinella double pool shall be distributed as if no dead heat occurred.

**(5)** If there is a dead heat for second in either of the quinella double contests involving contestants representing two or more betting interests, the quinella double pool shall be distributed as profit split.

**(6)** Should a betting interest in the first-half of the quinella double be scratched prior to the first quinella double contest being declared official, all money

wagered on combinations including the scratched betting interest shall be deducted from the quinella double pool and refunded.

(7) Should a betting interest in the second half of the quinella double be scratched prior to the close of wagering on the first quinella double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the quinella double pool and refunded.

(8) Should a betting interest in the second-half of the quinella double be scratched after the close of wagering on the first quinella double contest, all wagers combining the winning combination in the first contest with a combination including the scratched betting interest in the second contest shall be allocated a consolation payout. In calculating the consolation payout the net quinella double pool shall be divided by the total amount wagered on the winning combination in the first contest and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first contest combined with a combination including the scratched betting interest in the second contest to obtain the consolation payout. Breakage is not utilized in this calculation. The consolation payout is deducted from the net quinella double pool before calculation and distribution of the winning quinella double payout. In the event of a dead heat involving separate betting interests, the net quinella double pool shall be distributed as a profit split.

(9) If either of the quinella double contests is cancelled prior to the first quinella double contest, or the first quinella double contest is declared "no contest", the entire quinella double pool shall be refunded on quinella double wagers for those contests.

(10) If the second quinella double contest is cancelled or declared "no contest" after the conclusion of the first quinella double contest, the net quinella double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first quinella double contest. If there are no wagers selecting the winning combination in the first quinella double contest, the entire quinella double pool shall be refunded on quinella double wagers for those contests.

#### **M. Exacta Pools:**

(1) The exacta requires selection of the first two finishers, in their exact order, for a single contest.

(2) The net exacta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

(a) if contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise

(b) as a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then

(c) as a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then

(d) as a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then

(e) the entire pool shall be refunded on exacta wagers for that contest.

(3) If there is a dead heat for first involving:

(a) contestants representing the same betting interest, the exacta pool shall be distributed as a single price pool to those selecting the coupled entry of mutuel field combined with the next separate betting interest in the official order of finish;

(b) contestants representing two or more betting interests, the exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving contestants represent the same betting interest, the exacta pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving contestants representing two or more betting interests, the exacta pool shall be distributed to ticket holders in the following precedence, based upon the official order of finish:

(a) as a profit split to those combining the first-place betting interest with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then

(b) as a single price pool to those combining the first-place betting interest with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then

(c) as a profit split to those wagers correctly selecting the winner for first-place and those wagers selecting any of the dead-heated betting interests for second-place; but there are no such wagers, then

(d) the entire pool shall be refunded on exacta wagers for that contest.

#### **N. Trifecta Pools:**

**(1)** The trifecta requires selection of the first three finishers, in their exact order, for a single contest.

**(2)** The net trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combinations included, in correct sequence, the first two betting interest; but if there are no such wagers, then

**(c)** as a single price pool to those whose combinations correctly selected the first-place betting interest only; but if there are no such wagers, then

**(d)** the entire pool shall be refunded on trifecta wagers for that contest

**(e)** where only two horses finish in the race on which trifecta wagering is conducted, the pool shall be calculated so that the net pool should be divided by the value of tickets sold in the pool on horses selected to finish first and second in the exact order of the official result coupled with any other horse that started in the race;

**(f)** where only one horse finishes in a race on which trifecta wagering is conducted, the pool shall be calculated so that the net pool shall be divided by the value of the tickets sold in the trifecta pool selecting that horse to finish first, coupled with any two other horses started in the race.

**(3)** If less than three betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.

**(4)** If there is a dead heat for first involving:

**(a)** contestants representing three or more betting interests, all of the wagering combinations selecting three betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split;

**(b)** contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place betting interest shall share in a profit split.

**(5)** If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

**(6)** If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

**O. Supertrifecta Pools:**

**(1)** The superfecta requires selection of the first four finishers, in their exact order for a single contest.

**(2)** The net superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

**(c)** as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

**(d)** as a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

**(e)** the entire pool shall be refunded on superfecta wagers for that contest.

**(3)** If less than four betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.

**(4)** If there is a dead heat for first involving:

**(a)** contestants representing four or more betting interests, all of the wagering combinations selecting four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split;

**(b)** contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth place betting interest shall share in a profit split;

**(c)** contestants representing two betting interests, both of the wagering a combination selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

**(5)** If there is a dead heat for second involving:

**(a)** contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split;

**(b)** contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

**(6)** If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.

**(7)** If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.

**(8)** Coupled entries and mutuel fields may be permitted in superfecta contests with the prior written approval of the commission.

**P. Pentafecta (Super Hi-5):**

**(1)** The pentafecta (super hi-5) requires the selection of the first five finishers, in their exact order, for a single contest.

**(2)** An association may elect to conduct a pentafecta (super hi-5) in the carryover method as provided in subsection (7) below. If an association elects to offer the carryover method, a notice shall be made in the daily program explaining that there is a carryover provision and the percentages applying to the jackpot pool and the minor pool. All pentafectas (super hi-5) not conducted in the carryover method shall be conducted in the non-carryover method as provided in subsection (3) below.

**(3)** The net non-carryover pentafecta (super hi-5) pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

**(a)** as a single price pool to those whose combination finished in exact order as the first five betting interests, if there are no such wagers;

**(b)** as a single price pool to those whose combination included, in exact order, the first four betting interests, if there are no such wagers;

**(c)** as a single price pool to those whose combination included, in exact order, the first three betting interests, if there are no such wagers;

**(d)** as a single price pool to those whose combination included, in exact order, the first two betting interests, if there are no such wagers;

**(e)** as a single price pool to those whose combination correctly selected the first place betting interest only, if there are no such wagers;

**(f)** the entire pentafecta (super hi-5) pool shall be refunded for that contest.

**(4)** If less than five betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest.

**(5)** If there is a dead heat in any of the finishing positions, all wagers selecting either of the dead-heated positions with the correct non-dead-heated positions shall be winners and share in the specified payout pool. For example, the results 1/2 -3-4-5-6 with a dead heat in the win position involving numbers 1 and 2 would produce the following winning combinations: 1-2-3-4-5 and 2-1-3-4-5. Payouts will be calculated by splitting the pool equally between each winning combination, then dividing each portion by the number of winning tickets (a "profit split"). As such, a dead heat will produce separate and distinct payouts associated with the distinct winning combinations.

**(6)** In the event that more than one component of a coupled entry or mutual field finishes within the first five positions, the first member of the coupled entry or field to finish shall determine the position of the single betting interest. The net pool shall be distributed to those whose selection included the coupled entry or mutual field and each of the other four betting interests.

**(7)** The net carryover pentafecta (super hi-5) pool shall be distributed to winning wagers in the following order of finish:

**(a)** if tickets are sold on the winning combination of the pentafecta (super hi-5), the net pool shall have added to it any carryover monies from previous pentafecta (super hi-5) contests, and shall then be equally divided among those ticket holders;

**(b)** if no tickets are sold on the winning combination of the pentafecta (super hi-5), then the net pool shall be divided into two separate pools. The major pool of the net pool shall be paid as a carryover pool into the next scheduled pentafecta (super hi-5) race. The remaining minor pool shall be paid as a pentafecta (super hi-5) consolation pool, which will be equally divided among those tickets holders who correctly selected the first four betting interests; but if there is no such wager then;

**(c)** the pentafecta (super hi-5) consolation pool will be divided among those ticket holders who correctly select the first three interests; but if there are no such wagers, then;

**(d)** the pentafecta (super hi-5) consolation pool will be divided among those ticket holders who correctly select the first two interests; but if there are no such wagers, then;

**(e)** the pentafecta (super hi-5) consolation pool will be divided among those ticket holders who correctly select the first betting interest; but if there are no such wagers, then;

**(f)** the entire net pool shall become a carryover pool into the next regularly scheduled pentafecta (super hi-5) race.

**(g)** If the pentafecta (super hi-5) gross pool is refunded in accordance with the above-described rules, then all monies carried over, if any, shall be carried over to the next regularly scheduled pentafecta (super hi-5).

**(h)** If less than five betting interests finish and the contest is declared official, payoffs will be made based on the order of finish of those betting interests completing the contest. In this event, payouts will be calculated as consolation payouts and the remaining net pool will be handled as a jackpot carryover.

**(i)** In the event the accumulated jackpot carryover has not been distributed prior to the final contest of the performance, then the accumulated jackpot carryover and the net pool in the final pentafecta (super hi-5) contest of the performance will be added to the first pentafecta (super hi-5) contest of the next performance.

**(j)** All dead heat provisions of Paragraphs (5), (6), (7), (8), (9) of this subsection and coupled entry of mutuel field provisions of Paragraph (6) of this subsection apply to the net carryover pentafecta (super hi-5) pool distributions.

**(8)** The minimum number of betting interests required to start in a contest in which pentafecta (super hi-5) wagering is offered shall be seven.

**(9)** Associations electing to offer the net carryover pentafecta (super hi-5) pool may, prior to offering the wager designate the jackpot carryover amount at any given percentage of the net pool; the remaining percentages will be the minor pool portion, if any. This elected percentage may not be changed during the performance on which the pentafecta (super hi-5) is conducted in the carryover method.

**(10)** At the association's discretion, the pentafecta (super hi-5) wager may be discontinued and there will be a final distribution of any jackpot carryover combined with the final net pool of the final pentafecta (super hi-5) race and priced as a single price pool as described in Paragraph (3) of this subsection.

**(11)** Each association conducting the pentafecta (super hi-5) pool of any type, must notify the wagering public via a statement in the official program or by prominently displaying on each level of the facility, a declaration of whether the standard version or the carryover version of the pool is being conducted.

**(12)** Different methods of conduct of this pool may not be combined for the pentafecta (super hi-5) between intertrack or simulcast wagering hosts and guests.

## **Q. Twin Quinella Pools:**

**(1)** The twin quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first twin quinella contest must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin quinella contest. There will be no monetary reward for winning the first twin quinella contest. Both of the designated twin quinella contests shall be included in only one twin quinella pool.

**(2)** In the first twin quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin quinella contest:

**(a)** if a coupled entry or mutuel field finishes as the first two finishers, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners; otherwise

**(b)** those whose combination finished as the first two betting interests shall be winners; but if there are no such wagers, then

**(c)** those whose combination included either the first or second-place finisher shall be winners; but if there are no such wagers on one of those two finishers, then

**(d)** those whose combination included the one covered betting interest included within the first two finishers shall be winners; but if there are no such wagers, then

**(e)** the entire pool shall be refunded on twin quinella wagers for that contest.

**(3)** In the first twin quinella contest only, if there is a dead heat for first involving:

**(a)** contestants representing the same betting interest, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners;

**(b)** contestants representing two betting interests, the winning twin quinella wagers shall be determined as if no dead heat occurred;

**(c)** contestants representing three or more betting interests, those whose combination included any two of the betting interests finishing in the dead heat shall be winners.

**(4)** In the first twin quinella contest only, if there is a dead heat for second involving:

**(a)** contestants representing the same betting interest, those who selected the first-place finisher combined with the coupled entry or mutuel field in second-place shall be winners;

**(b)** contestants representing two or more betting interests, those who combined the first-place finisher with any of the betting interests involved in the dead for second shall be winners.

**(5)** In the second twin quinella contest only, the entire net twin quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin quinella contest:

**(a)** if a coupled entry or mutuel field finishes as the first two finishers, as a single price pool to those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise

**(b)** as a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

**(c)** as a profit split to those whose combination included either the first or second-place finisher; but if there are no such wagers on one of those two finishers, then

**(d)** as a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then

**(e)** as a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then

**(f)** in accordance with Subsection M Paragraph (2) of 15.2.7 NMAC.

**(6)** In the second twin quinella contest only, if there is a dead heat for first involving:

**(a)** contestants representing the same betting interest, the net twin quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish;

**(b)** contestants representing two betting interests, the net twin quinella pool shall be distributed as if no dead heat occurred;

**(c)** contestants representing three or more betting interests, the net twin quinella pool shall be distributed as a profit split to those whose combination included any two of the betting interests finishing in the dead heat.

(7) In the second twin quinella contest only, if there is a dead heat for second involving:

(a) contestants representing the same betting interest, the net twin quinella pool shall be distributed as if no dead heat occurred;

(b) contestants representing two or more betting interests, the net twin quinella pool shall be distributed as a profit split to those who combined the first-place finisher with any of the betting interests involved in the dead heat for second.

(8) If a winning ticket for the first-half of the twin quinella is not presented for exchange prior to the close of betting on the second-half twin quinella contest, the ticket holder forfeits all rights to any distribution of the twin quinella pool resulting from the outcome of the second contest.

(9) Should a betting interest in the first half of the twin quinella be scratched, those twin quinella wagers including the scratched betting interest shall be refunded.

(10) Should a betting interest in the second half of the twin quinella be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second twin quinella contest, the ticket holder forfeits all rights to the twin quinella pool.

(11) If either of the twin quinella contests is cancelled prior to the first twin quinella contest, or the first twin quinella contest is declared "no contest", the entire twin quinella pool shall be refunded on twin quinella wagers for that contest.

(12) If the second-half twin quinella contest is cancelled or declared "no contest" after the conclusion of the first twin quinella contest, the net twin quinella pool shall be distributed as a single price pool to wagers selecting the winning combination in the first twin quinella contest and all valid exchange tickets. If there is no such wagers, the net twin quinella pool shall be distributed as described in Subsection M Paragraph (2) of 15.2.7 NMAC.

#### **R. Twin Trifecta Pools:**

(1) The twin trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin trifecta contest must be exchanged for a free ticket on the second twin trifecta contest in order to remain eligible for the second-half twin trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin trifecta contest. Winning first half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta contests shall be included in only one twin trifecta pool.

**(2)** After wagering closes for the first half of the twin trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools; the first-half twin trifecta pool and the second-half twin trifecta pool.

**(3)** In the first twin trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta contest:

**(a)** a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

**(c)** as a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

**(d)** the entire twin trifecta pool shall be refunded on twin trifecta wagers for that contest and the second-half shall be cancelled.

**(4)** If no first-half twin trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In such case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.

**(5)** Winning tickets from the first half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta contest:

**(a)** as a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first three betting interests; but if there are no such tickets, then

**(b)** The entire second-half twin trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half twin trifecta pool of the next consecutive performance.

**(6)** If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta contest, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool.

**(7)** Should a betting interest in the first half of the twin trifecta be scratched, those twin trifecta wagers including the scratched betting interest shall be refunded.

**(8)** Should a betting interest in the second half of the twin trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second twin trifecta contest, the ticket holder forfeits all rights to the second-half twin trifecta pool.

**(9)** If, due to a late scratch, the number of betting interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.

**(10)** If there is a dead heat or multiple dead heats in either the first or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

**(a)** the first half of the twin trifecta, the payout shall be calculated as a profit split;

**(b)** the second half of the twin trifecta, the payout shall be calculated as a single price pool.

**(11)** If either of the twin trifecta contests are cancelled prior to the first twin trifecta contest, or the first twin trifecta contest is declared "no contest", the entire twin trifecta pool shall be refunded on twin trifecta wagers for that contest and the second-half shall be cancelled.

**(12)** If the second-half twin trifecta contest is cancelled or declared "no contest", all exchange tickets and outstanding first-half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that contest as a single price pool, but not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in Subsection N Paragraph (3) of 15.2.7 NMAC.

**(13)** The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the twin trifecta carryover is frozen, 100 percent of the net twin trifecta pool for each individual contest shall be distributed to winners of the first half of the twin trifecta pool.

**(14)** A written request for permission to distribute the twin trifecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

**(15)** Should the twin trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first half of the twin trifecta:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

**(c)** as a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

**(d)** as a single price pool to holders of valid exchange tickets.

**(e)** as a single price pool to holders of outstanding first-half winning tickets.

**(16)** Contrary to Subsection N Paragraph (4) of 15.2.7 NMAC, during a performance designated to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first, second, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place betting interests. If there are no wagers correctly selecting the first and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the twin trifecta, all first-half tickets will become winners and will receive 100 percent of that day's net twin trifecta pool and any existing twin trifecta carryover as a single price pool.

**(17)** The twin trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

**(a)** upon written approval from the commission as provided in Subsection N Paragraph (15) of 15.2.7 NMAC;

**(b)** upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued;

**(c)** on the closing performance of the meet or split meet.

**(18)** If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover

plus accrued interest shall then be added to the second-half twin trifecta pool of the following meet on a date and performance so designated by the commission.

**(19)** Providing information to any person regarding covered combinations or amount wagered on specific combinations is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

**(20)** The association must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

### **S. Tri-Superfecta Pools:**

**(1)** The tri-superfecta requires selection of the first three finishers, in their exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first tri-superfecta contest must be cashed for an exchange ticket on the second tri-superfecta contest in order to remain eligible for the second-half tri-superfecta pool. The number of exchanges to be determined by the association with written approval of the commission. Such tickets may be exchanged only at attended ticket windows prior to the second tri-superfecta contest. Winning first-half tri-superfecta tickets will receive both an exchange and a monetary payout. Both of the designated tri-superfecta contests shall be included in only one tri-superfecta pool.

**(2)** After wagering closes for the first half of the tri-superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools; the first-half tri-superfecta pool and the second-half tri-superfecta pool.

**(3)** In the first tri-superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first tri-superfecta contest:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combinations included, in correct sequence, the first two betting interest; but if there are no such wagers, then

**(c)** as a single price pool to those whose combinations correctly selected the first-place betting interest only; but if there are no such wagers, then

**(d)** the entire pool shall be refunded.

**(4)** If no first-half tri-perfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half tri-perfecta pool. In such case, the second-half tri-perfecta pool shall be retained and added to any existing tri-perfecta carryover pool.

**(5)** Winning tickets from the first half of the tri-perfecta shall be exchanged for tickets selecting the first four finishers of the second half of the tri-perfecta. The second-half tri-perfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second tri-perfecta contest:

**(a)** as a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then

**(b)** the entire second-half tri-perfecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half tri-perfecta pool of the next performance.

**(6)** If a winning first-half tri-perfecta ticket is not presented for cashing and exchange prior to the second-half tri-perfecta contest, the ticket holder may still collect the monetary value associated with the first-half tri-perfecta pool but forfeits all rights to any distribution of the second-half tri-perfecta pool.

**(7)** Coupled entries and mutuel fields may be permitted in tri-perfecta contests with the prior written approval of the commission.

**(8)** Should a betting interest in the first half of the tri-perfecta be scratched, those tri-perfecta tickets including the scratched betting interest shall be refunded.

**(9)** Should a betting interest in the second half of the tri-perfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second tri-perfecta contest, the ticket holder forfeits all rights to the second-half tri-perfecta pool.

**(10)** If, due to a late scratch, the number of betting interests in the second-half of the tri-perfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half tri-perfecta pool for that contest as a single price pool, but not the tri-perfecta carryover.

**(11)** If there is a dead heat or multiple dead heats in either the first or second-half of the tri-perfecta, all tri-perfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

(a) the first half of the tri-superfecta, the payout shall be calculated as a profit split;

(b) the second half of the tri-superfecta, the payout shall be calculated as a single price pool.

(12) If either of the tri-superfecta contests are cancelled prior to the first tri-superfecta contest, or the first tri-superfecta contest is declared "no contest", the entire tri-superfecta pool shall be refunded on tri-superfecta wagers for that contest and the second-half shall be cancelled.

(13) If the second-half tri-superfecta contest is cancelled or declared "no contest", all exchange tickets and outstanding first-half winning tri-superfecta tickets shall be entitled to the net tri-superfecta pool for that contest as a single price pool, but not the tri-superfecta carryover. If there are no such tickets, the net tri-superfecta pool shall be distributed as described in Subsection O Paragraph (3) of 15.2.7 NMAC.

(14) The tri-superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the tri-superfecta carryover equals or exceeds the designated cap, the tri-superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half tri-superfecta carryover is frozen, 100 percent of the net tri-superfecta pool for each individual contest shall be distributed to winners of the first half of the tri-superfecta pool.

(15) A written request for permission to distribute the tri-superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(16) Should the tri-superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the tri-superfecta after completion of the first half of the tri-superfecta:

(a) as a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

(b) as a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(c) as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(d) as a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then

(e) as a single price pool to holders of valid exchange tickets.

(f) as a single price pool to holders of outstanding first half-winning tickets.

(17) Contrary to Subsection O Paragraph (4) of 15.2.7 NMAC, during a performance designated to distribute the tri-superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the tri-superfecta. If there are no wagers correctly selecting the first, second, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place betting interests. If there are no wagers correctly selecting the first and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the tri-superfecta, all first-half tickets will become winners and will receive 100 percent of that day's net tri-superfecta pool and any existing tri-superfecta carryover as a single price pool.

(18) The tri-superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) upon written approval from the commission as provided in Subsection O Paragraph (15) of 15.2.7 NMAC;

(b) upon written approval from the commission when there is a change in the carryover cap or when the tri-superfecta is discontinued;

(c) on the closing performance of the meet or split meet.

(19) If, for any reason, the tri-superfecta carryover must be held over to the corresponding tri-superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The tri-superfecta carryover plus accrued interest shall then be added to the second-half tri-superfecta pool of the following meet on a date and performance so designated by the commission.

(20) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

(21) The association must obtain written approval from the commission concerning the scheduling of tri-superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved tri-superfecta format require prior approval from the commission.

## **T. Twin Superfecta Pools:**

**(1)** The twin superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second twin superfecta contest. Winning first-half twin superfecta tickets will receive both an exchange and a monetary payout. Both of the designated twin superfecta contests shall be included in only one twin superfecta pool.

**(2)** After wagering closes for the first half of the twin superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools; the first-half twin superfecta pool and the second-half twin superfecta pool.

**(3)** In the first twin superfecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin superfecta contest:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

**(c)** as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

**(d)** as a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

**(e)** the entire twin superfecta pool shall be refunded on twin superfecta wagers for that contest and the second half shall be cancelled.

**(4)** If no first-half twin superfecta ticket selects the first four finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin superfecta pool. In such case, the second-half twin superfecta pool shall be retained and added to any existing twin superfecta carryover pool.

**(5)** Winning tickets from the first half of the twin superfecta shall be exchanged for tickets selecting the first four finishers of the second half of the twin superfecta. The second-half twin superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin superfecta contest:

**(a)** as a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then

**(b)** the entire second-half twin trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half twin superfecta pool of the next performance.

**(6)** If a winning first-half twin superfecta ticket is not presented for cashing and exchange prior to the second-half twin superfecta contest, the ticket holder may still collect the monetary value associated with the first-half twin superfecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool.

**(7)** Coupled entries and mutuel fields may be permitted in twin superfecta contests with the prior written approval of the commission.

**(8)** Should a betting interest in the first half of the twin superfecta be scratched, those twin superfecta tickets including the scratched betting interest shall be refunded.

**(9)** Should a betting interest in the second half of the twin superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second twin superfecta contest, the tickets holder forfeits all rights to the second-half twin superfecta pool.

**(10)** If, due to a late scratch, the number of betting interests in the second-half of the twin superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin superfecta pool for that contest as a single price pool, but not the twin superfecta carryover.

**(11)** If there is a dead heat or multiple dead heats in either the first or second-half of the twin superfecta, all twin superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

**(a)** the first half of the twin superfecta, the payoff shall be calculated as a profit split;

**(b)** the second half of the twin superfecta, the payoff shall be calculated as a single price pool.

**(12)** If either of the twin superfecta contests are cancelled prior to the first twin superfecta contest, or the first twin superfecta contest is declared "no contest", the

entire twin superfecta pool shall be refunded on twin superfecta wagers for that contest and the second-half shall be cancelled.

**(13)** If the second-half twin superfecta contest is cancelled or declared "no contest", all exchange tickets and outstanding first-half winning twin superfecta tickets shall be entitled to the net twin superfecta pool for that contest as a single price pool, but not the twin superfecta carryover. If there are no such tickets, the net twin superfecta pool shall be distributed as described in Subsection P Paragraph (3) of 15.2.7 NMAC.

**(14)** The twin superfecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the twin superfecta carryover equals or exceeds the designated cap, the twin superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half twin superfecta carryover is frozen, 100 percent of the net twin superfecta pool for each individual contest shall be distributed to winners of the first half of the twin superfecta pool.

**(15)** A written request for permission to distribute the twin superfecta carryover on a specific performance may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

**(16)** Should the twin superfecta carryover be designated for distribution on a specified date and superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin superfecta carryover plus accrued interest shall then be added to the second-half performance, the following precedence will be followed in determining winning tickets for the second half of the twin superfecta after completion of the first half of the twin superfecta:

**(a)** as a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

**(b)** as a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

**(c)** as a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

**(d)** as a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

**(e)** as a single price pool to holders of valid exchange tickets;

**(f)** as a single price pool to holders of outstanding first half winning tickets.

**(17)** Contrary to Subsection P Paragraph (4) of 15.2.7 NMAC, during a performance designated to distribute the twin superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the twin superfecta. If there are no wagers correctly selecting the first, second, third, and fourth-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first, second, and third-place betting interests. If there are no wagers correctly selecting the first, second, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place betting interests. If there are no wagers correctly selecting the first and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the twin superfecta, all first-half tickets will become winners and will receive 100 percent of that day's net twin superfecta pool and any existing twin superfecta carryover as a single price pool.

**(18)** The twin superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

**(a)** upon written approval from the commission as provided in Subsection P Paragraph (15) of 15.2.7 NMAC of the twin superfecta rules;

**(b)** upon written approval from the commission when there is a change in the carryover cap or when the twin superfecta is discontinued;

**(c)** on the closing performance of the meet or split meet.

**(19)** If, for any reason, the twin superfecta carryover must be held over to the corresponding twin twin superfecta pool of the following meet on a date and performance so designated by the commission.

**(20)** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.

**(21)** The association must obtain written approval from the commission concerning the scheduling of twin superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any subsequent changes to the approved twin superfecta format require prior approval from the commission.

#### **U. Exacta (n) Pools:**

**(1)** The exacta (n) requires selection of the first two finishers, in their exact order, in each of a designated number of contests. The association must obtain written

approval from the commission concerning the scheduling of exacta (n) contests, the designation of one of the methods prescribed in Subsection Q Paragraph (2) 15.2.7 NMAC; and the amount of any cap to be set on the carryover. Any changes to the approved exacta (n) format require prior approval from the commission.

**(2)** The exacta (n) pool shall be apportioned under one of the following methods:

**(a)** Method 1, exacta (n) with no minor pool and no carryover. The net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in the greatest number of exacta (n) contests. If there are no winning wagers, the entire pool shall be refunded on exacta (n) wagers for those contests.

**(b)** Method 2, exacta (n) with no minor pool and carryover instead of a refund. The net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the net exacta (n) pool and the carryover shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in the greatest number of exacta (n) contests. If there are no winning wagers, the net exacta (n) pool shall be added to the carryover.

**(c)** Method 3, exacta (n) with no minor pool and carryover. The net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. If there are no winning wagers, the net exacta (n) pool shall be added to the carryover.

**(d)** Method 4, exacta (n) with minor pool and no carryover. The major share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in the second greatest number of exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the major share of the net exacta (n) pool shall be combined with the minor share for distribution as a single price pool to those who selected the first and second place finishers, in exact order, in the greatest number of exacta (n) contests. If there are no wagers selecting the first and second place finishers, in exact order, in a second greatest number of exacta (n)

contests, the minor share of the net exacta (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first and second place finishers, in exact order, in each of the Exacta (n) contests. If there are no winning wagers, the pool shall be refunded on exacta (n) wagers for those contests.

**(e)** Method 5, exacta (n) with minor pool and carryover. The major share of the net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in the second greatest number of exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the minor share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in the greatest number of exacta (n) contests, and the major share shall be added to the carryover. If there are no wagers selecting the first and second place finishers, in exact order, in a second greatest number of exacta (n) contests, the minor share of the net exacta (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, or if there are no such winning wagers, added to the carryover.

**(f)** Method 6, exacta (n) with minor pool based upon any one exacta and no carryover. The major share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those (including recipients of the major share of the net exacta (n) pool) who selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the major share of the net exacta (n) pool shall be combined with the minor share for distribution as a single price pool to those who selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests. If there are no winning wagers, the pool is refunded.

**(g)** Method 7, exacta (n) with minor pool based upon any one exacta, and carryover. The major share of the net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those (including recipients of the major share of the net exacta (n) pool) who selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in each of the exacta (n) contests, the major share shall be added to the carryover. If there are no wagers selecting the first

and second place finishers, in exact order, in any of the exacta (n) contests, the minor share of the net exacta (n) pool shall also be added to the carryover.

**(h)** Method 8, exacta (n) with minor pool based upon individual exactas, and no carryover. The major share of the net exacta (n) pool shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool based upon the sum of the dollar value of wagers for each of the exacta (n) contests considered separately, in which the first and second place finishers, in exact order, were correctly selected, based on the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those (including recipients of the major share of the net exacta (n) pool) who selected the first and second place finishers, in exact order, in one or more of the exacta (n) contests. Each recipient of a minor share shall receive an amount equal to the single price times the number of exacta (n) contests in which the recipient correctly selected the winning combination. If there are no wagers selecting the first and second place finishers, in exact order, in all exacta (n) contests, the major share shall be combined with the minor share and the entire net exacta (n) pool shall be distributed in accordance with the rules in the preceding paragraph for distributing the minor share of the net exacta (n) pool. If there are no winning wagers, the pool shall be refunded.

**(i)** Method 9, exacta (n) with minor pool based upon individual exactas, and carryover. The major share of the net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool based upon the sum of the dollar value of wagers, for each of the exacta (n) contests considered separately, in which the first and second place finishers, in exact order, were correctly selected, based on the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those (including recipients of the major share of the net exacta (n) pool) who selected the first and second place finishers, in exact order, in one or more of the exacta (n) contests. Each recipient of a minor share shall receive an amount equal to the single price times the number of exacta (n) contests in which the recipient correctly selected the winning combination. If there are no wagers selecting the first and second place finishers, in exact order, in all exacta (n) contests, the minor share shall be distributed in accordance with the rules in the preceding paragraph for distributing the minor share of the net exacta (n) pool, and the major share shall be added to the carryover; except that if there are no winning wagers in either the major or the minor pool, today's pool shall be refunded and the carryover shall be carried over.

**(j)** Method 10, exacta (n) with minor pool based upon individual exactas and carryover; 100% carryover if no winning wagers. The major share of the net exacta (n) pool and the carryover, if any, shall be distributed as a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n)

contests, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool based upon the sum of the dollar value of wagers, for each of the exacta (n) contests considered separately, in which the first and second place finishers, in exact order, were correctly selected, based upon the official order of finish. The minor share of the net exacta (n) pool shall be distributed as a single price pool to those (including recipients of the major share of the net exacta (n) pool) who selected the first and second place finishers, in exact order, in one or more of the exacta (n) contests. Each recipient of a minor share shall receive an amount equal to the single price times the number of exacta (n) contests in which the recipient correctly selected the winning combination. If there are no wagers selecting the first and second place finishers, in exact order, in all exacta (n) contests, the minor share shall be distributed in accordance with the rules in the preceding paragraph for distributing the minor share of the net exacta (n) pool, and the major share shall be added to the carryover. If there are no winning wagers, the minor share shall also be added to the carryover.

**(3)** Dead Heats: In the event of a dead heat in any of the exacta (n) contests, the net exacta (n) shall be distributed to winning wagers in the following precedence, based upon the official order of finish, for each exacta contest within the exacta (n) wager:

**(a)** If there is a dead heat for first in any of the exacta (n) contests involving contestants representing the same betting interest, the exacta (n) pool shall be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest.

**(b)** If there is a dead heat for first in any of the exacta (n) contests involving contestants representing two or more betting interests, the exacta (n) pool shall be distributed as a single price pool with a winning wager including each betting interest involved in the dead heat.

**(c)** If there is a dead heat for second in any of the exacta (n) contests involving contestants representing the same betting interest, the exacta (n) pool shall be distributed as if no dead heat occurred.

**(d)** If there is a dead heat for second in any of the exacta (n) contests involving contestants representing two or more betting interests, the exacta (n) pool shall be distributed as a single price pool with a winning wager including the betting interest which finished first together with any betting interest involved in the dead heat for second.

**(4)** Scratches: Should a betting interest in any contest of the exacta (n) be scratched or excused from the contest prior to the first exacta (n) contest being declared official, all money wagered on combinations including the scratched betting interest shall be deducted from the exacta (n) pool and refunded.

**(a)** Should a betting interest in any contest of the exacta (n) be scratched or excused from the contest after the first exacta (n) contest has been declared official, all money wagered on combinations including this betting interest shall remain in the exacta (n) pool and the ticket holder may still collect the monetary value of any distribution evidenced by the ticket containing the scratched betting interest.

**(b)** If, due to a late scratch, the number of betting interests in a contest of the exacta (n) is reduced to fewer than two, for purposes of the exacta (n) such contests shall be declared "no contest" and the exacta (n) pool shall be subject to the rules set forth in Subsection Q Paragraph (5) of 15.2.7 NMAC of these rules.

**(5)** Canceled Contests: If any of the exacta (n) contests are cancelled or declared "no contest" prior to the first exacta (n) contest being declared official, the entire exacta (n) pool shall be refunded on exacta (n) wagers for those contests.

**(a)** If all remaining exacta (n) contests are cancelled or declared "no contest" after the first exacta (n) contest is declared official, the net exacta (n) pool shall be distributed as a single price pool to wagers selecting the winning combination in the first exacta (n) contest, but not the exacta (n) carryover. However, if there are no wagers selecting the winning combination in the first exacta (n) contest, the entire exacta (n) pool shall be refunded on exacta (n) wagers for those contests.

**(b)** If any of the remaining exacta (n) contests are cancelled or declared "no contest" after the first exacta (n) is declared official, the net exacta (n) pool shall be distributed in accordance with rules governing distribution of the minor share where there is no winner of the major share.

**(6)** Mandatory Distribution: A written request for permission to distribute the exacta (n) carryover on a specific performance may be submitted to the commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The association must notify the commission at least 10 days prior to implementation. If the exacta (n) pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next scheduled mandatory distribution performance.

**(a)** If the exacta (n) carryover is designated for distribution on a specified date and performance, the following precedence shall be followed in determining winning tickets for the net exacta (n) pool and the carryover pool;

**(b)** As a single price pool to those who selected the first and second place finishers, in exact order, in each of the exacta (n) contests, based upon the official order of finish. If there are no wagers selecting the first and second place finishers, in exact order, in all exacta (n) contests, then

(c) As a single price pool to those who selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests based upon the official order of finish.

(d) If there are no wagers which correctly selected the first and second place finishers, in exact order, in at least one of the exacta (n) contests, based upon the official order of finish, then all exacta (n) tickets shall become winners and receive 100 percent of that day's net exacta (n) pool and the exacta (n) carryover pool as single price pool.

(e) Subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The exacta (n) carryover plus accrued interest shall then be added to the net exacta (n) pool of the following meet on a date and performance so designated by the commission.

#### **V. Team Wager Pool:**

(1) The team wager pool requires selection of a designated "team" in each of a designated number of contests. Winning bets shall be determined based upon the official order of finish in each contest and the standing of each team with respect to the official order of finish. For purposes of the team wager, finishers from the same team shall be bracketed together to determine a single betting interest, as set forth in Paragraph (4).

(2) Prior to the start of the contests that comprise the team wager, all participants in each of the contests shall be divided by the association between or among each of the team wager teams, and the roster of each team made public, as well as the number of points to be awarded to the team whose member is the first finisher in a designated contest, the second finisher, and so forth until no more points are awarded in that contest.

(3) At the conclusion of all contests that comprise the team wager, the number of points for each team shall be compiled, and the team with the most points shall be declared the "winning team".

(4) The team wager pool shall be apportioned under either of the following methods:

##### **(a) Winning Margins Team Wager:**

(i) In the "winning margins team wager", the total number of points awarded in the team wager shall be divided by the association into a series of brackets comprised of a series of point ranges ("winning margin") by which one team (team A) might defeat the other team (team B); a series of point ranges by which team B might defeat team A; and a tie between the teams. Each bracket shall constitute a separate betting interest in the winning margins team wager.

(ii) The net winning margins team wager pool shall be distributed as a single price pool to those who selected the correct bracket. If there are no wagers selecting the correct bracket, the entire pool shall be refunded.

(iii) Example: Points are assigned to each of the first four finishers in each contest (four points for the first finisher down to one point for the fourth finisher, for a total of 10 points awarded in each contest), based upon the official order of finish, with a total of six contests in the team wager, resulting in a total of 60 points in all. The brackets could be designated as:

Team A's winning margin is	1-10 points
	11-20 points
	21-30 points
	31-40 points
	41-50 points
	51-60 points
Team B's winning margin is	1-10 points
	11-20 points
	21-30 points
	31-40 points
	41-50 points
	51-60 points

The two teams tie, and the margin is 0 points  
In this example, there are 13 separate betting interests

If, in this example, finishers representing team A come in 1st and 3rd in one contest, and finishers representing team B come in 2nd and 4th in that contest, team A would have  $4+2=6$  points and team B would have  $3+1=4$  points. The current winning margin (after the first contest) would be team A by 2 points

#### (b) Team Double Wager

(i) In the "team double wager", the commission shall approve two different methods of determining the winning tickets qualifying for a share of the net pool.

(ii) The commission shall also approve the manner of apportioning the net team double wager pool, and the conditions under which the pool shall be refunded or otherwise apportioned if there are no winning wagers.

(iii) Example: A "daily-double"-style pool consisting of having to correctly select the bracket of the winning margin, as above, as well as a bracket based upon and including the total points achieved by the winning team.

**(5) Brackets**

(a) The brackets may be comprised of the margins by which the winning team defeats the team that finishes second; the total number of points achieved by the winning team; or other method of determining the brackets, as approved by the commission.

(b) Such factors as the number of teams in the team wager; the method by which teams are designated; the number of points to be awarded in each contest, the number of contests comprising the team wager; and the method by which the "brackets" constituting each betting interest in the team wager are designated, shall all be subject to approval of the commission.

(6) Coupled Entries or Fields: With approval of the commission, coupled entries may be permitted in contests comprising the team wager, but may only participate as part of the same team. With approval of the commission, fields may be permitted in contests comprising the team wager, but may only participate as part of the same team.

(7) Dead Heat: If there is a dead heat including any finisher(s) for which points are awarded in the team wager, the total amount of points in the dead heat positions shall be combined and divided equally amongst the betting interests that have finished in the dead heat.

**(8) Scratches**

(a) Should an entry in any contest of the team wager be scratched or excused from the contest, all money wagered on combinations including this entry shall remain in the team wager pool and the ticket holder may still collect the monetary value of any distribution evidenced by the ticket containing the scratched betting interest.

(b) If, due to a scratched or excused entry, the number of entries assigned to a team in a contest of the team wager is reduced to fewer than the number of positions in the final order of finish for which the team is eligible to receive points, for purposes of the team wager pool such contest shall be declared "no contest" and wagers involving any betting interests that are no longer capable of being achieved shall be refunded.

**W. Match Rival Pools:**

(1) The match rival requires the selection of the winning contestant in a designated contest or series of contests, in a competition between two or more equally matched betting interests, or based on the sportsmanship or skill of the jockeys or

trainers, regardless of the official placing of the other betting interests in that contest or series of contests.

**(2)** The choice of which contestants from a contest shall participate in the match rival shall be made as follows:

**(a)** the association must obtain written approval from the commission concerning who shall determine the contestants for each match rival contest;

**(b)** the matching of contestants for the match rival shall be limited to contestant versus contestant, jockey versus jockey or trainer versus trainer;

**(c)** the contestants chosen for the match rival wager shall be conspicuously identified in the official program;

**(3)** The net match rival pool shall be distributed to winning wagers in the following precedence, based on the official order of finish:

**(a)** as a single price pool to those whose selection finished first in a single match rival contest, or first in the greatest number of a series of match rival contests; but if there are no such wagers, then;

**(b)** the match rival pool shall be refunded;

**(4)** If there is a dead heat in a contest involving two or more of the contestants in:

**(a)** a single-contest match rival pool, then the entire pool shall be refunded; or

**(b)** one or more contests of a series, then all contestants involved in the dead heat shall be considered winners and the net pool shall be distributed as a single price pool, provided that:

**(c)** in a series of contests, if there is a dead heat in half or more of the contests then the match rival pool for those contests shall be refunded.

**(5)** If any match rival contest is cancelled or declared no contest;

**(a)** in a single-contest match rival pool, the pools shall be refunded;

**(b)** in a series of contests, if half or more of the contests are cancelled or declared no contest, then the match rival pool for those contests shall be refunded.

**(6)** If any contestant is scratched or declared a non-starter in any match rival contest, then that contest shall be cancelled.

(7) If all contestants fail to finish in a match rival contest, then that contest shall be cancelled.

#### **X. 123Racing Pick (N) Wager Pool:**

(1) The 123Racing pick-n is a pari-mutuel wager that requires the selection of one runner from each contest in a series of specific contests comprising the 123Racing pick-n pool ("123Racing pool"). "N" denotes the number of designated contests in that pool.

(2) Four is the minimum number of contests required to offer a 123Racing pick-n pool.

(3) If a 123Racing pick-n pool is reduced to fewer than four completed contests, the 123Racing pick-n pool will be cancelled and all wagers will be refunded.

(4) Each wager is automatically assigned to a unique wager identification by the host totalizator platform, and is allocated "points" in each contest.

(5) Points are allocated for winning selections of contestants that finish in the first, second or third position in the official results for each contest and have a pari-mutuel payout associated with its finish. Points scored will be equivalent to adding the pari-mutuel pool host payouts for its finish. Points scored will be equivalent to adding the pari-mutuel pool host payouts for the win, place and show wager on that selection (i.e. \$2 win, \$2 place and \$2 show wagers).

(6) Points are accumulated after each contest in the 123Racing pick-n pool and displayed on a leaderboard shown at betting venues and online.

(7) Each 123Racing pick-n wager is assigned a unique identifier or nickname associated with the serial number of the ticket or account wager record. This unique identifier or nickname is used to identify the wagers' progress on the leaderboard display.

(8) The unique 123Racing pick-n wagers with the highest points scores after the last designated contest, share in the payouts of the net pool according to paragraph (14) of this subsection.

(9) After each leg of the contests comprising the 123Racing pick-n wager, the leaderboard displays the points accumulated from that leg and the cumulative points of each player and their ranking in the 123Racing pick-n pool. After the final contest comprising the 123Racing pick-n, the leaderboard displays the final results and payouts for the 123Racing pick-n pool.

**(10)** Where a selection in a 123Racing pick-n wager does not finish in first, second or third in the official results, or the selection was a non-wagering interest, no points are scored.

**(11)** The 123Racing pick-n wager is not eliminated if a selection does not score points.

**(12)** Wagering on the 123Racing pick-n pool shall close at the start of the first designated contest in the 123Racing pick-n pool. Participants are not permitted to cancel a 123Racing pick-n wager after the 123Racing pick-n pool has closed.

**(13)** One hundred percent of the net 123Racing pick-n pool is paid out upon completion of all designated contests in the 123Racing pick-n pool.

**(14)** The distribution of the 123Racing pick-n pool is based on the winning wager(s) in the following order of precedence:

**(a)** Single winners of the 123Racing pick-n pool

**(i)** The highest scoring single wager in the 123Racing pick-n pool receives sixty percent of the net pool.

**(ii)** The second highest scoring single wager receives thirty percent of the net pool.

**(iii)** The third highest scoring single wager receives ten percent of the net pool.

**(b)** If there are two 123Racing pick-n wagers that score the highest points then those two winning wagers share ninety percent (sixty percent plus thirty percent) of the net pool equally divided between the two winning wagers and the second highest scoring single wager receive ten percent of the net pool.

**(c)** If there are three or more winning wagers scoring the same highest points, one hundred percent of the net pool is equally divided amongst each winning wager. This shall be done consistent with the minimum pari-mutuel payouts of the jurisdiction in which the wager was hosted.

**(d)** If there is a single wager with the highest points total, and two or more wagers with the second highest points total, the highest scoring wager will receive sixty percent of the net pool, and the second highest points wagers share forty percent of the net pool equally divided by the two or more wagers, as the case may be, that scored the second highest points total.

**(e)** If there is a single wager with the highest points total, and a single wager with the second highest points total, and two or more wagers with the third highest

points total, the highest scoring wager will receive sixty percent of the net pool, the second highest point wager will receive thirty percent of the net pool, and the third highest point wagers will share ten percent of the net pool equally divided by the two or more wagers, as the case may be, that scored the third highest point total.

**(15)** Subject to paragraph (3) of this subsection, if a single contest included as part of a 123Racing pick-n pool is cancelled or declared a "no contest", the net pool shall be distributed based on the results of the other designated contests included in the pool.

**(16)** Coupled entries or mutuel fields, as defined within the rules and regulations of the commission, shall race in any 123Racing pick-n contest as a single betting interest for purposes of the 123Racing pick-n pool calculations.

**(17)** A scratch after wagering on the 123Racing pick-n has begun of any betting interest of a coupled entry or mutuel field selection in said 123Racing pick-n contest shall be of no effect with respect to the status of such remaining entry either or both field as a viable wagering interests, unless in conflict with the wagering rules in the host track jurisdiction.

**(18)** Should a betting interest in any of the 123Racing pick-n contests be scratched, the post time favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest at the close of wagering on that contest shall be substituted for the scratched betting interest for all purposes including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizator shall produce reports showing each of the wagering combinations with substituted betting interest which became winners as result of the substitution in addition to the normal winning combination.

**(19)** The takeout and the pool distribution for a 123Racing pick-n pool shall be set by the host association and approved by the host regulatory commission.

**(20)** With written approval of the commission, the pool host may contribute to the net amount of the 123Racing pick-n pool.

**(21)** 123Racing pick-n scoring example: Picks that finish first, second, or third in each contest score points allocated by summing the pari-mutuel payouts equivalent to a \$2 win, place and show wager, i.e. by summing the official win, place and show pari-mutuel payouts for the contest, as in the following examples:

Horse A - First Place	Horse B - Second Place	Horse C - Third Place
Win: \$6.00 Place: \$5.60 Show: \$2.20	Place: \$15.60 Show: \$4.80	Show: \$2.10
	<b>Total Score Equals:</b>	<b>Total Score Equals:</b>

<b>Total Score Equals:</b>	Place + Show = 20.40 points	Place = 2.10 points
Win + Place + Show =13.80 points		

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 3/15/2001; A, 3/31/2003; A, 9/15/2003; A, 4/14/2005; A, 7/15/2005; A, 11/30/2005; A, 3/30/2007; A, 6/15/2009; A, 12/1/2010; A, 11/1/2011; A, 1/1/2013; A, 9/15/2014; A, 12/16/2016; A, 5/1/2019]

## **CHAPTER 3: PROFESSIONAL ATHLETIC COMPETITION [RESERVED]**

## **CHAPTER 4: BINGO AND RAFFLES**

### **PART 1: GENERAL PROVISIONS**

#### **15.4.1.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.1.1 NMAC - Rp, 15.4.1.1 NMAC, 2/23/2021]

#### **15.4.1.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.1.2 NMAC - Rp, 15.4.1.2 NMAC, 2/23/2021]

#### **15.4.1.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection G of Section 60-2F-6 NMSA 1978 authorizes the board to make rules to hold, conduct and operate all games of chance held in the state except those exempt under the New Mexico Bingo and Raffle Act.

[15.4.1.3 NMAC - Rp, 15.4.1.3 NMAC, 2/23/2021]

#### **15.4.1.4 DURATION:**

Permanent.

[15.4.1.4 NMAC - Rp, 15.4.1.4 NMAC, 2/23/2021]

#### **15.4.1.5 EFFECTIVE DATE:**

February 23, 2021 unless a later date is cited at the end of a section.

[15.4.1.5 NMAC - Rp, 15.4.1.5 NMAC, 2/23/2021]

#### **15.4.1.6 OBJECTIVE:**

This rule establishes definitions of terms used in this chapter, clarifies the role of the New Mexico gaming control board in promulgating regulations and establishes the scope and severability of such rules.

[15.4.1.6 NMAC - Rp, 15.4.1.6 NMAC, 2/23/2021]

#### **15.4.1.7 DEFINITIONS:**

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the New Mexico Bingo and Raffle Act. The definitions set forth below shall be applicable to all parts of this chapter.

##### **A. Definitions beginning with A:**

(1) **"Accountant"** means a game accountant as defined in the act who further is an individual licensed by the board and designated by the bingo manager to fulfill duties relating to accounting procedures and reporting including filing of all board required quarterly reports and associated obligations, on behalf of the licensee.

(2) **"Act"** means the New Mexico Bingo and Raffle Act.

(3) **"Agent"** means any member or employee of the New Mexico gaming control board or any other person authorized to act on the board's behalf.

(4) **"Appellant"** means a person aggrieved by an action of the New Mexico gaming control board, who files a request for hearing before the board.

(5) **"Appellee"** means the New Mexico gaming control board, its agents or its representatives.

(6) **"Applicant"** means a person who has applied for a license or approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the act.

(7) **"Approved record"** means those records required by the act, or regulations promulgated there under which shall be maintained on forms prescribed or approved by the New Mexico gaming control board.

(8) **"Alternate bingo manager"** means an assistant to the bingo manager permitted by the board who assumes overall responsibility for supervising and

managing the operation of games of chance in the bingo manager's absence. The alternate bingo manager derives their authority from the licensed bingo manager. If an organization does not have a licensed bingo manager, they cannot conduct games of chance.

(9) **"Audit"** means an examination of an applicant's or licensee's accounting records, financial situation, and business practices to determine compliance with, state law, or rules adopted by the New Mexico gaming control board.

(10) **"Auxiliary"** means an organization that has a qualified affiliation with a licensee in accordance with a national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary organization.

#### **B. Definitions beginning with B:**

(1) **"Bingo"** means a game of chance in which each player has one or more bingo cards printed with different numbers on which to place markers when the respective numbers are drawn and announced by a bingo caller. Bingo also includes those games of chance that do not contain an instant win component but contain numbers that must be exposed by the player and the winning combination is exposed by the draw of a bingo ball or by some other approved specific event. The approved specific event must consist of a method of randomly selecting numbers that correspond to the numbers printed by the manufacturer.

(2) **"Bingo caller"** means the individual who, in the game of bingo, draws and announces numbers.

(3) **"Bingo employee"** as defined in the act, means a person, paid or volunteer, connected directly with a game of chance but does not include nongaming personnel such as bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages; secretarial or janitorial personnel; or stage, sound and light technicians. All bingo employees shall be permittees.

(4) **"Bingo manager"** means the person responsible for overseeing bingo and pull-tab activities conducted pursuant to a bingo license.

(5) **"Bingo operating account"** means an independent operating bank account established for bingo operations only for which all gross receipts and proceeds shall be maintained separately from licensee's general operating accounts.

(6) **"Bingo tax"** means the excise tax imposed pursuant to Section 60-2F-21 NMSA 1978.

(7) **"Bingo winning combination"** means numbers which have been announced by the bingo caller, and a player has covered the predetermined

arrangement and declares bingo, after which the pattern on the winning card is independently verified by a bingo employee.

(8) **"Board"** means the gaming control board or its designee.

#### **C. Definitions beginning with C:**

(1) **"Change fund"** means the cash used for making change.

(2) **"Charitable purposes"** means activities that promote, directly or indirectly, the well-being of the public at large or that benefit of an indefinite number of persons in the state.

(3) **"Completed application"** means that the application has been entirely filled in, the appropriate fee is attached, additional documentation requested is provided and signatures with proper notary are included.

(4) **"Credit report"** means a credit report generated by any of the three major credit agencies in the United States, which are equifax, experian and transunion.

#### **D. Definitions beginning with D:**

(1) **"Deal"** means a predetermined pool of pull-tabs with the same serial number and a predetermined number of winners.

(2) **"Direct relative"** means the individual's spouse or spousal equivalent, parent, mother-in-law, father-in-law, brother-in-law, sister-in-law, brother, sister, child or stepchild.

(3) **"Door-prize"** means a promotional drawing where no additional consideration is charged for the chance to play.

#### **E. Definitions beginning with E:**

(1) **"Electronic transfer"** means transactions initiated through a financial institution which include ATM transactions, direct deposits, withdrawals or point-of-sale transactions.

(2) **"Employee"** means a person, paid or volunteer, who works in the service of the licensee, bingo or pull tab operation or works for the qualified organization.

(3) **"Enforcement action"** means an action by the board or its agents that limits, conditions, suspends or revokes a license or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing.

(4) **"Executive director"** means the chief administrative officer appointed by the board.

(5) **"Extra cards"** means other cards sold at the door during a bingo occasion along with the master card. These cards are controlled by a separate color or size and serial number from the master card. This does not include special cards.

#### **F. Definitions beginning with F:**

(1) **"Fee"** includes all license, approval, investigative costs, taxes and fines imposed by the board or its agents.

(2) **"Fine"** means any monetary penalty assessed by the board or its agents for a violation of the act after an administrative hearing has been held or as negotiated between the board or its agents and the applicant or licensee in settlement proceedings.

#### **G. Definitions beginning with G:**

(1) **"Game of chance"** means an event in which payment for participation is required, a winner or winners are identified by an act of fate and prizes are awarded to the winners.

(2) **"Gross receipts"** means proceeds received by a bingo licensee from the sale of bingo cards, raffle tickets or pull-tab tickets, the sale of rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge, the sale of playing materials, and all other miscellaneous receipts.

#### **H. Definitions beginning with H:**

(1) **"Hard cards"** means a reusable bingo card.

(2) **"House rules"** means rules established by each licensee for items not covered by the act, or regulations promulgated under the act or other provisions of law.

(3) **"Hybrid game"** means a game of chance using pull-tabs as defined in the act which have both instant and non-instant winnings. The non-instant winnings are selected by drawing using a bingo blower or a seal card provided by the manufacturer of the game. This type of pull-tab game may be referred to as an "event game" or "side game." Hybrid game pull-tabs may only be sold during a bingo occasion. Instant winnings must be announced by the bingo caller during the same occasion in which a hybrid game pull-tab deal is sold

#### **I. Definitions beginning with I: [RESERVED]**

**J. Definitions beginning with J: [RESERVED]**

**K. Definitions beginning with K: [RESERVED]**

**L. Definitions beginning with L:** "Licensed premises" means the area that has been approved to conduct games of chance.

**M. Definitions beginning with M:**

(1) "**Master board**" means the tray with five rows and 15 columns that holds bingo balls removed from the hopper in spaces specifically designated for each ball. This is the official score board for a bingo game.

(2) "**Master card**" means the main bingo card in use for the occasion that each player is required to have in their possession to play bingo. This is sometimes referred to as the door or admission card. This card is usually controlled by using only one color or size card.

**N. Definitions beginning with N: [RESERVED]**

**O. Definitions beginning with O: [RESERVED]**

**P. Definitions beginning with P:**

(1) "**Person**" means a legal entity or individual.

(2) "**Petitioner**" means the board or the board's representative.

(3) "**Premises**" means the land together with all buildings, improvements and personal property located on the land, either leased or owned by the licensee.

(4) "**Promotional games**" means all bingo games, raffle tickets and pull-tabs that are awarded as a door prize, bingo prize, pull-tab prize or a free or reduced priced game, offered to any player for any reason.

(5) "**Pull-tab dispenser**" means a mechanical or electromechanical device that dispenses pull-tabs or reads a bar-code printed on the exterior of the pull-tab and displays the win or loss status of the pull-tab on a video display.

**Q. Definitions beginning with Q: [RESERVED]**

**R. Definitions beginning with R:**

(1) "**Records**" mean inventory records, bank records, accounting records, receipts, invoices, deposits, employee logs, payroll, taxes, bingo and occasion

documentation, and any other document that is required under the current rules and the act.

(2) **"Respondent"** means a licensee or person to which an approval has been granted and who is the subject of a complaint issued by the board or its agents.

(3) **"Retail value"** means the price set by a licensee to participate in a game of chance.

**S. Definitions beginning with S:**

(1) **"Special card"** means a bingo card used for a specific game or games which is controlled by a separate color, serial number and manufacturer's identification number. Special cards are additional bingo cards sold separately that entitle purchasers to participate in bingo games that cannot be played on either a master card or an extra card.

(2) **"Staff permit badge"** means a hard plastic card issued by the board or its agents with the licensee's name, expiration date and photograph.

(3) **"State"** means the state of New Mexico.

**T. Definitions beginning with T: [RESERVED]**

**U. Definitions beginning with U: [RESERVED]**

**V. Definitions beginning with V:**

(1) **"Variance"** means a temporary exemption from a specific part or subpart of Title 15, Chapter 4, not to exceed the date of renewal of a license.

(2) **"Vendor"** means distributors and manufacturers of "equipment" as defined in the act.

**W. Definitions beginning with W: "Willfully" means knowingly or purposefully.**

**X. Definitions beginning with X: [RESERVED]**

**Y. Definitions beginning with Y: [RESERVED]**

**Z. Definitions beginning with Z: [RESERVED]**

[15.4.1.7 NMAC - Rp, 15.4.1.7 NMAC, 2/23/2021]

**15.4.1.8 ADOPTION, AMENDMENT AND REPEAL:**

The New Mexico gaming control board is authorized to adopt regulations pursuant to the New Mexico Bingo and Raffle Act, Sections 60-2F-1 through 60-2F-26 NMSA 1978. From time to time as the board deems necessary, the board will adopt, amend and repeal such regulations, consistent with the policy, objectives, and purposes of the New Mexico Bingo and Raffle Act.

[15.4.1.8 NMAC - Rp, 15.4.1.8 NMAC, 2/23/2021]

#### **15.4.1.9 CONSTRUCTION:**

Nothing contained in Title 15, Chapter 4 will be construed so as to conflict with any provision of the New Mexico Bingo and Raffle Act or any other applicable statute.

[15.4.1.9 NMAC - Rp, 15.4.1.9 NMAC, 2/23/2021]

#### **15.4.1.10 SEVERABILITY:**

The sections and subsections of the parts in Chapter 4 of Title 15 promulgated by the board are deemed severable. If any section or subsection is found invalid, unconstitutional, or otherwise contrary to the laws of New Mexico by opinion of a court of competent jurisdiction or by legislative enactment, the opinion or enactment will invalidate only that particular section or subsection. All other provisions of Title 15, Chapter 4 will remain in full force and effect.

[15.4.1.10 NMAC - Rp, 15.4.1.10 NMAC, 2/23/2021]

#### **15.4.1.11 TELEPHONE CONFERENCES:**

**A.** In all cases where it is possible, board members shall attend public meetings of the board in person.

**B.** A member of the board may participate in a meeting of the board by means of a conference telephone when it is difficult or impossible for the member to attend the meeting in person, provided:

**(1)** each member participating by conference telephone can be and is identified when speaking;

**(2)** all participants in the telephone conference are able to hear each other at the same time; and

**(3)** members of the public who are attending the meeting are able to hear any member of the board who speaks during the meeting.

**C.** Whenever circumstances justifying participation by telephone conference arise, the board member requiring the telephone conference shall notify board staff as early in

advance of the meeting as possible so that arrangements can be made to set up and operate necessary conference telephone equipment.

[15.4.1.11 NMAC - Rp, 15.4.1.11 NMAC, 2/23/2021]

**15.4.1.12 RETENTION OF RECORDS:**

Licensee shall maintain and keep safe the books and records necessary to substantiate the particulars of all reports submitted to the board or required by the act or this title for a period of three years at the licensee's administrative office.

[15.4.1.12 NMAC - Rp, 15.4.1.12 NMAC, 2/23/2021]

**15.4.1.13 CONFIDENTIAL RECORDS:**

All tax identification and financial account identification numbers for an applicant, licensee or permittee submitted to the board shall be confidential and not be subject to any disclosure under the Inspection of Public Records Act.

[15.4.1.13 NMAC - Rp, 15.4.1.13 NMAC, 2/23/2021]

**PART 2: APPLICATION FOR LICENSURE**

**15.4.2.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.2.1 NMAC - Rp, 15.4.2.1 NMAC, 2/23/2021]

**15.4.2.2 SCOPE:**

This rule applies to all licensees or applicants for licensure, or other approval under the New Mexico Bingo and Raffle Act.

[15.4.2.2 NMAC - Rp, 15.4.2.2 NMAC, 2/23/2021]

**15.4.2.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections I, J, K and L of Section 60-2F-6 NMSA 1978 authorize the board to adopt regulations concerning licensure for persons involved in the conducting of games of chance.

[15.4.2.3 NMAC - Rp, 15.4.2.3 NMAC, 2/23/2021]

**15.4.2.4 DURATION:**

Permanent.

[15.4.2.4 NMAC - Rp, 15.4.2.4 NMAC, 2/23/2021]

**15.4.2.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.2.5 NMAC - Rp, 15.4.2.5 NMAC, 2/23/2021]

**15.4.2.6 OBJECTIVE:**

This rule establishes standards and requirements for licensure and other approvals under the New Mexico Bingo and Raffle Act.

[15.4.2.6 NMAC - Rp, 15.4.2.6 NMAC, 2/23/2021]

**15.4.2.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.2.7 NMAC - Rp, 15.4.2.7 NMAC, 2/23/2021]

**15.4.2.8 NATURE OF LICENSE AND APPLICATION REQUEST:**

**A.** Any license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

**B.** Any application for a license or other approval submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

**C.** Any application for license or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

**D.** By applying for and obtaining any license or other approval from the board, the applicant agrees to abide by all provisions of the act, the regulations promulgated pursuant to the act and all other applicable laws and regulations.

**E.** By applying for a license or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss

that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.4.2.8 NMAC - Rp, 15.4.2.8 NMAC, 2/23/2021]

#### **15.4.2.9 LICENSE CLASSIFICATIONS:**

##### **A. Licenses include:**

(1) manufacturer's license, which authorizes the approved licensee to manufacture, produce, or sell to licensed distributors or licensed qualified organizations, any equipment or supplies for the conduct of games of chance in the state or for sale outside the state in accordance with the act and board rules;

(2) distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any equipment or supplies for the conduct of games of chance in the state or outside the state in accordance with the act and board rules; and

(3) and bingo and raffle operator's license, which authorizes a qualified organization to acquire equipment and supplies for the conduct of games of chance and to conduct games of chance on the licensed premises.

##### **B. Other approvals include:**

(1) staff permit, which authorizes the participation of the holder in the conduct of games of chance; staff permit for bingo caller, bingo manager, alternate bingo manager, accountant, all bingo employees, and any other position deemed necessary by the board;

(2) approval and classification of games of chance as either bingo, raffle, or pull-tabs; and

(3) approval to amend a license to show a change in the name and address of the permittees of the licensee under whom the games of chance shall be held. Should there be any change to the permittees listed on the license; the licensee shall be responsible for submitting the proper documentation within 10 days.

[15.4.2.9 NMAC - Rp, 15.4.2.9 NMAC, 2/23/2021]

#### **15.4.2.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:**

**A.** Every application, statement, and notice required to be filed under the act or this rule shall be submitted on forms prescribed by the board and shall contain such information and documents as specified.

**B.** The applicant shall file with the application all requested information requested by the board. The application requires full disclosure of all information requested therein. The failure to provide all required and requested information may result in denial or delay in consideration of the application.

**C.** Upon request of the board or its agents, the applicant shall provide any additional information. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 15 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless the applicant can show good cause.

**D.** All information required to be included in a renewal application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information submitted to the board in the renewal application, the applicant shall file, within five days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

**E.** The application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

**F.** At the board's discretion an applicant may be required to submit to a background investigation.

**G.** Neither the state, the board, or any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

**H.** The applicant shall cooperate fully with the board and its agents with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

**I.** The board may deny the application of any applicant that refuses or fails to provide any information requested by the board or its agents, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determines is necessary to evaluate the qualifications for a suitability of the applicant.

**J.** All new applications submitted to the board shall be completed within 30 days of the initial submission of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in

the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

**K.** An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board shall establish the new filing date of the application with respect to the time requirements for action on the application.

**L.** An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

**M.** An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board.

[15.4.2.10 NMAC - Rp, 15.4.3.10 NMAC, 2/23/2021]

#### **15.4.2.11 REQUIREMENTS FOR DISCLOSURE IN APPLICATION; CONTENTS OF APPLICATION:**

The applicant for a bingo and raffle operator's license shall submit with the application a proposed plan for the conduct of games of chance. Failure to include any of the following shall constitute an incomplete application. The plan shall include the following:

**A.** a physical address where games of chance will be conducted, mailing and physical address of the administrative office where all documentation for games of chance are kept;

**B.** a floor plan;

**C.** a copy of the applicant's current charter, articles of incorporation, or bylaws;

**D.** a list of the organization's current official roster of active and auxiliary members;

**E.** proof of organization's tax exempt status, if applicable;

**F.** if conducting pull-tab dispenser sales without concurrent bingo events, applicants that are not a veterans' or fraternal organization, shall include proof of IRS 501 (c)(3) tax exempt status;

**G.** if a charitable organization, documentation of the preceding four quarters or the last calendar year's activities in furtherance of a charitable purpose. Activities in furtherance of a charitable purpose include:

**(1)** services provided directly by the organization for a charitable purpose;

(2) monetary donations to other charitable organizations;

(3) goods donated to individuals and organizations for a charitable purpose, substantiated by the names of the recipients, description of items donated and receipts for any items purchased by the organization prior to donation;

(4) a charitable contribution 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 qualified organization's national organization and the distribution is used for charitable purposes.

H. evidence of good standing with the public regulation commission, parent organization, and the attorney general's office if applicable;

I. a description of all games of chance that the licensee will conduct for each approved occasion including:

(1) the order in which games will be played;

(2) the patterns needed to win;

(3) whether the prize payout is based on sales or attendance; and

(4) the price of each type of bingo card(s) offered for sale.

J. a payout schedule of the games of chance; if the applicant chooses to award prizes contingent on the number of patrons who play, separate payout schedules shall be submitted to the board in addition to announcing and posting the time of the attendance count; the attendance count shall be conducted 10 minutes prior to the start of each occasion; only schedules submitted to the board shall be used to pay prizes; issuance of the license constitutes approval of the payout schedule;

K. if checks will be used as an optional payout for prizes;

L. the days and times of each occasion where games of chance are held;

M. the house rules;

N. the name, address of the in-state financial institution where a bingo operating account has been established and into which all gross receipts from games of chance will be deposited;

O. bank signature card with all signatures and names of authorized signors on the bingo operating account; any changes to signatories on the bingo operating account, including additions and deletions, require notification to the board within three days;

**P.** a copy of any contract to lease the licensed premises or bingo equipment from a lessor or distributor; and

**Q.** any other information requested by the board or its agents.

[15.4.2.11 NMAC - Rp, 15.4.9.11 NMAC, 2/23/2021]

**15.4.2.12 APPLICATION FOR STAFF PERMIT:**

**A.** An organization with a bingo and raffle license shall designate only one bingo manager and one bingo accountant responsible for completion of the bingo and raffle activity reports, but may designate up to three alternate bingo managers.

**B.** Applicants shall submit:

(1) completed staff permit application;

(2) application fee;

(3) signed and notarized authorization for a background investigation;

(4) self disclosure form;

(5) the applicant's fingerprints and photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of a certified identification technician or a certified law enforcement officer;

(6) certificate of completion for training provided by the board or its agents if required by the board; and

(7) the applicant's credit report dated within the 30 days prior to submission of the applicant's signed application to the board.

**C.** Applicant shall not have a warrant for their arrest in any jurisdiction.

**D.** Each applicant shall submit a current photograph with each initial and renewal application. The photographs shall have been taken no earlier than three months before the date the application is filed.

**E.** A staff permit badge issued to a bingo employee shall indicate the permittee's name, staff permit number, and expiration date.

**F.** A staff permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished the requested information for a staff permit to the board.

**G.** Applicants or permittees who intend to utilize their approval at a licensed venue not currently designated on the initial application shall submit notice to the board in writing prior to beginning new employment. Additionally this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.

**H.** An initial application shall be reviewed, granted or denied and responded to by the board's staff within 60 days of receipt of completed application.

**I.** All permits are valid for three years from the date of issuance.

**J.** Bingo managers and alternate bingo managers may work at other licensed organizations but shall be active members in good standing with each of the licensed organization.

[15.4.2.12 NMAC - Rp, 15.4.2.12 NMAC, 2/23/2021]

#### **15.4.2.13 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:**

**A.** A person shall apply for and obtain a manufacturer's or distributor's license prior to engaging in the manufacture or distribution of equipment or supplies used in the conduct of games of chance.

**B.** Applicants shall submit a form prescribed by the board to include the vendor's name, address, contact information, federal and state tax identification numbers, evidence of good standing with the public regulation commission, all license numbers required to conduct business in New Mexico and a list of licensees with whom the applicant intends to conduct business.

**C.** Licenses shall be renewed every three years. Any change of vendor information shall be reported in writing to the licensing division within 10 days of change.

**D.** Applications for manufacturer's or distributor's licenses shall be made, processed, and determined in the same manner as applications for other licenses as set forth in the act and this rule.

[15.4.2.13 NMAC – Rp, 15.4.2.13 NMAC, 2/23/2021]

#### **15.4.2.14 APPLICATION FEES:**

**A.** The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

**B.** Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

- (1) manufacturer's license, \$200;
- (2) distributor's license, \$200;
- (3) bingo and raffle operator's license, \$200;
- (4) bingo managers, alternate bingo managers and accountants staff permits, \$50; and
- (5) all other bingo employee staff permits, \$25.

**C.** In addition to any nonrefundable license or approval fee paid, all bingo, raffle, and pull tab operators, manufacturers, and distributors shall pay supplementary investigative fees and costs, if any.

**D.** The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall not file any other application with the board until all such fees and costs are paid in full.

**E.** If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board shall discontinue investigation and processing of the application and shall issue a final, written order denying the application.

**F.** The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

**G.** Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

[15.4.2.14 NMAC - Rp, 15.4.2.14 NMAC, 2/23/2021]

#### **15.4.2.15 CONDITIONS OF APPROVAL OF APPLICATION:**

The approval of any application is subject to the following conditions and constitutes the following agreements by the licensee:

**A.** the licensee shall at all times make its bingo establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement;

**B.** the licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an account or preparer of the report, or any entity in which the licensee has a direct or indirect controlling interest; upon request of the board or its agents, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or its agents to examine such documents;

**C.** with respect to new license applications, the licensee shall commence the activity approved by the board within 90 days after the date of approval by the board on the application; failure to commence the approved activity voids the board's approval, and the licensee shall file a new application; the board, in its discretion, may waive the requirements of a new application; the licensee shall make written application for waiver to the board within thirty days of the date the board's action on the original application becomes void; and

**D.** the licensee shall be responsible for all registration, taxation, and licensing costs imposed by the act or other state law.

[15.4.2.15 NMAC - Rp, 15.4.2.15 NMAC, 2/23/2021]

#### **15.4.2.16 GROUND FOR DENIAL OF APPLICATION:**

**A.** The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

(1) evidence 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 the background investigation;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any administrative gaming offense in any jurisdiction;

(4) entry of a civil judgment against the applicant 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 proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to satisfy any requirement for application or to timely respond to any request by the board or its agents for additional information;

(9) permanent suspension, revocation, denial or other limiting action on any bingo license issued by any jurisdiction; or

(10) approval of the application would otherwise be contrary to New Mexico law or public policy.

**B.** The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on bingo, raffle or pull-tab activities permitted under the license, administrative fines, or such other terms as the board requires.

[15.4.2.16 NMAC – Rp, 15.4.2.16 NMAC, 2/23/2021]

#### **15.4.2.17 RESTRICTION FOR REAPPLYING:**

Any applicant whose application has been denied or whose license has been suspended or revoked shall not reapply for licensing or approval by the board for the period of one year.

[15.4.2.17 NMAC – Rp, 15.4.2.17 NMAC, 2/23/2021]

### **PART 3: LICENSE AND STAFF PERMIT RENEWAL**

#### **15.4.3.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.3.1 NMAC - Rp, 15.4.3.1 NMAC, 2/23/2021]

#### **15.4.3.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.3.2 NMAC - Rp, 15.4.3.2 NMAC, 2/23/2021]

#### **15.4.3.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections I, J, K and L of Section 60-2F-6 NMSA 1978 authorize the board to adopt regulations concerning licensure for persons involved in the conducting of games of chance.

[15.4.3.3 NMAC - Rp, 15.4.3.3 NMAC, 2/23/2021]

#### **15.4.3.4 DURATION:**

Permanent.

[15.4.3.4 NMAC - Rp, 15.4.3.4 NMAC, 2/23/2021]

#### **15.4.3.5 EFFECTIVE DATE:**

March 23, 2021, unless a later date is cited at the end of a section.

[15.4.3.5 NMAC - Rp, 15.4.3.5 NMAC, 2/23/2021]

#### **15.4.3.6 OBJECTIVE:**

This rule establishes standards for the periodic renewal of licenses issued under the New Mexico Bingo and Raffle Act.

[15.4.3.6 NMAC - Rp, 15.4.3.6 NMAC, 2/23/2021]

#### **15.4.3.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.3.7 NMAC - Rp, 15.4.3.7 NMAC, 2/23/2021]

#### **15.4.3.8 NATURE OF LICENSE AND RENEWAL APPLICATION REQUEST:**

**A.** Any renewed license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

**B.** Any application for a renewed license or other approval submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

**C.** Any renewal application for license or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability,

character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

**D.** By applying for and obtaining any renewed license or other approval from the board, the applicant agrees to abide by all provisions of the act, the regulations promulgated pursuant to the act and all other applicable laws.

**E.** By applying for a renewed license or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.4.8. NMAC - Rp, 15.4.3.8 NMAC, 2/23/2021]

#### **15.4.3.9 RENEWAL APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:**

**A.** All licenses shall expire on the third anniversary date of the original issuance and will be subject to renewal on an anniversary date basis. Every renewal application, statement, and notice required to be filed under the act or this rule shall be submitted on forms prescribed by the board and shall contain such information and documents as specified.

**B.** The applicant shall file with the renewal application all requested information requested by the board or its agents not less than 60 days prior to the expiration date. The renewal application requires full disclosure of all information requested therein. The failure to provide all required and requested information may result in grounds for denial or suspension of approval.

**C.** Upon request of the board or its agents, the applicant shall provide any additional information. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 15 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the renewal application unless good cause is shown.

**D.** All information required to be included in a renewal application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information submitted to the board in the renewal application, the applicant shall file, within five days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

**E.** The renewal application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

**F.** At the board's discretion an applicant may be required to submit to a background investigation.

**G.** Neither the state, the board, or any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

**H.** The applicant shall cooperate fully with the board and its agents with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

**I.** The board shall deny the renewal application of any applicant that refuses or fails to provide any information requested by the board or its agents, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determine is necessary to evaluate the qualifications for a suitability of the applicant.

**J.** All renewal applications shall be completed by the applicant within 15 days of submission. Failure to complete the renewal application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure.

**K.** An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board or its agents shall establish the new filing date of the renewal application with respect to the time requirements for action on the application.

**L.** An amendment to a renewal application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

**M.** An applicant may file a written request for withdrawal of the renewal application at any time prior to final action on the application by the board.

[15.4.3.9 NMAC - Rp, 15.4.3.9 NMAC, 2/23/2021]

**15.4.3.10 REQUIREMENTS FOR DISCLOSURE IN RENEWAL OF LICENSE ISSUED; CONTENTS OF RENEWAL APPLICATION:**

The renewal of a bingo and raffle operator's license shall be filed with the board not less than 60 days prior to the expiration date. The licensee shall submit with the renewal application a proposed plan for the conduct of all games of chance. The plan shall include all of the requirements set forth in Section 15.4.2.11 NMAC.

[15.4.3.10 NMAC - Rp, 15.4.3.10 NMAC, 2/23/2021]

#### **15.4.3.11 DENIAL OR DELAY IN LICENSURE:**

**A.** The board may deny or delay an application for renewal if:

- (1)** the applicant is delinquent in the payment of any installment of the bingo tax or of any other fees, fines, costs, or penalties imposed by the state;
- (2)** the application is incomplete;
- (3)** the quarterly reports are not current; or
- (4)** other reasons deemed necessary by the board.

**B.** If the application is not properly verified or not fully, accurately and truthfully complete, any existing license may be suspended until the default has been corrected. A \$100 fee shall be assessed.

**C.** The renewal application acceptance date shall not alter the anniversary date. Should the license be issued after the anniversary date as a result of a late or incomplete application, the licensee shall expire on the original anniversary date.

[15.4.3.11 NMAC - Rp, 15.4.3.11 NMAC, 2/23/2021]

#### **15.4.3.12 RENEWAL OF STAFF PERMIT ISSUED:**

Staff permits issued by the act expire three years from the date of issuance of the permit and are subject to renewal in accordance to the act and this rule. A complete application for renewal of the staff permit shall be filed with the board at least 10 days prior to the date of expiration. The renewal application shall be submitted on forms prescribed by the board.

**A.** Applicants shall submit:

- (1)** a completed staff permit renewal application;
- (2)** application fee;
- (3)** signed and notarized authorization for a background investigation;

(4) self disclosure form;

(5) the applicant's fingerprints and photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of a certified identification technician or a certified law enforcement officer; and

(6) the applicant's credit report dated within the 30 days prior to submission of the applicant's signed application to the board.

**B.** Permittees shall not have a warrant for their arrest in any jurisdiction.

**C.** Permittees shall submit a current photograph with each renewal application. The photographs shall have been taken no earlier than three months before the renewal application is filed.

**D.** Permittees who intend to use their staff permit at a licensed venue not currently designated on the initial or previous renewal applications shall submit notice to the board in writing prior to beginning new employment. Additionally, this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.

[15.4.3.12 NMAC - Rp, 15.4.3.12 NMAC, 2/23/2021]

#### **15.4.3.13 RENEWAL FEES:**

**A.** Renewal fees are as follows:

(1) manufacturer, \$200;

(2) distributor, \$200;

(3) bingo operator, \$200;

(4) bingo managers, alternate bingo managers and accountants staff permits, \$50; and

(5) all other bingo employee staff permits, \$25

**B.** Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

[15.4.3.13 NMAC - Rp, 15.4.3.13 NMAC, 2/23/2021]

#### **15.4.3.14 LATE RENEWAL OF LICENSE:**

**A.** The board may, in its discretion, accept and process a renewal application filed after the deadline established in Subsection B of 15.4.3.9 NMAC. Any such application, however, shall be subject to a late renewal fee of \$100 dollars with an additional fee of \$10 per day up to 30 days.

**B.** If the licensee fails to renew within the required amount of time, any application received up to one year after the expiration date may be considered a renewal application. All applicable late fees shall be paid upon submission of the renewal application. Upon showing of good cause, the applicant may submit an initial application and have any late fees waived.

[15.4.3.14 NMAC - Rp, 15.4.3.14 NMAC, 2/23/2021]

#### **15.4.3.15 LATE RENEWAL OF A STAFF PERMIT:**

If the permittee fails to submit a completed application and fee within the required amount of time, a \$50 late fee shall be assessed.

[15.4.3.15 NMAC - Rp, 15.4.3.15 NMAC, 2/23/2021]

#### **15.4.3.16 MANDATORY CESSATION OF BINGO, RAFFLE AND PULL-TAB ACTIVITY:**

No licensee shall engage in any games of chance unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the act and this rule shall cease the games of chance authorized by the license on the date the license expires. Any person engaging in any games of chance without a renewed license may be subject to criminal sanctions.

[15.4.3.16 NMAC - Rp, 15.4.3.16 NMAC, 2/23/2021]

### **PART 4: LICENSED PREMISES**

#### **15.4.4.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.4.1 NMAC - Rp, 15.4.4.1 NMAC, 2/23/2021]

#### **15.4.4.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.4.2 NMAC - Rp, 15.4.4.2 NMAC, 2/23/2021]

#### **15.4.4.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.4.3 NMAC - Rp, 15.4.4.3 NMAC, 2/23/2021]

#### **15.4.4.4 DURATION:**

Permanent.

[15.4.4.4 NMAC - Rp, 15.4.4.4 NMAC, 2/23/2021]

#### **15.4.4.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.4.5 NMAC - Rp, 15.4.4.5 NMAC, 2/23/2021]

#### **15.4.4.6 OBJECTIVE:**

This rule establishes standards and requirements for premises on which licensed games of bingo, raffle and pull-tabs are operated by a licensee pursuant to the New Mexico Bingo and Raffle Act.

[15.4.4.6 NMAC - Rp, 15.4.4.6 NMAC, 2/23/2021]

#### **15.4.4.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.4.7 NMAC - Rp, 15.4.4.7 NMAC, 2/23/2021]

#### **15.4.4.8 SUITABILITY OF PREMISES:**

The licensed premises shall meet the requirements of the act and regulations promulgated under the act.

**A.** The proposed licensed premises shall comply with all zoning ordinance of the city or county and fire safety, health or building codes.

**B.** A licensee shall maintain a secure storage area on the licensed premises for funds, bingo cards, pull-tabs and raffle tickets.

[15.4.4.8 NMAC - Rp, 15.4.4.8 NMAC, 2/23/2021]

**15.4.4.9 AREA OF LICENSED PREMISES; RESTRICTIONS:**

**A.** The licensed premises shall be clearly marked and no games of chance shall be permitted outside of the licensed premises.

**B.** No bingo operator's license shall encompass more than one licensed premise.

**C.** Licensees allowing use of their licensed premise by a non-licensed organization, as defined in Subsection Y of Section 60-2F-4 1978 and Paragraph (2) of Subsection A of Section 60-2F-26 NMSA 1978, in the conduct of bingo or raffle shall submit forms prescribed by the board.

**D.** Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises shall furnish the following information to the board within 30 days of the effective date of the lease:

- (1)** the lessor's name and address;
- (2)** copy of the lease;
- (3)** statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and
- (4)** any other information requested by the board.

**E.** Failure to provide the information requested constitutes sufficient grounds for the board to deny the application.

**F.** The licensee shall furnish to the board complete information pertaining to any change in any premises lease within 30 days after the effective date of such change.

**G.** No licensee shall conduct any activity authorized under the act, if the lease, rent, contract, or any other arrangements under which the right to use the premises requires rental or other payment to another, based on a percentage of receipts or profits derived from such licensed activities.

**H.** No rental or lease agreement for real or personal property shall be in excess of fair market value, which shall be the responsibility of the licensee to demonstrate to the board or its agents upon request.

**I.** All rental and lease agreements shall be subject to prior approval by the board or its agents to ensure compliance with all applicable laws, rules and regulations.

[15.4.4.9 NMAC - Rp, 15.4.4.9 NMAC, 2/23/2021]

#### **15.4.4.10 CHANGE OF LOCATION:**

**A.** A licensee's licensed premise may be amended from the location shown on the physical license and listed in the original application with written notification to the board. The notification shall include the information required by the licensing division and payment of a nonrefundable fee of \$100.

**B.** Failure of the licensee to obtain the board's prior approval of the relocation of the license as issued under the act may result in administrative action including but not limited to suspension, revocation, and fines to the licensee and bingo manager.

[15.4.4.10 NMAC - Rp, 15.4.4.10 NMAC, 2/23/2021]

### **PART 5: OPERATING PROCEDURE STANDARDS**

#### **15.4.5.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.5.1 NMAC - Rp, 15.4.5.1 NMAC, 2/23/2021]

#### **15.4.5.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.5.2 NMAC - Rp, 15.4.5.2 NMAC, 2/23/2021]

#### **15.4.5.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsections G and H of Section 60-2F-6 NMSA 1978 authorize the board to adopt rules to hold, conduct and operate all games of chance held in the state except those exempt under the New Mexico Bingo and Raffle Act, implement the act, and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.5.3 NMAC - Rp, 15.4.5.3 NMAC, 2/23/2021]

#### **15.4.5.4 DURATION:**

Permanent.

[15.4.5.4 NMAC - Rp, 15.4.5.4 NMAC, 2/23/2021]

**15.4.5.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.5.5 NMAC - Rp, 15.4.5.5 NMAC, 2/23/2021]

**15.4.5.6 OBJECTIVE:**

This rule establishes requirements for operating procedures of bingo operator licensees.

[15.4.5.6 NMAC - Rp, 15.4.5.6 NMAC, 2/23/2021]

**15.4.5.7 DEFINITIONS:**

See 15.4.17 NMAC for applicable definitions.

[15.4.5.7 NMAC - Rp, 15.4.5.7 NMAC, 2/23/2021]

**15.4.5.8 GENERAL DUTIES:**

**A.** It is the responsibility of every licensee to be informed of the content of the act, rules promulgated under the act, and all amendments to either, and any board prescribed training, if applicable. Lack of knowledge of the act, rules, or amendments thereto shall not be an excuse or defense for any violations.

**B.** A licensee shall maintain all records required by the board in accordance with rules and as required by law.

**C.** A licensee shall provide immediate access to all records and premises of the licensee for inspection at the request of the board or its agents and all law enforcement agencies.

**D.** A licensee shall keep current all payments and obligations to the licensing authority, suppliers and distributors of gaming equipment, lessors of premises, and tax payments to the taxation and revenue department.

**E.** A licensee shall not extend credit to a player to play in any game of chance.

**F.** A licensee shall not enter into any agreement with providers of equipment or services, including lessors of premises, which imposes restrictions on the licensee with respect to the use of net proceeds.

**G.** A licensee shall not purchase goods or services for which the cost exceeds fair market value, which shall be the responsibility of the licensee to demonstrate to the board or its agents upon request.

H. A licensee shall obtain bingo, raffle and pull-tab supplies and all associated equipment only from a licensed distributor, manufacturer or operator.

I. A licensee shall employ methods that safeguard all bingo, raffle and pull-tab assets.

[15.4.5.8 NMAC - Rp, 15.4.5.8 NMAC, 2/23/2021]

#### **15.4.5.9 METHODS OF OPERATION:**

A. All licensed premises shall be operated in a manner consistent with the act, and the rules promulgated there under.

B. All licensees shall conduct all games of chance in a manner that does not pose a threat to the public health, safety and welfare of the citizens of New Mexico or reflect adversely on the security or integrity of charitable gaming.

C. It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy. Willful or persistent use of methods of operation deemed unsuitable, or failure of the licensee to use suitable methods, shall constitute grounds for revocation of the license and imposition of a fine or other disciplinary action by the board.

D. Licensees shall maintain singular control of the conduct of games of chance within their bingo operation, and at no point shall engage with, facilitate, employ or allow a commercial lessor, the owner of a premises and all parties who lease or sublease a premises to the bingo licensee for the conduct of games of chance, to participate in the conduct of any game of chance or bingo occasion regulated by the New Mexico Bingo and Raffle Act. Prohibited acts under this Subsection D include, but are not limited to, the managing, operating, promoting, advertising or administering of a game of chance or any arrangement for payments to a lessor, owner or any other party that is based on a licensee's revenue from games of chance.

E. No person having a financial interest in a licensed distributor or manufacturer, including a spouse, first degree relative, employee or agent of a licensed distributor or manufacturer, shall operate, manage, conduct, advise or assist in the operating, managing, conducting, promoting or administering of any game of chance, except that a distributor or manufacturer may advertise or promote bingo events free of charge on behalf of licensed bingo operators at no cost as an in-kind donation. For purposes of this subsection, the term "assist" shall include, but is not limited to, the payment of any expense of a licensed organization, whether such payment is by loan or otherwise.

[15.4.5.9 NMAC - Rp, 15.4.5.9 NMAC, 2/23/2021]

#### **15.4.5.10 UNSUITABLE METHODS OF OPERATION:**

Any activity by any licensee or employee 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.** 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;
- B.** employing any person required to hold a staff permit who has been denied a staff permit, or who has failed to or refused to apply for a staff permit;
- C.** failing to comply with all federal, state and local laws and regulations governing the operations of games of chance, including without limitation the payment of all fees and taxes;
- D.** denying the board or its agents or other authorized persons access to a licensed premise or records;
- E.** misrepresentation of any material fact or information to the board or its agents;
- F.** obstructing or impeding the activities of the board or its agents;
- G.** conducting or permitting the conduct, knowingly or unknowingly, of any game of chance other than that allowed pursuant to the act;
- H.** knowingly or unknowingly permitting the conduct of games of chance by any other entity at a location or premises at the time, regardless of the division or separation of rooms within the building, hall, or enclosure;
- I.** failing to require employees to wear staff permits;
- J.** employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license;
- K.** failing to immediately award prize(s) to winning patrons;
- L.** failing to adhere to and enforce house rules; and
- M.** allowing any of its members operating any licensed activity to directly or indirectly in the course of such operations;
  - (1)** employ any device, scheme or artifice to defraud or deceive;
  - (2)** make any untrue or misleading statement; or

(3) engage in any act, practice or course of operation that would operate as a fraud or deceit upon any person; and

N. otherwise failing to conduct games of chance in accordance with the act or this chapter.

[15.4.5.10 NMAC - Rp, 15.4.5.10 NMAC, 2/23/2021]

#### **15.4.5.11 REPORTS OF VIOLATIONS:**

A. Any licensee or permittee 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 or rules promulgated under the act, or of any other local, state or federal law on the licensed premises or related to the licensed operation.

B. Each licensee shall immediately by telephone and in writing report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any game of chance offered for play, or used for any other gaming purpose within the state by such licensee. Any 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 cheating, including distributing a warning about cheating to other state licensees or other licensing jurisdictions.

[15.4.5.11 NMAC - Rp, 15.4.5.11 NMAC, 2/23/2021]

#### **15.4.5.12 PAYMENT OF WINNINGS:**

A. All prizes shall be paid from the licensee's bingo operating account.

B. All gross receipts collected during the occasion shall be deposited into the bingo operating account. Prize payouts from gross receipts collected during an occasion is prohibited.

C. Upon determining a winner, the licensee shall remove any merchandise prize won immediately from display and it shall be tendered to the winner. Cash or checks issued for prizes shall be awarded immediately. Checks issued for prizes from the bingo operating account shall be consecutively numbered, signed by two authorized representatives of the licensee and made payable to a person, and the nature of the payment shall be noted on the face of the check.

D. Licensees offering any merchandise as a prize shall have documented proof of ownership of said item, free from any and all liens, mortgages and encumbrances prior to the sale of any bingo cards, raffle tickets or pull-tabs. This documented evidence of ownership shall be made available to the either the board or any law enforcement agency upon demand.

[15.4.5.12 NMAC - Rp, 15.4.5.12 NMAC, 2/23/2021]

**15.4.5.13 PATRON DISPUTES:**

**A.** Unresolved patron complaints shall be reported to the board's enforcement division by telephone and in writing on a form prescribed by the board within 72 hours.

**B.** In the event an unresolved dispute arises with a patron concerning payment of alleged winnings, the licensee shall provide the patron with a patron dispute form at the time of the dispute, and the licensee and patron shall each complete a separate patron dispute form immediately. Within 72 hours of the dispute, the licensee and patron shall separately submit a copy of the patron dispute form to the enforcement division. The form may be submitted by facsimile, electronic mail, or U.S. mail.

[15.4.5.13 NMAC - Rp, 15.4.5.13 NMAC, 2/23/2021]

**15.4.5.14 POSSESSION AND VERIFICATION OF STAFF PERMITS:**

**A.** Every permittee shall wear a valid staff permit badge that is easily visible at all times when engaged in the conduct of games of chance.

**B.** Refusal or failure to wear the staff permit badge as required in this rule shall be grounds for disciplinary action.

**C.** If a permittee's badge is lost or stolen, the permittee shall notify the board immediately and purchase a replacement badge.

**D.** The permittee shall wear a temporary badge provided by the board in place of the lost or stolen badge until a replacement badge is received.

[15.4.5.14 NMAC - Rp, 15.4.5.14 NMAC, 2/23/2021]

**15.4.5.15 EMPLOYEE CONDUCT:**

**A.** No employee may accept any type of gift, percentage of winnings, money or a thing of value from any player or any person associated with a player in exchange for influencing the outcome of a game of chance.

**B.** No bingo employee shall play any game of chance during the same bingo occasion in which they have worked as a bingo employee for any length of time.

**C.** There shall be no private exchange of information between the caller and any other person which identifies numbers drawn or suggests numbers to be drawn as part of a game of chance, verbally or by any other method, prior to the verification of winning numbers.

[15.4.5.15 NMAC - Rp, 15.4.5.15 NMAC, 2/23/2021]

**15.4.5.16 SECURITY:**

**A.** Licensees shall implement and maintain security measures that shall ensure safe and honest operation of the bingo establishment.

**B.** The licensee shall identify paid security personnel, if any, by badge or uniform while games of chance are being conducted. These personnel shall not be permitted by the licensee to play or to participate in the conduct of games of chance.

[15.4.5.16 NMAC - Rp, 15.4.5.16 NMAC, 2/23/2021]

**15.4.5.17 HOUSE RULES:**

**A.** A licensee shall establish house rules applicable to the conduct of games of chance as long as the rules do not conflict with the act or this title. Before any licensee enacts, adopts or modifies 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.

**C.** Houses rules shall be posted inside and near all entrances to the licensed premise.

**D.** Postings shall have at the top "*house rules*" in a minimum 24 point non-cursive font followed by the rules in a 14 point non-cursive font.

**E.** At a minimum house rules shall address the following:

- (1) last number called, required or not;
- (2) temporary suspension of bingo occasion or game;
- (3) explanation of tiered payouts and if refunds are or are not given;
- (4) how "bingo" is signaled and who must receive the signal to stop the game;
- (5) multiple prize awards;
- (6) condition under which a winning pull-tab will be paid;
- (7) check cashing policy;
- (8) age requirements;

- (9) smoking;
- (10) reserving seats;
- (11) promotional games;
- (12) tipping; and

(13) procedures and forms required to be completed by the patron and licensee in the event of a patron dispute or complaint.

[15.4.5.17 NMAC - Rp, 15.4.5.17 NMAC, 2/23/2021]

#### **15.4.5.18 FORMS:**

The board may prescribe all forms called for or required by the act or this chapter, and all filings with the board shall be accompanied by such affidavits, documents, and other supporting data as the board requires.

[15.4.5.18 NMAC - Rp, 15.4.5.18 NMAC, 2/23/2021]

#### **15.4.5.19 RESPONSIBILITY TO POST AND HAVE IN ITS POSSESSION CERTAIN MATERIAL:**

**A.** A copy of the Bingo & Raffle Act and Title 15, Chapter 4 of the NMAC in their entirety shall be present during the conduct of all games of chance and made available to any patron upon request.

**B.** The licensee shall post a notice in a minimum 24 point non-cursive font in two or more conspicuous places stating that copies of the act and rules promulgated thereunder and the house rules may be obtained from the bingo manager for any player to read.

[15.4.5.19 NMAC - Rp, 15.4.5.19 NMAC, 2/23/2021]

#### **15.4.5.20 DISPLAY OF LICENSEE'S NAME:**

**A.** Licensees shall clearly display the name of the organization holding a bingo game in an area adjacent to the caller. The name shall be in letters at least six inches high.

**B.** The name displayed shall be the name of the organization licensed to conduct the bingo game followed by the word "*bingo*" or "*raffle*".

**C.** The licensee shall not assume or display any other trade or fictitious name.

**D.** If the premises are rented or used by more than one organization, the organization playing at that time and date will display its license.

[15.4.5.20 NMAC - Rp, 15.4.5.20 NMAC, 2/23/2021]

**15.4.5.21 INSPECTION OF PREMISES, RECORDS, MACHINES AND DEVICES:**

**A.** An agent of the board may enter a licensee's premises without advance notice. During bingo occasions, a space shall be left behind players and between tables to allow the agent to walk down each row of tables and inspect bingo cards in play.

**B.** An agent may perform all or any of the following:

**(1)** count all monies received during the operation of the licensed activities in the premises, inspect income received by the licensee and inspect records of prizes paid out;

**(2)** examine and copy any records of the licensee;

**(3)** examine all pieces of equipment or parts thereof, or devices of any nature which are being used to conduct the licensed activities and to require the licensee to dismantle equipment, if necessary, except during operation of a game; and

**(4)** perform other inspections as the agent deems necessary to ensure compliance with the act or rules.

[15.4.5.21 NMAC - Rp, 15.4.5.21 NMAC, 2/23/2021]

**15.4.5.22 DISCLOSURE OF PRIZES DURING GAMES OF CHANCE:**

**A.** The licensee shall clearly and audibly disclose full information before each game concerning the number of prizes to be awarded, whether the prizes are awarded in cash, check, or merchandise, and the cash value and the method by which such prizes may be awarded, including the cost of playing.

**B.** Prizes or prize money offered shall be communicated to all players 30 minutes prior to the start of a game and cannot be altered thereafter.

[15.4.5.22 NMAC - Rp, 15.4.5.22 NMAC, 2/23/2021]

**15.4.5.23 DOOR PRIZES:**

The value of a door prize shall not exceed \$1,000.

[15.4.5.23 NMAC - Rp, 15.4.5.23 NMAC, 2/23/2021]

#### **15.4.5.24 PROMOTIONAL GAMES OF CHANCE:**

Free and discounted games of chance may be awarded to players when:

- A.** house rules describe how these games of chance are awarded;
- B.** no employee or members of employee's household are permitted to participate;
- C.** method of award is equitable and non-discriminatory;
- D.** the following information is collected, recorded and retained per occasion in accordance with the records retention requirements;
  - (1)** name, address and phone number of players receiving the promotional game;
  - (2)** the date and occasion the promotional game was played; and
  - (3)** the retail value of the promotional game;
- E.** all promotional games awarded are subject to the bingo tax; and
- F.** licensee shall compute the bingo tax using the retail value of a non-promotional game and not the free or reduced price.

[15.4.5.24 NMAC - Rp, 15.4.5.24 NMAC, 2/23/2021]

#### **15.4.5.25 EMPLOYEE TERMINATION; SURRENDER AND CANCELLATION STAFF PERMIT:**

- A.** A permittee who is not employed by at least one licensee shall surrender their staff permit badge to the board within 10 days.
- B.** Licensee shall notify the board, in writing, of a permittee termination within three days.
- C.** A staff permit expires if the permittee is not employed in a permitted position for a period greater than 90 days.
- D.** Licensee shall notify the board, in writing when a permittee is not employed in a permitted position for a period greater than 90 days.

[15.4.5.25 NMAC - Rp, 15.4.5.25 NMAC, 2/23/2021]

#### **15.4.5.26 TEMPORARY CESSATION OF GAMES OF CHANCE:**

**A.** The licensee shall contact the board in writing prior to the cessation of one or more bingo occasions or cessation of pull-tab dispenser operations. In the event there is an emergency and prior notice cannot be given, the licensee shall advise the board no later than the next business day.

**B.** If bingo operations cannot resume on the next scheduled occasion, or pull-tab dispenser operations cannot resume by the next scheduled day, the licensee shall notify the board in writing and include the dates and times of the occasions or cessation of dispenser operations and the reason for the closure.

**C.** If the cessation of bingo occasions or pull-tab dispenser operations exceeds 30 days, the licensee shall notify the board in writing and include the length of the cessation, the reason for cessation, and the date regular operations will resume. The licensee shall provide updated notifications to the board every 30 days thereafter until such time as bingo occasions or pull-tab dispenser operations resume.

**D.** Any bingo operator licensee that ceases games of chance for more than 90 consecutive days and has not requested and received authorization from the board to do so, shall surrender its bingo operator's license to the board. The board may suspend or revoke the bingo operator's license, absent good cause shown for cessation of operation exceeding 90 consecutive days.

[15.4.5.26 NMAC - Rp, 15.4.5.26 NMAC, 2/23/2021]

#### **15.4.5.27 CESSATION OF GAMES OF CHANCE; SURRENDER AND CANCELLATION OF LICENSE:**

**A.** The licensees shall notify the taxation and revenue department of cessation of bingo and raffle activities in writing.

**B.** The licensee seeking to cease operations shall submit a form prescribed by the board to include the licensee's name, license number and the names of all permittees with badge numbers, and the type of property/venue to the board's licensing division no later than 10 days from the final occasion.

**C.** The licensee shall surrender all licenses issued by the board to the board's licensing division no later than 10 days from the final occasion.

**D.** The licensee may sell or donate any equipment only to licensed operators or distributors.

**E.** The licensee shall sell or donate unopened pull-tab deals only to licensed operators or distributors.

**F.** The licensee may sell or donate unopened packages of bingo cards only to licensed operators or distributors.

**G.** All reporting requirements apply to the final quarterly report.

**H.** The licensee shall submit the final quarterly bingo and raffle activity reports on the prescribed quarterly report forms no later than 45 days from the final occasion conducted.

**I.** All monies in the bingo operating account shall be fully distributed and checks cleared no later than the 45 days from the last occasion. The bingo operating account balance should be zero. Proof of a zero balance in the bingo operating account and the closing of that account shall be sent to the board.

**J.** The ceasing of bingo activities does not relieve the bingo operator licensee of its obligations to pay any tax, fees or costs due or to submit any report or information required as a result of engaging in games of chance.

**K.** The board may take disciplinary action against any licensee that ceases games of chance without notice to the board, including revoking the license, imposing a fine, or both.

[15.4.5.27 NMAC - Rp, 15.4.5.27 NMAC, 2/23/2021]

## **PART 6: EQUIPMENT; BINGO, RAFFLE, PULL-TABS**

### **15.4.6.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.6.1 NMAC - Rp, 15.4.6.1 NMAC, 2/23/2021]

### **15.4.6.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.6.2 NMAC - Rp, 15.4.6.2 NMAC, 2/23/2021]

### **15.4.6.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.6.3 NMAC - Rp, 15.4.6.3 NMAC, 2/23/2021]

**15.4.6.4 DURATION:**

Permanent.

[15.4.6.4 NMAC - Rp, 15.4.6.4 NMAC, 2/23/2021]

**15.4.6.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.6.5 NMAC - Rp, 15.4.6.5 NMAC, 2/23/2021]

**15.4.6.6 OBJECTIVE:**

This rule establishes standards for the evaluation, testing, approval, modification, maintenance, and disposition of bingo, raffle and pull-tab equipment.

[15.4.6.6 NMAC - Rp, 15.4.6.6 NMAC, 2/23/2021]

**15.4.6.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.6.7 NMAC - Rp, 15.4.6.7 NMAC, 2/23/2021]

**15.4.6.8 BINGO EQUIPMENT:**

**A.** Authorized equipment and cards, including all bingo related items used in the conduct of bingo, shall be maintained in good repair and sound working condition. The board or its agents may order that any equipment, cards or related items immediately be repaired or replaced, if after examination, they are found to be defective.

**B.** All 75 balls of equal weight and diameter shall be present for bingo games and free of creases, holes or other damage.

**C.** The master board is the only official scorer. A lighted display board may be used, but it is not official.

**D.** Disposable bingo cards shall be used in all bingo games.

**E.** Each pack of bingo cards sold wholesale shall be consecutively numbered from the first card to the last and each card shall contain, on its face, both its individual consecutive serial number and the identification number assigned by the manufacturer.

**F.** Hard cards are prohibited.

**G.** If a wholesale of bingo cards to a non-licensee in the amount of \$100 or greater is conducted then the seller shall report to the board the buyer's name, address and phone number within three business days.

**H.** When bingo equipment is sold to a non-licensee the seller shall report the buyer's name, address and phone number to the board within three business days.

**I.** When a wholesale of bingo cards to a licensee is conducted the seller shall record and maintain an itemized invoice and the buyer's organization's name, license number and contact information.

[15.4.6.8 NMAC - Rp, 15.4.6.8 NMAC, 2/23/2021]

#### **15.4.6.9 RAFFLE TICKETS:**

**A.** Raffle ticket requirements:

(1) all tickets sold in any raffle shall have the state license number, the word "raffle" and the date, time, and place of drawing printed on each ticket;

(2) all tickets shall be consecutively numbered;

(3) all major cash or merchandise prizes conspicuously printed on the ticket;

(4) the cost of each ticket shall be printed on the front of each ticket; and

(5) with the exception of a split raffle, the expiration date by which a prize must be claimed shall be printed on each ticket.

**B.** If the ticket holder is required to be present at the drawing to be eligible for the prize, a statement setting forth this condition shall be conspicuously printed on each ticket and on all promotional material concerning the raffle.

**C.** When a prize exceeds \$75,000 the licensee shall submit a valid copy of a raffle ticket to the board prior to selling any tickets.

[15.4.6.9 NMAC - Rp, 15.4.6.9 NMAC, 2/23/2021]

#### **15.4.6.10 PULL-TAB EQUIPMENT:**

**A.** No licensee shall permit the display or operation of any pull-tabs which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner which may deceive the public.

**B.** Electronic and video pull-tab machines are prohibited.

**C.** Pull-tab dispensers shall be maintained in good repair and sound working condition.

**D.** All pull-tabs in a deal shall be sold at the same price.

**E.** A deal shall not exceed 25,000 tickets.

**F.** The seller or lessor of pull-tab dispensers shall report to the board the sale or lease of the device prior to the delivery or placement of the device on a licensed premise.

**G.** Deals intended for use in a pull-tab dispenser comprised of multiple rolls shall have all rolls indistinguishable from every roll in the deal.

**H.** The bingo operator licensee shall keep a dispenser access entry log inside the main cabinet access area of each pull-tab dispenser. Every person who gains entry into any internal space of a dispenser shall sign the access entry log, indicate the date and time of entry and list all areas inspected, repaired or serviced. The bingo operator licensee shall retain the dispenser log for a period of three years and shall make the dispenser log available to the board or its authorized agents upon request.

**I.** A pull-tab dispenser leased by more than one licensee shall not be used by another licensee unless and until the licensee has removed its pull-tab deals from play prior to use by the next licensee.

**J.** The keys to pull-tab dispensers must be on the premises and in the possession and control of the bingo licensee.

**K.** The board or its agents may examine and inspect any individual pull-tab dispenser and shall have immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

**L.** All pull-tabs in any one column or sleeve of the dispenser must be of the same deal.

**M.** No licensee may display, use or otherwise furnish a dispenser which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

[15.4.6.10 NMAC - Rp, 15.4.6.10 NMAC, 2/23/2021]

#### **15.4.6.11 DISALLOWANCE OF BINGO, RAFFLE AND PULL-TAB EQUIPMENT:**

**A.** The board may disallow the use of bingo, raffle or pull-tab equipment when in the interest of the public.

**B.** If the board or its agents discover any problem with a pull-tab dispenser that affects the security or integrity of the game, the board may direct the manufacturer, distributor or the bingo licensee to cease the sale, lease or use of the dispenser.

**C.** The board shall advise the manufacturer or distributor of the disallowed equipment of the date on which use of the disallowed equipment shall cease.

**D.** The board shall advise the licensees or applicants of the date on which the use of the disallowed equipment shall cease.

**E.** A licensee shall cease using the disallowed equipment by the date established by the board.

**F.** Licensee shall obtain written approval from the board prior to making any equipment modifications that may affect the outcome of a game of chance.

[15.4.6.11 NMAC - Rp, 15.4.6.11 NMAC, 2/23/2021]

**15.4.6.12 LOSS, THEFT, MECHANICAL FAILURE, INOPERATION, DESTRUCTION OR MALFUNCTION:**

The bingo manager shall report to the enforcement division each instance that a pull-tab dispenser with or without video display of the paper pull-tab gaming piece, in play malfunctions and each instance when play is disrupted or ceases operation regardless of the reason or length of time of disruption or malfunction or whether or not there is a monetary loss.

[15.4.6.12 NMAC - Rp, 15.4.6.12 NMAC, 2/23/2021]

**PART 7: CONDUCT OF BINGO**

**15.4.7.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.7.1 NMAC - Rp, 15.4.7.1 NMAC, 2/23/2021]

**15.4.7.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.7.2 NMAC - Rp, 15.4.7.2 NMAC, 2/23/2021]

**15.4.7.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.7.3 NMAC - Rp, 15.4.7.3 NMAC, 2/23/2021]

**15.4.7.4 DURATION:**

Permanent.

[15.4.7.4 NMAC - Rp, 15.4.7.4 NMAC, 2/23/2021]

**15.4.7.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.7.5 NMAC - Rp, 15.4.7.5 NMAC, 2/23/2021]

**15.4.7.6 OBJECTIVE:**

This rule establishes the conduct of bingo authorized by the New Mexico Bingo and Raffle Act.

[15.4.7.6 NMAC - Rp, 15.4.7.6 NMAC, 2/23/2021]

**15.4.7.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.7.7 NMAC - Rp, 15.4.7.7 NMAC, 2/23/2021]

**15.4.7.8 BINGO GAME CONTROLS:**

The bingo manager shall establish the following controls at all bingo games:

**A.** disposable bingo cards shall be used in all bingo games and adhere to the following specifications:

**(1)** each set of disposable cards used shall have a serial number and the identification number assigned by the manufacturer; and

**(2)** each disposable card/packet sold shall have a specific retail value, which has been reported to the board or its agents, and clearly posted;

**B.** the bingo caller shall be furnished, prior to starting each game the manufacturer's identification number and the serial numbers of all cards offered for sale for that particular game and shall announce to the players the range of numbers of the cards that are valid for that game; upon a player having completed a bingo winning combination and the player declaring "bingo," the caller shall require a bingo employee on the floor to verify the bingo winning combination and to read off the manufacturer's identification number and serial number of each winning card; payment shall not be made unless both numbers were among those offered for sale for that game; and

**C.** one or more licensed individuals shall be assigned the duty of making prize payouts. Payouts shall not be paid from gross receipts collected during an occasion.

[15.4.7.8 NMAC - Rp, 15.4.2.8 NMAC, 2/23/2021]

#### **15.4.7.9 BINGO OPERATIONS:**

**A.** The bingo manager, or in the absence of the bingo manager, an alternate bingo manager, shall be present on the premises continuously during the games and for a period of at least 30 minutes after the last game.

**B.** Licensees shall purchase pre-numbered paper cards from a licensed distributor or manufacturer.

**C.** Start up and close out of an occasion shall be conducted in the following manner:

**(1)** a payout schedule of all bingo games, which requires prior approval by the board or its agents, shall be posted 30 minutes prior to the start of an occasion,

**(2)** when an organization has been licensed to use a multi-tiered payout schedule:

**(a)** all tiers shall be posted 30 minutes prior to the occasion; and

**(b)** the tier to be used shall be announced 10 minutes prior to the occasion;

**(3)** prior to the start of the game, all bingo prizes, prize money, or checks shall be on the licensed premises; in the event check payments are to be issued for the payment of prizes, there shall be sufficient funds in the bingo operating account at the beginning of the bingo occasion;

**(4)** at the close out of each occasion, the bingo manager shall count all gross receipts to include all cash, checks, debit card receipts, and promotional, discounted or free games at the full price; and shall record all gross receipts and prepare and sign a bank deposit slip that reflects the final deposit; the deposit slip shall have the licensee's name and license number on it;

(5) a second bingo employee shall immediately count and verify the gross receipts and cosign the bank deposit slip;

(6) cash, coin, checks, and debit card receipts shall be temporarily stored in a secured area until a deposit is made; a secured area includes a locked vault on the licensed premises or the deposit drop box; in the event that nonrelated funds are kept in the same locked vault, bingo, raffle and pull tab funds shall be kept in a separate locked bank bag inside the vault; under no circumstances shall funds be kept at a location other than the licensed premise;

(7) if the licensee conducts two or more bingo occasions and chooses not to close out at the end of each occasion, then all gross receipts for each game of chance shall be kept separate for each occasion, secured in a locked vault and reconciled at the close of the last occasion or no later than the following business day; and

(8) the bingo manager and one other bingo employee shall ensure proper separate and accurate reporting of each of the occasions to include separate deposit slips that reflect separate gross receipts from each occasion.

D. Paper cards shall be used for all bingo games.

E. No bingo occasion shall begin prior to 9:00 a.m. or later than midnight.

[15.4.7.9 NMAC - Rp, 15.4.2.9 NMAC, 2/23/2021]

#### **15.4.7.10 SALE OF BINGO CARDS:**

A. Sale and use of bingo cards:

(1) bingo cards shall not be sold on credit or purchased with credit cards;

(2) a debit card issued by a banking institution or credit union may be used as a means of payment;

(3) each licensee that accepts payment by debit card must maintain records to substantiate all transactions;

(4) all debit card transactions must be reported on the quarterly reports covering the time period in which the transactions occurred;

(2)[5] all sales of bingo cards shall take place upon the premises and at the time of that bingo occasion;

(3)[6] no bingo cards shall be set aside or reserved for any person;

**(4)[7]** if a master card or admittance card is required in order to play bingo, then no extra cards will be sold to a player who has not purchased a master or admittance card;

**(5)[8]** all bingo cards other than promotional cards shall be sold at a set price; the price of each type of card shall remain fixed and may only be altered by requested amendment of the license subject to approval by the board or its agents, and shall be posted; and

**(6)[9]** if each person playing bingo is required to purchase a master card and is allowed to play extra cards in the same game, then the prize to be awarded on the master card and the extra cards shall be posted by the licensee at the beginning of each game.

**B.** No bingo cards sold for use in an occasion shall be valid for use in another occasion.

**C.** If bingo cards are being sold for an occasion immediately following the current occasion and both occasions are scheduled for the same day, the sales and deposits for each occasion shall be kept separate.

**D.** Any shortage calculated from sales for an occasion shall not be deducted from the gross receipts.

[15.4.7.10 NMAC - Rp, 15.4.2.10 NMAC, 2/23/2021]

#### **15.4.7.11 CONDUCT DURING BINGO GAMES:**

**A.** The caller shall:

- (1)** announce whether last ball called is or is not required;
- (2)** remove and hold only one ball at a time from the blower;
- (3)** call all letters and numbers clearly twice to all players present during the occasion;
- (4)** immediately following the calling of each number in a bingo game, the caller shall turn the portion of the ball, which shows the number and the letter to the players in the game so they may know that the proper number has been called;
- (5)** upon discovering that a number has been called incorrectly:
  - (a)** the game shall immediately stop;

**(b)** the caller shall announce "an error has been made, I am reading the correct number, please correct your card"; and

**(c)** then correct the board and continue with the game.

**(6)** not return a ball to any part of the blower until the conclusion of the game.

**B.** Each bingo game will be closed with the following procedure:

**(1)** the game shall be stopped after the winning combination has been signaled by a player;

**(2)** only the balls called are in play;

**(3)** a ball in the caller's hand, on a monitor, or otherwise segregated from other balls will not be called or placed into play; this ball will be held by the caller until the bingo winning combination has been verified;

**(4)** if it is a bingo winning combination the ball is returned to the machine and the game is over;

**(5)** if a game is stopped for a bingo declaration which proves not to be valid, the caller will then call the ball being held at the time the game was stopped;

**(6)** the bingo employee on the floor shall place the bingo card to be checked as a winner in front of at least one other player, with that player being given an opportunity to confirm that the bingo declared is a valid bingo winning combination by watching the card as the numbers are called;

**(7)** the caller shall require the bingo employee on the floor checking the bingo combination to read off the manufacturer's identification number and serial number of each winning card;

**(8)** the bingo employee on the floor shall announce the numbers of the bingo winning combination to the bingo caller who shall confirm using the master board, or, in case of a "cover-all" bingo, the caller shall call the numbers that have not been called using the master board; and

**(9)** the bingo caller shall then ask the players, "are there any other bingos?" If no one answers, the caller shall announce, "this game is completed".

**C.** The caller cannot verify the winning bingo numbers on the floor. Another bingo employee shall call the player's declared bingo numbers to the caller for verification.

**D.** In a bingo game where only a specific number of numbered balls will be called, that number shall be announced by the caller prior to the removal of the first ball from

the blower. Prior to the last ball being removed from the blower the caller will announce "last ball".

**E.** When conducting a "winner take all" bingo game, the bingo manager shall ensure that:

**(1)** the caller announces the number of cards sold and the prize amount prior to the beginning the game;

**(2)** a record of the game is compiled containing:

**(a)** the number of cards sold;

**(b)** the date and time the game was conducted;

**(c)** if the prize value is equal to or exceeds \$600, the winner(s) contact information;

**(d)** copies of any required tax reporting documents; and

**(e)** this record is retained in accordance with the 15.4.1.12 NMAC; and

**(f)** the aggregate amount of all prizes offered or given in all bingo games played in a single occasion shall not exceed \$2,500, exclusive of pull-tabs, raffles and door prizes.

**F.** In the event of a power outage, with the approval of the majority of players the caller may continue by removing bingo balls from the hopper manually.

[15.4.7.11 NMAC - Rp, 15.4.2.11 NMAC, 2/23/2021]

#### **15.4.7.12 RECORD OF NUMBERS DRAWN:**

A written record shall be compiled and retained by the licensee for a period of 60 days of all bingo numbers, in the order the numbers are called, when the bingo game payoff is \$600 or more.

[15.4.7.12 NMAC - Rp, 15.4.2.12 NMAC, 2/23/2021]

### **PART 8: CONDUCT OF RAFFLE**

#### **15.4.8.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.8.1 NMAC - Rp, 15.4.8.1 NMAC, 2/23/2021]

**15.4.8.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.8.2 NMAC - Rp, 15.4.8.2 NMAC, 2/23/2021]

**15.4.8.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.8.3 NMAC - Rp, 15.4.8.3 NMAC, 2/23/2021]

**15.4.8.4 DURATION:**

Permanent.

[15.4.8.4 NMAC - Rp, 15.4.8.4 NMAC, 2/23/2021]

**15.4.8.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.8.5 NMAC - Rp, 15.4.8.5 NMAC, 2/23/2021]

**15.4.8.6 OBJECTIVE:**

This rule establishes standards for the conduct of raffle authorized by the New Mexico Bingo and Raffle Act.

[15.4.8.6 NMAC - Rp, 15.4.8.6 NMAC, 2/23/2021]

**15.4.8.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.8.7 NMAC - Rp, 15.4.8.7 NMAC, 2/23/2021]

**15.4.8.8 RAFFLE CONTROLS:**

- A.** A licensee shall maintain a valid copy of a raffle ticket for each raffle conducted.

**B.** All proceeds including donations and gifts shall be reported as gross receipts under the act.

**C.** Each raffle ticket and all promotional material concerning the raffle, shall conspicuously state whether or not the ticket holder is required to be present at the raffle drawing in order to win prizes.

**D.** Raffle tickets shall not be discounted and must be sold for the same price.

[15.4.8.8 NMAC - Rp, 15.4.8.8 NMAC, 2/23/2021]

#### **15.4.8.9 RAFFLE OPERATIONS:**

**A.** All raffle tickets sold shall have a representation (stub) in the container prior to the start of the draw. No unsold raffle tickets shall have a representation (stub) in the container.

**B.** The drawing shall be open to all ticket holders.

**C.** The rules of the drawing shall be conspicuously posted in the immediate area of the device from which the draw occurs and will identify what a winning draw is.

**D.** When more than one prize is to be awarded the prize shall be announced immediately preceding the drawing of each winning ticket.

**E.** Prize substitutions are not allowed.

[15.4.8.9 NMAC - Rp, 15.4.8.9 NMAC, 2/23/2021]

#### **15.4.8.10 SPLIT RAFFLE:**

**A.** If a split is other than fifty-fifty, the winner's share shall be the first value of the expression.

**B.** All tickets sales and the drawing of the winner(s) shall occur at the same location on the same day.

**C.** There shall be a period of sufficient duration between the last ticket sold and the drawing so that the number of tickets sold and the prize(s) can be determined and announced.

**D.** The number of chances sold and the prize(s) shall be announced prior to the drawing of the winner(s).

[15.4.8.10 NMAC - Rp, 15.4.8.10 NMAC, 2/23/2021]

**15.4.8.11 \$75,000 OR MORE RAFFLES:**

Licensee shall meet all the conditions described in 15.4.8.9 NMAC and the following requirements:

**A.** shall notify the board on a form prescribed by the board 10 days prior to any public notice; and

**B.** shall report to board on a form prescribed by the board within three days of drawing the winner(s) name, address and phone number.

[15.4.8.11 NMAC - Rp, 15.4.8.11 NMAC, 2/23/2021]

**15.4.8.12 PAYMENT OF WINNINGS:**

**A.** Prizes shall be tendered in accordance with the specifications on the raffle ticket.

**B.** In the event that the winner does not accept a prize and:

**(1)** is present at the drawing a second drawing shall be made; or

**(2)** is not required to be and is not present at the drawing:

**(a)** the licensee shall obtain a written and signed letter declining the prize;

**(b)** the licensee shall notify the board; and

**(c)** the licensee may dispose of the prize in a manner they deem appropriate.

**C.** The organization shall not discard any of the sold tickets until all prizes have been accepted.

[15.4.8.12 NMAC - Rp, 15.4.8.12 NMAC, 2/23/2021]

**15.4.8.13 RAFFLE RECORDS TO BE KEPT:**

The following records shall be maintained:

**A.** the number of tickets available at the beginning of the event, if limited;

**B.** the number of tickets sold;

**C.** the date ticket sales began and ended;

**D.** the date and time the drawing was conducted;

E. the winner(s) contact information; and

F. any required IRS reporting documents.

[15.4.8.13 NMAC - Rp, 15.4.8.13 NMAC, 2/23/2021]

## **PART 9: CONDUCT OF PULL-TABS**

### **15.4.9.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.9.1 NMAC - Rp, 15.4.9.1 NMAC, 2/23/2021]

### **15.4.9.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.9.2 NMAC - Rp, 15.4.9.2 NMAC, 2/23/2021]

### **15.4.9.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.9.3 NMAC - Rp, 15.4.9.3 NMAC, 2/23/2021]

### **15.4.9.4 DURATION:**

Permanent.

[15.4.9.4 NMAC - Rp, 15.4.9.4 NMAC, 2/23/2021]

### **15.4.9.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.9.5 NMAC - Rp, 15.4.9.5 NMAC, 2/23/2021]

### **15.4.9.6 OBJECTIVE:**

This rule establishes the conduct of pull-tabs authorized by the New Mexico Bingo and Raffle Act.

[15.4.9.6 NMAC - Rp, 15.4.9.6 NMAC, 2/23/2021]

**15.4.9.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.9.7 NMAC - Rp, 15.4.9.7 NMAC, 2/23/2021]

**15.4.9.8 PULL-TAB GAME CONTROLS:**

**A.** A licensee shall not share a deal with any other licensee.

**B.** A licensee may simultaneously operate separate deals at the same location and may operate the same deal at different location on the licensed premises.

**C.** A deal shall not be combined with any other deals when doing so creates the appearance of a new or more complete deal.

**D.** A deal shall not be divided and sold in different locations or at different times when doing so creates the appearance of a greater than actual number of winning pieces.

**E.** Second chance games, in which non-winning pull-tabs are entered into a drawing, shall adhere to 15.4.8 NMAC.

**F.** A pay out schedule for each deal shall be posted in the immediate area where the pull-tabs from that deal are being sold and shall contain:

- (1) the serial number;
- (2) the size;
- (3) the predetermined number of winners; and
- (4) the prize amounts of the winners.

**G.** Sales, play and payment of prizes shall be conducted only on the licensed premise.

**H.** Prior to the purchase of a deal, seller shall disclose to the buyer in writing the following information:

- (1) the serial number;

- (2) the total number of pull-tabs;
- (3) the predetermined number of winning pull-tabs; and
- (4) the predetermined payout percentages.

I. A permittee, operator, or licensee shall not sell pull-tabs to an on-duty bingo employee, a member-in-charge, an alternate member-in-charge, or any person who has knowledge of pull-tab game winnings pertaining to the deal being currently sold or access to accounting records thereto.

J. A permittee, operator, or licensee shall verify and retain a written record of the identity of any individual redeeming winning pull-tabs with a value of \$600 or more.

[15.4.9.8 NMAC - Rp, 15.4.9.10 NMAC, 2/23/2021]

## **PART 10: ACCOUNTING REQUIREMENTS**

### **15.4.10.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.10.1 NMAC - Rp, 15.4.10.1 NMAC 2/23/2021]

### **15.4.10.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.10.2 NMAC - Rp, 15.4.10.2 NMAC 2/23/2021]

### **15.4.10.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.10.3 NMAC - Rp, 15.4.10.3 NMAC 2/23/2021]

### **15.4.10.4 DURATION:**

Permanent.

[15.4.10.4 NMAC - Rp, 15.4.10.4 NMAC 2/23/2021]

**15.4.10.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.10.5 NMAC - Rp, 15.4.10.5 NMAC 2/23/2021]

**15.4.10.6 OBJECTIVE:**

This rule establishes standards for accounting and financial reporting procedures for bingo, raffle and pull-tab licensees under the New Mexico Bingo and Raffle Act.

[15.4.10.6 NMAC - Rp, 15.4.10.6 NMAC 2/23/2021]

**15.4.10.7 DEFINITIONS:**

See 15.4.1.7 for all applicable definitions.

[15.4.10.7 NMAC - Rp, 15.4.10.7 NMAC 2/23/2021]

**15.4.10.8 AUDIT PROCEDURES:**

**A.** The board or its agents shall:

(1) conduct audits on quarterly report forms and supporting documents, periodic and special audits or reviews of the books and records of licensees, examine the books and records of any licensee when conditions indicate the need for such action or upon the request of the board;

(2) review and observe methods and procedures used by licensees, which can include the counting or handling cash or cash instruments; and

(3) determine each licensee's compliance with the act and board rules.

**B.** Audits shall be conducted in conformity with generally accepted auditing standards and compliance standards as established by the board.

**C.** If not in compliance, the licensee will have 15 days, after receiving notification from the board or its agents, to submit the required supporting documentation or prepare and submit an amended quarterly report.

**D.** During the audit, should it be determined that an error on the report resulted in an under or over reporting of tax, the board or its agents shall report its findings to the New Mexico taxation and revenue department, per requirements set forth in the Tax Administration Act and to the licensee.

**E.** Each licensee shall submit a complete quarterly report for each quarter it holds a valid bingo and raffle license. If a licensee has no bingo, raffle or pull-tab activity during any quarter, for whatever reason, the licensee shall submit a zero activity report for that quarter by the prescribed deadline.

**F.** A licensed distributor shall keep and maintain a complete set of records which shall include details of all activities of the distributor related to the conduct of the licensed activity as may be required by the board, including the quantities and types of bingo equipment, bingo paper, pull-tabs and associated supplies purchased and sold. Such records shall be available upon request by the board or its agents and shall be retained in accordance with Section 15.4.10.12 NMAC.

[15.4.10.8 NMAC - Rp, 15.4.10.8 NMAC 2/23/2021]

#### **15.4.10.9 ACCOUNTING PROCEDURES:**

**A.** All information set forth in the act is required to be documented on forms prescribed by the board.

**B.** The licensee shall separately account for the gross receipts from all games of chance on the prescribed quarterly report forms.

**C.** Each licensee shall maintain a bingo operating account to be used for all games of chance. All gross receipts shall be deposited and all disbursements shall be made from this account.

**D.** A licensee must have at least one separate general operating account in addition to a bingo operating account.

**E.** Funds from games of chance shall not be co-mingled with any other funds used by the licensee.

**F.** The bingo operating account shall have an end-of-month cutoff date.

**G.** The licensees shall reconcile bank statements monthly.

**H.** Licensees shall use a check, not a debit card, ATM card or any form of electronic transfer to pay any expense out of the bank operating account unless an electronic payment is required by IRS, federal, state or, bank regulations or an automated payroll system that uses direct deposits to employees' accounts.

**I.** If a licensee elects to pay bingo and raffle payroll using direct deposit, the licensee shall maintain adequate records to document each individual transaction and will provide all copies of such deposit record transactions with the corresponding bingo and raffle quarterly report form. If an independent bookkeeping or payroll company is

used, the licensee shall keep a copy of the agreement that authorizes them as the assigned agent to perform these duties.

**J.** Licensees with pull-tab dispensers shall empty and reconcile the receipts and payouts weekly and at the end of each month. The bingo manager shall ensure the audit printout is legible and retained in its original condition.

**K.** The gross receipts from all games of chance conducted during a bingo occasion shall be deposited into the bingo operating account no later than the next business day. Gross receipts from pull-tab dispensers shall be deposited into the bingo operating account on a weekly basis and at the end of each month.

**L.** Licensees utilizing pull-tab dispensers without a concurrent bingo occasion shall complete an approved record as defined in 15.4.1.7 NMAC for each pull-tab dispenser on a weekly basis.

**M.** Deposit records must be sufficient to allow a determination of deposits made from each occasion and each game of chance.

**N.** Signature stamps shall not be allowed.

**O.** Pre-signed checks shall not be allowed.

**P.** Checks shall be consecutively numbered and signed by two authorized persons.

**Q.** No check shall be drawn to "cash" or a fictitious payee. All checks used to withdraw funds from the bingo operating account to replenish prize payouts or the change fund shall be made payable to the licensee and the memo section shall state "prize payouts" or "change fund".

**R.** A perpetual inventory of the bingo paper and pull-tabs shall be maintained by the bingo manager on a form approved by the board.

**S.** All bingo paper and pull-tab not intended for sale due to defect, damage or any other reason shall be segregated, and destroyed or returned to a licensed distributor:

**(1)** prior to the segregation or destruction of any bingo paper and pull-tabs:

**(a)** the material shall be inventoried and recorded on a form approved by the board;

**(b)** the form signed by the highest ranking officer of the licensee that does not hold a valid staff permit; and

**(c)** the form shall be submitted to the board's audit division.

**(2)** all bingo paper and pull-tab returned to a licensed distributor shall:

**(a)** be inventoried and recorded on a form approved by the board;

**(b)** have this form signed by a representative of the licensed distributor;

**(c)** any monies paid by the distributor to the operator for returns shall not be subject to the bingo and raffle tax; and

**(d)** segregated pull-tabs and documentation regarding the return of pull-tabs to a licensed distributor or the destruction of pull-tabs shall be retained pursuant to 15.4.1.12 NMAC.

**T.** All unaccounted for bingo paper and pull-tabs may be subject to the bingo and raffle tax.

**U.** Bingo paper and pull-tab inventories shall not be stored or in any way comingled with the bingo paper and pull-tabs of any other licensee.

**V.** Any deposits made into the bingo operating account from the organization's general operating account for the purpose of sustaining bingo, pull-tab and raffle activity shall be noted on the deposit slip. These deposits are not considered to be bingo and raffle activity receipts and therefore, not subject to bingo and raffle tax.

[15.4.10.9 NMAC - Rp, 15.4.10.9 NMAC 2/23/2021]

#### **15.4.10.10 QUARTERLY REPORTS:**

**A.** The licensee shall submit quarterly bingo and raffle activity reports for all games of chance on the prescribed forms on or before but no later than the 25th day of April, July, October and January. If any due date falls on Saturday, Sunday or legal holiday, the due date is the next business day.

**B.** Licensees shall provide bank statements, images of the front of all cleared checks, and images of the front of all deposit slips for the period that corresponds with each report.

**C.** Each quarterly report shall be submitted with the required supporting documentation in the following order:

**(1)** quarterly report form;

**(2)** supplement forms;

**(3)** bank statements for each month;

- (4) copies of all check images and deposit slip images; and
- (5) copy of quarterly tax coupon.

**D.** If a licensee fails to file quarterly reports within the time required, or if the reports are not properly verified, accurate, and complete, the licensee's license may be suspended until the default has been corrected:

(1) a \$100 processing fee may be assessed for quarterly reports 30 days or more past due;

(2) a \$100 processing fee may be assessed if the licensee fails to submit all required supporting documentation or amended quarterly reports per Subsection C of 15.4.10.8 NMAC within 15 days of notification by the board;

(3) any \$100 processing fees shall be paid within 15 days of receipt of notification along with submission of the quarterly reports and all items requested by the board; to include amended quarterly reports and required supporting documentation;

(4) failure to submit the quarterly reports or required items requested by the board; to include amended quarterly reports, required supporting documentation and the processing fee(s) within 15 days of receipt of notification, may result in an administrative citation being issued; and

(5) the licensee may submit an appeal for the assessment of the processing fee(s) to the board within 15 days of receipt of notification. The appeal shall include a written rebuttal to the assessment. Appealing any processing fee does not relieve the licensee from the obligation to pay the fee or allow the licensee additional time to submit the quarterly reports or any required supporting documentation requested by the board.

[15.4.10.10 NMAC - Rp, 15.4.10.10 NMAC 2/23/2021]

#### **15.4.10.11 REPORTING AND PAYMENT PROCEDURES:**

**A.** Each licensee shall prepare an approved record covering each game of chance. This approved record shall disclose the following information:

(1) gross receipts collected from the sale of all bingo cards, pull-tabs or raffle tickets;

(2) the retail value of all promotional games;

(3) cash on hand at the commencement and at the conclusion of each occasion;

(4) signature of the bingo manager who oversees the occasion on all paperwork; and

(5) name, signature, and assigned duties of each employee for each occasion.

**B.** A bingo and raffle tax as established by statute, of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

**C.** The tax imposed pursuant to this section shall be submitted quarterly to the New Mexico taxation and revenue department on or before April 25, July 25, October 25 and January 25.

**D.** Fees required under the act and all reports relating to taxes and fees shall be received by the board no later than the date specified.

[15.4.10.11 NMAC - Rp, 15.4.10.11 NMAC 2/23/2021]

#### **15.4.10.12 RETENTION OF RECORDS:**

The licensee shall maintain all records required pursuant to 15.4.1.12 NMAC.

[15.4.10.12 NMAC - Rp, 15.4.10.12 NMAC 2/23/2021]

### **PART 11: VARIANCE PROCEDURES**

#### **15.4.11.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.11.1 NMAC - Rp, 15.4.11.1 NMAC, 2/23/2021]

#### **15.4.11.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.11.2 NMAC - Rp, 15.4.11.2 NMAC, 2/23/2021]

#### **15.4.11.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection H of Section 60-2F-6 NMSA 1978 authorizes the board to adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that

games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises.

[15.4.11.3 NMAC - Rp, 15.4.11.3 NMAC, 2/23/2021]

**15.4.11.4 DURATION:**

Permanent.

[15.4.11.4 NMAC - Rp, 15.4.11.4 NMAC, 2/23/2021]

**15.4.11.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.11.5 NMAC - Rp, 15.4.11.5 NMAC, 2/23/2021]

**15.4.11.6 OBJECTIVE:**

This rule establishes procedures for requesting a temporary exemption to any rule within 15.4 NMAC that is not directed by the act.

[15.4.11.6 NMAC - Rp, 15.4.11.6 NMAC, 2/23/2021]

**15.4.11.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.11.7 NMAC - Rp, 15.4.11.7 NMAC, 2/23/2021]

**15.4.11.8 GENERAL REQUIREMENTS:**

Licensee may seek a variance of limited provisions of the New Mexico Bingo and Raffle Rules 15.4 NMAC.

[15.4.11.8 NMAC - Rp, 15.4.11.8 NMAC, 2/23/2021]

**15.4.11.9 VARIANCE PROCEDURES:**

**A.** The bingo manager may submit a variance request on a form prescribed by the board, that shall include the licensee's name, license number, address, contact information and the specific part of 15.4 NMAC which the variance is being sought.

**B.** The board shall not grant a variance to any provision of the act.

**C.** The board or its agent shall review the request and respond to the licensee in writing within 30 days of the request.

**D.** Factors the board may consider when granting or denying a variance request include but are not limited to:

- (1)** impact on game integrity;
- (2)** annual gross receipts;
- (3)** proximity of licensed premise:
  - (a)** to the financial institution holding the operating account;
  - (b)** to licensed distributor; and
  - (c)** to another licensee's licensed premise;
- (4)** number of occasions per annum;
- (5)** staff, volunteer or paid; and
- (6)** regulatory compliance history.

**E.** A granted variance may be for a specific period of time and shall not exceed the expiration date of the license. In the absence of a specified period, the variance shall expire on the license expiration date.

**F.** The bingo manager may submit a request to renew a variance with license renewal application using the form prescribed by the board and the board's staff shall review, grant or deny and respond to said request within 30 days of receipt of request and independently of the approval of the license renewal. Renewal of license shall not automatically result in renewal of variance.

**G.** A copy of the approved variance request shall be posted adjacent to the license at the licensed premise.

[15.4.11.9 NMAC - Rp, 15.4.11.9 NMAC, 2/23/2021]

#### **15.4.11.10 APPEAL:**

The bingo manager may submit an appeal of a denial of a variance request to the board in writing within 30 days of notification of denial. The appeal shall comply with Subsection A of 15.4.14.9 NMAC.

[15.4.11.10 NMAC - Rp, 15.4.11.10 NMAC, 2/23/2021]

## **PART 12: ENFORCEMENT PROCEEDINGS**

### **15.4.12.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.12.1 NMAC - Rp, 15.4.12.1 NMAC, 2/23/2021]

### **15.4.12.2 SCOPE:**

This rule applies to all persons subject to revocation or suspension of a license or permit, disciplinary or other enforcement action under the New Mexico Bingo and Raffle Act.

[15.4.12.1 NMAC - Rp, 15.4.12.2 NMAC, 2/23/2021]

### **15.4.12.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection F of Section 60-2F-6 NMSA 1978 authorizes the board to appoint a hearing officer.

[15.4.12.3 NMAC - Rp, 15.4.12.3 NMAC, 2/23/2021]

### **15.4.12.4 DURATION:**

Permanent.

[15.4.12.4 NMAC - Rp, 15.4.12.4 NMAC, 2/23/2021]

### **15.4.12.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.12.5 NMAC - Rp, 15.4.12.5 NMAC, 2/23/2021]

### **15.4.12.6 OBJECTIVE:**

This rule establishes the guidelines and procedures for the conduct of enforcement proceedings initiated by the board under the New Mexico Bingo and Raffle Act.

[15.4.12.6 NMAC - Rp, 15.4.12.6 NMAC, 2/23/2021]

### **15.4.12.7 DEFINITIONS:**

For purposes of this Part 15.4.12 NMAC, "party" means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.

[15.4.12.7 NMAC - Rp, 15.4.12.7 NMAC, 2/23/2021]

**15.4.12.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:**

**A.** All hearings held pursuant to Section 60-2F-23 NMSA 1978 will be conducted by a hearing examiner duly appointed by the board.

**B.** Except for telephonic hearings, the location of the hearing shall be at the office of the board unless either party makes a written request to have the hearing conducted in the place or area affected.

**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.

[15.4.12.8 NMAC - Rp, 15.4.12.8 NMAC, 2/23/2021]

**15.4.12.9 SUMMONING OF LICENSEE:**

**A.** The board may summon any licensee, or its agents or employees, to appear to testify before the board or its agents concerning the conduct of a licensee or any of the licensee's agents or employees. All such testimony shall be given under oath and may cover any matter the board determines is relevant to the discharge of its duties.

**B.** Any person who is summoned to appear before the board or its agents has the right to be represented by legal counsel. Any testimony taken may be used by the board as evidence in any proceeding or matter then before it or which may later come before it. Failure to appear and testify at the designated time and place, unless excused by the board, constitutes grounds for the revocation or suspension of any license held by the person summoned, their principal, or employer.

[15.4.12.9 NMAC - Rp, 15.4.12.9 NMAC, 2/23/2021]

**15.4.12.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:**

**A.** If after investigation the board determines that a license, permit or other prior approval by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board shall initiate a hearing by issuing a complaint.

**B.** The complaint shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

**C.** The board shall serve the complaint, together with a summary of evidence in the board's possession and a transcript of testimony at any investigative hearing conducted in the matter, upon the licensee. Service and proof of service shall be made in any manner permitted by the New Mexico rules of civil procedure for the district courts.

**D.** The respondent shall file a written answer with the board within 30 days of service of the complaint.

[15.4.12.10 NMAC - Rp, 15.4.12.10 NMAC, 2/23/2021]

#### **15.4.12.11 RECORD OF PROCEEDING:**

**A.** The record of the proceeding will include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

**B.** A party may request a transcription of the proceedings. The party requesting the transcript will bear the cost of transcription.

[15.4.12.11 NMAC - Rp, 15.4.12.11 NMAC, 2/23/2021]

#### **15.4.12.12 DISCOVERY; SUBPOENAS:**

**A.** The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

**B.** The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing

on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

**C.** The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

**D.** Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the state district court unless otherwise provided for by law.

**E.** Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

**F.** Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

- (1) the testimony or evidence to be produced does not reasonably relate to any matter in question;
- (2) the testimony or evidence to be produced is unreasonable or oppressive;
- (3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or
- (4) any other reason justifies vacating or modifying the subpoena.

**G.** In any enforcement action, the respondent and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20 including all discrete subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[15.4.12.12 NMAC - Rp, 15.4.12.12 NMAC, 2/23/2021]

#### **15.4.12.13 FAILURE OR REFUSAL TO TESTIFY:**

**A.** If a respondent fails to testify in its own behalf or asserts a claim of privilege with respect to any question presented to the respondent, the hearing examiner may infer from such refusal that the testimony or answer would have been adverse in the respondent's case.

**B.** If any affiliate, holding company, employee, or agent of a respondent fails to respond to a subpoena or asserts a claim of privilege with respect to any question presented, the hearing examiner, after considering all of the circumstances, may infer that such testimony would have been adverse to the respondent.

[15.4.12.13 NMAC - Rp, 15.4.12.13 NMAC, 2/23/2021]

#### **15.4.12.14 PROCEDURES; EVIDENCE:**

**A.** The respondent may be represented by any person licensed to practice law in the state. An individual respondent may represent himself.

**B.** The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

**C.** Documentary evidence may be received in evidence in the form of true copies of the original.

**D.** Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

**E.** The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge; whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

**F.** The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

**G.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[15.4.12.14 NMAC - Rp, 15.4.12.14 NMAC, 2/23/2021]

#### **15.4.12.15 CONDUCT OF ENFORCEMENT HEARING:**

**A.** In addition to the procedures prescribed by the act, the following procedures shall apply, when appropriate:

(1) the board will present its opening statement on the merits; the respondent then will be permitted to make an opening statement on defense;

(2) the board will present its case in chief in support of the complaint;

(3) upon conclusion of the board's case in chief, the respondent will present its case in defense;

(4) upon conclusion of the respondent's case, the board may present rebuttal evidence; and

(5) the board will present its closing argument, the respondent will present answering argument, and the board may present rebuttal argument. Thereafter, the matter will be submitted for recommendation by the hearing examiner.

**B.** The hearing examiner may ask questions of witnesses and may request or allow additional evidence at any time as determined appropriate by the hearing examiner.

[15.4.12.15 NMAC - Rp, 15.4.12.15 NMAC, 2/23/2021]

#### **15.4.12.16 CONTINUANCES:**

The hearing examiner shall not grant a continuance except for good cause shown.

[15.4.12.16 NMAC - Rp, 15.4.12.16 NMAC, 2/23/2021]

#### **15.4.12.17 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

**A.** Failure of the respondent either to file an answer to the complaint or to appear at the hearing on the merits personally or by telephone, without having obtained a continuance, shall constitute an admission on all matters and facts contained in the complaint filed with respect to the respondent and shall be deemed a waiver of the right to an evidentiary hearing on the matter.

**B.** If the respondent fails to file an answer to the complaint, the petitioner shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against respondent:

(1) the respondent shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served; failure of the respondent to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) if the respondent timely files a response to the motion, the hearing examiner shall hear the matter; the hearing examiner may deny the motion and allow the respondent additional time to answer the complaint if an accident, illness or other good cause prevented the respondent from timely answering the complaint.

**C.** If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

[15.4.12.17 NMAC - Rp, 15.4.12.17 NMAC, 2/23/2021]

#### **15.4.12.18 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 45 days from the date of continuance.

**B.** The hearing examiner shall prepare a written decision containing their recommendation of action to be taken by the board. The hearing examiner's recommendation may include any, or any 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 \$1,000 for each violation.

**C.** Notice of the hearing examiner's recommended action shall be served on the parties within 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.

**E.** 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.

**F.** The board may dismiss an enforcement action with or without prejudice without recommendation of the hearing officer.

[15.4.12.18 NMAC - Rp, 15.4.12.18 NMAC, 2/23/2021]

**15.4.12.19 EX PARTE COMMUNICATIONS:**

**A.** No party or representative of any other person shall communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

**B.** Neither the hearing examiner nor any member of the board shall communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

**C.** Notwithstanding the provisions of Subsections A and B of 15.4.12.19 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

**D.** Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

**E.** This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state;

(2) any party from conferring with the hearing examiner or board counsel concerning procedural; or

(3) matters that do not involve issues of fact or law related to the proceeding.

[15.4.12.19 NMAC - Rp, 15.4.12.19 NMAC, 2/23/2021]

#### **15.4.12.20 TELEPHONIC HEARINGS:**

**A.** Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

**B.** Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

**C.** The location or locations of the parties during the hearing shall have a telephone and the means by which documents may be transmitted between the parties and hearing examiner.

**D.** The hearing officer shall initiate the telephone call. The petitioner and respondent are responsible for ensuring that the telephone number to their locations for the telephonic hearing is accurate and that they are available at that telephone number at the time the hearing is to commence. The board's staff shall conduct the hearing on a speaker phone and shall record the hearing, or in the alternative, shall provide a court reporter to transcribe the hearing. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the respondent to a default judgment.

**E.** The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[15.4.12.20 NMAC - Rp, 15.4.12.20 NMAC, 2/23/2021]

**15.4.12.21 APPEALS TO THE DISTRICT COURT:**

Pursuant to Subsection A of Section 60-2F-24 NMSA 1978, any person aggrieved by a final decision of the board issued pursuant to Section 15.4.12.18 NMAC may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[15.4.12.21 NMAC - Rp, 15.4.12.21 NMAC, 2/23/2021]

**PART 13: LICENSE OR STAFF PERMIT REVOCATION**

**15.4.13.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.13.1 NMAC - Rp, 15.4.13.1 NMAC, 2/23/2021]

**15.4.13.2 SCOPE:**

This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico gaming control board.

[15.4.13.2 NMAC - Rp, 15.4.13.2 NMAC, 2/23/2021]

**15.4.13.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Subsection A of Section 60-2F-6 NMSA 1978 authorizes the board to grant, deny, suspend, condition or revoke license or permits issued.

[15.4.13.3 NMAC - Rp, 15.4.13.3 NMAC, 2/23/2021]

**15.4.13.4 DURATION:**

Permanent.

[15.4.13.4 NMAC - Rp, 15.4.13.4 NMAC, 2/23/2021]

**15.4.13.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.13.5 NMAC - Rp, 15.4.13.5 NMAC, 2/23/2021]

**15.4.13.6 OBJECTIVE:**

This rule is established to provide persons holding licenses or staff permits issued by the New Mexico gaming control board notice of the types of circumstances under which the board may revoke the staff permit or license.

[15.4.13.6 NMAC - Rp, 15.4.13.6 NMAC, 2/23/2021]

**15.4.13.7 DEFINITIONS:**

See 15.4.1.7 NMAC for applicable definitions.

[15.4.13.7 NMAC - Rp, 15.4.13.7 NMAC, 2/23/2021]

**15.4.13.8 REVOCABLE PRIVILEGE:**

The holder of a staff permit or license issued by the board under the act has a revocable privilege only.

[15.4.13.8 NMAC - Rp, 15.4.13.8 NMAC, 2/23/2021]

**15.4.13.9 GROUNDS FOR REVOCATION OF A STAFF PERMIT OR LICENSE:**

**A.** The board or its agents may initiate action to revoke a staff permit or license for any cause deemed reasonable, 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 gambling offense in any jurisdiction, or any offense involving theft, fraud, embezzlement, or any fiduciary misconduct;

(3) entry of a civil judgment against the licensee that is based, in whole or in part, on conduct that allegedly constituted a crime involving theft, fraud, embezzlement or any fiduciary misconduct;

(4) 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 games of chance;

(5) failure to timely respond to any request by, or order of, the board or its agent;

(6) revocation of a work permit, or finding of suitability issued pursuant to the New Mexico Gaming Control Act;

- (7) violation of any provision of the act or this title;
- (8) failure to notify the board in writing of any criminal conviction or criminal charge pending, which is grounds for revocation under this part, against the licensee within 10 days of any arrest, summons, or conviction;
- (9) falsification of, failure to make a required entry in, or destruction of records required to be maintained;
- (10) failure to file any report as required under the act or rules;
- (11) failure to appear and testify at the designated time and place, unless excused by the board;
- (12) refusal or failure to possess the licensee's staff permit badge while engaged in the conduct of games of chance;
- (13) failure to follow operating procedures;
- (14) failure to remain current on child support payments; and
- (15) any other cause deemed appropriate by the board.

**B.** Any person whose staff permit has been revoked by the board may not reapply for a permit or license issued by the board for the period of at least one year pursuant to Section 60-2F-14 NMSA 1978 or as ordered by the board.

[15.4.13.9 NMAC - Rp, 15.4.13.9 NMAC, 2/23/2021]

#### **15.4.13.10 CRIMINAL CONVICTION AS GROUNDS FOR REVOCATION OR SUSPENSION:**

The board may revoke or suspend the license, or staff permit, of a person convicted of a felony or a crime of dishonesty, regardless of whether that person has exhausted their post-conviction rights and remedies.

[15.4.13.10 NMAC - Rp, 15.4.13.10 NMAC, 2/23/2021]

#### **15.4.13.11 REVOCATION PROCEEDINGS; SURRENDER OF STAFF PERMIT OR LICENSE:**

**A.** If after investigation the board determines that sufficient grounds exist to revoke a staff permit, the board shall 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 shall be conducted in accordance with board rule 15.4.12 NMAC, "Enforcement Proceedings."

**C.** A staff permit badge issued by the board is state property and shall be returned to the board by the licensee upon revocation of the staff permit.

[15.4.13.11 NMAC - Rp, 15.4.13.11 NMAC, 2/23/2021]

#### **15.4.13.12 DELEGATION OF AUTHORITY TO INITIATE 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 staff permit or license and to issue a complaint seeking revocation. The initial determination shall be based on evidence sufficient to support issuance of a complaint seeking to revoke the staff permit or license.

**B.** The board retains accountability for the authority delegated and retains the authority to make the final decision to revoke a staff permit or license following the initial decision by the executive director and public hearing before the board.

[15.4.13.12 NMAC - Rp, 15.4.13.12 NMAC, 2/23/2021]

### **PART 14: ADMINISTRATIVE APPEAL**

#### **15.4.14.1 ISSUING AGENCY:**

New Mexico Gaming Control Board.

[15.4.14.1 NMAC - Rp, 15.4.14.1 NMAC, 2/23/2021]

#### **15.4.14.2 SCOPE:**

This rule applies to all licensees, applicants for licensure, and persons aggrieved by an action of the board or its agents under the act.

[15.4.14.2 NMAC - Rp, 15.4.14.2 NMAC, 2/23/2021]

#### **15.4.14.3 STATUTORY AUTHORITY:**

Authority for this rule derives from the New Mexico Bingo and Raffle Act Section 60-2F-3 NMSA 1978. Sections 60-2F-6, 60-2F-23 and 60-2F-24 NMSA 1978 authorize the board to adopt procedural regulations to govern the procedures to be followed in administrative appeal hearings conducted pursuant to the New Mexico Bingo and Raffle Act.

[15.4.14.3 NMAC - Rp, 15.4.14.3 NMAC, 2/23/2021]

**15.4.14.4 DURATION:**

Permanent.

[15.4.14.4 NMAC - Rp, 15.4.14.4 NMAC, 2/23/2021]

**15.4.14.5 EFFECTIVE DATE:**

February 23, 2021, unless a later date is cited at the end of a section.

[15.4.14.5 NMAC - Rp, 15.4.14.5 NMAC, 2/23/2021]

**15.4.14.6 OBJECTIVE:**

This rule establishes the guidelines and procedures for the conduct of hearings under the New Mexico Bingo and Raffle Act when the hearing is initiated by a person aggrieved by an action of the board or its agent. Any person aggrieved by a decision of the board, including a denial of a license or permit, shall request a hearing for review of board action pursuant to 15.4.14 NMAC and obtain a final decision of the board pursuant to 15.4.14.17 NMAC prior to filing an appeal to the district court.

[15.4.14.6 NMAC - Rp, 15.4.14.6 NMAC, 2/23/2021]

**15.4.14.7 DEFINITIONS:**

For purposes of this 15.4.14 NMAC, "party" means each person named or admitted as a party to a proceeding before the board or its duly appointed hearing examiner.

[15.4.14.7 NMAC - Rp, 15.4.14.7 NMAC, 2/23/2021]

**15.4.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:**

**A.** All hearings held pursuant to Section 60-2F-24 NMSA 1978 shall be conducted by a hearing examiner duly appointed by the board.

**B.** Except for telephonic hearings, hearings shall be conducted at the office of the board.

**C.** All hearings held pursuant to Section 60-2F-24 NMSA 1978 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.

[15.4.14.8 NMAC - Rp, 15.4.14.8 NMAC, 2/23/2021]

**15.4.14.9 REQUEST FOR REVIEW OF BOARD ACTION:**

A. Any person aggrieved by an action of the board or one of its agents may request a hearing for the purpose of review of such action. The appellant shall file the request for hearing within 30 days of the date the action is taken. The request shall include the following:

- (1) a statement of the facts relevant to the review of the action;
- (2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;
- (3) a statement of the arguments that the appellant considers relevant to the review of the action; and
- (4) any other evidence considered relevant.

B. The hearing examiner will schedule the hearing as soon as practicable but in any event no later than 60 days from the date it receives the appellant's request for hearing. The hearing examiner may extend the 60 day time upon motion for good cause shown, or the parties may extend the 60 day time period by mutual agreement. The hearing examiner shall issue notice of the hearing, which shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a short and plain statement of the matters of fact and law asserted;
- (4) notice to any other parties to give prompt notice of issues controverted in fact or law; and
- (5) all necessary telephone numbers if a telephonic hearing will be conducted.

C. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.

[15.4.14.9 NMAC - Rp, 15.4.14.9 NMAC, 2/23/2021]

**15.4.14.10 RECORD OF PROCEEDING:**

**A.** The record of the proceeding shall include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

**B.** A party may request a transcription of the proceedings. The party requesting the transcript shall bear the cost of transcription.

[15.4.14.10 NMAC - Rp, 15.4.14.10 NMAC, 2/23/2021]

**15.4.14.11 DISCOVERY; SUBPOENAS:**

**A.** The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

**B.** The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

**C.** The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

**D.** Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

**E.** Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

**F.** Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

- (1)** the testimony or evidence to be produced does not reasonably relate to any matter in question;
- (2)** the testimony or evidence to be produced is unreasonable or oppressive;
- (3)** the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or
- (4)** any other reason justifies vacating or modifying the subpoena.

**G.** In any administrative appeal, the appellant and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to 20, including all subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

[15.4.14.11 NMAC - Rp, 15.4.14.11 NMAC, 2/23/2021]

#### **15.4.14.12 PROCEDURES; EVIDENCE:**

**A.** Any party may be represented by a person licensed to practice law in the state. An individual appellant may represent himself.

**B.** The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

**C.** Documentary evidence may be received in evidence in the form of true copies of the original.

**D.** Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

**E.** The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence.

**F.** Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge. Whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

**G.** The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

**H.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

[15.4.14.12 NMAC - Rp, 15.4.14.12 NMAC, 2/23/2021]

#### **15.4.14.13 CONDUCT OF PROCEEDING:**

**A.** Unless the hearing examiner reasonably determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule.

**B.** In addition to any procedures described by the act, the following procedures shall apply:

(1) the appellant may present an opening statement on the merits and the appellee may make a statement of the defense or reserve the statement until presentation of its case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of its petition;

(3) upon conclusion of appellant's case in chief, the appellee may move for dismissal of the petition; the hearing examiner may suspend the hearing and refer the motion to the board, which shall grant, deny, or reserve decision on the motion, with or without argument, as soon as practicable but in no event later than its next regularly scheduled board meeting;

(4) if no motion to dismiss is made, or if the board denies or reserves decision on the motion, the appellee shall present its case in defense;

(5) upon conclusion of the appellee's case, the appellant may present rebuttal evidence;

(6) after presentation of the evidence by the parties, the appellant may present a closing argument; the appellee then may present its closing argument, and the appellant may present a rebuttal argument; and

(7) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

[15.4.14.13 NMAC - Rp, 15.4.14.13 NMAC, 2/23/2021]

#### **15.4.14.14 BURDEN OF PROOF:**

The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the board or its agents should be reversed or modified.

[15.4.14.14 NMAC - Rp, 15.4.14.14 NMAC, 2/23/2021]

#### **15.4.14.15 CONTINUANCES:**

The hearing examiner shall not grant a continuance except for good cause shown.

[15.4.14.15 NMAC - Rp, 15.4.14.15 NMAC, 2/23/2021]

#### **15.4.14.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

**A.** Failure of the appellee to schedule a hearing within 60 days, unless the 60 day time period is extended, or of any party to appear at the hearing on the merits personally or by telephone, without having obtained a continuance may constitute a default and an admission on all matters and facts alleged by the opposing party and shall be deemed a waiver of the right to an evidentiary hearing on the matter. The hearing examiner may proceed to consider the matter, and the board may dispose of it, on the basis of the evidence before it.

**B.** If the appellee fails to schedule a hearing within 60 days, the appellant shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against the appellee:

(1) the appellee shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within 10 calendar days of the date the motion is served; failure of the appellee to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) if the appellee timely files a response to the motion, the hearing examiner shall hear the matter; the hearing examiner may deny the motion and allow the appellee

additional time to schedule a hearing on the merits if an accident, illness or other good cause prevented the appellee from timely scheduling a hearing.

**C.** If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

[15.4.14.16 NMAC - Rp, 15.4.14.16 NMAC, 2/23/2021]

#### **15.4.14.17 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.

**B.** 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 45 days from the date of continuance.

**C.** Not more than 30 days after completion of the hearing, the hearing examiner shall prepare a written decision containing their 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.

**D.** Notice of the hearing examiner's recommended action shall be served on the parties as promptly as possible but in no event later than 15 days after the date of the hearing on the matter. Service shall be made by registered or certified mail.

**E.** 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 to sustain, modify, or reverse the initial decision of the board or its agent.

**F.** The board may dismiss an appeal with or without prejudice without recommendation of the hearing officer, upon stipulation of the parties.

[15.4.14.17 NMAC - Rp, 15.4.14.17 NMAC, 2/23/2021]

#### **15.4.14.18 EX PARTE COMMUNICATIONS:**

**A.** No party or representative of any other person shall communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

**B.** Neither the hearing examiner nor any member of the board shall communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

**C.** Notwithstanding the provisions of Subsections A and B of 15.4.14.18 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as non-confidential is subject to the prohibition on ex parte communications withstanding the provisions of Subsections A and B of 15.4.14.18 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

**D.** Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

**E.** This section does not preclude:

**(1)** the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

**(2)** any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

[15.4.14.18 NMAC - Rp, 15.4.14.18 NMAC, 2/23/2021]

#### **15.4.14.19 TELEPHONIC HEARINGS:**

**A.** Any party requesting a telephonic hearing shall do so within 10 working days of the date of the notice. When the parties agree to conduct the hearing by telephone,

notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

**B.** Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than 10 days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

**C.** The location or locations of the parties during the hearing shall have a telephone and the means by which documents may be transmitted between the parties and hearing examiner.

**D.** The hearing officer shall initiate the telephone call. The petitioner and respondent are responsible for ensuring that the telephone number to their locations for the telephonic hearing is accurate and that they are available at the telephone number at the time the hearing is to commence. The board's staff shall conduct the hearing on a speaker phone and shall record the hearing, or in the alternative, shall provide a court reporter to transcribe the hearing. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the non-responsive party to a default judgment.

**E.** The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

[15.4.14.19 NMAC - Rp, 15.4.14.19 NMAC, 2/23/2021]

#### **15.4.14.20 APPEALS TO THE DISTRICT COURT:**

Pursuant to Subsection A of Section 60-2F-24 NMSA 1978, any person aggrieved by a final decision of the board issued pursuant to 15.4.14.17 NMAC may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[15.4.14.20 NMAC - Rp, 15.4.14.20 NMAC, 2/23/2021]

## **CHAPTER 5: BICYCLE RACING [RESERVED]**

# **CHAPTER 6: BOXING, WRESTLING AND MARTIAL ARTS**

## **PART 1: GENERAL PROVISIONS**

### **15.6.1.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.1.1 NMAC - N, 03-23-2002]

### **15.6.1.2 SCOPE:**

The provisions in Part 1 apply to all parts of Chapter 6 of Title 15, and provide relevant information to anyone affected or interested in Chapter 6 of Title 15.

[15.6.1.2 NMAC - N, 03-23-2002]

### **15.6.1.3 STATUTORY AUTHORITY:**

Part 1 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.1.3 NMAC - N, 03-23-2002]

### **15.6.1.4 DURATION:**

Permanent.

[15.6.1.4 NMAC - N, 03-23-2002]

### **15.6.1.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.1.5 NMAC - N, 03-23-2002]

### **15.6.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 6 is to set forth the provisions that apply to all of Chapter 6, and to all persons and entities affected by Chapter 6 of Title 15.

[15.6.1.6 NMAC - N, 03-23-2002]

### **15.6.1.7 DEFINITIONS:**

**A. "Amateur contest"** means any boxing, wrestling, martial arts, or mixed martial arts event, contest or exhibition, whether or not an admission fee is charged to the public, where the participants are licensed as amateurs with the commission in their field of unarmed combat. The terms "**amateur contest**" and "**smoker**" are used interchangeable, both terms have the same meaning.

**B. "Board"** means the medical advisory board of the New Mexico athletic commission.

**C. "Broadcast"** means any audio or visual image sent by radio, television or internet signals including podcast, webcast, streaming media, internet and any other electronic transmission.

**D. "Closed circuit telecast"** means any telecast that is not intended to be available for viewing without the payment of a fee for the privilege of viewing the telecast and includes, but is not limited to, the term "pay-per-view". This definition includes, but is not limited to, telecasts, podcast, webcast, streaming media, internet or any electronic transmission to arenas, bars, lounges, clubs, entertainment or meeting centers and private residences.

**E. "Commission"** means the New Mexico athletic commission.

**F. "Contact exhibition"** means any contest or portion of a fight card, bout, or event in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

**G. "Contest"** means any event or portion of a fight card, bout or exhibition in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

**H. "Counted out"** means that a participant has been knocked down and the referee and knockdown timekeeper have performed the appropriate count as set forth in the rules, and the completion of such count signifies that the participant has been knocked out.

**I. "Department"** means the New Mexico regulation and licensing department.

**J. "Event"** means any contest or portion of a fight card, bout, or exhibition in any form of unarmed combat, including but not limited to boxing, wrestling, or martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

**K. "Exhibition"** means any contest or portion of a fight card, bout, or event in any form of unarmed combat, including but not limited to boxing, wrestling, martial arts, or

mixed martial arts regulated by the commission, conducted, held, televised on closed circuit, or given within New Mexico.

**L. "Face value"** means the dollar value of a ticket that the customer is required to pay or, for complimentary tickets, would have required payment. It shall include any charges or fees, such as dinner, gratuity, parking, surcharges, or any other charges or fees that must be incurred in order to be allowed to view the match. However, if the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.

**M. "Fight card"** means a program of an event, contest, or exhibition of unarmed combat.

**N. "Foreign co-promoter"** means a promoter who has no physical place of business in New Mexico or who's business is incorporated in a state other than New Mexico.

**O. "He" or "his"** shall also mean "she" or "her".

**P. [RESERVED]**

**Q. "Main event"** means the principal match or matches within a program of matches.

**R. "Mixed martial arts"** means unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.

**S. "Official duty"** means any person who performs a task belonging to the commission during an event, contest, or exhibition of unarmed combat.

**T. "Professional contest"** means any boxing, wrestling, or martial arts, or mixed martial arts event, contest or exhibition, whether or not an admission fee is charged for admission of the public, where the participants are licensed as professionals with the commission in their field of unarmed combat.

**U. "Promoter"** means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any unarmed combat, including but not limited to boxing, wrestling or martial arts contest, exhibition or closed circuit television show.

**V. "Sham or fake"** means a professional event, contest, or exhibition that is unsanctioned or features participants who are not licensed professionals with the commission in their respective form of unarmed combat.

**W. "Technical zone"** means the area between the ring, cage or fenced area and public seating. The area must have a separate divider and be at least 8 but preferably 12 feet from the ring, cage or fenced area. If there is not a solid barrier, uniformed security must be present.

**X. "Timekeeper signal"** means the appropriate mechanism used to signal the end of the round.

**Y. "Unarmed combat"** means boxing, wrestling, martial arts, mixed martial arts or any form of competition in which a blow is usually struck which may reasonably be expected to inflict injury.

**Z. "Unarmed contest"** means an unarmed combatant competing in an unarmed combat approved and sanctioned by a state commission or a duly constituted and functioning tribal commission which provides the unarmed combatants with the minimum protection afforded by the commission.

[15.6.1.7 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.1.8 DOCUMENTS FILED WITH COMMISSION:**

All applications, records, or other papers and documents filed with or submitted to the commission or to the medical advisory board appointed by the commission, or at any hearing, shall become the property of the commission.

[15.6.1.8 NMAC - N, 03-23-2002]

#### **15.6.1.9 LICENSEE RECORDS SUBJECT TO COMMISSION INSPECTION:**

All the books and records of any licensee of this commission; or of any corporation of which the licensee is an officer, director or stockholder; and which directly or indirectly concern unarmed combat, including but not limited to boxing, wrestling, or martial arts, shall at all times be subject to the inspection of the commission at such times and under such circumstances as the commission may direct.

[15.6.1.9 NMAC - N, 03-23-2002; A; 08-26-2012]

#### **15.6.1.10 DUTIES OF THE COMMISSION ADMINISTRATOR:**

The commission's administrator shall keep a full and true record of all the commission's proceedings; preserve and keep its books, documents, papers, records; and prepare such papers, reports, and other documents as may be required by the commission; and perform such other duties as may be assigned to the commission administrator from time to time by the commission. The commission administrator shall keep a record of the minutes of all commission meetings and prepare monthly financial statements for the commission.

[15.6.1.10 NMAC - N, 03-23-2002]

**15.6.1.11 MINUTES OF COMMISSION MEETINGS:**

The minutes of all commission meetings shall be transcribed and kept on file at the commission's office and placed online, at [http://www.rld.state.nm.us/boards/athletic\\_commission\\_members\\_and\\_meetings.aspx](http://www.rld.state.nm.us/boards/athletic_commission_members_and_meetings.aspx).

[15.6.1.11 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.1.12 MEDICAL ADVISORY BOARD RECORDS:**

The records of the medical advisory board shall not be available for public inspection unless the commission is served with a subpoena issued by a court of competent jurisdiction.

[15.6.1.12 NMAC - N, 03-23-2002]

**15.6.1.13 AMENDMENT OF RULES:**

The commission may suspend, amend, revise or re-codify the rules in compliance with the Uniform Licensing Act (NMSA 1978 Sections 61-1-1 through 61-1-33). Any amendment of the rules shall be published by the commission as required by law, and shall be available for public inspection.

[15.6.1.13 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.1.14 SEVERABILITY:**

If any part or application of Chapter 6 of Title 15 is held invalid, the remainder, or its application to their situations or persons, shall not be affected.

[15.6.1.14 NMAC - N, 03-23-2002]

**15.6.1.15 OPEN MEETINGS NOTICES:**

Commission meetings shall be open to the public and shall be noticed pursuant to the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 10-15-4, and in accordance with the commission's annual Open Meetings Resolution

[15.6.1.15 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.1.16 INSPECTION OF PUBLIC RECORDS:**

The commission operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through 14-2-12. The commission's administrator is the

custodian of the commission's records. The commission may provide copies of public records upon request and upon payment of a reasonable copying fee. No person shall remove commission documents from the commission office. The commission maintains files for all applicants. Information in the applicant's file is a matter of public record except for the following:

**A.** medical reports, records of chemical dependency, physical or mental examinations;

**B.** complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the commission as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the commission by any investigating agent or agency; upon the completion of the investigation or processing of the complaint, AND upon the decision of the commission to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and

**C.** any other records excepted from disclosure pursuant to the Inspection of Public Records Act.

[15.6.1.16 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

#### **15.6.1.17 TELEPHONE CONFERENCES:**

As authorized by NMSA 1978 (1993 Repl. Pamp.) Section 10-15-1.C of the Open Meetings Act, when it is difficult or impossible for a commission member to attend a commission meeting in person, the member may participate by means of a conference telephone or similar communications equipment. Participation by such means shall constitute presence in person at the meeting. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the commission who speaks during the meeting.

[15.6.1.17 NMAC - N, 03-23-2002]

#### **15.6.1.18 LICENSEE REQUIRED TO UPDATE ADDRESS WITH COMMISSION:**

**A.** Correspondence, notices, bulletins, or any other information from the commission will be sent to the last known address on file with the commission at the commission's office.

**B.** The licensee shall be responsible for notifying the commission of any change in address.

[15.6.1.18 NMAC - N, 03-23-2002]

#### **15.6.1.19 CODE OF CONDUCT FOR COMMISSION MEMBERS:**

In accordance with the provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18, NMSA 1978, each commission member shall annually sign a commission member *code of conduct* and the commission shall annually adopt said executed document which shall then be forwarded to the New Mexico secretary of state by the commission administrator.

[15.6.1.19 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.1.20 COSTS OF DISCIPLINARY ACTIONS:**

Licensees shall bear **all costs** of disciplinary proceedings unless they are excused by the commission from paying all or part of the costs or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the commission.

[15.6.1.20 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.1.21 CHANGE OF DECISION:**

**A. Commission's power to change decision:** If the commission determines that any of the situations listed below has occurred with regard to any event, contest or exhibition of unarmed combat, then the decision rendered shall be changed as the commission directs.

**B. Collusion:** That there was collusion affecting the results of any bout.

**C. Scoring error:** That a mathematical or transcription error occurred in the compilation of the judge's scorecards that would indicate that the official decision had been awarded to the wrong contestant.

**D. Drugs or foreign substances:** That the unarmed combatant is found to have violated Part 15 of the commission's rules and regulations, wherein the unarmed combatant has tested positive for a prohibited substance that was in the unarmed combatant's system at the time of their event, contest or exhibition of unarmed combat.

**E. Violation of rules and regulations:** That there was a clear violation of the commission's rules and regulations governing the sanctioning of unarmed combat that affected the result of the event, contest or exhibition.

[15.6.1.21 NMAC - N, 02-13-2015]

## **PART 2: CONTRACTS**

### **15.6.2.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.2.1 NMAC - N, 03-23-2002]

### **15.6.2.2 SCOPE:**

The provisions in Part 2 apply to licensees regulated by the commission.

[15.6.2.2 NMAC - N, 03-23-2002]

### **15.6.2.3 STATUTORY AUTHORITY:**

Part 2 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-4, 60-2A-8, 60-2A-10, 60-2A-13, 60-2A-16, and 60-2A-18.

[15.6.2.3 NMAC - N, 03-23-2002]

### **15.6.2.4 DURATION:**

Permanent.

[15.6.2.4 NMAC - N, 03-23-2002]

### **15.6.2.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.2.5 NMAC - N, 03-23-2002]

### **15.6.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 6 is to set forth the policies and procedures for contracts.

[15.6.2.6 NMAC - N, 03-23-2002]

#### **15.6.2.7 DEFINITIONS:**

**[RESERVED]**

[15.6.2.7 NMAC - N, 03-23-2002]

#### **15.6.2.8 LICENSE REQUIRED:**

All participants in a contract must first be licensed by the commission before participating, either directly or indirectly, in any professional contest regulated by the commission.

[15.6.2.8 NMAC - N, 03-23-2002]

#### **15.6.2.9 AGE REQUIREMENTS:**

The commission may require a birth certificate or equally bona fide certification of age.

**A.** Professional unarmed combatants must be at least eighteen (18) years of age at the time they execute their professional contract.

**B.** Managers must be at least twenty-one (21) years of age at the time of their licensure with the commission.

**C.** Seconds must be at least eighteen (18) years of age at the time of their licensure with the commission

[15.6.2.9 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.2.10 EXECUTION OF CONTRACTS:**

Contracts between an unarmed combatant and a manager, or between an unarmed combatant or manager and a licensed promoter, shall be executed on printed contract forms approved by the commission. If printed contract forms are unavailable, the commission may approve notarized contracts. All contracts must at a minimum include all agreed upon terms such as weight, allowed possible ranges of weight, number of rounds, duration of rounds, named opponent and signatures of all parties to the contract including promoter and unarmed combatant or his approved management.

[15.6.2.10 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

#### **15.6.2.11 [RESERVED]**

[15.6.2.11 NMAC - N, 03-23-2002]

#### **15.6.2.12 USE OF THE UNARMED COMBATANT'S TRUE NAME IN SIGNING CONTRACTS:**

The commission will not approve any contract for the services of an unarmed combatant unless such contract is signed by the unarmed combatant under his true, legal and complete name.

[15.6.2.12 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.13 CONTRACT FILING:**

A copy of any contract entered into between a manager and an unarmed combatant must be placed on file with the commission for approval.

**A.** A contract becomes null and void if at any time during its term the manager or the unarmed combatant loses his license as a result of an action by the commission or by failure of the manager or unarmed combatant to renew his license.

**B.** A manager is not allowed to participate in more than 33-1/3 percent of the ring earnings of the unarmed combatant.

**C.** The commission must approve and consent to any assignment of any part of the unarmed combatant or manager's interest in a contract.

[15.6.2.13 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.14 VALIDATION OF THE CONTRACT:**

**A.** Unless otherwise directed by the commission, both parties to the contract, the manager and the unarmed combatant, or an approved representative for either party, must appear before the commission at the same time to have the contract approved and validated by the commission.

**B.** No contract between a manager and an unarmed combatant will be approved for more than a three-year term.

[15.6.2.14 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.15 EXECUTION OF THE CONTRACT BY UNARMED COMBAT MANDATORY:**

An unarmed combatant must carry out all the terms and conditions of the contract to which he is a party. Any unarmed combatant failing to fulfill the terms of any such contract will be subject to disciplinary action by the commission.

[15.6.2.15 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.2.16 UNARMED COMBATANT DEFAULT OF CONTRACT:**

**A.** If an unarmed combatant claims that his failure to fulfill the terms of his contract was caused by illness or injury or by conditions over which he had no control, he shall submit such claim in writing to the commission.

**B.** The commission may then decide whether such default requires the imposition of any penalty or disciplinary action.

**C.** In the event that either no claim is made, or that it is made and rejected by the commission:

**(1)** the commission may suspend or revoke the license of the unarmed combatant in default and award to the opponent the amount of any forfeit posed under the terms of the contract; and

**(2)** the commission may declare the defaulting unarmed combatant ineligible for any other unarmed combat contest in the state of New Mexico until such terms of the breached contract are fulfilled.

**D.** If the commission finds that the default was excusable, the defaulting unarmed combatant must fulfill the terms of the contract by an adjourned date subject to the approval of the commission. Subject to penalty of suspension or revocation of his license, the unarmed combatant shall not combat in any other unarmed combat contest or for any other promoter without the approval of the commission.

[15.6.2.16 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.17 [RESERVED]**

[15.6.2.17 NMAC - N, 03-23-2002]

#### **15.6.2.18 CONDITION FOR APPROVAL OF UNARMED COMBAT CONTEST CONTRACTS:**

The commission will not approve contracts for unarmed combat contest unless both unarmed combatants have signed contracts with the same licensed promoter.

[15.6.2.18 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.19 TIME LIMITS FOR FILING UNARMED COMBAT CONTEST CONTRACTS:**

The promoter must meet the following conditions to file contracts with the commission for unarmed combat.

**A.** All main events and semi-main event contracts between a promoter and any licensed unarmed combatant or approved management of a licensed unarmed combatant, effecting or calling for the services of a main event or semi-main event unarmed combatant, shall be filed with the commission within seven days after the execution of the contract, and at least seven days prior to any unarmed combat contest to which the contract relates.

**B.** All contracts for preliminary unarmed combatants shall be filed no later than 96 hours prior to any match to which they relate, unless otherwise approved by the commission or its designee.

[15.6.2.19 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015; A, 01-15-2017]

**15.6.2.20 COMPENSATION OF PROFESSIONAL UNARMED COMBAT IS REQUIRED:**

**A.** Payment may be made only to persons set forth by the commission unless the commission has approved, in advance, all the details of payment to another party.

**B.** All unarmed combatants participating in a professional unarmed combat contest shall be paid, directly or through their licensed managers, who shall issue a receipt for such payment.

**C.** Payment shall be made only to the duly recognized manager or to the unarmed combatant himself, if he has no recognized manager.

**D.** Unless otherwise agreed to by the commission, all participants must be paid immediately following the conclusion of the final bout.

**E.** Promoters shall pay the agreed amount to the contestants.

**F.** No professional unarmed combatant shall be paid less than \$25.00 for each round scheduled in any contest.

**G.** Unarmed combatants shall not kickback any part of the amount paid them to any manager, second, promoter, or matchmaker.

**H.** None of the parties involved in an event or match shall accept a kickback offered to him by any unarmed combatant.

[15.6.2.20 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.2.21 CONTRACTS FOR BROADCAST OR TELECAST OF UNARMED COMBAT CONTEST:**

**A.** All contracts entered into by any licensee of the commission, or any and all amendments, changes or modifications calling for or referring to any motion picture, telecast or radio broadcast of any unarmed combat contest, exhibition or match must be promptly filed with the commission for approval.

**B.** No person or party may announce or conduct any such broadcast or telecast of any unarmed combat contest, exhibition or match conducted under the jurisdiction of the commission without first obtaining the approval of the commission.

[15.6.2.21 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.22 PROHIBITIONS TO ENTER INTO CONTRACT:**

The commission prohibits any licensed matchmaker, promoter, manager, contestant, person or party employed or connected with a licensed promoter, to enter into a contract or commence negotiations for any unarmed combat contest or exhibition with any other licensee whose license is currently suspended or revoked by the commission.

[15.6.2.22 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.2.23 [RESERVED]**

[15.6.2.23 NMAC - N, 03-23-2002]

#### **15.6.2.24 [RESERVED]**

[15.6.2.24 NMAC - N, 03-23-2002; A, 08-26-2012; Repealed, 01-15-2017]

### **PART 3: TICKETS FOR CONTESTS AND EXHIBITIONS**

#### **15.6.3.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.3.1 NMAC - N, 03-23-2002]

#### **15.6.3.2 SCOPE:**

The provisions in Part 3 apply to anyone printing, selling, or purchasing tickets for an event regulated by the commission.

[15.6.3.2 NMAC - N, 03-23-2002]

#### **15.6.3.3 STATUTORY AUTHORITY:**

Part 3 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-4, 60-2A-8, 60-2A-15, 60-2A-23, 60-2A-25, 60-2A-26, 60-2A-27, 60-2A-28, and 60-2A-29.

[15.6.3.3 NMAC - N, 03-23-2002]

**15.6.3.4 DURATION:**

Permanent.

[15.6.3.4 NMAC - N, 03-23-2002]

**15.6.3.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.3.5 NMAC - N, 03-23-2002]

**15.6.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 6 is to set forth protocols for printing, commission approval, sales, disbursement, and purchase of tickets for events regulated by the commission.

[15.6.3.6 NMAC - N, 03-23-2002]

**15.6.3.7 DEFINITIONS:**

"**Face value**" means the dollar value of a ticket that the customer is required to pay or, for complimentary tickets, would have required payment. It shall include any charges or fees, such as dinner, gratuity, parking, surcharges or any other charges or fees that must be incurred in order to be allowed to view the match. However, if the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.

[15.6.3.7 NMAC - N, 03-23-2002]

**15.6.3.8 [RESERVED]**

[15.6.3.8 NMAC - N, 03-23-2002; A, 08-26-2012, Repealed, 01-15-2017]

**15.6.3.9 [RESERVED]**

[15.6.3.9 NMAC - N, 03-23-2002; Repealed, 01-15-2017]

**15.6.3.10 [RESERVED]**

**15.6.3.11 PROHIBITIONS IN THE DISTRIBUTION AND SALE OF TICKETS:**

**A.** Promoters and corporations licensed by the commission must be vigilant in preventing ticket speculation.

**B.** Promoters and corporations licensed by the commission are prohibited from the following:

**(1)** Selling any tickets for any price other than the price printed on the face of the ticket, without the consent of the commission or representative in charge.

**(2)** Changing the price of the tickets at any time after the tickets for the contest or exhibition have been placed on sale without the consent of the commission or commission representative in charge.

**(3)** Selling any tickets at any time during the contest or exhibition for a price less than tickets for similar seats were sold or offered before the exhibition or contest began, without the consent of the commission or commission representative in charge.

**(4)** Selling standing room or roll tickets for any contest or exhibition without the consent of the commission or commission representative in charge and of the appropriate local or municipal safety departments.

[15.6.3.11 NMAC - N, 03-23-2002]

**15.6.3.12 SALE OF TICKETS AND TICKET EXCHANGES:**

**A.** No licensee may sell any ticket for more than the price printed on the face of the ticket.

**B.** No other person may sell any ticket of which he is in possession for more than fifty cents over the price printed on the face of the ticket.

**C.** Ticket exchanges may only be made at the licensed promoter or corporations' box office.

**D.** Once the main event has started, no additional tickets may be sold.

[15.6.3.12 NMAC - N, 03-23-2002]

**15.6.3.13 [RESERVED]**

**15.6.3.14 CONDITIONS TO BE MET BEFORE TICKETS ARE SOLD OR PROMOTIONAL ACTIVITIES COMMENCE:**

The sale of tickets or promotional activities for any proposed contest or exhibition is prohibited until the commission through its director, receives and approves a completed event permit from and approves plans and statements showing the seating arrangements and the ticket prices established for each seating area.

[15.6.3.14 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

#### **15.6.3.15 OTHER CONDITIONS FOR SELLING TICKETS:**

**A. Reserved seats identified:** Promoters and promoter corporations licensed by the commission must have available in their main office, a chart that plainly indicates the location of all reserved seats.

**B. Duties of box office employees:** Box office employees of each promoter or promoter corporation licensed by the commission shall assist in the sale of tickets, and cooperate with the commission's representative in the tabulating of receipts, as well as, counting sold and unsold tickets directly after the main unarmed combat contest contenders enter the ring.

**C. Ticket sale supervision by treasurer:** The treasurer of each promoter or promoter corporation licensed by the commission shall, in addition to other duties that may be prescribed to him, supervise the sale of tickets to the general public and prepare the necessary and proper tax returns as required by law.

**D. Signed gate receipts report required:** Failure of the licensee's treasurer to sign the gate receipts report shall result in the suspension of the promoter's permit to stage the next scheduled event, contest or exhibition.

[15.6.3.15 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.3.16 [RESERVED]**

#### **15.6.3.17 REPORTS REQUIRED BY THE COMMISSION:**

Within 72 hours after the close of the event, contest, or exhibition, the authorized representative of the promoter licensed by the commission must submit to the commission the following written reports.

**A.** An "**athletic tax report**" showing the number of each class of tickets sold, unsold or unused; and shall:

**(1)** permit the commission or its designated representative to examine the following: all sold and unsold or unused tickets; stubs; coupons; the financial records of the event;

(2) permit the commission or its designated representative to investigate all other matters relating to the receipts and conduct of the box office and ticket takers; and

(3) permit the commission or its designated representative to review the ticket tally, which must conform to the manifest.

**B. An "inspectors' financial statement"** for the particular contest or exhibition that must be approved and signed by the following persons:

(1) the commissioner in attendance or by the commission's designated representative in charge;

(2) the commission inspectors making the count; and

(3) the authorized representative of the licensed promoter of the event.

**C. An "after contest report"** that shall be submitted within seventy-two hours after the close of the contest, on forms as required by the commission. Information shall include a breakdown of all tickets sold or distributed, including but not limited to tickets sold, exchanged for goods or services, donated or complimentary. The payments made to the competitors and officials, and the manner and form in which they were compensated.

[15.6.3.17 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**15.6.3.18 [RESERVED]**

**15.6.3.19 PERSONS EXCUSED FROM HOLDING TICKETS:**

Only the following persons are excused from holding tickets for an event, contest, exhibition, or match. For these designated exceptions, appropriate admission tickets may be issued in such number and in such form as approved by the commission.

**A.** Members of the commission.

**B.** Persons designated by the commission for an official duty.

**C.** The officials required to attend under provisions of state laws or the commission's rules and regulations (15.6 NMAC).

**D.** The principals, managers and seconds who are involved in the contests or exhibitions.

**E.** The policemen, firemen and other public officials, actually on duty, shall be admitted to any contest or exhibition.

[15.6.3.19 NMAC - N, 03-23-2002; A, 08-26-2012]

## **PART 4: DUTIES AND CONDUCT OF LICENSEES**

### **15.6.4.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.4.1 NMAC - N, 03-23-2002]

### **15.6.4.2 SCOPE:**

The provisions in Part 4 apply to all licensees of the commission.

[15.6.4.2 NMAC - N, 03-23-2002]

### **15.6.4.3 STATUTORY AUTHORITY:**

Part 4 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-13, 60-2A-14, 60-2A-15, 60-2A-16, 60-2A-17, 60-2A-18, 60-2A-21, 60-2A-22, 60-2A-28, and 60-2A-29.

[15.6.4.3 NMAC - N, 03-23-2002]

### **15.6.4.4 DURATION:**

Permanent.

[15.6.4.4 NMAC - N, 03-23-2002]

### **15.6.4.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.4.5 NMAC - N, 03-23-2002]

### **15.6.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 6 is to set forth notify all commission licensees of the duties and conduct expected by the commission and the consequences of not complying with the provisions.

[15.6.4.6 NMAC - N, 03-23-2002]

### **15.6.4.7 DEFINITIONS:**

**[RESERVED]**

**15.6.4.8 DUTY TO SAFEGUARD BUILDING, PREMISES, AND SAFETY OF ATTENDEES:**

**A. Duty to safeguard premises:** All promoters licensed by the commission are required to assure the commission that all necessary arrangements have been made to safeguard the premises where unarmed combat contests, wrestling or martial arts exhibitions are to be conducted in order to ensure that adequate protection is provided by state licensed uniformed security guards and companies, law enforcement agency or security guards exempt from licensure pursuant to the Private Investigations Act 61-27B-4 to prevent riot, stampede, or disorderly conduct on the premises.

(1) Any disorderly conduct, act of assault or breach of decorum on the part of any commission licensee is prohibited.

(2) Any violation of this section by a commission licensee shall subject the licensee to penalties as deemed appropriate by the commission.

**B. Building equipment and safety requirements:** All premises, buildings, or structures used or intended for use in holding or televising unarmed combat boxing, wrestling, or martial arts matches or exhibitions shall:

(1) be properly ventilated;

(2) **[RESERVED]**

(3) provide an adequate fire alert system, fire extinguishers, emergency and fire exits; and

(4) shall, in all manner, conform to the laws, ordinances, building codes and regulations pertaining to buildings in the village, town, city or state where the building is situated.

**C. Sale of alcoholic beverages on the premises:** Alcoholic beverages may be sold at a match or event only by special permission of the commission.

(1) The commission may allow the sale of alcoholic beverages and limit the content of sales at each event.

(2) If sale of alcoholic beverages at an event is approved by the commission, there must be a valid license to sell alcohol in place issued by the proper state licensing agency.

(3) If an unruly crowd or incident occurs at any event where the sale of alcoholic beverages has been approved by the commission, the official in charge of the event may immediately suspend the sales of alcoholic beverages.

(4) No alcohol is allowed within the technical zone.

**D. Ambulance at live events:** The promoter shall ensure that there is an ambulance on stand-by or medical personnel with appropriate resuscitation equipment at ringside at all live unarmed combat, boxing, wrestling, or full contact karate or kickboxing events.

[15.6.4.8 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.4.9 [RESERVED]**

**15.6.4.10 DUTY TO PROVIDE INSURANCE FOR LICENSED CONTESTANTS:**

**A.** Any person, party, or corporation holding a promoter's license issued by the commission shall continuously provide insurance protection for licensed unarmed combat, boxing, wrestling, or martial arts contestants appearing in unarmed combat, boxing contests, wrestling or martial arts exhibitions.

**B.** Insurance coverage shall provide the licensee reimbursement for medical, surgical, and hospital care for any injuries sustained while participating in a match.

**C.** The minimum insurance limit shall be \$2500.00 for injuries sustained by the contestant while participating in any program, event, match, or exhibition operated under the control of the licensed promoter.

**D.** Failure by the licensed promoter to provide and pay premiums on insurance as provided in this section shall be cause for the suspension or the revocation of the promoter's license.

[15.6.4.10 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.4.11 DUTY TO INFORM COMMISSION OF CONTESTANT'S ILLNESS:**

**A.** Licensed promoters, matchmakers, and managers have the duty to promptly inform and furnish the commission with all information concerning an unarmed combatant's, boxer's, wrestler's, or martial artist's illness or any other reason affecting his ability to safely compete, and for his failure to fulfill any contract.

**B.** Such information must be submitted to the commission before it is released to the media.

**C.** The contestant is in no way relieved from his contractual obligation until the commission has been properly informed, as provided in Subsection A of 15.6.4.11 NMAC.

**D.** Any unarmed combatant, boxer, wrestler, or martial artist who is reported ill to the commission may be placed on the "ill and unavailable list". He will not be reinstated until he has met the following conditions:

(1) he has been examined and given a medical release by the commission's appointed physician, and

(2) he fulfills all of the commitments pending at the time of his removal from the "available list" by the commission; or

(3) he is released from those commitments by the promoter.

[15.6.4.11 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.4.12 DUTY TO COMPENSATE EVENT PARTICIPANTS:**

The promoter of an event will be required to pay all fees due to event participants and personnel.

**A.** Fees set by the commission: The commission shall annually adopt a policy to set fees to be paid to referees, judges, deputy inspectors and timekeepers.

**B.** Fees set by the medical advisory board: With the approval of the commission, the medical advisory board shall determine fees to be paid to ringside physicians.

**C.** Negotiated fees: The promoter shall negotiate fees with other event personnel (e.g. security officers, announcers, ticket sellers, ticket takers, doormen, etc.) on an individual basis.

[15.6.4.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.4.13 [RESERVED]**

#### **15.6.4.14 DUTY OF MANAGER TO KEEP RECORDS:**

Managers shall keep accurate records of the receipts and expenses of the professional contestants under their management and control.

[15.6.4.14 NMAC - N, 03-23-2002]

#### **15.6.4.15 DUTY TO REPORT OFFER TO CONDUCT SHAM OR COLLUSIVE CONTEST:**

**A.** A licensee must immediately report to the commission any circumstance, situation, or occurrence where he has been approached with an offer, request, or suggestion to participate in, contribute, or aid and abet in any manner, a sham or collusive contest; or to participate in any contest that is not to be conducted honestly or fairly.

**B.** Failure to report such activity to the commission shall subject the licensee to disciplinary action and such penalty as the commission may thereafter decide.

[15.6.4.15 NMAC - N, 03-23-2002]

#### **15.6.4.16 DUTY TO PROVIDE A SURETY BOND:**

**A.** A licensed promoter, whether a person, party or corporation, must furnish to the commission a surety bond to guarantee that he will pay all participants any rents, leasing amounts, utility bills, ticket printing invoices, advertising costs, and any other legitimate expenses incurred in conjunction with each program, event, match, exhibition, or televised viewing promoted by the promoter.

**B.** Before a promoter distributes the receipts of any contest or exhibition, he must first deduct all sums due for the privilege tax due to the state.

**C.** A licensed promoter, whether a person, party, or corporation, in default of any of its debts or obligations, shall be suspended by the commission.

**D.** The commission may reinstate the promoter if the promoter meets the following conditions:

**(1)** the promoter provides the commission with proof that all the subject debts and obligations have been paid in full; and

**(2)** the promoter must provide proof of a valid surety bond, in an amount to be determined by the commission.

[15.6.4.16 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.4.17 RESIDENT STATUS REQUIREMENT FOR PROMOTER:**

Promoters shall be responsible to the commission and shall have resident status in New Mexico preceding their application for an event permit.

**A.** Individual promoters shall have bonafide resident status in the state. However, the resident requirements may be waived by a majority order of the commission.

**B.** Corporate promoters shall maintain, in New Mexico, an agent authorized to accept the service of judicial process and other documents. A certified copy of such authorization shall be filed with the commission.

**C.** At least three trustees or managing directors of unincorporated clubs or associations shall be bonafide residents of the state, and their names shall be filed with the commission.

[15.6.4.17 NMAC - N, 03-23-2002]

#### **15.6.4.18 PROHIBITIONS OF SPECIFIC PROFESSIONAL RELATIONSHIPS OR ACTIVITIES:**

**A. Charitable organization promotions:** Unarmed combats, boxing matches, wrestling programs, or martial arts exhibitions conducted under the auspices or in conjunction with any charitable organization are prohibited by the commission unless the commission grants approval for such activity. The promoter may apply for commission approval by submitting the agreement setting forth the terms and conditions of the program for the commission's review.

**B. Licensed matchmaker forbidden to act as manager or assignee of unarmed combatant:** Matchmakers are forbidden from acting as the manager or assignee of any unarmed combatant; or from participating in any way, directly or indirectly, in the ring earnings or management of any unarmed combatant. However, the commission shall license matchmakers as managers employed by licensed promoters, if acceptable to the commission. In such cases:

(1) the matchmaker and the promoter shall be jointly responsible to the commission for any matches conducted;

(2) matches shall be conducted only by a licensed promoter or licensed matchmaker;

(3) matchmakers will be held responsible by the commission if they arrange matches in which one of the principles is outclassed; and

(4) persistent lack of judgment in this matter will be regarded as cause for suspension or revocation of the matchmaker's license, and the matchmaker shall have no further connection with any unarmed combatant or stable of unarmed combatants.

**C. Restrictions on promoter as employer of other commission licensees:** Licensed promoters are prohibited from employing, or in any other way having any commercial connection to, any licensed unarmed combatant, wrestler, manager or second.

**D. Restrictions on other principles with regard to commission licensees:**

(1) The commission prohibits any director, officer, employee, or stockholder of any licensed promoter from serving or acting, either directly or indirectly, as the manager, assignee or second to any unarmed combatant. Nor shall a promoter or matchmaker participate as an unarmed combatant in an event they are either promoting or matchmaking.

(2) The commission prohibits any director, officer, employee, or stockholder of any licensed promoter from being employed by, or in any other way being connected with, any other promoter, without the approval of the commission.

[15.6.4.18 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.4.19 [RESERVED]**

#### **15.6.4.20 DUTY TO OBTAIN EVENT PERMITS:**

A licensed promoter must obtain an event permit prior to each professional and amateur program, match, event, contest or exhibition.

**A.** The commission will issue a permit upon receipt from the promoter of a completed commission-approved application, and all other required documentation.

**B.** The application and attachments must be approved with the commission not later than 72 hours prior to the regularly scheduled meeting before the contest. The application must contain the following information and documentation:

- (1) evidence of a current promoter's license;
- (2) date of the contest;
- (3) copy of the contract for the event location;
- (4) proof of contest insurance;
- (5) name of the main event participants;
- (6) number of scheduled rounds of all unarmed combatant contests on the event card;
- (7) verification of adequate security;
- (8) verification of ambulance and medical technicians; and
- (9) report on all unarmed combatants from fightfax.com or mixedmartialarts.com, or other nationally or industry recognized reporting service.

**C.** The promoter must provide the commission with the signed and witnessed formal contracts for the main event executed on forms supplied by the commission and executed in accordance with 15.6.2 NMAC.

**D.** Each applicant for an event permit agrees to grant the commission, or its authorized representative, the right to examine the books of accounts and other records of the applicant relating to each event for which an event permit application is made.

[15.6.4.20 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

#### **15.6.4.21 APPROVAL OF EVENT PERMITS:**

Before approving any event permit, the commission, or the two commissioners acting under the commission's delegated authority, will consider the relative merits of the contestants, their past records, and whether or not they are suitable opponents. The commission reserves the right to disapprove any match or unarmed combatant contest on the grounds that it is not in the best interest of unarmed combatant boxing, wrestling, or martial arts, or of the health and safety of either of the contestants.

**A.** Each application for an event permit will be reviewed by the administrator or by commission staff to assure compliance with all application requirements of the commission.

**B.** When the application is complete, the events coordinator or commission staff will review the event permit request with two commission members to obtain their approval. The two commissioners have the authority to provide final approval. However, if they are unwilling to grant approval of the event permit application, the following shall occur:

**(1)** the event permit request will be considered at the next regularly scheduled commission meeting; or

**(2)** the commission reserves the right to not approve an event for failure to submit a timely application; the commission may approve an application that is untimely if the applicant demonstrates extenuating circumstances.

[15.6.4.21 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.4.22 [RESERVED]**

#### **15.6.4.23 DUTIES REGARDING SCHEDULING OR CANCELING OF EVENTS:**

**A.** Scheduled events may not be cancelled or adjourned without the consent of the commission.

**B.** If the commission, for any reason, does not approve an event for which any tickets have been sold, the promoter shall cause all ticket holders to receive a full refund.

[15.6.4.23 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.4.24 LICENSE CARD REQUIRED:**

**A.** Unless otherwise approved by the commission or its designee, all participants, whether including but not limited to a promoter, corporation, referee, judge, matchmaker, timekeeper, corporation treasurer, unarmed combatant, professional boxer, wrestler, kick boxer or martial artist, manager, trainer, second or announcer, must be licensed by the commission no later than 96 hours prior to the event before they may participate, either directly or indirectly, in any unarmed combating, boxing, sparring, wrestling match or kick boxing exhibition.

**B.** Upon request, any participant must allow inspection of his license and federal identification card by the commission or its delegated representative.

**C.** Any participant denying inspection of his license card by the commission, or its delegated representative, shall be prohibited by the commission from participating in the event.

[15.6.4.24 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**15.6.4.25 PROTOCOL FOR USING ASSUMED NAMES:**

**A.** An unarmed combatant, boxer or wrestler may use, but not be licensed under, an assumed name, provided the commission has approved the use of the assumed name.

**B.** An unarmed combatant, boxer or wrestler may not assume or be licensed under a name deceptively similar to the name of any other boxer or wrestler.

[15.6.4.25 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.4.26 [RESERVED]**

**15.6.4.27 SUSPENSIONS REPORTED NATIONALLY:**

**A.** The commission shall report all suspensions nationally, except those imposed locally for minor infractions of local rules.

**B.** The commission shall report any suspensions to championship sponsoring organizations within ten (10) days of the suspension.

[15.6.4.27 NMAC - N, 03-23-2002]

## **PART 5: REQUIREMENTS TO SAFEGUARD HEALTH**

### **15.6.5.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.5.1 NMAC - N, 03-23-2002]

### **15.6.5.2 SCOPE:**

The provisions in Part 5 apply to all licensees of the commission.

[15.6.5.2 NMAC - N, 03-23-2002]

### **15.6.5.3 STATUTORY AUTHORITY:**

Part 5 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-4, 60-2A-7, 60-2A-8, 60-2A-17, 60-2A-20, 60-2A-21, 60-2A-28, and 60-2A-29.

[15.6.5.3 NMAC - N, 03-23-2002]

### **15.6.5.4 DURATION:**

Permanent.

[15.6.5.4 NMAC - N, 03-23-2002]

### **15.6.5.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.5.5 NMAC - N, 03-23-2002]

### **15.6.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 6 is to notify all commission licensees of the duties and conduct expected by the commission with regard to safeguarding the health and safety of contestants in events regulated by the commission.

[15.6.5.6 NMAC - N, 03-23-2002]

### **15.6.5.7 DEFINITIONS:**

"Medical Professional" means a physician, physician's assistant, emergency medical technician, registered nurse, or paramedic licensed in the state of New Mexico.

[15.6.5.7 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.5.8 MEDICAL EXAMINATION AND CERTIFICATION OF CONTESTANTS REQUIRED:**

**A.** All unarmed combatants/contestants shall submit to a uniform pre-bout medical examination performed by a New Mexico licensed physician approved by the commission within 24 hours prior to entering the ring in the scheduled match or exhibition. All unarmed combatants/contestants shall submit the required medical records no later than 96 hours before a scheduled event. It shall be the duty of the licensed promoter to ensure compliance with this rule. All deadlines in this rule relate back to the date of the scheduled match or exhibition.

**(1) The documents required** as part of the pre-bout medical examination include:

**(a)** negative blood test results, obtained not later than six months prior to the event, for:

- (i)** HIV;
- (ii)** hepatitis B, surface antigen (SA);
- (iii)** hepatitis C antibody;

**(b) Dilated eye exam result:** Professional contestants must submit the results of a dilated eye exam performed by an ophthalmologist, optometrist or qualified physician no more than one year prior to any competition.

**(c) Proof of compliance with any medical restrictions:** The commission requires proof of compliance with any previous medical restrictions imposed by another commission before medical approval for a bout.

**(2) Female unarmed combatants:** All female unarmed combatants must provide a negative pregnancy test within 24 hours to each event, contest, or exhibition. The pregnancy test shall be taken within those 24 hours to the event, contest, or exhibition.

**(3)** The commission or ringside physician may order an electrocardiogram, MRI or MRI/MRA examination when a contestant has either:

- (a)** lost three or more bouts in a row by KO or TKO;

(b) lost six bouts in a row; or

(c) had an extensive losing record in the last two years; MRI or MRI/MRA examination results will be accepted if conducted within five years, when:

- (i) neurological clearance is needed for a pre-fight examination;
- (ii) an unarmed combatant is competing in a five round title fight; or
- (iii) a contestant is 35 years old or older.

#### **B. Certification of fitness**

(1) Immediately following the examination, the physician shall file with the commission a written report of the results of the examination on a form prescribed by the commission. The physician shall certify as to the physical fitness of each contestant scheduled to participate in the match or exhibition and deliver the completed examination report to the commission's representative; the completed examination report will be made available to the promoter of the match or exhibition before the commencement of the event.

(2) The promoter of the match or exhibition shall prohibit any unarmed combatant from entering the ring unless he has been certified by the examining physician to be physically fit to engage in the match or exhibition.

(3) It shall be unlawful for any physician to certify falsely to the physical condition of any contestant in a professional boxing or sparring match or martial arts exhibition.

**C. Participation in non-commission sanctioned events:** Any unarmed combatant who participates in a non-commission sanctioned event in another jurisdiction must submit to a new array of blood tests, described in Paragraph (1) of this rule, unless the unarmed combatant can prove to the commission that the non-commission sanctioned event required all combatants to submit to pre-bout blood testing in a manner similar to the commission. Violation of this rule could result in a fine, license suspension, or license revocation.

#### **D. Disqualifying conditions/ailments:**

(1) The commission will not issue or renew the license of any applicant who wishes to compete in any sport regulated by the commission and who has suffered from any type of cerebral hemorrhage.

(2) If an applicant for a contestant license has suffered a serious head injury, including but not limited to concussions, the applicant must have the application reviewed by the commission before any license is issued or renewed.

**E. Cost of the medical examination:** The cost of any physical examination shall be prescribed by a schedule of fees established by the commission.

(1) The cost of any medical examinations of event contestants shall be paid directly to the commission by the promoter of the event.

(2) The physician will be paid directly by the promoter in accordance with the fees established by rule by the commission.

[15.6.5.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015; A, 01-15-2017]

#### **15.6.5.9 CONFIDENTIAL NATURE OF MEDICAL REPORTS:**

All medical reports submitted to the commission and all medical records of the commission's medical advisory board or commission relative to the physical examination and medical condition of unarmed combatants boxers, wrestlers, or martial artists, shall be considered confidential in nature. These records shall be open to examination only to the following:

A. to the unarmed combatants, boxer, wrestler, or martial artist wishing to examine his own medical records and upon his written application to the commission to examine said records; or

B. to a court of competent jurisdiction upon subpoena for an appropriate court case.

[15.6.5.9 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.5.10 [RESERVED]**

#### **15.6.5.11 SPECIFICATIONS FOR HAND BANDAGES ON UNARMED COMBATANTS' HANDS:**

A. Hand bandages on the hands of a unarmed combatant shall be restricted to soft gauze not more than 60 feet in length and two inches in width; and held in place by not more than 10 feet of adhesive tape not more than one and one-half inches for each hand. Wrapping of hands is mandatory.

B. The use of adhesive tape over the knuckles is strictly prohibited. The tape shall not cover any part of the knuckles when the hand is clenched to make a fist. One strip of tape one-quarter inch may be placed between each finger to secure the wraps. Tape must be behind the knuckles one-half inch.

C. The use of water or any other liquid or material on the tape is strictly prohibited.

**D.** The hand bandages shall be placed and adjusted in the dressing room in the presence of a representative designated by the commission and, if requested, one representative of the other unarmed combatant.

**E.** Under no condition are gloves to be placed on the hands of the contestant until the commission representative stamps or signs the commission's approval on the hand bandages.

**F.** No spirits of ammonia may be used in the ring or cage.

**G.** Only discretionary use of petroleum jelly may be used on the face prior to the start of the fight.

**H.** In case of cuts, only the following solutions are allowed:

- (1) a sealed solution of adrenaline 1/1000 at ringside;
- (2) avetine; and
- (3) thrombin.

**I.** All first aid equipment used by a second, trainer or manager shall in all cases and at all times be subject to inspection by the commission or its representative, or assigned physician and the decision as to the use shall be final.

**J.** No prescribed inhalers or any other type of aerosol inhaler may be used in the corner of any fighter. A prescribed inhaler may be given to the ringside physician prior to the start of the bout.

[15.6.5.11 NMAC - N, 3/23/2002; A, 8/26/2012; A, 1/30/2024]

#### **15.6.5.12 PHYSICIAN IN ATTENDANCE:**

**A.** It shall be the duty of every promoter to have in attendance at every (1) professional unarmed combat event, contest, or exhibition, (2) amateur mixed martial arts event, contest, or exhibition, or (3) any amateur event in which protective headgear is not worn by the amateur combatants, a physician licensed by the state of New Mexico and designated by the commission.

**B.** It shall be the duty of every promoter to have in attendance at every amateur unarmed combat event, contest, or exhibition, not fitting into Section A, above, a medical professional.

**C.** The commission may establish a schedule of fees to be paid by the promoter to cover the cost of the medical professional's attendance.

**D.** The promoter shall pay the medical professional directly, in accordance with rules established by the commission.

[15.6.5.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.5.13 THE RINGSIDE PHYSICIAN:**

**A.** Duties of the ringside physician: The ringside physician shall:

(1) Observe the physical condition of the contestants during the course of the match.

(2) Advise the referee if the physician determines that a contestant requires first aid treatment.

(3) Render treatment to a contestant if requested to do so by the referee.

(4) Examine any contestant between rounds whenever the physician deems it appropriate.

(5) Advise the referee to terminate the match if the physician is of the opinion that any contestant is physically unfit to continue.

(6) Treat any contestant who appears injured at the conclusion of the match.

(7) Advise the commission representative in charge to terminate any match if, in the opinion of the physician, any contestant has received severe punishment or is in danger of serious physical injury.

(8) Render immediately any emergency treatment necessary, and recommend further treatment or hospitalization, if required.

(9) Determine whether the injured contestant and his manager should remain in the ring or on the premises after the contest for a period of time as deemed advisable by the physician.

(10) Present a full report on the matter to the commission within 24 hours of the match.

**B.** When the ringside physician may enter the ring: Barring anything contrary to this part, the ringside physician may enter the ring between rounds and terminate any match or bout to prevent severe punishment or serious injury to a contestant. The referee may request an examination of the contestant during the match or bout, and is required to stop the contest upon the recommendation of the physician.

[15.6.5.13 NMAC - N, 03-23-2002]

**15.6.5.14 WHEN A MANDATORY COUNT OF EIGHT IS REQUIRED:**

**A.** In the event that one unarmed combatant is knocked-down, the referee shall give a mandatory 8-count. A unarmed combatant shall be deemed "down" when any part of his body, except his feet, is on the floor or he is hanging helplessly over or on the ropes.

**B.** Should a contestant slip, or fall down, or be pushed, he shall be ordered to his feet immediately. Failure to rise may subject him to disqualification.

[15.6.5.14 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.5.15 [RESERVED]**

**15.6.5.16 AUTOMATIC SUSPENSION OF UNARMED COMBATANT SUFFERING ACTUAL KNOCKOUT:**

**A.** any contestant who has suffered an actual knockout shall be automatically suspended for at least sixty (60) days;

**B.** the contestant shall surrender his license card to the commission; and

**C.** the contestant shall not engage in any unarmed combatant, boxing or sparring contest or exhibition during the period of such suspension.

[15.6.5.16 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.5.17 EXAMINATION AND REPORT AFTER SEVERE INJURY OR KNOCKOUT:**

**A.** Any contestant who has sustained any severe injury or actual knockout in a bout or match shall be thoroughly examined within twenty-four (24) hours by a physician approved by the commission's medical advisory board.

**B.** Upon the medical advisory board's recommendation, the commission may suspend the unarmed combatant beyond the mandatory sixty (60) days until he is fully recovered.

**C.** In the event that a contestant who has suffered a severe injury or a knockout has been treated by his own personal physician or has been hospitalized, he or his manager must promptly submit a full report from the attending physician or hospital to the commission's medical advisory board.

[15.6.5.17 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.5.18 [RESERVED]**

#### **15.6.5.19 SPECIAL MANDATORY MEDICAL EXAMINATIONS:**

**A.** Contestant losing six consecutive matches: Any contestant who has lost six consecutive bouts or matches must be automatically suspended and cannot be reinstated until he has submitted to a medical examination of the type specified in Subsection A of 15.6.5.8 NMAC.

**B.** Physician panel: At the request of the commission, the medical advisory board shall appoint a panel of three physicians to specially examine any licensed unarmed combatant, boxer, wrestler, or martial artist as deemed necessary by the commission.

[15.6.5.19 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.5.20 MANDATORY RESTING PERIOD FOR BOXERS BETWEEN BOUTS:**

**A.** If an unarmed combatant has competed anywhere in a six (6) rounds or more bout, he shall not be allowed to box in New Mexico until seven (7) days have elapsed since his last bout.

**B.** If an unarmed combatant has competed anywhere in a four (4) round bout, he shall not be allowed to box in New Mexico until four (4) days have elapsed since his last bout.

[15.6.5.20 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.5.21 [RESERVED]**

#### **15.6.5.22 AMBULANCE AT LIVE EVENTS:**

The promoter shall ensure that there is an ambulance on stand-by at all professional and amateur mixed martial arts events, contests, or exhibitions.

[15.6.5.22 NMAC - N, 03-23-2002; A, 8-16-2012; A, 01-15-2015]

### **PART 6: THE OFFICIALS**

#### **15.6.6.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.6.1 NMAC - N, 03-23-2002]

#### **15.6.6.2 SCOPE:**

The provisions in Part 6 apply to all licensees of the commission.

[15.6.6.2 NMAC - N, 03-23-2002]

**15.6.6.3 STATUTORY AUTHORITY:**

Part 6 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.6.3 NMAC - N, 03-23-2002]

**15.6.6.4 DURATION:**

Permanent.

[15.6.6.4 NMAC - N, 03-23-2002]

**15.6.6.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.6.5 NMAC - N, 03-23-2002]

**15.6.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 6 is to set forth notify all commission licensees of the duties of the ring officials.

[15.6.6.6 NMAC - N, 03-23-2002]

**15.6.6.7 DEFINITIONS:**

"**Officials**" refers to the event referees, announcers, timekeepers, and judges.

[15.6.6.7 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.6.8 REFEREES AND JUDGES ARE ASSIGNED BY THE COMMISSION:**

**A. Commission assigns officials for bouts and exhibitions:** The commission shall assign deputy inspectors, physicians, timekeeper, referees and judges to each professional unarmed combat, bout, program, match, or exhibition conducted by a licensed promoter in New Mexico.

**B. Officials paid by promoter:** All officials assigned and directed by the commission to be in attendance at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule furnished by the commission to the promoter.

**C. Number and substitution of officials:** The number of officials required to be in attendance, or the substitution of officials for any reason or at any time during the event, bout, program, match, or exhibition, shall be solely within the power and discretion of the commission.

[15.6.6.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.6.9 [RESERVED]**

[15.6.6.9 NMAC - N, 03-23-2002]

**15.6.6.10 THE UNARMED COMBAT REFEREE:**

**A. License required:** A referee must be licensed by the commission before he will be permitted, assigned, or directed by the commission to assume the duties and powers of a referee.

**B. Duties and powers:** The unarmed combatant referee shall have the following duties and powers:

- (1) Inspecting the ring cage or fighting area per 15.6.7 NMAC.
- (2) To instruct the contestants.
- (3) To inspect each unarmed combatant gloves and make sure that no foreign, harmful, or detrimental substances have been applied to either the gloves or to the bodies of the boxers.
- (4) To stop a bout or contest at any stage on the grounds that it is too one-sided. In such an event, the referee may award the bout to the superior contestant as a technical knockout.
- (5) To stop a bout or contest at any stage if he determines that one or both of the unarmed combatant are not competing in earnest. In such an event, the referee may disqualify one or both of the contestants. If only one contestant is disqualified, the referee may award the bout as a technical knockout to the other contestant.
- (6) To stop a bout or contest at any stage on account of a major foul being committed by either contestant. In such an event, in a boxing contest the referee may award the decision to the boxer who was fouled.

[15.6.6.10 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.6.11 [RESERVED]**

[15.6.6.11 NMAC - N, 03-23-2002]

#### **15.6.6.12 [RESERVED]**

[15.6.6.12 NMAC - N, 03-23-2002]

#### **15.6.6.13 THE ANNOUNCER:**

**A. License required:** An announcer must be licensed by the commission before he will be permitted by the commission to assume the duties of an announcer. Unlicensed persons may not be employed by the promoter to act as the announcer for an event being conducted by the promoter.

**B. Introductions:** Only introductions approved by the commission shall be made from the ring, cage or fighting area. Announcing from the ring, cage or fighting area the names of any persons not connected with the sport, without prior consent from the commission or its delegated representative, is forbidden.

**C. Announcing the contestants:** After the announcer completes the introductions, he shall announce the name of each contestant and his correct weight, along with any other announcements that he is directed by the commission to announce.

[15.6.6.13 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.6.14 THE TIMEKEEPER:**

**A. License required:** A timekeeper must be licensed by the commission before he will be permitted by the commission to assume the duties of a timekeeper. Unlicensed persons may not be employed by the promoter to act as timekeepers for an event being conducted by the promoter.

**B. Location of the timekeeper:** The timekeeper must sit outside the ring, cage or fighting area and close to the gong.

**C. Tools of the timekeeper:** Each timekeeper must have either a whistle or a gong and a stopwatch, which must be submitted for approval by the commission representative in attendance at the unarmed combat event.

**D. Knockout protocol:** In the event that a bout terminates by a knockout during any round, the timekeeper shall inform the announcer of the exact duration of the round.

**E. Ten-second signals required:** The timekeeper shall signal ten (10) seconds prior to the beginning of any round. At such signal, all seconds must leave the inside of the ring, cage or fighting area and all stools and equipment must be removed from the ring, cage or fighting area. The timekeeper must not signal during the progress of a round except to indicate that only ten (10) seconds remain in the round.

**F. Signal end of round:** The timekeeper must use the appropriate time keeper signal to indicate the ending of each round.

[15.6.6.14 NMAC - N, 03-23-2002; A, 08-26-2012]

## **PART 7: THE PREMISES, ITS FACILITIES AND EQUIPMENT**

### **15.6.7.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.7.1 NMAC - N, 03-23-2002]

### **15.6.7.2 SCOPE:**

The provisions in Part 7 apply to all licensees of the commission.

[15.6.7.2 NMAC - N, 03-23-2002]

### **15.6.7.3 STATUTORY AUTHORITY:**

Part 7 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-20, 60-2A-21, 60-2A-29, and 60-2A-31.

[15.6.7.3 NMAC - N, 03-23-2002]

### **15.6.7.4 DURATION:**

Permanent.

[15.6.7.4 NMAC - N, 03-23-2002]

### **15.6.7.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.7.5 NMAC - N, 03-23-2002]

### **15.6.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 6 is to set forth all commission requirements for the building premises, facilities, and equipment that are to be used for an event regulated by the commission.

[15.6.7.6 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.7.7 DEFINITIONS:**

**[RESERVED]**

[15.6.7.7 NMAC - N, 03-23-2002]

**15.6.7.8 THE PREMISES AND EQUIPMENT:**

Any building or premise in which professional or amateur event, contest, or exhibition regulated by the commission is to be held must first be approved by the commission. A promoter may only arrange for and hold events, regulated by the commission in premises and with equipment approved by the commission.

[15.6.7.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

**15.6.7.9 [RESERVED]**

**15.6.7.10 SEATING ACCOMMODATIONS FOR OFFICIALS:**

The promoter must ensure a suitable technical zone, separate ringside, cage or fighting area seats are provided for the judges, the timekeeper, the knockdown counter, the physicians, the commission representatives and other person(s) identified by the commission.

**A.** The attending commission representative must approve seating accommodations prior to the commencement of any event.

**B.** The promoter must also provide one seat in each contestant's corner for the inspectors on duty to occupy during the event.

**C.** There shall also be a separate and cordoned-off area for working officials sitting ringside, cage or fighting area.

[15.6.7.10 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.7.11 [RESERVED]**

**15.6.7.12 THE RING:**

Any ring in which an unarmed combat contest excluding mixed martial arts or exhibition is to be conducted, must first be inspected and approved by the commission chair or his designee as having met the following requirements.

**A. Size:** The standard ring shall be at least twenty (20 x 20) square feet within the ropes, but no more than twenty-four (24 x 24) square feet, unless otherwise approved by the commission; and have no less than eighteen (18) inches of unencumbered platform surface extending from the ropes.

**B. Elevation:** The ring shall not be elevated more than four (4) feet off of the floor, and shall be provided with two sets of suitable steps for use of contestants, coaches, and officials.

**C. Ropes:** The ring ropes shall be four (4) in number with the bottom rope off-set from the other three. The bottom rope shall be between thirteen (13) and eighteen (18) inches from the ring surface. The ropes shall be no less than one (1) inch in diameter and should be covered with a soft material to avoid injury to the participants.

**D. Padding:** The ring surface shall have a smooth, firm surface covered with clean canvas or other resilient material stretched taut and laced tightly to the ring platform. Between the surface and the cover, there shall be a layer of ensolite padding or similar material, at least one (1) inch thick that extends over the entire surface inside and outside of the ropes.

**E. Ring posts:** The ring posts shall be four (4) in number and shall extend no more than fifty-eight (58) inches from the surface of the ring. Each post shall be at least eighteen (18) inches distant from the ring ropes. Ring posts and turnbuckles shall be suitably padded to insure the participants' safety.

**F. Lighting:** The ring shall be amply illuminated by overhead lights that should be so arranged that shadows shall be eliminated and discomfort from heat and glare are minimized for persons in and near the ring.

[15.6.7.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

#### **15.6.7.13 [RESERVED]**

#### **15.6.7.14 EMERGENCY MEDICAL FACILITIES AND EQUIPMENT:**

**A. Commission approval required:** All medical facilities and equipment to be used at any event regulated by the commission must be approved in advance by the commission.

**B. Promoter responsibility:** The licensed promoter of any event regulated by the commission must provide adequate emergency medical equipment and must ensure that the commission has approved all medical facilities and equipment for the event.

**C. Specifications for medical facilities and equipment:** The commission shall provide to each licensed promoter, a bulletin containing commission-approved

specifications and information regarding the medical facilities and equipment required for each event.

[15.6.7.14 NMAC - N, 03-23-2002]

**15.6.7.15 [RESERVED]**

**15.6.7.16 OTHER EQUIPMENT:**

The commission or commission representative must approve all equipment used in conjunction with the contest.

**A. The gong:** The gong must not be less than ten (10) inches in diameter, and it must be adjusted and secured at ringside.

**B. Scales:** The commission must approve, in advance of any contest, any scale that will be used for any contestant weigh-in.

**C. Buckets and bottles:** There must be a clean bucket and a clean bottle in each contestant's corner for each bout or event, along with an additional bucket for the disposal of contaminated materials in each corner.

**D. Second's stools:** The promoter must provide second's stools for each contestant's corner.

**E. Miscellaneous equipment:** The promoter must provide gloves, water, mats and any other equipment or articles as required by the commission for the proper conduct of any bout or event.

[15.6.7.16 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.7.17 [RESERVED]**

**15.6.7.18 DRESSING ROOMS:**

**A. Contestant's dressing rooms restricted:** No one shall be allowed in a contestant's dressing room except his manager, his seconds, and the commission representatives.

**B. Commission approval for exceptions to restrictions:** The commission or its representative may make exception to the restrictions in Subsection A of 15.6.7.18 NMAC, and permit members of the press and members of the promoting corporation into a contestant's dressing room.

**C. Food and beverages in dressing rooms:** At the contestant's discretion, food and non-alcoholic beverages may be allowed in the contestant's fitting room subject to

approval by a commissioner, deputy, or designated official. No tobacco products shall be allowed.

[15.6.7.18 NMAC - N, 03-23-2002; A, 01-15-2015]

## **PART 8: CONDUCT OF BOXING CONTESTS**

### **15.6.8.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.8.1 NMAC - N, 03-23-2002]

### **15.6.8.2 SCOPE:**

The provisions in Part 8 apply to all licensees of the commission.

[15.6.8.2 NMAC - N, 03-23-2002]

### **15.6.8.3 STATUTORY AUTHORITY:**

Part 8 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-20, 60-2A-21, 60-2A-29, and 60-2A-31.

[15.6.8.3 NMAC - N, 03-23-2002]

### **15.6.8.4 DURATION:**

Permanent.

[15.6.8.4 NMAC - N, 03-23-2002]

### **15.6.8.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.8.5 NMAC - N, 03-23-2002]

### **15.6.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 6 is to set forth all commission requirements for the conduct of any boxing contests regulated by the commission.

[15.6.8.6 NMAC - N, 03-23-2002]

#### **15.6.8.7 DEFINITIONS:**

"**Contests**" are considered "boxing contests" and not "fights" or "prize fights".

[15.6.8.7 NMAC - N, 03-23-2002]

#### **15.6.8.8 CHANGES IN ANNOUNCED OR ADVERTISED BOXING PROGRAMS:**

**A. Notice of change required:** A notice of any change in the announced or advertised programs for any main event contest must be filed with, and approved by, the commission at least forty-eight (48) hours before the weighing-in time of the contest.

**B. Posting of notice:** Notices of any such change or substitution must also be conspicuously posted at all box offices on the premises and announced from the ring before the opening boxing contest.

**C. Refund policy:** If any patrons apply for refunds on their purchased tickets, the promoter or promoting corporation shall make such refunds upon demand, provided such tickets are presented at the box office on the day or night of the contest.

[15.6.8.8 NMAC - N, 03-23-2002]

#### **15.6.8.9 DURATION OF MATCHES:**

**A. Non-championship matches:** In non-championship matches, contestants may only be matched for four, six, or ten rounds unless otherwise approved by the commission.

**B. World championship matches:** World championship matches must not exceed twelve (12) rounds in duration.

**C. State championship matches:** State championship matches may be conducted for twelve (12) rounds, at the direction of the commission.

[15.6.8.9 NMAC - N, 03-23-2002]

#### **15.6.8.10 BOXING ROUNDS:**

**A. Number of boxing rounds allowed:** There shall be no less than twenty-six (26) scheduled rounds of boxing on any one program, unless otherwise approved by the commission.

**B. Round duration and intermission between rounds for male contestants:** Each round shall be three (3) minutes in duration and there shall be one-minute rest period intermissions allowed between rounds.

**C. Round duration and intermission for female contestants:** All bouts for female boxer shall be scheduled for no more than ten (10) rounds with each round lasting two (2) minutes in duration, with rest period intermissions of one (1) minute duration between rounds.

[15.6.8.10 NMAC - N, 03-23-2002]

**15.6.8.11 CONTESTANTS' SECONDS:**

**A. Approval of seconds by commission:** the commission must approve all seconds.

(1) Each contestant must submit the name of his chief second and his assistant second to the commission for approval.

(2) Only seconds approved by the commission shall be permitted in the contestant's corner.

(3) Before the fight begins, the referee must be informed who the chief second is.

**B. Number of seconds per contestant:**

(1) The maximum number of seconds a contestant may have is three.

(2) Only one of a boxer's seconds will be permitted inside the ring ropes between rounds.

**C. Conduct of seconds:**

(1) Seconds must remain seated during each round.

(2) Seconds must not interfere with or move a boxer who has been knocked down until they are instructed to do so by the ringside physician.

(3) Seconds are prohibited from entering the ring between rounds and assisting a contestant back to his corner unless the boxing contest has been terminated by the referee or ringside physician.

(4) Seconds are prohibited from throwing any towel, sponge, etc., into the ring as a token of defeat.

(5) A second may step on the ring apron to retire his boxer in defeat.

[15.6.8.11 NMAC - N, 3/23/2002; A, 1/30/2024]

#### **15.6.8.12 CONTESTANTS' EQUIPMENT:**

**A. Gloves:** The following requirements apply to the gloves that must be used by contestants in an event.

- (1) Gloves for main events shall be new.
- (2) Gloves for any bout scheduled for ten (10) or more rounds shall be new.
- (3) Gloves are to be furnished by the licensed promoter or licensed promoter corporation.
- (4) Gloves used in any boxing event must be no less than eight (8) ounces in weight for boxers who weight 154 pounds or less; and at least ten (10) ounces in weight for boxers who weight over 154 pounds or are female. All gloves must be thumb attached or minus the thumb and approved by the commission.
- (5) Gloves shall be identical and shall not be altered in any manner.

**B. Shoes:** Only shoes of soft material that are not fitted with spikes, cleats, hard soles, or hard heels shall be permitted in the ring.

**C. Mouthpieces:** Each contestant shall wear an individually fitted mouthpiece that shall remain in the contestant's mouth at all times during the competition.

- (1) The round cannot begin until the contestants are wearing mouthpieces.
- (2) If the mouthpiece is dislodged during competition, the referee will call time at the first opportune moment without interfering with the immediate action and have the mouthpiece replaced.
- (3) The referee shall direct the other contestant to the farthest neutral corner and escort the contestant with the dislodged mouthpiece to his or her corner to have the mouthpiece rinsed and replaced.
- (4) The referee may deduct points or disqualify a participant if he deems that the mouthpiece is being intentionally spit out.

**D. Abdominal guards:** Contestants shall wear an abdominal guard of a standard type that provides sufficient protection to withstand any low blow.

**E. Boxing trunks and protective cups:** All contestants shall be required to wear boxing trunks, the belt of which shall not extend above the waistline and protective cups that shall be firmly in place before the contestant enters the ring.

### **15.6.8.13 NUMBER OF BOXING CONTEST OFFICIALS REQUIRED:**

There shall be at least one physician in attendance at ringside at all times. In addition, at least the following officials shall be present at each boxing contest:

- A.** one referee;
- B.** three judges;
- C.** one timekeeper; and
- D.** one announcer.

[15.6.8.13 NMAC - N, 03-23-2002; A, 08-26-2012]

### **15.6.8.14 POSITION OF JUDGES AND PHYSICIANS:**

**A. Judges:** The judges shall be stationed at opposite sides of the ring.

**B. Physicians:** The physician shall be stationed at places designated by the commission representative in charge.

[15.6.8.14 NMAC - N, 03-23-2002]

### **15.6.8.15 FEMALE BOXERS:**

The weight classes for female boxers shall be the same as used by male boxers.

**A.** A female boxer must be qualified to perform as a boxing contestant before she enters the ring.

**B.** A female boxer shall not engage in a contest with a male boxer.

**C.** In addition to meeting such requirements of the commission's rules that are applicable to boxers generally, a female boxer shall comply with the following rules:

(1) use a mouthpiece specifically designed for her mouth;

(2) use glove sizes as follows:

(a) female boxers up to 154 lbs. shall use 8 ounce gloves, properly fitted; and

(b) female boxers over 154 lbs. shall use 10 ounce gloves, properly fitted.

(3) secure her hair with soft and non-abrasive material in a manner that does not interfere with the vision or safety of either contestant; and

(4) not use facial cosmetics.

**D. Female contestants shall be permitted to wear a body shirt or blouse without buttons, buckles or ornaments. Other apparel or equipment is prohibited.**

**E. All female boxers must provide a negative pregnancy test prior to each bout.**

**F. A contest between female boxers must be limited to 10 rounds of two minutes duration, with one minute rest periods between rounds.**

**G. The promoters of a contest between female boxers shall provide the female contestants with adequate dressing rooms separate from the dressing rooms of male boxers.**

[15.6.8.15 NMAC - N, 3/23/2002; A, 1/30/2024]

#### **15.6.8.16 BOXING CONTESTANTS:**

**A. Non-main event contestants:** All contestants, except main event contestants, participating in the boxing program must report to the designated dressing room of the event premises no later than one half hour before the commencement of the first scheduled boxing contest.

**B. Arrival of main event contestants to event city:** Not less than 24 hours before the contest, a main event contestant shall report in person to the promoter in the city where the match will take place.

(1) Promoters shall immediately notify the commission that the main event contestants have arrived.

(2) If the bout is of sufficient importance, the contestants shall complete their training in the city concerned. The commission shall determine the number of days required for this purpose.

**C. Main event contestants report for event:** Main event contestants may report to the contest location no later than one hour before the commencement of the first boxing contest.

**D. Confinement to dressing rooms:** All contestants will remain in their dressing rooms until ordered to the ring by the commission representative in charge.

**E. Physical appearance:** Before entering the ring, their hair must be trimmed, and when necessary, tied back in such a way as to not cover the contestant's face or to interfere with the vision or safety of either contestant.

**F. Contestant's ring costume:**

(1) Each contestant on a program must provide himself with a ring costume approved by the commission.

(2) Each contestant's costume must include a foul-proof groin protector of the contestant's own selection, but of a type to be approved by the commission, which will avert any claims of a low blow being made during the contest.

**G. Contestant's conduct after boxing contest is finished:**

(1) After the decision of any boxing contest has been announced, each contestant and his seconds must leave the ring at once and retire to the contestant's dressing room.

(2) Each contestant is prohibited from indicating in any way to the officials or the spectators his opinion as to whether he won or lost the boxing contest.

[15.6.8.16 NMAC - N, 3/23/2002; A, 1/30/2024]

**15.6.8.17 WEIGHING-IN CEREMONIES:**

**A. Schedules of ceremonies:** The times and places of all weigh-in ceremonies for indoor or outdoor programs shall be determined by the commission. However, all weigh-ins shall take place no later than twelve o'clock noon on the day of the contest.

**B. Contestant weigh-ins:** All contestants shall be weighed-in on scales approved by the commission, and in the presence of their opponents and the commission representative.

**C. Postponement of weigh-in:** In the event a boxing contest is postponed, for any reason whatsoever, more than 24-hours prior to the contest, a second weigh-in and additional physical examinations may be required on the day to which the boxing contest has been rescheduled.

[15.6.8.17 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.8.18 ADJUSTMENT OF CONTESTANT'S GLOVES:**

In all boxing contests, the gloves of each contestant will be adjusted under the supervision of the commission representative in charge.

**A. Laces:** The laces of each glove shall be knotted on the back of the wrists.

**B. Adhesive tape:** A strip of one-inch to two-inch adhesive tape shall be placed on the wrists of the gloves, over the laces.

**C. Removal of gloves:** The contestant's gloves must be removed after the boxing contest and before the contestant leaves the ring.

[15.6.8.18 NMAC - N, 3/23/2002; A, 1/30/2024]

**15.6.8.19 LICENSURE OF AGENTS REQUIRED:**

The commission shall issue licenses to all agents present to perform functions representative of the commission at a boxing program. This requirement shall include box office attaches, ticket collectors, doormen, glove men, seconds, managers, and any others performing duties specified and ordered by the commission at a boxing program.

[15.6.8.19 NMAC - N, 03-23-2002]

**15.6.8.20 THE REFEREE:**

**A. Referee's wearing apparel:** The commission shall prescribe the type, style, and color of the referee's apparel.

**B. Referee instructs the contestants:** Before the start of each boxing contest, the referee must call the contestants together for final instructions. Each contestant may only be accompanied by his chief second, except in cases where a contestant also requires the services of an interpreter. After receiving the referee's instructions, the contestants shall shake hands and retire to their respective corners to await the gong for the first round.

[15.6.8.20 NMAC - N, 03-23-2002]

**15.6.8.21 INSPECTORS:**

**A. Appointed by the commission:** The commission shall appoint inspectors to be present at boxing contests. Inspectors shall work in cooperation and in conjunction with any police officers as may be detailed for this duty at boxing contests.

**B. Prohibitions to assigning officials:** The commission will not and shall not assign officials who are directly or indirectly associated with, including but not limited to any financial interest in, the management of any contestant; or who is an individual promoter; or who is a stockholder in, or employee of, a promoter corporation or an unincorporated club or association engaged in the promotion of contests.

[15.6.8.21 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.8.22 PROHIBITED ACTIVITIES:**

**A. Excessive spraying of water on contestant:** Any excessive or undue spraying or throwing of water on any contestant between rounds is forbidden.

**B. Application of monsel's solution:** The application of monsel's solution, or any use of its derivatives on the body of the contestant between rounds, is prohibited.

**C. Persons forbidden to coach contestants:** The employees of any licensed promoter and the matchmaker are forbidden from coaching any contestant at any time during the progress of any boxing contest.

**D. Persons disqualified from officiating:** Officials, directors, matchmakers, or stockholders of any promoting corporation or licensed club are disqualified from officiating in any capacity at any boxing contest conducted by such corporation. They are also prohibited from interfering in any way with the contestants participating in said boxing program.

**E. Persons prohibited from holding financial interest in contest:** No official or employee of this commission, or of its medical panels or medical advisory board, and no judge or referee licensed by this commission may, directly or indirectly, have any financial interest in any contestant, wrestler, promoting corporation, or in any manager's contract with any licensed athlete, or in any assignment thereof.

[15.6.8.22 NMAC - N, 03-23-2002]

#### **15.6.8.23 [RESERVED]**

[15.6.8.23 NMAC - N, 03-23-2002; A, 08-26-2012; Repealed, 01-15-2015]

#### **15.6.8.24 OUTDOOR BOXING CONTESTS:**

The following special rules and regulations pertain to outdoor boxing programs only. All other rules and regulations of the commission not affected or modified below remain in full force and effect for all outdoor boxing contests, as well as, other boxing programs.

**A. Postponement of boxing event:** In the event of rain immediately before or during the course of any outdoor boxing program, except during the course of the main event, the promoter may postpone the program to a time and place approved by the commission.

(1) An announcement giving the full details of the postponement shall be made by the promoter.

(2) Any patron desiring a refund of the purchase price of his ticket may apply for the refund at the box office on the premises, except when the main boxing contest is held on the scheduled date or one of the successive rain-out dates indicated on the ticket.

(3) All contestants who have fulfilled their boxing contracts before the rain-out, shall be paid in full by the promoter.

**(4)** On the date to which the program is postponed, the promoter shall have scheduled substitute boxing contests in such number and duration as directed by the commission.

**B. Rearrangement or shortening of program:** In the event of threatening weather and rain, the program of boxing contests may be rearranged or shortened by the promoter with the consent of the commission representative in charge.

**C. Reimbursement of expenses to contestants:** All contestants in boxing contests, other than the main event, who were unable to compete because of weather conditions or a rearrangement or shortening of the boxing program, shall have their expenses and other fees paid by the promoter as the commission representative in charge may direct.

**D. Stopping the boxing contest because of rain:** In the event that rain occurs after the main event is completed, the boxing program shall be considered as having been completed.

**(1)** In the event of rain during the progress of the main event, the boxing contest shall be continued or stopped at the discretion of the commission representative in charge.

**(2)** If the main boxing contest is stopped, the provisions of Subsection A of 15.6.8.24 NMAC as to postponement and refunds shall apply.

[15.6.8.24 NMAC - N, 03-23-2002]

#### **15.6.8.25 AMATEUR CONTESTS:**

All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted.

[15.6.8.25 NMAC - N, 01-15-2015]

### **PART 9: SCORING SYSTEM**

#### **15.6.9.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.9.1 NMAC - N, 03-23-2002]

#### **15.6.9.2 SCOPE:**

The provisions in Part 9 apply to all licensees of the commission.

[15.6.9.2 NMAC - N, 03-23-2002]

**15.6.9.3 STATUTORY AUTHORITY:**

Part 9 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-11; 60-2A-19; 60-2A-20, 60-2A-21, 60-2A-22; 60-2A-29, and 60-2A-31.

[15.6.9.3 NMAC - N, 03-23-2002]

**15.6.9.4 DURATION:**

Permanent.

[15.6.9.4 NMAC - N, 03-23-2002]

**15.6.9.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.9.5 NMAC - N, 03-23-2002]

**15.6.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 6 is to set forth all commission requirements for the scoring of a boxing contest regulated by the commission.

[15.6.9.6 NMAC - N, 03-23-2002]

**15.6.9.7 DEFINITIONS:**

**A. "Down"** means that some part of the contestant's body other than his feet is on the ring floor; or the contestant is hanging helplessly on the ring ropes; or the contestant is rising from a down position.

**B. "TKO"** means loss by a technical knockout and refers to the ending of a bout by a referee for any reason other than a count-out or a disqualification.

**C. "KO"** means loss by a knockout.

[15.6.9.7 NMAC - N, 03-23-2002]

**15.6.9.8 UNIFORM REGULATIONS FOR PROFESSIONAL BOXING:**

The New Mexico athletic commission adopts the association of boxing commissioners (ABC) *uniform rules for professional boxing championships*. In the event of a problem/situation regarding the ABC rules, the final authority shall rest with the commission utilizing its **own** regulations. Within forty-eight (48) hours after the contest, *the supervisor's checklist*, a form provided by ABC, shall be completed and returned to ABC by the supervising commission.

**A. Contest elements considered:** In scoring a contest, the elements of offense, defense, clean hitting, ring generalship and sportsmanship shall be carefully considered.

**B. Scoring judges:** Three judges approved by the commission shall evaluate each contest and score the contest.

**C. "10 point" must system:** The 10-point must system will be the standard system of scoring a boxing contest.

**D. Winner's points:** The winner of any round is marked a "10".

**E. Loser's points:** The loser of any round is marked "1" to "9".

**F. Mandatory eight (8) count:** Mandatory 8-count after knockdowns will be the standard procedure in all contests.

**G Standing eight (8) count:** There shall be NO standing eight-count called in any contest.

**H. Three (3) knockdown rule:** There shall be NO three-knockdown rule called in any contest.

**I. Twenty-second count:** A contestant shall receive a twenty-second count if he is knocked out of the ring and onto the floor.

**J. Referee is sole arbiter:** The referee is the sole arbiter of a contest and is the only individual authorized to stop a bout.

**K. Knockdown rated:** The referee shall call a knockdown as such as soon as it occurs.

**L. Ring generalship:** The contestant who takes advantage of the full "9" count should be credited with "ring generalship", which would not be credited to him if he arose immediately and tried to continue in a possibly groggy condition.

**M. Foul blows:** The use of foul blows and other tactics shall result in a penalty of one (1) point for each foul committed, and the referee shall advise the judges immediately of the number of points to be deducted.

**N. Disqualification for second's assist:** Contestants are to be unassisted by their seconds. If a contestant is assisted by his second, the referee shall disqualify the boxer.

**O. Saved by the bell:** A contestant who has been knocked down cannot be saved by the bell in any round.

[15.6.9.8 NMAC - N, 03-23-2002]

#### **15.6.9.9 KNOCKDOWNS:**

**A. Judges scoring knockdowns:** The judges may score a knockdown in any one round as either one or two points in favor of a contestant who scored the knockdown.

**B. Judges score independently:** Each judge must determine for himself which value shall be placed on the knockdown.

[15.6.9.9 NMAC - N, 03-23-2002]

#### **15.6.9.10 PROTOCOL FOR USING SCORECARDS:**

Judges shall clearly write their decision and sign their scorecards; and they must mark their cards in ink or in indelible pencil at the end of each round.

[15.6.9.10 NMAC - N, 03-23-2002]

#### **15.6.9.11 THE TALLY AND DECISION:**

**A. The tally:** At the conclusion of the round, each judge must tally up the points he has awarded each contestant and submit the scorecard to the referee.

**B. The decision:** After the scorecards have all been checked by the commission representative, they must be returned to the announcer who shall announce the decision of the judges from the ring.

**C. Main event protocol on announcing the decision:** In main events, the announcer shall call out the points awarded by each judge. The decision must then be awarded to the contestant with the greatest number of points on two of the scorecards.

[15.6.9.11 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.9.12 AMATEUR CONTESTS; SMOKERS:**

All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted.

[15.6.9.12 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.9.13 MAJOR FOULS:**

**A.** The following are major fouls.

- (1) Hitting an opponent who is down or who is rising from the down position.
- (2) Using the knee against the opponent.
- (3) Purposely going down without being hit.
- (4) Failure to heed the referee's warning concerning low blows or other minor fouls.
- (5) Any dangerous and un-sportsmanlike conduct in the ring.

**B.** The referee may disqualify the offending contestant, and award the bout or any points to the contestant being fouled.

**C.** Disqualification on fouls to the body may only occur if the referee deems that these fouls are flagrant and/or continual.

[15.6.9.13 NMAC - N, 03-23-2002]

**15.6.9.14 MINOR FOULS:**

**A.** The following are minor fouls.

- (1) Holding an opponent.
- (2) Deliberately maintaining a clinch.
- (3) Hitting with the inside or butt of the hand, the wrist, or the elbow.
- (4) Backhanded blows.
- (5) Low blows.
- (6) Hitting or flicking with the open glove.
- (7) Wrestling or roughing the ropes.
- (8) Deliberately striking at the part of the body over the kidneys.
- (9) Use of a pivot blow or rabbit punch.

**(10) Hitting on the break.**

**B.** It is within the discretion of the referee to determine whether the offending contestant should merely be warned, or have points deducted, for committing a minor foul.

**C.** If a boxer injures himself while attempting to intentionally foul his opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

[15.6.9.14 NMAC - N, 03-23-2002]

**15.6.9.15 [RESERVED]**

[15.6.9.15 NMAC - N, 03-23-2002]

**15.6.9.16 REFEREE'S NOTICE TO JUDGES CONCERNING FOULS:**

**A.** In the event that the referee determines that a foul has been committed, he shall notify the judges immediately.

**B.** The judges shall deduct one point from the offending contestant's scores.

**C.** On any illegal blow to the body the referee may order a deduction of points and will give the necessary time for recovery to the injured boxer (with a maximum of five minutes) after consulting with the ringside physician. If the referee rules this foul was accidental and after five minutes the injured boxer can't continue, the rules governing accidental fouls shall apply. A contestant who is hit with an accidental low blow must continue after the 5-minute rest or he will lose the bout.

**D.** There may be a deduction of points by the referee at any time for illegal blows and/or conduct by the boxer and/or his corner men.

**E.** In the case of a clear and intentional foul that causes an injury and the contest can still continue, the contestant who was doing the fouling will have two (2) points deducted.

**(1)** The referee must stop the action and inform all judges and the commission or commission representative of this deduction.

**(2)** Point deductions for intentional fouls will be mandatory.

[15.6.9.16 NMAC - N, 03-23-2002]

**15.6.9.17 CONDITIONS FOR COUNTING A CONTESTANT OUT:**

A fighter who is hit with an accidental low blow must continue the contest after a reasonable time, but no more than five (5) minutes, or he will lose the contest.

[15.6.9.17 NMAC - N, 03-23-2002]

#### **15.6.9.18 WRITTEN REPORT TO COMMISSION REGARDING FOULS:**

If, in any boxing contest, a contestant is penalized with the loss of three or more rounds due to fouls, the referee and each judge must report the matter to the commission, in writing, within twenty-four (24) hours.

[15.6.9.18 NMAC - N, 03-23-2002]

#### **15.6.9.19 TECHNICAL KNOCKOUTS; TECHNICAL DECISIONS; TECHNICAL DRAWS; DISQUALIFICATIONS; NO CONTESTS:**

##### **A. Technical knockouts.**

(1) When a cut is produced by a legal punch and the contest is stopped because of that cut, the injured boxer shall lose by a technical knockout and the commissions shall enter the letters TKO in the record.

(2) When a referee stops a contest to save any contestant from further punishment, he must award the other contestant the decision by a technical knockout.

(3) If a boxer sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured boxer will lose by a TKO.

(a) Any contestant losing by a TKO shall receive a minimum of a thirty (30) day medical suspension.

(b) Any contestant losing by a KO shall receive a minimum of a sixty (60) day medical suspension.

##### **B. Technical decisions.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, the injured contestant will win by a technical decision if he is ahead on the score cards.

(2) If the accidental foul occurs after the completion of four (4) rounds and the bout must be stopped immediately because the fouled contestant is injured severely enough that he cannot continue, a technical decision shall be awarded to the contestant who is ahead on the score cards at the time the bout is stopped.

(a) Partial or incomplete rounds will be scored.

(b) At the discretion of the Judges, if no action has occurred, the round may be scored as an *even* round.

(3) If in the later rounds, the injury has worsened as a result of legal blows, and the injured boxer cannot continue, a decision shall be rendered by referring to the scorecards. The judges, who must inform the commission and both contestants that the foul is the result of an accidental foul, shall score partial rounds.

#### **C. Technical draws.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, a technical draw will be declared if the injured contestant is even or behind on the scorecards.

(2) If an accidental foul occurs before the completion of four (4) rounds and the injured contestant cannot continue, the contest will be declared a technical draw.

#### **D. Disqualifications.**

(1) In the case where an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately; the contestant causing the injury shall lose by disqualification, even if he is the injured contestant.

(2) If the referee deems that a contestant has conducted himself in an un-sportsman-like manner, he may stop the bout and disqualify that contestant.

**E. No contests:** If, before four (4) rounds are completed in a contest, an accidental foul causes an injury severe enough for the referee to stop the bout immediately, the bout will result in a no contest.

[15.6.9.19 NMAC - N, 03-23-2002]

#### **15.6.9.20 COUNTING:**

**A. Timekeeper calls off the seconds:** When a contestant is down, the timekeeper shall immediately commence calling off the seconds indicating the count with a motion of his arm.

**B. Referee picks up the count:** When the timekeeper commences calling off the seconds, the referee must immediately order the other contestant to a neutral corner and shall pick up the count from the timekeeper, indicating the count with a motion of his arm.

#### **C. Reaching the count of ten.**

(1) If a contestant is unable to continue at the count of ten, the referee shall declare the other contestant the winner by a knockout.

(2) If a contestant who has fallen or has been knocked out of the ring during the contest fails to be on his feet in the ring before the expiration of ten seconds, the referee shall count him out as if he were down.

(3) A contestant who has fallen or has been knocked out of the ring must return to the ring unassisted.

(4) If a contestant who has fallen fails to be on his feet in the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to ten (10). If the contestant fails to rise before the count of ten (10), the bout shall be awarded to the other contestant by a knockout in the round just ended.

(5) If a contestant has been knocked out of the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to twenty (20). If the contestant fails to rise before the count of twenty (20), the bout shall be awarded to the other contestant by a knockout in the round just ended. The contestant must return to the ring unaided.

[15.6.9.20 NMAC - N, 03-23-2002]

#### **15.6.9.21 TERMINATION OF THE CONTEST:**

The three-knockdown rule is NOT in effect. The contest may be stopped at any time by the referee if he deems it necessary to protect the health, safety, and welfare of either contestant.

**A. Contest terminated between rounds:** If the contest is terminated between rounds, the knockout must be recorded as having occurred in the round most recently terminated.

**B. Knockout recorded in subsequent round:** When the knockout occurs between rounds and the bell for the subsequent round has already sounded, the end of the contest shall be recorded in the subsequent round.

**C. Items thrown into the ring:** The throwing of towels, sponges, etc, into the ring by a contestant's corner men or seconds will NOT stop the contest.

**D. Injured contestant:** If a contestant is cut, the referee may interrupt the bout to consult the ringside physician to determine if the injured boxer can continue or not. If the ringside physician steps on the ring apron, the referee may call time-out and have the injured boxer examined by this physician. Final authority to stop or continue a bout rests with the referee.

[15.6.9.21 NMAC - N, 03-23-2002]

## **PART 10: BOXING CLASSES AND CHAMPIONSHIPS**

### **15.6.10.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.10.1 NMAC - N, 03-23-2002]

### **15.6.10.2 SCOPE:**

The provisions in Part 10 apply to all licensees of the Commission.

[15.6.10.2 NMAC - N, 03-23-2002]

### **15.6.10.3 STATUTORY AUTHORITY:**

Part 10 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.10.3 NMAC - N, 03-23-2002]

### **15.6.10.4 DURATION:**

Permanent.

[15.6.10.4 NMAC - N, 03-23-2002]

### **15.6.10.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.10.5 NMAC - N, 03-23-2002]

### **15.6.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 6 is to set forth all commission regulations regarding boxing classes and championships.

[15.6.10.6 NMAC - N, 03-23-2002]

### **15.6.10.7 DEFINITIONS:**

**[RESERVED]**

[15.6.10.7 NMAC - N, 03-23-2002]

#### **15.6.10.8 STATE CHAMPIONSHIP TITLE:**

**A. When A Boxer Must Defend Title:** A boxer holding a state championship title must defend his title against a suitable contender within six months after winning, or after last defending, his title, or his title may be vacated by the commission.

**B. Challenge To The Title:** In the event a championship titleholder fails to defend his title, any boxer in the same class who is considered by the commission to be a suitable contender, may, at the lapse of the six-month period, file a challenge with the commission.

[15.6.10.8 NMAC - N, 03-23-2002]

#### **15.6.10.9 AMATEUR CONTESTS:**

All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted.

[15.6.10.9 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.10.10 PROCEDURE WHEN COMMISSION RECEIVES A CHALLENGE:**

**A. Challenge Forwarded To Championship Titleholder:** Upon receipt of a challenge for the state championship title, the commission shall forward the challenge to the championship titleholder, and announce the challenge to the title at the commission office.

**B. Title Holder Agrees To Defend His Title:** Upon receipt of the challenge forwarded by the commission, the championship titleholder must, within twenty (20) days after the announcement, enter into "Articles of Agreement" to defend his state championship title against the challenging contender.

**C. Title Holder Does Not Agree to Defend His Title:** In the event the championship titleholder does not enter into an agreement as specified in Subsection B of this rule, or capriciously refuses to promptly defend his state championship title, the title may be withdrawn from him by the commission.

[15.6.10.10 NMAC - N, 03-23-2002]

#### **15.6.10.11 PROCEDURE IF MORE THAN ONE CHALLENGE IS RECEIVED:**

**A. Commission Forwards and Announces Challenges:** In the event that the commission receives challenges to the championship title from more than one contender, the commission shall forward and announce the challenges as provided in Subsection A of 15.6.10.10 NMAC.

**B. State Champion Selects His Challenger:** Upon receipt of the challenges from the commission, the championship titleholder may, with the approval of the commission, select to defend his title against any one of the challengers.

[15.6.10.11 NMAC - N, 03-23-2002]

#### **15.6.10.12 CHAMPIONSHIP FORFEIT:**

In the event that a state championship titleholder is permanently unable to physically qualify for the defense of his state title, the commission shall forfeit his championship and declare the title vacant.

[15.6.10.12 NMAC - N, 03-23-2002]

#### **15.6.10.13 WEIGHT LIMITS FOR CHAMPIONSHIP BOXING CONTESTS:**

**A. State Class Weights:** State championships are recognized only in the following classes; and the weight limit of each contestant in a state championship contest must comply with the list below:

- (1) Junior Flyweight: 108 lbs. - Differential: 5 lbs.
- (2) Flyweight: 112 lbs. - Differential: 5 lbs.
- (3) Bantamweight: 118 lbs. - Differential: 7 lbs.
- (4) Junior Featherweight: 122 lbs. - Differential: 8 lbs.
- (5) Featherweight: 126 lbs. - Differential: 10 lbs.
- (6) Junior Lightweight: 130 lbs. - Differential: 10 lbs.
- (7) Lightweight: 135 lbs. - Differential: 10 lbs.
- (8) Junior Welterweight: 140 lbs. - Differential: 12 lbs.
- (9) Welterweight: 147 lbs. - Differential: 12 lbs.
- (10) Junior Middleweight: 154 lbs. - Differential: 13 lbs.
- (11) Middleweight: 160 lbs. - Differential: 13 lbs.

- (12) Light Heavyweight: 175 lbs. - Differential: 14 lbs.
- (13) Cruiserweight: 190 lbs. - Differential: 14 lbs.
- (14) Heavyweight: No maximum weight for any contestant.

**B. Title Holder Must Be At Weight:** Whenever a state championship title holder engages in a championship contest in this state, he must be at the weight required by the class for which he holds the championship.

**C. Time Limits for Passing the Scale:** All contestants in a championship-boxing contest must pass the scale at noon on the day of the contest, or at an additional weigh-in two (2) hours later.

**D. Non-State Championship Contests:** Championship bouts other than state championship bouts shall be determined by the sanctioning organization.

[15.6.10.13 NMAC - N, 03-23-2002]

#### **15.6.10.14 HOW CHAMPIONSHIP CAN BE LOST:**

A championship can be lost by default; by forfeit; or by a contestant's inability to pass the scale, but a championship can only be won by a contender in a contest.

[15.6.10.14 NMAC - N, 03-23-2002]

#### **15.6.10.15 WEIGHT LIMITS IN NON-CHAMPIONSHIP BOXING CONTESTS:**

The same weight limits listed in 15.6.10.13 NMAC will apply in non-championship boxing contests.

[15.6.10.15 NMAC - N, 03-23-2002]

#### **15.6.10.16 OVERWEIGHT BOXERS IN NON-TITLE BOXING CONTESTS:**

Contestants in non-title boxing contests who are found to be overweight under the terms of the contract, may be suspended by the commission after the match, for such period as the commission may decide.

[15.6.10.16 NMAC - N, 03-23-2002]

#### **15.6.10.17 [RESERVED]**

[15.6.10.17 NMAC - N, 03-23-2002]

#### **15.6.10.18 CONTRACTS FOR STATE CHAMPIONSHIP BOXING CONTESTS:**

All contracts for state championship boxing contests must be signed at a commission meeting.

**A. Posting Forfeit Monies:** On the date of the contract signing, the two contestants and the licensed corporation promoting the boxing contest will each post forfeit monies with the commission.

(1) The contestants, the champion title holder and the challenger, will each deposit \$50, if their purses are not more than \$5,000.

(2) If the title bout purse for either contestant is more than \$5,000, that contestant must post a deposit of 10% of his guaranteed purse.

(3) The promoter of the title contest must deposit an amount equal to the highest amount deposited by either contestant.

**B. Posting Deposits Ensures Contestants' Appearance:** Posting of forfeit monies is to insure that each contestant will appear at the championship contest and will make the proper weight; and that the promoter will fulfill the promoter's obligations.

**C. Title Bouts Authorized by Outside Sanctioning Body:** For championship title contests authorized by an outside sanctioning body (IBF, WBA, WBC, etc.) only the promoter shall be required to post a deposit equal to 10% of the total purse for both of the title bout contestants. The deposit may be waived or readjusted by the Commission.

**D. If Forfeit Is Declared:** In the event that a forfeit is declared, the deposit or deposits so forfeited will be distributed equally between the non-defaulting depositors and the New Mexico athletic commission.

[15.6.10.18 NMAC - N, 03-23-2002]

## **PART 11: SPECIAL REQUIREMENTS FOR WRESTLING**

### **15.6.11.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.11.1 NMAC - N, 03-23-2002]

### **15.6.11.2 SCOPE:**

The provisions in Part 11 apply particularly to all persons and parties licensed by the commission to participate in any manner in wrestling exhibitions.

[15.6.11.2 NMAC - N, 03-23-2002]

**15.6.11.3 STATUTORY AUTHORITY:**

Part 11 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.11.3 NMAC - N, 03-23-2002]

**15.6.11.4 DURATION:**

Permanent.

[15.6.11.4 NMAC - N, 03-23-2002]

**15.6.11.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.11.5 NMAC - N, 03-23-2002]

**15.6.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 6 is to set forth all commission regulations regarding wrestling exhibitions.

[15.6.11.6 NMAC - N, 03-23-2002]

**15.6.11.7 DEFINITIONS:**

"Fall" refers to scoring against a wrestler when, for a count of three, both of the wrestler' shoulders touch the floor at the same time; or when the wrestler is held down by a submission hold.

[15.6.11.7 NMAC - N, 03-23-2002]

**15.6.11.8 WRESTLING PROGRAMS ARE NOT CONTESTS:**

All professional wrestling programs under the supervision and authority of the commission are exhibitions, not contests.

[15.6.11.8 NMAC - N, 03-23-2002]

**15.6.11.9 [RESERVED]**

[15.6.11.9 NMAC - N, 03-23-2002]

**15.6.11.10 COMMISSION RULES APPLY EXCLUSIVELY:**

All wrestlers are required to wrestle under the rules of the commission.

[15.6.11.10 NMAC - N, 03-23-2002]

**15.6.11.11 ADVERTISING FOR WRESTLING EXHIBITIONS:**

**A. Exhibitions:** All wrestling programs shall be advertised or announced as wrestling exhibitions.

**B. Commission approval required for exceptions:** Any wrestling promoter who advertises, or causes to be advertised, any professional wrestling exhibition as a wrestling match or championship match, may only do so with the express approval of the commission.

**C. Preservation of advertising copy:** Wrestling promoters shall provide the commission with copies of all advertising issued in connection with the wrestling exhibition.

[15.6.11.11 NMAC - N, 03-23-2002]

**15.6.11.12 [RESERVED]**

[15.6.11.12 NMAC - N, 03-23-2002]

**15.6.11.13 LICENSE BY COMMISSION REQUIRED:**

**A. Licensees:** All promoters, managers, professional wrestlers, referees, announcers, and anyone who enters the ring, shall be licensed by the commission in order to participate in any wrestling exhibition in New Mexico.

**B. Booking agencies:** Any person or party operating a booking agency for wrestlers must be licensed as a matchmaker by the commission. In any such agency is a corporation, an officer of said corporation must be licensed by the commission.

[15.6.11.13 NMAC - N, 03-23-2002]

**15.6.11.14 REQUIRED OFFICIALS AT WRESTLING EXHIBITIONS:**

The following officials shall be in attendance at each wrestling exhibition.

**A.** Referee.

**B.** Event coordinator.

**C.** Announcer.

**D. Physician.**

[15.6.11.14 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.11.15 [RESERVED]**

[15.6.11.15 NMAC - N, 03-23-2002]

**15.6.11.16 MANAGERS AND PROMOTERS:**

**[RESERVED]**

[15.6.11.16 NMAC - N, 3/23/2002; Repealed, 1/30/2024]

**15.6.11.17 MEDICAL EXAMINATION OF A WRESTLER:**

**A. Conducted by physician designate:** Before any wrestler may enter the ring, a physician designated by the commission shall examine all wrestlers, referees, and any other licensed person entering the ring and engaging in a professional exhibition.

**B. Medical examination schedule:** All wrestlers, referees, and any other person who will enter the ring, must present themselves for such examination within one calendar day prior to the commencement of the exhibition.

**C. Disclosure required:** No wrestler shall conceal any known illness or disability from the examining physician.

**D. Drug testing of wrestlers:** The commission has the right to drug test any wrestler at any given time.

(1) The drug test can consist of the following: cocaine, marijuana, etc.

(2) If the wrestler tests positive, his license will be withheld or suspended, and he is prohibited from wrestling in New Mexico until he appears before the commission and proves that he is drug-free.

**E. Wrestler prohibited from wrestling:** The examining physician shall not permit any wrestler to enter the ring who is suffering from any illness or disability that in any way interferes with or prevents the wrestler from giving a full, complete, and satisfactory exhibition of his ability and skill; or endangers his health or the health of his opponent.

[15.6.11.17 NMAC - N, 3/23/2002; A, 1/30/2024]

**15.6.11.18 [RESERVED]**

[15.6.11.18 NMAC - N, 03-23-2002]

#### **15.6.11.19 EQUIPMENT REQUIREMENTS AT EXHIBITIONS:**

**A. Barricade requirements:** Barricades around ringside shall be mandatory at all wrestling exhibitions.

**B. Wrestling mats:** Mats inside the barricades around the ring should be at least one (1) inch thick and cover any exposed ground.

[15.6.11.19 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.11.20 [RESERVED]**

[15.6.11.20 NMAC - N, 03-23-2002]

#### **15.6.11.21 [RESERVED]**

[15.6.11.21 NMAC - N, 3/23/2002; Repealed, 1/30/2024]

#### **15.6.11.22 [RESERVED]**

[15.6.11.22 NMAC - N, 3/23/2002; Repealed, 1/30/2024]

#### **15.6.11.23 [RESERVED]**

[15.6.11.23 NMAC - N, 03-23-2002]

#### **15.6.11.24 WRESTLERS' CONDUCT TOWARD THIRD PARTIES:**

Wrestlers shall not molest, hit, or abuse any spectator in any manner.

[15.6.11.24 NMAC - N, 03-23-2002]

### **PART 12: CONTEST REQUIREMENTS FOR FULL CONTACT KARATE AND KICKBOXING**

#### **15.6.12.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.12.1 NMAC - N, 03-23-2002]

#### **15.6.12.2 SCOPE:**

The provisions in Part 12 apply to all persons and parties licensed by the commission to participate in any manner in full contact karate and kickboxing events.

[15.6.12.2 NMAC - N, 03-23-2002]

**15.6.12.3 STATUTORY AUTHORITY:**

Part 12 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.12.3 NMAC - N, 03-23-2002]

**15.6.12.4 DURATION:**

Permanent.

[15.6.12.4 NMAC - N, 03-23-2002]

**15.6.12.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.12.5 NMAC - N, 03-23-2002]

**15.6.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 6 is to set forth all commission regulations regarding full contact karate and kickboxing.

[15.6.12.6 NMAC - N, 03-23-2002]

**15.6.12.7 DEFINITIONS:**

- A. **"MKR"** refers to minimum kicking requirements.
- B. **"Down"** or **"knock down"** refers to a situation where any portion of a contestant's body, other than his feet, touches the floor.
- C. **"Leg checking"** means extending the leg to check an opponent's leg to prevent him from kicking.
- D. **"Clinching"** mean holding or otherwise tying-up an opponent's arms to prohibit him from punching.
- E. **"Palm heel strikes"** means using the heel of the palm of the hand to deliver a blow to the face of an opponent.
- F. **"Blind foul"** refers to a foul that the referee cannot see.

[15.6.12.7 NMAC - N, 03-23-2002]

#### **15.6.12.8 DISTINCTION BETWEEN RULES REGULATING EVENTS:**

**A. Sanctioning body rules:** Various sanctioning bodies regulate full contact karate and kickboxing by rule. These sanctioning body rules may serve as a guideline, and with the approval of the commission may vary to align the event or contest with the rules of the sanctioning body.

**B. Sanctioning body rules must be approved by commission:** A set of sanctioning body rules must be submitted to the commission for approval for any full contact karate or kickboxing event or contest proposed to be conducted in New Mexico.

**C. International sanctions that vary:** The commission must approve sanctioning body rules that vary from the commission's rules.

[15.6.12.8 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.12.9 LICENSED OFFICIALS:**

**A. Licensure by commission required:** All promoters, managers, matchmakers, trainers, booking agents, contestants, and their seconds, as well as officials such as referees, judges, timekeepers, and announcers officiating at any full-contact karate or kickboxing event shall be licensed by the commission.

**B.** Any violation of this rule shall subject the violator to penalty by the commission.

[15.6.12.9 NMAC - N, 03-23-2002]

#### **15.6.12.10 AMATEUR CONTESTS:**

All provisions in this section apply to all amateur events, contests, and exhibitions, unless the amateur event, contest, or exhibition is conducted pursuant to the rules for that form that are approved by the commission before the event, contest, or exhibition is conducted.

[15.6.12.10 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.12.11 CONTESTANTS' EQUIPMENT:**

**A. Required equipment:** The following equipment shall be required, unless otherwise noted:

**(1) Hand and foot equipment:** All contestants will wear regulation gloves and foot protective equipment approved by the sanctioning body representative. Breaking, roughing, or twisting of gloves or footpads shall not be permitted.

**(2) Shin-pads:** Shin-pads of a soft substance or material must be worn by all contestants and approved by the sanctioning body representative if the event sanction so requires such equipment.

**(3) Groin protector:** All contestants must wear an approved groin protector. A plastic cup with an athletic supporter is adequate, but an abdominal guard is preferable.

**(4) Mouthpiece:** All contestants must wear fitted mouthpieces.

**B. Prohibited equipment or other items:** The following equipment or other listed items are prohibited from being worn by any contestant:

- (1)** elbow pads;
- (2)** forearm pads;
- (3)** rings or other jewelry; or
- (4)** any other items not authorized by the commission or sanctioning body rules.

[15.6.12.11 NMAC - N, 03-23-2002]

#### **15.6.12.12 WIPING CONTESTANT'S HANDS PAD:**

After a contestant is knocked down, or has slipped or fallen to the canvas, the referee will wipe the fallen contestant's gloves free of dirt or moisture before allowing the fallen contestant to resume the contest.

[15.6.12.12 NMAC - N, 03-23-2002]

#### **15.6.12.13 DURATION OF ROUNDS:**

- A.** Each round will be two (2) minutes in duration.
- B.** Rest periods between rounds will be one (1) minute in duration.
- C.** The time runs continuously and may only be called or stopped by the referee in special cases.
- D.** All professional contests shall be five (5) or more rounds, to a maximum of twelve (12) rounds in length.
- E.** World, continental, national, and regional title contests shall be twelve (12), ten (10), nine (9), and eight (8) rounds respectively.

F. State title contests shall be seven (7) rounds.

[15.6.12.13 NMAC - N, 03-23-2002]

#### **15.6.12.14 KICKING JUDGE'S DUTIES:**

There will a kicking judge assigned to each contestant in a contest.

**A. Location of kicking judges:** Each kicking judge will be positioned at ringside sitting opposite his contestant's opposing contestant's corner.

**B. Responsibility of kicking judges:** It is the responsibility of the kicking judges to determine the legality of the kicks executed by his own contestant, and to keep count of the number of kicks they determine to be legal.

**C. Tracking the number of kicks with flip-cards:** Both kicking judges shall use a card set of eight (8) flip-cards numbered one (1) through eight (8) to keep track of the number of kicks executed by his own assigned fighter. The promoter of the event shall supply all flip-cards for the kicking judges' use.

(1) When the first legal kick is thrown, the kicking judge will hold up the card with the number one (1), and as each legal kick is thrown, he will continue to hold up the appropriate card for the number of legal kicks thrown by his contestant during the round.

(2) If a contestant executes less than the minimum number of required legal kicks in any one (1) round, the kicking judge will immediately notify the referee of the number of kicks thrown.

[15.6.12.14 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.15 MINIMUM KICKING REQUIREMENTS:**

**A. Legal kicks:** Each contestant must execute at least eight (8) legal kicks per round in a contest bout.

(1) Legal kicks are considered those that are attempts to land hard on a target area of the opponent's body with the intent to do damage.

(2) The determination as to which kicks will be counted as legal is made by the kicking judges.

**B. Points deduction:** One (1) point will be deducted from each scoring judge's ballot for each legal kick less than eight (8) thrown by a contestant.

**C. Penalty for failing to fulfill MKR:** A contestant will be immediately disqualified if he does not fulfill his minimum kicking requirement (MKR) in any of the following contests:

(1) in any two (2) rounds of a bout that is three (3), four (4), five (5), or six (6) rounds in length; or

(2) in any three (3) rounds of a bout that is seven (7), eight (8), nine (9), ten (10), or eleven (11) rounds in length; or

(3) in any four (4) rounds of a twelve (12)-round world title bout.

**D. MKR requirement reduced:** MKR requirements will be reduced by one (1) kick for both contestants in any given round for standing eight (8) count or mandatory eight (8) count. (For example, if a round has one (1) knockdown, the minimum kick requirement would be seven (7) for that round.) Each kicking judge will drop a card for each contestant during the standing or mandatory eight (8)-count to compensate for the MKR reduction.

[15.6.12.15 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.16 [RESERVED]**

[15.6.12.16 NMAC - N, 03-23-2002]

#### **15.6.12.17 SCORING:**

**A. Balloting by scoring judges:** The three scoring judges of a contest will each select a winner of each round at the end of each round, marking their ballots accordingly.

**B. Ballots final:** Once the respective scoring judges have marked the ballots, no changes of the ballots are allowed, except at the express directive of the sanction body representative or the commission representative.

**C. Scoring system:** Each scoring judge scores all rounds by recording a score of not more than ten (10) and not less than five (5) points for the winner of each round according to the following qualifications:

(1) **10-10 score:** A 10-10 score indicates an even round. Neither contestant distinguished himself as being more effective than the other. In addition, the contestants appeared equal in the other areas used to break an even round, such as opponent control, ring strategy, and overall conditioning and abilities as a complete karate contestant (with emphasis on kicking ability).

**(2) 10-9 score:** A 10-9 score indicates that one (1) contestant distinguished himself as the more effective fighter during the round as described in Paragraph (1). This score is used often, and indicates an obvious margin between the contestants. Should one contestant have been only slightly better in a round, an appropriate score would be 10-9.5.

**(3) 10-8 score:** A 10-8 score is used sparingly, but it indicates a round in which one (1) contestant was in constant control and unquestionably outclassed his opponent. This contestant must also have obviously stunned his opponent, usually including at least one (1) knockdown or one (1) standing eight (8)-count. If there were no knockdowns or standing eight (8)-counts, there must still have been enough damage done to indicate that at least one(1) of the occurrences was imminent, and in this case a more appropriate score would be 10-8.5.

**(4) 10-7 score:** A 10-7 score is very seldom used. It indicates total domination by one (1) fighter to the point that the referee nearly stops the bout. The losing fighter must have been completely dominated and controlled, generally including at least two (2) knockdowns or two (2) standing eight (8)-counts. A 10-7-5 score may be given to indicate a round that a scoring judge determines falls between the qualifications for a 10-7 round and a 10-8 round.

**(5) 10-5 score:** A 10-5 score is almost never used. Generally is a 10-6 score seen only on national continental, or world title bouts in which the three (3)-knockdown rule has been waived. One (1) contestant must have been so completely dominated as to have been knocked down at least three (3) times and never to have really been in the fight at all. Scores of 10-6.5 and 10-5.5 also require these circumstances.

#### **D. [RESERVED]**

**E. Points totaled:** Points shall be totaled on each scoring judge's scorecard to determine that judge's selection of a winner. Each judge's selection will count as one (1) vote towards determining the overall winner of the bout.

**(1) A scorecard draw:** If a judge's scorecard, when totaled, reflects an equal number of points for both contestants, that judge will have voted for a draw.

**(2) A majority decision:** If two (2) judges' scores favor one (1) contestant, and the other judge votes for a draw, the two (2) votes for the same contestant shall declare a winner by a majority decision.

**(3) A unanimous decision:** If all three (3) judges' scores favor one (1) contestant, that contestant shall be declared the winner by a unanimous decision.

**(4) A split decision:** If one (1) judge votes for one (1) contestant and the remaining two (2) judges vote for the other contestant, the contestant receiving the two (2) votes shall be declared the winner by split decision.

[15.6.12.17 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.18 METHODS OF OFFENSIVE SCORING TECHNIQUE:**

Methods of offensive scoring techniques are regulated by the event sanctioning body and must be pre-approved by the commission.

[15.6.12.18 NMAC - N, 03-23-2002]

#### **15.6.12.19 [RESERVED]**

[15.6.12.19 NMAC - N, 03-23-2002]

#### **15.6.12.20 FOULS:**

**A. Categories of fouls:** At the discretion of the referee, fouls may be classified into two (2) categories: one to three (1-3) point fouls.

**B. Referee's discretion regarding foul penalty:** The referee's decision as to the severity of the penalty for a foul committed will be based on the intent of the contestant committing the foul and the result of the foul.

(1) At the time of the infraction, the referee will indicate to the scorekeeper the number of points to be deducted from each scoring judges' ballot at the end of the round; or

(2) The referee may simply issue a warning to the contestant, and no points will be deducted.

**C. Referee determines scoring of the foul:** The scoring of the foul will be based on the referee's determination, as follows:

(1) If the referee determines that the foul was obviously committed by one (1) of the contestants, and that the fouled contestant did not contribute to the injury (e.g., by ducking into a knee; moving into an oncoming forehead, etc.), the referee will instruct the scorekeeper to deduct the appropriate number of points from the scorecard of the contestant who committed the foul.

(2) If the referee determines that the injured contestant was responsible for his own injury, the referee will not penalize his opponent in any manner. In this case, if the referee or ring physician determines that the injured contestant is unable to continue, he will lose the contest by a technical knockout.

(3) If an injury occurs as a result of a blind foul, the referee may, at his sole discretion, confer with any or all of the three judges and the ISKA representative to

determine which contestant was at fault. The referee may consider any, all, or none of these officials' input in making his final determination.

**D. List of Fouls:**

- (1) head butting;
- (2) striking with the elbow or knee;
- (3) striking or kicking to the hip, groin, knee, or any area below the waist;
- (4) intentional striking or kicking to the back of the head, neck, or to the throat;
- (5) striking to the face with any part of the arm other than the gloved hand (as in the spinning-backfist attempt that lands with the forearm or elbow);
- (6) linear, or straight-in, striking or kicking to the spine;
- (7) punching or kicking a contestant when he is down. However, if a contestant is on his way to the floor, the opponent may continue his attack until the other opponent touches the floor with any part of his body other than his feet;
- (8) takedowns, other than legal sweeps;
- (9) intentionally pushing, shoving or wrestling an opponent to the canvas or out of the ring with any part of the body;
- (10) illegal sweeping (see 15.6.12.32.D NMAC);
- (11) attacking on the break when both contestants have been instructed by the referee to take one (1) [~~step~~] step back;
- (12) attacking after the bell to end the round has sounded;
- (13) holding and hitting (e.g. holding with one (1) hand, especially behind the neck, and hitting with the other hand);
- (14) grabbing or holding on to an opponent's foot or leg, followed by a takedown, strike, or kick;
- (15) holding the ropes with one (1) hand while kicking, punching, or defending with the other hand or with the legs;
- (16) leg checking; the contestant whose leg was checked shall have an attempted kick counted by the kicking judge;

(17) purposely going down without being hit, which will result in the referee's automatically administering an eight (8)-count as specified in the rule on knockdowns; no points will be subtracted from the scorecard by the scorekeeper in this case, but the judges will consider this knockdown as they would any other knockdown;

(18) using abusive language in the ring on in the corner, as determined by the referee;

(19) hitting or flicking one's opponent with an open glove or thumb;

(20) intentionally evading contact;

(21) clinching;

(22) intentionally delaying the contest through the use of improper equipment with seconds remaining in the ring after the start of the round;

(23) beginning a round without a mouthpiece; or intentionally dropping a mouthpiece; or intentionally spitting out the mouthpiece, etc.;

(24) spitting, slapping, or biting;

(25) palm heel strikes;

(26) any un-sportsmanlike trick or action causing injury to an opponent.

**E. Consequences of delivering a fouling technique deemed malicious:** A contestant who executes a fouling technique which is deemed malicious (i.e. delivered with the intent of causing injury above and beyond the scope reasonably expected in a contest of this nature), may be subject to sharing the medical, as well as, related recovery and recuperation expenses suffered as a result of the fouling technique by the injured opponent.

[15.6.12.20 NMAC - N, 03-23-2002; A, 02-13-2015]

**15.6.12.21 [RESERVED]**

[15.6.12.21 NMAC - N, 03-23-2002]

**15.6.12.22 SCOREKEEPER SCORES THE FOULS:**

**A. Points deducted for fouls:** When a referee determines that a foul has been committed, and that the fight will continue, the scorekeeper will automatically deduct the appropriate number of points from each of the judge's scorecards.

**B. When both contestants commit fouls:** When both contestants commit fouls, the scorekeeper will deduct points from each judge's scorecard for each contestant.

**C. Repeated fouls:** In the event that a contestant commits two (2) three (3)-point fouls in one round, or commits the same foul two (2) or more times during the course of a contest:

(1) The contestant may be automatically disqualified by the referee.

(2) The referee may also allow the fight to continue if he feels that no malicious intent is involved and instruct the scorekeeper to deduct the appropriate points for each foul.

**D. No less than zero points scored:** No contestant will be scored less than zero in a round.

[15.6.12.22 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.23 CONTEST STOPPED AS A RESULT OF FOULS:**

**A. Recovery time for injured contestant:** If the referee determines that the fouled contestant needs time to recover, he may stop the bout and the time, and give the injured contestant a reasonable amount of time to recover.

**B. Contestant examined:** At the end of this reasonably allotted rest period, the referee and the ring physician will determine if the fouled contestant can continue the bout. If he can continue, time in that round will be resumed and the bout will continue.

[15.6.12.23 NMAC - N, 03-23-2002]

#### **15.6.12.24 [RESERVED]**

[15.6.12.24 NMAC - N, 03-23-2002]

#### **15.6.12.25 METHOD OF COUNTING OVER A FIGHTER WHO IS DOWN:**

**A. Beginning the count:** When a contestant is knocked down or purposely falls down, the referee shall instruct the opponent to retire to the farthest neutral corner of the ring by pointing to that corner, and will immediately begin the count over the contestant who is down.

**B. Referee's audible count:** The referee will audibly announce the passing of the seconds, accompanying the audible count with motions of his arm; the motion indicating the end of each second.

**C. Mandatory eight (8)-count:** If a contestant is knocked down, the referee will automatically begin a mandatory eight (8)-count and then, if the fighter appears able to continue, will allow the bout to resume.

**D. Timekeeper's count:** The timekeeper will give the referee the correct one (1)-second interval for his count by slapping his hand downward on the ring and audibly or visually indicating the seconds passing.

**E. Official count:** The referee's count is the only official count.

**F. Stopping the count:**

(1) The referee shall not count past eight (8) if the contestant has risen to his feet.

(2) Should the opponent fail to stay in the farthest neutral corner as instructed by the referee, the referee shall stop the count until the opponent has returned to the neutral corner. After the opponent returns to the neutral corner, the referee shall resume the count at the point from which it was interrupted.

**G. Determination that immediate attention is required:** If in the referee's opinion, he believes the downed contestant will be unable to rise by the count of ten (10) and requires immediate attention, he may signal the end of the bout before the count of ten (10). He will do so by waving his arms in front of his face and immediately summoning the downed contestant's corner personnel and the ring physician to attend the downed contestant.

**H. Stopping the count during physician's examination:** The referee may, at his discretion, request that the ringside physician examine a contestant during the bout. Should the examination occur during the course of a round, the clock will be stopped until the examination is complete.

[15.6.12.25 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.26 THE KNOCKOUT OR KNOCKDOWN:**

A contestant will be declared knocked down if any portion of his body other than his feet touches the floor.

**A. Being pushed or slipping:** A contestant will not be declared knocked down if he is pushed or accidentally slips to the floor. The referee will make the decision as to whether a contestant was pushed or slipped to the floor, rather than being knocked down.

**B. Knockout declared:** In all full contact karate contests, if the downed contestant fails to rise before the count of ten (10), the referee will declare him knocked out, and the bout will be awarded to the opponent by a knockout.

**C. Signaling the knockout:** If the contestant taking the count is still down when the referee calls the count of ten (10), the referee will wave both arms to indicate that the contestant has been knocked out and will signal that the opponent is the winner.

**D. No being saved by the bell:** There is no being saved by the bell. A round's ending before the referee reaches the count of ten (10) will have no bearing on the count.

**E. Technical knockout:** If a referee determines, during the rest period between rounds, that a contestant is unable to continue the bout, he can declare the opponent the winner by a technical knockout.

**F. Going through the ropes:** When a contestant has been wrestled, pushed, or has fallen through the ropes during a bout, the provisions in 15.6.12.29 NMAC of this rules shall apply. The timekeeper will begin the count pursuant to that rule.

**G. Contestants go down simultaneously:** If both contestants go down simultaneously, the count will begin and continue as long as one of the contestants is down.

**(1)** If one (1) contestant rises before the count of ten (10), and the other contestant remains down through the count of ten (10), the contestant who rose shall be declared the winner by a knockout.

**(2)** If both contestants rise before the count of ten (10), the round will continue.

**H. Technical draw:** If both contestants remain down until the count of ten (10), the bout will be stopped and the decision will be a technical draw.

**I. Resuming the count:** Should a fighter who has been knocked down rise before the count of ten (10) is reached and then go down immediately without being struck, the referee shall resume the count where it was left off.

**J. Starting a new count:** If the contestant stands for more than two (2) seconds, or is in some way touched by his opponent before going down, the referee will begin a new count.

[15.6.12.26 NMAC - N, 03-23-2002; A, 02-13-2015]

**15.6.12.27 STANDING EIGHT (8)-COUNT:**

**A. Amateur and professional contests:** In all amateur and professional contests, the referee may, at his discretion, administer a standing eight-(8)-count to a contestant who is in trouble, but who is still standing.

**B. Opponent to neutral corner:** The referee shall direct the opponent to a neutral corner, and then begin counting from one (1) to eight (8), examining the contestant in trouble as he counts.

**C. Contest ordered to resume:** If, after completing the eight (8)-count, the referee determines that the contestant is able to continue, he shall order the bout to resume.

**D. Technical knockout declared:** If, after completing the eight (8)-count, the referee determines that the contestant is unable to continue, he shall stop the bout and declare the opponent the winner by a technical knockout.

[15.6.12.27 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.28 [RESERVED]**

[15.6.12.28 NMAC - N, 03-23-2002]

#### **15.6.12.29 WHEN A CONTESTANT FALLS FROM THE RING DURING THE ROUND:**

**A. Time-out called:** When a contestant has been wrestled, pushed, or has fallen over or through the ropes during a bout, the referee will call time-out, and if the fallen contestant's ability to return to the ring seems questionable, the referee may ask the ringside physician to examine the contestant.

**B. Rules on assisting fallen contestant:** If, in the opinion of the physician and the referee, the fallen contestant is able to continue the bout, only one handler from his corner will be allowed to assist the fallen contestant back into the ring.

(1) The handler will do no more than assist the fallen contestant.

(2) If the handler is found performing any other tasks as are normal during rest periods (i.e. stopping a cut, etc.), the referee will immediately penalize or disqualify the fallen contestant.

**C. Penalties:** A contestant who deliberately wrestles, pushes, or throws an opponent out of the ring, or who hits his opponent when he is partly out of the ring and prevented by the ropes from assuming a position of defense, will be penalized by the referee.

**D. Disqualification:** If the tactic committed in Subsection C of this section results in injury to the opponent, the guilty contestant may be disqualified according to the

appropriate rulings under 15.6.12.20 NMAC of the commission's rules and regulations regarding fouls.

**E. Situation where counting begins:** When a contestant intentionally falls through the ropes, or was knocked from the ring by a fair blow (which is to say that he was not wrestled, pushed, or otherwise shoved through the ropes by his opponent), the referee will begin counting the fallen contestant as though he has been knocked out in the ring.

(1) In this instance, the fallen contestant's seconds will not be allowed to assist him back into the ring.

(2) Once standing on the ring platform outside the ropes, the contestant must enter the ring immediately where he may either resume the bout or the referee may finish the count.

**F. Other contestant to neutral corner:** When a contestant has fallen over or through the ropes, the other contestant shall retire to the farthest neutral corner of the ring and stay there until instructed to continue the bout by the referee.

[15.6.12.29 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.30 THREE (3) -KNOCKDOWN RULE:**

**A. Amateur or professional contests:** In any amateur or professional contest, the "three (3) knockdown rule" will be in effect.

**B. In all contests:** In all contests, the standing eight (8)-count will be considered a knockdown under this "three (3) knockdown rule".

(1) Should any contestant be knocked down or receive a standing eight (8)-count three (3) times during the course of a round, he will be considered knocked out.

(2) The referee will automatically terminate the bout and award the victory to the opponent by knockout or technical knockout.

**C. National, continental and world title contests:** In national, continental, and world title contests, this rule is automatically waived and contests will be stopped at the discretion of the referees.

[15.6.12.30 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.31 [RESERVED]**

[15.6.12.31 NMAC - N, 03-23-2002; Repealed, 02-13-2015]

#### **15.6.12.32 SWEEPING:**

**A. Sweeping not a knockdown:** A legal, successful sweep is not considered a knockdown.

**B. Execution of sweeping technique:** Sweeps must be executed with the arch part of the foot and delivered to the outside part of the leg only, and only to the lower portion of the calf or ankle.

**C. Proper sweeping technique:** The sweeping technique must be an obvious attempt to unbalance the opponent's front leg.

**D. Improper sweeping technique:** The sweeping technique must clearly not be an attempt to injure the opponent's leg. Sweeps to the inside part, the front part, or the rear part of the opponent's leg will not be permitted.

**E. Follow-up techniques:** It is the contestant's choice whether to follow-up his legal sweeping attempt with a legal follow-up technique.

(1) Follow-up techniques must land on the opponent prior to any part of the opponent's body, other than the soles of the feet, touching the floor.

(2) Striking a downed opponent is always illegal.

[15.6.12.32 NMAC - N, 03-23-2002]

#### **15.6.12.33 INTENTIONAL EVASION OF CONTEST:**

**A. Warning issued:** The referee will issue a warning to a contestant intentionally avoiding any physical contact with his opponent.

**B. Penalty:** The referee may penalize the contestant who continues to avoid a confrontation with his opponent after he has received a warning for doing so during the round.

**C. Additional penalties:** If the warned contestant continues to evade action, either in the same round or in any round, the referee may, in his discretion, award more penalties; or stop the contest and declare a technical knockout.

[15.6.12.33 NMAC - N, 03-23-2002]

#### **15.6.12.34 FAILURE TO RESUME THE CONTEST:**

**A. Leaving the ring prohibited:** Contestants are prohibited from leaving the ring during the one (1)-minute rest period between rounds.

**B. Failure to resume contest at the bell:** Should a contestant not come out of his corner when the bell sounds at the commencement of a round, the referee will begin

counting as though the contestant were knocked down; and the scoring judges will consider the situation as an actual knockdown when scoring the round.

**C. Technical knockout awarded:** Should a contestant fail or refuse to resume fighting at the conclusion of the round, the referee will award a technical knockout to his opponent.

(1) Unless the circumstances indicate to the referee the need for an investigation or disciplinary action.

(2) In which case, the referee will not make a decision, and will order the purse or purses of either or both contestants withheld.

[15.6.12.34 NMAC - N, 03-23-2002; A, 02-13-2015]

#### **15.6.12.35 [RESERVED]**

[15.6.12.35 NMAC - N, 03-23-2002]

#### **15.6.12.36 REFEREE'S AND PHYSICIAN'S POWER TO STOP THE CONTEST:**

**A. Referee's power to render a decision:** The referee shall have the power to stop the contest at any stage, including during the rest periods, and render a decision:

(1) If he considers the match too one (1)-sided; or

(2) If either contestant is in such condition that to continue the match might subject him to serious injury

**B. Referee's power to call a technical draw:** The referee will declare the match a technical draw should both contestants be in such condition that to continue the match might subject them to serious injury.

**C. Referee's power to call for an examination:** In cases where a contestant receives a cut eye from a fair blow or accidental foul, or any other injury that the referee believes may incapacitate the contestant, the referee may call the ringside physician into the ring for examination of the contestant before he decides to stop the contest. Time will be called while the physician conducts the examination.

**D. Ringside physician's powers:** The ringside physician shall have the power to enter the ring to ascertain the extent of any injury he believes may have occurred, or any serious injury he believes may be suffered by a contestant, whether or not he is summoned by the referee.

(1) The physician shall notice his desire to enter the ring by instructing the commission's representative to have the bell rung.

**(2)** If the bell is ordered to be rung mid-round, it shall be a signal to the referee to temporarily stop the contest to allow the physician to conduct his examination of the contestant.

**(3)** Time will be called while the physician conducts the examination.

**E. Both have power to terminate the contest:** Either the referee or the ringside physician shall have the power to terminate the contest. Should the physician request termination for medical reasons, the referee will automatically terminate the contest.

**F. Referee has sole power to render a decision:** In the event the contest is terminated, the referee shall have the sole power to render a decision.

[15.6.12.36 NMAC - N, 03-23-2002; A, 02-13-2015]

## **PART 13: CLOSED CIRCUIT TELECASTS**

### **15.6.13.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.13.1 NMAC - N, 03-23-2002]

### **15.6.13.2 SCOPE:**

The provisions in Part 13 apply to all circuit telecasting of events regulated by the commission.

[15.6.13.2 NMAC - N, 03-23-2002]

### **15.6.13.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.13.3 NMAC - N, 03-23-2002]

### **15.6.13.4 DURATION:**

Permanent.

[15.6.13.4 NMAC - N, 03-23-2002]

### **15.6.13.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.13.5 NMAC - N, 03-23-2002]

**15.6.13.6 OBJECTIVE:**

The objective of Part 13 of Chapter 6 is to set forth all commission regulations regarding closed circuit telecasts of any boxing, wrestling, martial arts events regulated by the commission.

[15.6.13.6 NMAC - N, 03-23-2002]

**15.6.13.7 DEFINITIONS:**

**A. "Distributor"** refers to any person who purchases, acquires, owns and holds the distribution rights for a closed circuit telecast of an event regulated by the commission to be viewed in New Mexico; and who intends to sell, sells, or in some manner extends such distribution rights in part to another person or entity.

**B. "Broadcast"** means any audio or visual image sent by radio or television signals.

**C. "Closed circuit telecast"** means any telecast that is not intended to be available for viewing without the payment of a fee for the privilege of viewing the telecast and includes the term "pay-per-view". This definition includes, but is not limited to, telecasts to arenas, bars, lounges, clubs, entertainment or meeting centers and private residences.

**D. "Podcast"** (or non-streamed webcast) is a series of digital media files, either audio or video, that are released episodically and often downloaded through web syndication.

**E. "Webcast"** is a media file distributed over the internet using streaming media technology to distribute a single content source to many simultaneous listeners/viewers. A webcast may either be distributed live or on demand. Webcasting is "broadcast" over the internet.

**F. "Streaming media"** is multimedia that is constantly received by, and normally presented to, an end-user while being delivered by a streaming provider. The name refers to the delivery method of the medium rather than to the medium itself. Live streaming, more specifically, means taking the video and broadcasting it live over the internet.

[15.6.13.7 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.13.8 REQUIREMENTS FOR CLOSED CIRCUIT TELECASTS:**

**A. Licensed promoter required:** Closed circuit telecasts of unarmed combat events shall not be telecast, podcast or webcast from, or into, New Mexico except under the auspices of a licensed promoter who shall be responsible for filing the appropriate reports and tax payments with the commission as referenced herein.

**B. Event permit required:** The promoter shall complete and submit to the commission a completed application form for an event permit disclosing the dates, locations, and cities intended for closed circuit telecast, podcast or webcast of the commission regulated event in the state of New Mexico. The promoter is prohibited from selling or negotiating the sale of rights to broadcast such closed circuit telecast to any person prior to receiving an event permit from the commission.

**C. Tickets required.**

(1) Tickets are required for the closed circuit telecast of any event regulated by the commission.

(2) All tickets must be printed by a printer approved by the commission.

(3) All tickets for the event shall be delivered to the commission or the commission's representative. The tickets shall be delivered in a sealed container along with a manifest certifying the actual number of tickets printed.

(4) The commission or the commission's representative will audit the tickets before returning them to the promoter.

(5) Tickets may only be sold after they have been audited by the commission or the commission's representative.

**D. Insurance required:** The promoter shall furnish to the commission proof of insurance to cover injury to spectators attending the closed circuit telecast event. The promoter shall also have "signal interruption" insurance available, if requested by the commission.

**E. Licensing required for all event personnel:** All box office employees, ticket takers, and doormen at any closed circuit telecast events shall be licensed by the commission; whether the events are held at arenas, bars, lounges, clubs, entertainment or meeting centers, etc.

**F. [RESERVED]**

**G. Reports required.**

(1) A written report on forms provided by the commission shall be filed by any promoter holding, showing, or telecasting any commission-regulated event via closed

circuit telecast, podcast or webcast viewed within New Mexico, whether or not the broadcast, podcast or webcast originated in New Mexico.

**(2)** The report shall state the number of tickets or orders sold, and the amount of gross receipts from the sale of tickets or order, excluding federal and state sales taxes.

**H. International sanction rules:** The commission must approve international sanctioning body rules that vary from the commission's rules.

[15.6.13.8 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.13.9 [RESERVED]**

[15.6.13.9 NMAC - N, 03-23-2002]

#### **15.6.13.10 CABLE TELEVISION SYSTEM PAY-PER-VIEW TELECASTS:**

**A. Promoter's preliminary report required:** A promoter broadcasting a closed circuit telecast utilizing a cable television system's pay-per-view facilities shall file a report with the commission within seventy-two (72) hours following the date of the telecast, and estimating the number of orders sold.

**B. Cable system operator's report required:** Each cable television system operator whose pay-per-view facilities were utilized to telecast a closed circuit program event program shall file a report with the commission within fifteen (15) calendar days following the date of the telecast, podcast or webcast and stating the number of orders sold.

**C. Promoter's final report required:** The promoter shall file a final report with the commission within thirty (30) calendar days following the date of the telecast, and stating the number of orders sold. The report will be accompanied by a fee payment of five percent (5%) of the total gross receipts from all orders sold, excluding federal and state sales taxes.

[15.6.13.10 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.13.11 NON-CABLE TELEVISION SYSTEM TELECASTS:**

**A. Promoter's report required:** A promoter holding, showing, or telecasting a closed circuit telecast utilizing facilities other than a cable television system's pay-per-view, shall file a report with the commission within seventy-two (72) hours following the date of the telecast.

**B. Report and fee payment to commission:** The report shall be accompanied by a fee payment of five percent (5%) of the total gross receipts derived from the sale of tickets, excluding federal and state sales taxes.

[15.6.13.11 NMAC - N, 03-23-2002; A, 08-26-2012]

#### **15.6.13.12 HOTEL AND MOTEL TELECASTS:**

**A. Licensed promoter not required:** New Mexico law does not currently require a licensed promoter for closed circuit telecasts, podcast or webcast of unarmed combat event programs provided in-room by hotels or motels.

**B. Report and supervisory fees required:** Each hotel or motel facility or establishment providing in-room closed circuit telecasts of boxing, wrestling, or martial arts event programs will be responsible for filing a report with the commission within seventy-two (72) hours after each telecast, podcast or webcast of the event. The report shall be accompanied by a payment of the appropriate supervisory fee due.

[15.6.13.12 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012]

#### **15.6.13.13 PENALTIES FOR FAILURE TO REPORT OR PAY TAXES:**

**A. Promoter:** The commission shall levy a fine on any promoter who fails to file either or both the report and tax payment within the prescribed time frame for any closed circuit telecast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the promoter was not at fault for the failure to file either or both the report and tax payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

**B. Hotels and motels:** The commission shall levy a fine on any hotel or motel facility or establishment that fails to file either or both the report and supervisory fee payment within the prescribed time frame for any closed circuit telecast, podcast or webcast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the hotel or motel facility or establishment was not at fault for the failure to file either or both the report and fee payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

[15.6.13.13 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012]

#### **15.6.13.14 TELEVISION TECHNICIANS REQUIRED:**

A qualified television technician shall be present at each location where a closed circuit telecast of a commission-regulated event is being presented.

**A. Promoter's responsibilities.**

(1) It is the responsibility of the promoter to ensure that there is a qualified television technician present at each televised event.

(2) Two days prior to the scheduled event, the promoter shall furnish the commission with the names of all such television technicians.

**B. Commission approves technicians:** Televisions technicians must be approved by the commission. The commission reserves the right to disapprove the event if it determines that the television technician is not qualified.

[15.6.13.14 NMAC - N, 03-23-2002]

**Pre-NMAC History:** Material in the part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

NMAC 80-13, Closed Circuit T.V., filed 9-24-80.

NMAC Rule 92-15, Closed Circuit Telecasts, filed 8-17-92.

NMAC Rule 92-1, Definitions, filed 8-17-92.

Those relevant portions of NMAC Rule 95-1, Definitions, filed 5-5-95.

**History of Repealed Material:**

NMAC Rule 95-1 (aka 15 NMAC 6.1), Definitions, filed 5-5-95; repealed effective 03-23-2002.

NMAC Rule 92-15 (aka 15 NMAC 6.13) Closed Circuit Telecasts, filed 8-17-92; repealed effective 03-23-2002.

**Other History:**

NMAC Rule 95-1 was recompiled into the first version of the New Mexico Administrative Code as 15 NMAC 6.1 and named Definitions.

NMAC Rule 92-15 was recompiled into the first version of the New Mexico Administrative Code as 15 NMAC 6.13 and named Closed Circuit Telecasts.

15.6.13 NMAC, Closed Circuit Telecasts, replaced 15 NMAC 6.13, Closed Circuit Telecasts, effective 03-23-2002.

## **PART 14: FEE SCHEDULE**

### **15.6.14.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.14.1 NMAC - N, 03-23-2002]

### **15.6.14.2 SCOPE:**

The provisions in Part 14 of Chapter 6 apply to all persons seeking licensure by the New Mexico athletic commission and provides for a regulatory and supervisory fee.

[15.6.14.2 NMAC - N, 03-23-2002; A/E, 10-11-2005]

### **15.6.14.3 STATUTORY AUTHORITY:**

Part 14 of Chapter 6 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30 NMSA 1978 (1980 Repl. Pamp.); specifically Section 60-2A-4; 60-2A-4; 60-2A-8; 60-2A-9; 60-2A10; 60-2A-11; 60-2A-12, 60-2A-23, 60-2A-24, 60-2A-25, 60-2A-26, 60-2A-27 and 60-2A-28.

[15.6.14.3 NMAC - N, 03-23-2002; A/E, 10-11-2005]

### **15.6.14.4 DURATION:**

Permanent.

[15.6.14.4 NMAC - N, 03-23-2002]

### **15.6.14.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.14.5 NMAC - N, 03-23-2002]

### **15.6.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 6 is to establish the fees to generate sufficient revenues required by the commission to carry out its administrative functions and recover its costs of regulating professional contests and supervising exhibitions.

[15.6.14.6 NMAC - N, 03-23-2002; A/E, 10-11-2005]

### **15.6.14.7 DEFINITIONS:**

**[RESERVED]**

[15.6.14.7 NMAC - N, 03-23-2002]

**15.6.14.8 FEES:**

**A.** All fees are non-refundable.

**B.** Annual licensing fees are set as follows:

- (1) promoters license: \$250.00
- (2) foreign co-promoters: \$500.00
- (3) referees: \$25.00
- (4) timekeeper: \$25.00
- (5) announcers: \$25.00
- (6) seconds: \$25.00
- (7) trainers: \$25.00
- (8) managers: \$25.00
- (9) professional boxer: \$25.00
- (10) professional wrestlers: \$35.00
- (11) booking agent: \$35.00
- (12) matchmaker: \$35.00
- (13) judges: \$25.00
- (14) judge-trainee: \$10.00
- (15) professional mixed martial arts: \$25.00
- (16) amateur mixed martial arts: \$ 25.00

**C.** Regulatory fee: In an amount established semi-annually by the commission sufficient to cover the costs of regulating professional contests, up to four percent (4 %) of the total gross receipts derived by the promoter from any professional contest conducted live in New Mexico.

**D.** Supervisory fee: In an amount established semi-annually by the commission sufficient to cover the costs of supervising the exhibition of professional contests on a closed-circuit telecast, podcast or webcast or motion picture, up to five percent (5 %) of the total gross receipts derived from the exhibition.

[15.6.14.8 NMAC - N, 03-23-2002; A/E, 10-11-2005; A, 08-26-2012; A, 01-15-2015]

#### **15.6.14.9 REGULATORY FEE:**

**A.** A regulatory fee is imposed upon every promoter for the privilege of promoting a professional contest conducted live in New Mexico. The commission shall at a regular or special meeting for which notice has been duly and properly published, establish the amount of the regulatory fee on a semi-annual basis in an amount sufficient to cover the costs of regulating all professional contests during that period of time. The amount of the regulatory fee shall not exceed four percent (4 %) of the total gross receipts of any professional contest conducted live in New Mexico.

**B.** In establishing the regulatory fee, the commission shall consider its actual and projected revenues and expenses for the current fiscal year, and during the semi-annual period in question in connection with the regulation of professional contests, as well as historical revenues and expenses of the commission, the number and nature of scheduled and projected professional contests during the semi-annual period, alternate funding that may be available to the commission, historical information bearing upon projected revenues and expenses for the semi-annual period and such other factors as the commission may deem relevant to its determination.

**C.** As used in this section, "total gross receipts of any professional contest" includes, but is not limited to:

(1) the gross price charged by the promoter for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

(2) the face value of all tickets sold and complimentary tickets issued; and

(3) any sums received by the promoter as consideration for holding a professional contest at a particular location.

**D.** The regulatory fee is non-refundable and is due from the promoter within seventy-two (72) hours after the completion of the professional contest.

**E.** Any person upon whom the regulatory fee is imposed shall furnish to the commission a written report on forms prescribed by the commission showing:

(1) the number and face value of all tickets sold and complimentary tickets issued for the professional contest;

(2) the amount of total gross receipts generated by the promoter from the professional contest, including the value of all complimentary tickets issued;

(3) the amount of gross receipts derived by the promoter from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commission, brokerage fees, distribution fees, advertising or any other expenses or charges; and

(4) such other matters as the commission may prescribe.

**F.** The commission or any of its authorized employees may inspect the books, ticket receipts or manifests or any other records necessary for the proper enforcement of the regulatory fee and or the supervisory fee imposed pursuant to the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

**G.** The commission may impose other limitations or conditions as necessary to ensure compliance with the provisions of the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

**H.** The regulatory fee is in addition to any other fees imposed by the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

[15.6.14.9 NMAC - N/E, 10-11-2005]

#### **15.6.14.10 SUPERVISORY FEE:**

**A.** A supervisory fee is imposed upon any person who charges and receives an admission fee for the privilege of exhibiting any live professional contest by a "closed-circuit telecast" as defined elsewhere in these regulations. The commission shall at a regular or special meeting for which notice has been duly and properly published, establish the amount of the supervisory fee on a semi-annual basis in an amount sufficient to cover the costs of supervising all such exhibitions during that period of time. The amount of the supervisory fee shall not exceed five percent (5 %) of the gross receipts derived from any such exhibition.

**B.** In establishing the supervisory fee, the commission shall consider its actual and projected revenues and expenses in connection with the supervision of live professional contest by closed circuit telecast, podcast or webcast for the current fiscal year, and during the semi-annual period in question, as well as historical revenues and expenses of the commission, the number and nature of scheduled and projected professional contests that will be telecasted or exhibited during the semi-annual period, alternate funding that may be available to the commission, historical information bearing upon

projected revenues and expenses for the semi-annual period and such other factors as the commission may deem relevant to its determination.

**C.** Any person who charges and receives an admission fee for exhibiting any live amateur or professional contest on a closed circuit telecast, podcast or webcast shall comply with all requirements for closed circuit telecasts, podcast or webcast contained elsewhere in these regulations.

[15.6.14.10 NMAC - N/E, 10-11-2005; A, 08-26-2012]

#### **15.6.14.11 TIME OF PAYMENT OF REGULATORY FEE AND REPORTS:**

**A.** Any person upon whom the regulatory fee is imposed by the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978) shall, within seventy-two (72) hours after completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the commission a written report, on forms prescribed by the commission, showing:

- (1) the number of tickets sold and issued or sold or issued for such professional contest;
- (2) the amount of the gross receipts or value thereof;
- (3) the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of such professional contest and without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and
- (4) such other matters as the commission may prescribe.

**B.** The commission or any of its authorized employees may inspect the books, tickets stubs or any other data necessary for the proper enforcement of the supervisory fee imposed in the Professional Athletic Competition Act (60-2A-1 to 60-2A-30 NMSA 1978).

[15.6.14.11 NMAC - N/E, 10-11-2005]

#### **15.6.14.12 TIME OF PAYMENT OF SUPERVISORY FEE AND REPORTS:**

Any person upon whom the supervisory fee is imposed by the Professional Athletic Competition Act (Section 60-2A-26 NMSA 1978) for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two (72) hours after completion of the event, furnish to the commission a verified written report, on forms prescribed by the commission, showing the number of tickets or subscriptions sold or the amount of fees collected for the exhibition without any deductions.

[15.6.14.12 NMAC - N/E, 10-11-2005]

**15.6.14.13 FAILURE TO COMPLY:**

**A.** Any person who willfully attempts to evade or defeat any regulatory fee or supervisory fee imposed pursuant to the Professional Athletic Competition Act (60-2A-1 to 60-2A-30 NMSA 1978) is guilty of a fourth degree felony.

**B.** In the case of failure due to negligence or disregard of rules and regulation of the commission, but without intent to defraud, a civil penalty shall be imposed for failure to pay, when due, any amount of the regulatory fee or supervisory fee. A two percent (2 %) per month shall be added to the amount, or a fraction of a month from the date the fee was due or from the date the report was required to be filed, not to exceed ten percent of the fee due.

[15.6.14.13 NMAC - N/E, 10-11-2005]

**PART 15: DRUGS AND FOREIGN SUBSTANCES - PENALTIES**

**15.6.15.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.15.1 NMAC - N, 03-23-2002]

**15.6.15.2 SCOPE:**

The provisions in part 15 apply to all licensees of the commission.

[15.6.15.2 NMAC - N, 03-23-2002; A, 02-13-2015]

**15.6.15.3 STATUTORY AUTHORITY:**

Part 15 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.15.3 NMAC - N, 03-23-2002]

**15.6.15.4 DURATION:**

Permanent.

[15.6.15.4 NMAC - N, 03-23-2002]

**15.6.15.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.15.5 NMAC - N, 03-23-2002]

#### **15.6.15.6 OBJECTIVE:**

The objective of Part 15 of Chapter 6 is to set forth all commission regulations regarding the use of prohibited drugs and foreign substances by commission licensees and the penalties adjudged by the commission for such use.

[15.6.15.6 NMAC - N, 03-23-2002]

#### **15.6.15.7 DEFINITIONS:**

**A. "Alcohol"** includes all consumable non-prescriptive substance which contains alcohol, specifically including, without limitation: spirits, wine, malt beverages, intoxicating liquors, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

**B. "Alcohol abuse"** any consumption of a preparation including alcohol (e.g. beverages or medicines).

**C. "Controlled substance"** includes the following five prohibited classes of drugs: narcotics, depressants, stimulants, hallucinogens and cannabis. A controlled substance includes any chemical substances having the capacity to affect behavior and regulated or prescribed by law with regard to possession, use or distribution.

**D. "Covered participant"** any athlete who participates in events sanctioned by the New Mexico athletic commission (NMAC).

**E. "Drugs"** include the following five types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, metabolites of previously identified drugs; or non-prescription substances containing previously identified drugs.

**F. "Random sample"** random selection must be based on a scientifically valid method(s) that assures that all athletes have an equal chance of being selected for testing. As used in this policy, testing is required for one third of all athletes competing in NMAC sanctioned event. The testing company will provide a notification of those athletes to be tested at the time of the weigh-ins.

**G. "Reasonable suspicion"** a belief drawn from specific, objective facts which can be articulated and have reasonable inferences drawn from those facts. The NMAC shall have the authority to request that any specific athlete be tested on a reasonable suspicion basis.

**H. "Championship bout"** the NMAC shall have the authority to test any athlete participating in a NMAC sanctioned event competing for a state, regional, national or world championship.

[15.6.15.7 NMAC - N, 03-23-2002; A, 08-26-2012]

**15.6.15.8 WATER ALLOWED:**

**A.** During the contest, only water is to be used in the corners.

**B.** No substance, other than plain drinking water, shall be given to or ingested by a contestant during the course of a match.

[15.6.15.8 NMAC - N, 03-23-2002]

**15.6.15.9 [RESERVED]**

[15.6.15.9 NMAC - N, 03-23-2002]

**15.6.15.10 INSPECTION OF DRUGS, CONTAINERS, AND EQUIPMENT:**

**A. Subject to inspection:** Drugs, containers, and other equipment used in conjunction with the match, regardless of why or how they are used, or where they are located, shall be available at all times for inspection by the physician, the referee or the commission representative.

**B. Subject to seizure:** These items are subject to seizure by the physician, the referee, or the commission representative if there is any evidence that they have been used to violate this rule; or are in violation of any provision of the Professional Athletic Competition Act (Sections 60-2A-1 through 60-2A-33) or the commission's rules and regulation.

[15.6.15.10 NMAC - N, 03-23-2002]

**15.6.15.11 RESPONSIBILITY OF LICENSEES:**

Every person under the commission's jurisdiction has the responsibility to immediately advise the physician, the referee, or the commission representative of any knowledge that any contestant scheduled for engagement in any match has, in violation of this rule, ingested or is under the influence of any drug or foreign substance prohibited by this rule, 15.6.15.13 NMAC.

[15.6.15.11 NMAC - N, 03-23-2002]

**15.6.15.12 PROHIBITED USE OF DRUGS OR FOREIGN SUBSTANCES:**

**A.** It is expressly prohibited for any event contestant licensed by the commission to use or be under the influence, at any time, of any drug, stimulant, or foreign substance designed to be ingested that would unfairly increase or decrease his performance; or impair his or the physician's ability to recognize a potentially serious injury or physical condition.

**B.** Use by a contestant of any prohibited drugs or stimulants before or during a contest shall be cause for disqualification.

**C.** A contestant shall disclose prescriptions for drugs that are otherwise banned under these rules, for the commission's review before the event, contest, or exhibition.

[15.6.15.12 NMAC - N, 03-23-2002; A, 01-15-2015]

### **15.6.15.13. PROHIBITED DRUGS OR FOREIGN SUBSTANCES DESIGNED FOR INGESTION:**

The following drug or foreign substance classifications are prohibited except as otherwise indicated.

**A. Stimulants:** All stimulants are banned with the following exceptions.

**(1) Caffeine** - Provided, however, that an amount greater than 12 mcg/ml in the urine is prohibited.

**(2) Beta 2 Agonist** - Provided that it is selected from the following list and is in aerosol or inhalant form only.

**(a)** Drug chemical: Bitolterol Mesylate; brand name: Tonalate

**(b)** Drug chemical: Metaproterenol Sulfate; brand name: Alupent or Metaprel

**(c)** Drug chemical: Albuterol Sulfate; brand name: Ventolin or Proventil

**(d)** Drug chemical: Terbutaline Sulfate; brand name: Brethaire

**B. Narcotics**

**C. Anabolic steroids, including growth hormone**

**D. Diuretics**

**E. Alcohol**

**F. Local anesthetics**

## **G. Corticosteroids**

[15.6.15.13 NMAC - N, 03-23-2002]

### **15.6.15.14 EXAMINATION OF CONTESTANT FOR DRUG USE BY INGESTION:**

Any contestant may be required to submit to drug testing, or any other testing required by the commission.

**A. Physician's observations:** After each match, the physician shall advise the commission representative as to whether or not he observed any behavior or other signs that would indicate the advisability of processing a contestant's urine sample.

**B. Decision to conduct drug test:** The commission representative shall make the final decision as to the processing of a contestant's urine sample.

**C. Commission representative initiates drug test:** Whenever the commission representative has reason to believe that a contestant has ingested or used a prohibited drug or foreign substance, he shall request, and the contestant shall provide, under the supervision of the physician, commission representative, or inspector, a sample of his urine taken not more than one (1) hour after the conclusion of the match.

**D. Integrity of urine sample to be maintained:** Urine samples shall be taken in accordance with the protocol agreed upon, in writing, between the commission and the laboratory employed to process urine samples.

**E. Contestant's cooperation required:** The contestant being tested shall not use any substances or methods that would alter the integrity of the urine sample.

[15.6.15.14 NMAC - N, 03-23-2002]

### **15.6.15.15 PENALTIES FOR FAILURE TO PROVIDE URINE SAMPLE:**

Failure or refusal to provide a urine sample immediately upon request shall result in the revocation of the contestant's license.

**A. Losing contestant:** Any contestant who has been adjudged the loser of a match, and who subsequently refuses or is unable to provide a urine sample, shall forfeit his share of the purse to the commission.

**B. Winning contestant:** Any contestant who is adjudged the winner of a match, and who subsequently refuses or is unable to provide a urine sample, shall forfeit the win and shall not be allowed to engage in any future match in this state.

**(1)** A "no decision" result shall be entered into the official record of the match.

(2) The purse shall be redistributed as though the contestant found to be in violation of this subsection had lost the match.

**C. Forfeit of purse:** If redistribution of the purse is not necessary; or if the distribution of the purse has been accomplished and the contestant is found to be in violation of Subsections A or B of this section, the contestant shall forfeit his share of the purse to the commission.

[15.6.15.15 NMAC - N, 03-23-2002]

**15.6.15.16 [RESERVED]**

[15.6.15.16 NMAC - N, 03-23-2002]

**15.6.15.17 DRUGS OR FOREIGN SUBSTANCES DESIGNED FOR EXTERNAL USE:**

No other drug or foreign substance designed for external use except as expressly provided in this rule or as directed by the physician, shall be used by any contestant while participating in an event contest. Under the conditions described herein, participants may use the following drugs or foreign substances designed for external use.

**A. Petroleum jelly:** Only discretionary use of petroleum jelly [e.g. vaseline], and nothing else, will be allowed on the face, arms, or any other part of the contestant's body. The excessive use of petroleum jelly is strictly prohibited and the referee shall direct that any excessive petroleum jelly be removed.

**B. Adrenalin, thrombin, and avitine:** In case a contestant sustains a cut or laceration, only the discretionary, topical use of the following, or their generic equivalents as approved by the physician, shall be allowed to stop the bleeding:

- (1) a 1/1000 solution of adrenalin;
- (2) avitine; or
- (3) thrombin.

[15.6.15.17 NMAC - N, 03-23-2002]

**15.6.15.18 PENALTIES FOR PROHIBITED DRUG OR FOREIGN SUBSTANCE USE:**

**A. Losing contestant:** Any contestant determined to have been using, or to have been under the influence of a prohibited drug or foreign substance, and who has been adjudged the loser of a match, shall forfeit his share of the purse to the commission.

**B. Winning contestant:** Any contestant determined to have been using, or to have been under the influence of a prohibited drug or foreign substance, and who has been adjudged the winner of a match, shall forfeit the win, and shall not be allowed to engage in any future match in this state.

(1) A "no decision" result shall be entered into the official record of the match.

(2) The purse shall be redistributed as though the contestant found to be in violation of this subsection had lost the match.

**C. Forfeit of purse:** If redistribution of the purse is not necessary; or if the distribution of the purse has been accomplished and the contestant is found to be in violation of Subsections A or B of this section, the contestant shall forfeit his share of the purse to the commission.

**D. Additional penalties:** The following additional penalties shall be assessed against any contestant found to be in violation of this section:

(1) **Penalty for the first occurrence:** The contestant's license shall be suspended for a period of one hundred eighty (180) calendar days, during which time the contestant shall be banned from participating in any manner in any match or activity regulated by this commission.

(2) **Penalty for the second occurrence:** The contestant's license shall be suspended for a period of one (1) year, during which time the contestant shall be banned from participating in any manner in any match or activity regulated by this commission.

(3) **Penalty for the third occurrence:** The contestant's license shall be permanently revoked and he shall be permanently banned from participating in any manner in any match or activity regulated by this commission.

[15.6.15.18 NMAC - N, 03-23-2002]

#### **15.6.15.19 [RESERVED]**

[15.6.15.19 NMAC - N, 03-23-2002]

#### **15.6.15.20 PENALTIES FOR AIDING AND ABETTING THE VIOLATION OF THIS RULE:**

**A. Grounds for suspension or revocation:** Participation in or contributing to the violation of 15.6.15 NMAC (this rule) by any person licensed by the commission shall be grounds for suspension or revocation of all commission licenses held by that licensee.

**B. Forfeit of purse:** Any licensee found to be in violation of this section shall forfeit his share of the purse to the commission.

**C. Suspension and revocation penalties:** The following penalties shall be assessed against any licensee found to be in violation of this section.

**(1) Penalty for the first occurrence:** The licensee's license shall be suspended for a period of one hundred eighty (180) calendar days, during which time the licensee shall be banned from participating in any manner in any match or activity regulated by this commission.

**(2) Penalty for the second occurrence:** The licensee's license shall be suspended for a period of one (1) year, during which time the licensee shall be banned from participating in any manner in any match or activity regulated by this commission.

**(3) Penalty for the third occurrence:** The licensee's license shall be permanently revoked and the licensee shall be permanently banned from participating in any manner in any match or activity regulated by this commission.

[15.6.15.20 NMAC - N, 03-23-2002]

## **PART 16: DISCIPLINARY ACTIONS**

### **15.6.16.1 ISSUING AGENCY:**

New Mexico Athletic Commission

[15.6.16.1 NMAC - N, 03-23-2002]

### **15.6.16.2 SCOPE:**

The provisions in Part 16 apply to all licensees of the commission.

[15.6.16.2 NMAC - N, 03-23-2002]

### **15.6.16.3 STATUTORY AUTHORITY:**

Part 16 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-4, 60-2A-8, 60-2A-10, 60-2A-13, 60-2A-14, 60-2A-15, 60-2A-19, 60-2A-27, 60-2A-28, and 60-2A-31.

[15.6.16.3 NMAC - N, 03-23-2002]

### **15.6.16.4 DURATION:**

Permanent.

[15.6.16.4 NMAC - N, 03-23-2002]

**15.6.16.5 EFFECTIVE DATE:**

March 31, 2002, unless a later date is cited at the end of a section.

[15.6.16.5 NMAC - N, 03-23-2002]

**15.6.16.6 OBJECTIVE:**

Set forth the disciplinary authority of the commission over its licensees and disciplinary procedures and actions that the commission's licensees are subject to.

[15.6.16.6 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.7 DEFINITIONS:**

**A. "Complaint"** means a complaint filed with the commission against a licensee or an applicant for licensure.

**B. "Complainant"** means a party who files a complaint against a licensee or against an applicant for licensure.

**C. "Respondent"** means the licensure applicant or the licensee who is the subject of the complaint filed with the commission.

**D. "Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the commission, or its designated hearing officer, before the commission takes action which might result in disciplinary action against the respondent's license or application for license.

**E. "Violation"** means a violation of the Professional Athletic Competition Act or the rules and regulations adopted by the commission

**F. "Notice of Contemplated Action" or "NCA"** means the process whereby the respondent is notified of the Commission's intent to take action against the respondent's license, and whereby the respondent is afforded the opportunity for a hearing.

**G. "Shall"** means mandatory; a requirement.

**H. "Should"** means a suggestion or recommendation; not a requirement.

**I. "License Revocation"** means to rescind a license, thus barring conduct authorized by the license.

**J. "License Suspension"** means to prohibit, for a limited and specified stated period of time, the conduct authorized by the license.

[15.6.16.7 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.8 AUTHORITY OF COMMISSIONER OR DEPUTY:**

**A.** The commission may, in its discretion, take the following action or any combination of such actions deemed appropriate:

- (1) Suspend the license for a period of time deemed appropriate.
- (2) Revoke the license.
- (3) Order future compliance and any remedial action as determined by the commission.
- (4) Refer alleged violations of Sections 60-2A-27 through 32 NMSA 1978 to the office of the district attorney in the judicial district in which the alleged violation(s) occurred.

**B.** Each commissioner, shall have full power to act as an official on behalf of the commission at all contests and exhibitions to fully enforce all of the rules of the commission. Furthermore, each commissioner has the power and authority to immediately suspend a license, without prior notice, for any violation of this chapter of the laws of this state, if doing so is necessary in the interest of protection the health and safety of the unarmed combatant or any member of the public.

[15.6.16.8 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.9 VIOLATORS SUBJECT TO DISCIPLINARY ACTION:**

Any commission licensee or permit holder who violates the laws of the state of New Mexico or the rules and regulations of the commission, may have his license or permit revoked, suspended, fined or otherwise disciplined, in such a manner as the commission may direct.

[15.6.16.9 NMAC - N, 03-23-2002; A, 01-15-2015]

**15.6.16.10 LICENSE OR PERMIT SUSPENSION:**

In addition to the power of any commissioner to immediately suspend a license under 15.6.16.8 NMAC, the commission may suspend any license or permit it has issued by issuing a dated notice to that effect, served by certified mail, return receipt requested to the licensee or permit holder.

**A.** Such suspension shall be without any advance hearing and shall take effect upon issuance of such notice of suspension by the commission, if such suspension is necessary in the interest of protecting the health and safety of the public.

**B.** The notice shall specify the effective date and term of the suspension.

**C.** The suspended licensee or permit holder shall be provided a hearing on the matter within 20 days of the date the notice of suspension is served. Such hearing shall be held to determine whether the suspended license or permit shall be revoked as specified in this section.

**D.** The notice of suspension must be in writing and must be served on the respondent(s) within three business days from the date the license or permit was suspended by the commission or from the date the license or permit was suspended by a commissioner.

[15.6.16.10 NMAC - N, 03-23-2002; A, 01-15-2015; A, 01-15-2017]

#### **15.6.16.11 LICENSE OR PERMIT REVOCATION:**

Before the commission may revoke a license or permit, the subject licensee or permit holder shall be served, by certified mail, return receipt requested, a notice of contemplated action ("NCA") to revoke the license.

**A.** In the NCA, the respondent will be advised of their right to request a hearing on the revocation, in which they can appear before the commission or hearing officer appointed by the commission. Such request for a hearing must be made by the respondent within twenty (20) days from the date the NCA was served on the respondent. Respondents must be notified in the NCA of their right to be represented by counsel, to present relevant evidence, and to examine all opposing witnesses who may testify at their hearing.

**B.** The NCA shall state the alleged misconduct upon which the contemplated license or permit revocation is based.

**C.** The respondent may appear in person or be represented by his attorney to answer to the charges specified in the NCA and to show cause as why his license or permit should not be revoked.

**D.** At any stage of the hearing proceedings, the commission may require the respondent to take the stand and give sworn testimony.

**E.** All witnesses, and respondents must testify under oath at any disciplinary hearing convened and conducted by the commission. The oath may be administered by any commissioner present or by the court reporter, if one is available to record the proceedings.

**F.** The commission or designated hearing officer shall be the sole judge of the relevancy and competency of the testimony given, the credibility of the witnesses, and the sufficiency of the evidence presented.

**G.** In the event that the respondent does not appear at the scheduled hearing; or if having appeared, the facts and evidence presented at the hearing warrant, in the discretion of the commission, a revocation of the license or permit, the license or permit shall be revoked and a notice of revocation shall be promptly served on the licensee by certified mail, return receipt requested.

[15.6.16.11 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.16.12 FORFEITURE OF PURSE:**

**A.** The commission shall have the power to declare forfeiture of any purse, or any part or share thereof, belonging to both or either of the contestants or of any manager, if it has reason to believe such contestant or contestants, or manager of the contestant or contestants, has committed an act in violation of any rules or regulation of the commission.

**B.** The amount forfeited shall be paid to the commission within forty-eight (48) hours of the declaration of forfeiture. The commission shall hold the purse until there is a final determination whether a violation has been committed.

[15.6.16.12 NMAC - N, 03-23-2002]

#### **15.6.16.13 IMPOSITION OF FINES:**

The commission may, in its discretion impose fines for violations of the laws of the state of New Mexico or of the commission's rules and regulations (15.6 NMAC). In the event that the licensee has a fine imposed upon his license by the commission, the commission may, in its discretion, suspend the license until the fine has been paid.

[15.6.16.13 NMAC - N, 03-23-2002]

#### **15.6.16.14 SETTLEMENTS:**

**A.** Settlements are encouraged. Settlements upon terms that are consistent with the provisions of this act are encouraged at any stage of disciplinary proceedings. Settlements are negotiated by the administrative prosecutor on behalf of the commission.

**B.** Content of settlement agreements. Every proposed settlement agreement shall:

**(1)** state how each violation of the Professional Athletic Competition Act and the rules and regulations of this commission are affected by the settlement;

(2) if the settlement is contingent upon certain action by the respondent, describe the contingency and the consequences of the respondents failure to meet the contingency;

(3) if the settlement is not intended as a full and complete settlement of all issues in the case, list those issues not settled; and

(4) bear the signature and date of signature of the commission's administrative prosecutor and the respondent(s).

**C.** Presentation to the commission. All settlement agreements must be presented to the commission whereupon the commission must either accept or reject the settlement. Without commission approval, the settlement will have no legal effect.

(1) Upon approval by the commission, the chairman shall sign and date the settlement agreement.

(2) The commission administrator shall file the authorized settlement agreement with the commission.

[15.6.16.14 NMAC - N, 03-23-2002; A, 01-15-2015]

#### **15.6.16.15 WITHHOLDING OF PURSE:**

In accordance with Section 60-2A-19 of the Professional Athletic Competition Act, the commission delegates to the chairman or his designee, the authority to order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second, if in the judgment of the chairman or his designee, there has been a violation of the act or of the commission's rules and regulations (15.6 NMAC).

**A.** Upon the withholding of any part of a purse, the commission will inform the licensee in writing of the alleged violation(s), the rights of the licensee, and schedule a hearing at the next regularly scheduled commission meeting.

**B.** If the commission determines after a hearing that the licensee is not entitled to any part of the purse or other funds, the withheld purse or funds shall not be returned to the promoter, but shall be deposited in the commission's funds.

[15.6.16.15 NMAC - N, 03-23-2002]

#### **15.6.16.16 SEVERABILITY REMEDIES:**

If anything designated herein shall be held contrary to the law or unconstitutional, the action taken shall be changed to suspension of less than one (1) month and not more

than one (1) year for each offense, and the penalties for multiple violations are to run consecutively.

[15.6.16.16 NMAC - N, 03-23-2002]

**15.6.16.17 COMMISSION BULLETINS:**

The commission shall, from time to time, issue bulletins regarding suspension, revocations, fines, penalties, and promulgation of rules and regulations. All licensed corporations and matchmakers must keep the commission bulletin on file.

[15.6.16.17 NMAC - N, 03-23-2002]

**15.6.16.18 SUSPENSIONS REPORTED NATIONALLY:**

**A.** The commission shall report nationally all suspensions, except those imposed locally for minor infractions of local rules.

**B.** The commission shall report any suspensions to championship sponsoring organizations within ten (10) days of the suspension.

[15.6.16.18 NMAC - N, 03-23-2002]

**15.6.16.19 COSTS OF DISCIPLINARY ACTIONS:**

Licensees shall bear **all costs** of disciplinary proceedings unless they are excused by the board from paying all or part of the costs, or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the commission.

[15.6.16.19 NMAC - N, 03-23-2002]

**PART 17: LICENSURE PROVISIONS**

**15.6.17.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.17.1 NMAC - N, 03-23-2002]

**15.6.17.2 SCOPE:**

The provisions in Part 17 of Chapter 6 apply to all license applicants of the New Mexico athletic commission.

[15.6.17.2 NMAC - N, 03-23-2002]

**15.6.17.3 STATUTORY AUTHORITY:**

Part 17 of Chapter 6 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.).

[15.6.17.3 NMAC - N, 03-23-2002]

**15.6.17.4 DURATION:**

Permanent.

[15.6.17.4 NMAC - N, 03-23-2002]

**15.6.17.5 EFFECTIVE DATE:**

March 23, 2002, unless a later date is cited at the end of a section.

[15.6.17.5 NMAC - N, 03-23-2002]

**15.6.17.6 OBJECTIVE:**

The objective of Part 17 of Chapter 6 is to establish the requirements for licensure by the New Mexico athletic commission.

[15.6.17.6 NMAC - N, 03-23-2002]

**15.6.17.7 DEFINITIONS:**

**[RESERVED]**

[15.6.17.7 NMAC - N, 03-23-2002]

**15.6.17.8 PREREQUISITE LICENSURE REQUIREMENTS FOR PROFESSIONAL AND AMATEUR UNARMED COMBATANTS:**

Applicants must submit the following documentation to the commission.

**A.** Completed application.

**B.** A copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

**C.** The applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

[15.6.17.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.17.9 PREREQUISITE LICENSURE REQUIREMENTS FOR REFEREES:**

All applicants for a referee's license must.

- A.** Submit a completed commission-approved application for licensure.
- B.** Submit proof of a minimum of ten (10) fights as a referee trainee.
- C.** Submit the applicable license fee as set forth in Paragraph (3) of Subsection B of 15.6.14 NMAC.
- D.** Submit copy of driver's license or state issued identification card proving the applicant is a least 18 years of age.

[15.6.17.9 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.17.10 PREREQUISITE LICENSURE REQUIREMENTS FOR JUDGES:**

All applicants for a judge's license must.

- A.** Submit a completed commission-approved application for licensure.
- B.** Submit the applicable license fee as set forth in Paragraphs (13) or (14) of Subsection B of 15.6.14 NMAC.
- C.** Take and satisfactorily pass a written exam designated by the commission before being assigned to a required actual training period of no less than three unarmed combat events where he will actually score bouts under the supervision of a commission-designated instructor.
- D.** The judge applicant shall be designated as a "judge-trainee" until completion of the training period.
- E.** Submit a copy of driver's license or state issued identification card proving the applicant is a least 18 years of age.
- F.** Applicants who hold a judge's license in a jurisdiction other than New Mexico must submit a completed commission-approved application for licensure and requisite fee. These out-of-state judges need not (1) complete a written exam; (2) observe a training period; or (3) be designated as a "judge-trainee" unless the commission in its discretion deems any of these requirements necessary.

[15.6.17.10 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015]

#### **15.6.17.11 FAILURE TO PASS THE EXAM:**

Each applicant for licensure who takes the test and fails to pass it shall be eliminated from the list of officials and may not take the exam again for at least thirty (30) days.

[15.6.17.11 NMAC - N, 03-23-2002]

**15.6.17.12 REGISTERED ADDRESS OF LICENSEE:**

All commission notices and bulletins will be sent to the licensee at the last address on file in the commission office. The licensee shall be responsible for notifying the commission of any change in address.

[15.6.17.12 NMAC - N, 03-23-2002]

**15.6.17.13 PERSONNEL CHANGES OF A CORPORATE LICENSEE:**

The commission shall be notified immediately of any new or additional officers, stockholders, or directors of a corporate licensee; and any changes in such corporate licensees shall be upon notice to and with the approval of the commission.

[15.6.17.13 NMAC - N, 03-23-2002]

**15.6.17.14 PREREQUISITE LICENSURE REQUIREMENTS FOR ANNOUNCERS:**

All applicants for an announcer's license must.

- A. Submit a completed commission-approved application for licensure.
- B. Submit the applicable license fee as set forth in Subsection B of 15.6.14 NMAC.
- C. Submit a copy of driver's license or state issued identification card proving the applicant is at least 18 years of age.

[15.6.17.14 NMAC - N, 08-26-2012]

**15.6.17.15 PREREQUISITE LICENSURE REQUIREMENTS FOR TIMEKEEPER:**

All applicants for a timekeeper's license must.

- A. Submit a completed commission-approved application for licensure.
- B. Take and satisfactorily pass a written exam designated by the commission before being assigned to a required actual training period of no less than three professional unarmed combat shows where they will actually keep time for bouts under the supervision of a commission-designated instructor.
- C. Submit the applicable license fee as set forth in Subsection B of 15.6.14 NMAC.

D. Submit a copy of driver's license or state issued identification card proving the applicant is a least 18 years of age.

[15.6.17.15 NMAC - N, 08-26-2012]

## **PART 18: SAFETY ATHLETIC EQUIPMENT PROGRAM**

### **15.6.18.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.18.1 NMAC - N, 5-27-2001]

### **15.6.18.2 SCOPE:**

The provisions in Part 18 apply to all boxing organizations located and operating in the State of New Mexico and registered, on a current annual basis, with USA Boxing, Inc.

[15.6.18.2 NMAC - N, 5-27-2001]

### **15.6.18.3 STATUTORY AUTHORITY:**

Part 18 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Section 60-2A-4, which authorizes the New Mexico Athletic Commission to adopt reasonable rules and regulations to implement the purposes of the Commission.

[15.6.18.3 NMAC - N, 5-27-2001]

### **15.6.18.4 DURATION:**

Permanent.

[15.6.18.4 NMAC - N, 5-27-2001]

### **15.6.18.5 EFFECTIVE DATE:**

5-27-2001, unless a later date is cited at the end of a Section.

[15.6.18.5 NMAC - N, 5-27-2001]

### **15.6.18.6 OBJECTIVE:**

The objective of Part 18 of Chapter 6 is to set forth Commission regulations regarding the safety athletic equipment program.

[15.6.18.6 NMAC - N, 5-27-2001]

**15.6.18.7 DEFINITIONS:**

**[RESERVED]**

[15.6.18.7 NMAC - N, 5-27-2001]

**15.6.18.8 THE SAFETY ATHLETIC EQUIPMENT PROGRAM:**

The New Mexico Athletic Commission establishes a Safety Athletic Equipment Program intended to provide eligible boxing organization participants with available funds for the purchase of safety athletic equipment for use in their training programs to increase safety, promote awareness of safety issues, and foster safe boxing practices in the state of New Mexico.

[15.6.18.8 NMAC - N, 5-27-2001]

**15.6.18.9 FUNDING FOR THE SAFETY ATHLETIC EQUIPMENT PROGRAM:**

**A.** The Commission will attempt to secure annual funding for the Safety Athletic Equipment Program contingent upon authorization from the Legislature and the Executive.

**B.** The Commission makes no guarantee that funding will be available for this program.

[15.6.18.9 NMAC - N, 5-27-2001]

**15.6.18.10 APPLICATION FORM FOR PARTICIPATION IN THE PROGRAM:**

The Commission shall develop an Application Form by which an interested boxing organization may apply for participation in the Safety Athletic Equipment Program. The approved application form is available from the Commission office upon request.

[15.6.18.10 NMAC - N, 5-27-2001]

**15.6.18.11 [RESERVED]**

[15.6.18.11 NMAC - N, 5-27-2001]

**15.6.18.12 CRITERIA USED TO SELECT PARTICIPANTS:**

**A.** The Commission shall adopt criteria to utilize in its selection of participants to be awarded equipment pursuant to the program.

**B.** Criteria to be considered (but not limited to) shall include:

- (1)** Length of time the boxing organization has been in operation in New Mexico.
- (2)** Length of time the boxing organization has been registered with USA Boxing, Inc.
- (3)** Current financial condition of the boxing organization.
- (4)** Geographic diversity within New Mexico.

[15.6.18.12 NMAC - N, 5-27-2001]

#### **15.6.18.13 CONSIDERATION FOR SAFETY EQUIPMENT:**

**A.** As fair market value consideration for safety equipment, each boxing organization will be required to provide safety-training classes in return for the safety athletic equipment.

**B.** Each boxing organization shall be required to present a two (2) hour safety training class per \$500 equipment allocation provided to it by the Commission in conjunction with this program.

**C.** Any boxing organization that has received an equipment allocation from the Commission may be monitored by the Commission or Commission designee for compliance with the safety training class requirement.

**D.** The Commission may require a post-audit report from the boxing organization providing verification of the equipment purchased and how the equipment allocation was used.

[15.6.18.13 NMAC - N, 5-27-2001]

### **PART 19: CONDUCT OF BARE-KNUCKLE CONTESTS**

#### **15.6.19.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.19.1 NMAC - N, 6/11/2021]

#### **15.6.19.2 SCOPE:**

The provisions in Part 19 apply to all licensees of the commission.

[15.6.19.2 NMAC - N, 6/11/2021]

**15.6.19.3 STATUTORY AUTHORITY:**

Part 19 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-20, 60-2A-21, 60-2A-29, and 60-2A-31.

[15.6.19.3 NMAC - N, 6/11/2021]

**15.6.19.4 DURATION:**

Permanent.

[15.6.19.4 NMAC - N, 6/11/2021]

**15.6.19.5 EFFECTIVE DATE:**

June 11, 2021, unless a later date is cited at the end of a section.

[15.6.19.5 NMAC - N, 6/11/2021]

**15.6.19.6 OBJECTIVE:**

The objective of Part 19 of Chapter 6 is to set forth all commission requirements for the conduct of any bare-knuckle contests regulated by the commission.

[15.6.19.6 NMAC - N, 6/11/2021]

**15.6.19.7 DEFINITIONS:**

**A. "Contests"** are considered "bare-knuckle contests" and not "fights" or "prize fights."

**B. "Down"** means that some part of the contestant's body other than their feet is on the ring floor; or the contestant is hanging helplessly on the ring ropes/cage; or the contestant is rising from a down position.

**C. "KO"** means loss by a knockout

**D. "TKO"** means loss by a technical knockout and refers to the ending of a bout by a referee for any reason other than a count-out or a disqualification.

[15.6.19.7 NMAC - N, 6/11/2021]

#### **15.6.19.8 CHANGES IN ANNOUNCED OR ADVERTISED BARE-KNUCKLE PROGRAMS:**

**A. Notice of change required:** A notice of any change in the announced or advertised programs for any main event contest must be filed with, and approved by, the commission at least 48 hours before the weighing-in time of the contest.

**B. Posting of notice:** Notices of any such change or substitution must also be conspicuously posted at all box offices on the premises and announced from the ring before the opening contest.

**C. Refund policy:** If any patrons apply for refunds on their purchased tickets, the promoter or promoting corporation shall make such refunds upon demand, provided such tickets are presented at the box office on the day or night of the contest.

[15.6.19.8 NMAC - N, 6/11/2021]

#### **15.6.19.9 DURATION OF MATCHES:**

All matches must be between three and five rounds with all championship fights lasting five rounds.

[15.6.19.9 NMAC - N, 6/11/2021]

#### **15.6.19.10 BARE-KNUCKLE ROUNDS:**

**A. Number of rounds allowed:** There shall be no less than 17 scheduled rounds on any one program, unless otherwise approved by the commission.

**B. Round duration and intermission between rounds for contestants:** Each round shall be no more than three minutes in duration and there shall be a 90 second rest period intermission allowed between rounds.

[15.6.19.10 NMAC - N, 6/11/2021]

#### **15.6.19.11 CONTESTANTS' SECONDS:**

**A. Approval of seconds by commission:** the commission must approve all seconds.

(1) Each contestant must submit the name of his chief second and his assistant second to the commission for approval.

(2) Only seconds approved by the commission shall be permitted in the contestant's corner.

(3) Before the fight begins, the referee must be informed who the chief second is.

**B. Number of seconds per contestant:**

(1) The maximum number of seconds a contestant may have is three.

(2) Only one of a fighter's seconds will be permitted inside the ring/ropes/cage between rounds.

**C. Conduct of seconds:**

(1) Seconds must remain seated during each round.

(2) Seconds must not interfere with or move a fighter who has been knocked down until they are instructed to do so by the ringside physician.

(3) Seconds are prohibited from entering the ring between rounds and assisting a contestant back to his corner unless the contest has been terminated by the referee or ringside physician.

(4) A second may step on the ring apron to retire their fighter in defeat.

[15.6.19.11 NMAC - N, 6/11/2021]

**15.6.19.12 CONTESTANTS' EQUIPMENT:**

**A. Wrapped Hands:** The following requirements apply to the wrapping of a fighter's hands for a bareknuckle fight.

(1) Hands shall be wrapped with gauze and athletic tape that ends no closer than one inch from the fighter's knuckles. The wrap must include the wrist and may travel up to three inches past the junction of the wrist bone.

(2) Gauze may be applied to the wrist, palm of the hand, back of the hand, and thumb. The length of gauze to be utilized may not exceed a length of 10 feet per hand.

(3) Tape may be applied to the wrist, palm of the hand, back of the hand, and thumb. The tape shall not be greater than one inch in width and shall not exceed 10 feet in length per hand.

(4) The use of water, plaster, ointments, Vaseline, glues or any other liquid or materials to the hand wraps or bandages is strictly prohibited.

**B. Shoes:** Shoes are required and must be soft material that are not fitted with spikes, cleats, hard soles, or hard heels shall be permitted in the ring.

**C. Mouthpieces:** Each contestant shall wear an individually fitted mouthpiece that shall remain in the contestant's mouth at all times during the competition.

(1) The round cannot begin until the contestants are wearing mouthpieces.

(2) If the mouthpiece is dislodged during competition, the referee will call time at the first opportune moment without interfering with the immediate action and have the mouthpiece replaced.

(3) The referee shall direct the other contestant to the farthest neutral corner and escort the contestant with the dislodged mouthpiece to the contestant's corner to have the mouthpiece rinsed and replaced.

(4) The referee may deduct points or disqualify a participant if he deems that the mouthpiece is being intentionally spit out.

**D. Abdominal guards:** Contestants may wear an abdominal guard of a standard type that provides sufficient protection to withstand any low blow. The use of this equipment shall be determined by the fighters or promotion on an individual basis.

**E. Attire and groin protection:** All contestants shall be required to wear shorts or boxing trunks, the belt of which shall not extend above the waistline and protective cups/groin protectors that are properly fitted and shall be firmly in place before the contestant enters the ring. All trunks shall be without pockets.

[15.6.19.12 NMAC - N, 6/11/2021]

#### **15.6.19.13 NUMBER OF BARE-KNUCKLE CONTEST OFFICIALS REQUIRED:**

There shall be at least two physician in attendance at all times, one of which must remain ringside. In addition, at least the following officials shall be present at each contest:

**A.** one referee;

**B.** three judges;

**C.** one timekeeper; and

**D.** one announcer.

[15.6.19.13 NMAC - N, 6/11/2021]

#### **15.6.19.14 POSITION OF JUDGES AND PHYSICIANS:**

**A. Judges:** The judges shall be stationed at opposite sides of the ring.

**B. Physicians:** The physician shall be stationed at places designated by the commission representative in charge.

[15.6.19.14 NMAC - N, 6/11/2021]

#### **15.6.19.15 FEMALE FIGHTERS:**

The weight classes for female fighter shall be the same as used by male fighters.

**A.** A female fighter shall not engage in a contest with a male fighter.

**B.** Female contestants shall be permitted to wear a body shirt or blouse without buttons, buckles or ornaments. Other apparel or equipment is prohibited.

**C.** All female fighters must provide a **negative pregnancy test** prior to each bout.

[15.6.19.15 NMAC - N, 6/11/2021]

#### **15.6.19.16 BARE-KNUCKLE CONTESTANTS:**

**A. All event contestants:** All contestants, participating in the program must report to the designated dressing room of the event premises no later than one hour before the commencement of the first scheduled contest unless otherwise permitted by the New Mexico Athletic Commission.

**B. Confinement to dressing rooms:** All contestants will remain in their dressing rooms until ordered to the ring by the commission representative in charge.

**C. Physical appearance:** All finger nails must not extend past the tip of the fingers and thumbs.

**D. Contestant's ring costume:**

(1) Each contestant on a program must provide himself with a ring costume approved by the commission.

(2) No makeup or cosmetics shall be applied to a fighter's face.

**E. Contestant's conduct after contest is finished:** After the decision of any contest has been announced, each contestant and his seconds must leave the ring at once and retire to the contestant's dressing room after being cleared by a ring-side physician.

**F. Contestant's minimum age:** No fighter shall be less than 18 years old at the time the sign a contract to fight.

[15.6.19.16 NMAC - N, 6/11/2021]

**15.6.19.17 WEIGHING-IN CEREMONIES:**

**A. Schedules of ceremonies:** The times and places of all weigh-in ceremonies for indoor or outdoor programs shall be determined by the commission. However, all weigh-ins shall take place no later than twelve o'clock noon on the day of the contest.

**B. Contestant weigh-ins:** All contestants shall be weighed-in on scales approved by the commission, and in the presence of their opponents and the commission representative.

**C. Postponement of weigh-in:** In the event a contest is postponed, for any reason whatsoever, more than 24-hours prior to the contest, a second weigh-in and additional physical examinations may be required on the day to which the contest has been rescheduled.

[15.6.19.17 NMAC - N, 6/11/2021]

**15.6.19.18 LICENSURE OF AGENTS REQUIRED:**

The commission shall issue licenses to all agents present to perform functions representative of the commission at a Bare-Knuckle program. This requirement shall include, cut men, seconds, managers, and any others performing duties specified and ordered by the commission at a program.

[15.6.19.18 NMAC - N, 6/11/2021]

**15.6.19.19 THE REFEREE:**

**A. Referee's wearing apparel:** The commission shall prescribe the type, style, and color of the referee's apparel.

**B. Referee instructs the contestants:** Before the start of each contest, the referee must call the contestants together for final instructions. Each contestant may only be accompanied by his chief second, except in cases where a contestant also requires the services of an interpreter. After receiving the referee's instructions, the contestants shall shake hands and retire to their respective corners to await the gong for the first round.

[15.6.19.19 NMAC - N, 6/11/2021]

**15.6.19.20 INSPECTORS:**

**A. Appointed by the commission:** The commission shall appoint inspectors to be present at all contests. Inspectors shall work in cooperation and in conjunction with any police officers as may be detailed for this duty at contests.

**B. Prohibitions to assigning officials:** The commission will not and shall not assign officials who are directly or indirectly associated with, including but not limited to any financial interest in, the management of any contestant; or who is an individual promoter; or who is a stockholder in, or employee of, a promoter corporation or an unincorporated club or association engaged in the promotion of contests.

[15.6.19.20 NMAC - N, 6/11/2021]

#### **15.6.19.21 PROHIBITED ACTIVITIES:**

**A. Excessive spraying of water on contestant:** Any excessive or undue spraying or throwing of water on any contestant between rounds is forbidden.

**B. Application of monsel's solution:** The application of monsel's solution, or any use of its derivatives on the body of the contestant between rounds, is prohibited.

**C. Persons forbidden to coach contestants:** The licensed promoter, matchmaker and any promotion employees or contract employees are forbidden from coaching any contestant at any time during the progress of any contest.

**D. Persons disqualified from officiating:** Officials, directors, matchmakers, or stockholders of any promoting corporation or licensed club are disqualified from officiating in any capacity at any contest conducted by such corporation. They are also prohibited from interfering in any way with the contestants participating in said program.

**E. Persons prohibited from holding financial interest in contest:** No official or employee of this commission, or of its medical panels or medical advisory board, and no judge or referee licensed by this commission may, directly or indirectly, have any financial interest in any contestant, wrestler, promoting corporation, or in any manager's contract with any licensed athlete, or in any assignment thereof.

[15.6.19.21 NMAC - N, 6/11/2021]

#### **15.6.19.22 OUTDOOR CONTESTS:**

The following special rules and regulations pertain to outdoor programs only. All other rules and regulations of the commission not affected or modified below remain in full force and effect for all outdoor contests, as well as, other programs.

**A. Postponement of event:** In the event of rain immediately before or during the course of any outdoor program, except during the course of the main event, the promoter may postpone the program to a time and place approved by the commission.

(1) An announcement giving the full details of the postponement shall be made by the promoter.

(2) Any patron desiring a refund of the purchase price of his ticket may apply for the refund at the box office on the premises, except when the main contest is held on the scheduled date or one of the successive rain-out dates indicated on the ticket.

(3) All contestants who have fulfilled their contracts before the rain-out, shall be paid in full by the promoter.

(4) On the date to which the program is postponed, the promoter shall have scheduled substitute contests in such number and duration as directed by the commission.

**B. Rearrangement or shortening of program:** In the event of threatening weather and rain, the program of contests may be rearranged or shortened by the promoter with the consent of the commission representative in charge.

**C. Reimbursement of expenses to contestants:** All contestants in a contest who were unable to compete because of weather conditions or a rearrangement or shortening of the program, shall have their expenses and other fees paid by the promoter as the commission representative in charge may direct.

**D. Stopping the contest because of rain:** In the event that rain occurs after the main event is completed, the program shall be considered as having been completed.

(1) In the event of rain during the progress of the main event, the contest shall be continued or stopped at the discretion of the commission representative in charge.

(2) If the main contest is stopped, the provisions of Subsection A of 15.6.19.22 NMAC as to postponement and refunds shall apply.

[15.6.19.22 NMAC - N, 6/11/2021]

#### **15.6.19.23 UNIFORM REGULATIONS FOR PROFESSIONAL BOXING:**

**A. Contest elements considered:** In scoring a contest, the elements of offense, defense, clean hitting, ring generalship and sportsmanship shall be carefully considered.

**B. Scoring judges:** Three judges approved by the commission shall evaluate each contest and score the contest.

**C. "10 point" must system:** The 10-point must system will be the standard system of scoring a bare-knuckle contest.

**D. Winner's points:** The winner of any round is marked a "10".

**E. Loser's points:** The loser of any round is marked "one" to "nine".

**F. Mandatory eight-count:** Mandatory eight-count will be the standard procedure in all contests.

**G. Three knockdown rule:** There shall be NO three-knockdown rule called in any contest.

**H. 20 second count:** A contestant shall receive a 20-second count if he is knocked out of the ring and onto the floor.

**I. Referee is sole arbiter:** The referee is the sole arbiter of a contest and is the only individual authorized to stop a bout.

**J. Knockdown rated:** The referee shall call a knockdown as such as soon as it occurs.

**K. Ring generalship:** The contestant who takes advantage of the full "nine" count should be credited with "ring generalship", which would not be credited to him if he arose immediately and tried to continue in a possibly groggy condition.

**L. Foul blows:** The use of foul blows and other tactics shall result in a penalty of one point for each foul committed, and the referee shall advise the judges immediately of the number of points to be deducted.

**M. Disqualification for second's assist:** Contestants are to be unassisted by their seconds. If a contestant is assisted by his second, the referee shall disqualify the fighter.

**N. Saved by the bell:** A contestant who has been knocked down cannot be saved by the bell in any round.

[15.6.19.23 NMAC - N, 6/11/2021]

#### **15.6.19.24 KNOCKDOWNS:**

**A. Judges scoring knockdowns:** The judges may score a knockdown in any one round as either one or two points in favor of a contestant who scored the knockdown.

**B. Judges score independently:** Each judge must determine for himself which value shall be placed on the knockdown.

[15.6.19.24 NMAC - N, 6/11/2021]

#### **15.6.19.25 PROTOCOL FOR USING SCORECARDS, THE TALLY AND DECISION:**

**A. The Rounds Scoring:** Judges shall clearly write their decision and sign their scorecards; and they must mark their cards in ink or in indelible pencil at the end of each round.

**B. The tally:** At the conclusion of the round, each judge must tally up the points he has awarded each contestant and submit the scorecard to the referee.

**C. The decision:** After the scorecards have all been checked by the commission representative, they must be returned to the announcer who shall announce the decision of the judges from the ring.

**D. Main event protocol on announcing the decision:** In main events, the announcer shall call out the points awarded by each judge. The decision must then be awarded to the contestant with the greatest number of points on two of the scorecards.

[15.6.19.25 NMAC - N, 6/11/2021]

#### **15.6.19.26 MAJOR FOULS:**

**A.** The following are major fouls.

- (1) Hitting an opponent who is down or who is rising from the down position.
- (2) Using the knee against the opponent.
- (3) Purposely going down without being hit.
- (4) Failure to heed the referee's warning concerning low blows or other minor fouls.
- (5) Any dangerous and un-sportsmanlike conduct in the ring.
- (6) Throwing an opponent out of the ring or fenced area.
- (7) Attacking an opponent who is under the care of the referee.
- (8) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
- (9) Tripping an opponent.
- (10) Use of body lock throws to move your "opponent."

**B.** The referee may disqualify the offending contestant, and award the bout or any points to the contestant being fouled.

**C.** Disqualification on fouls to the body may only occur if the referee deems that these fouls are flagrant or continual.

[15.6.19.26 NMAC - N, 6/11/2021]

**15.6.19.27 MINOR FOULS:**

**A.** The following are minor fouls.

- (1) Holding an opponent.
- (2) Deliberately maintaining a clinch.
- (3) Hitting with the inside or butt of the hand, the wrist, or the elbow.
- (4) Backhanded blows.
- (5) Low blows.
- (6) Hitting or flicking with an open hand.
- (7) Wrestling or roughing the ropes.
- (8) Deliberately striking at the part of the body over the kidneys.
- (9) Use of a pivot blow or rabbit punch.
- (10) Hitting on the break.
- (11) Butting with the head.
- (12) Eye gouging of any kind.
- (13) Biting.
- (14) Hair pulling.
- (15) Fish hooking.
- (16) Groin attacks of any kind.
- (17) Putting a finger into any orifice or into any cut or laceration on an opponent

- (18) Small joint manipulation.
- (19) Striking to the spine or the back of the head.
- (20) Throat strikes of any kind, including, without limitation, grabbing the trachea.
- (21) Clawing, pinching or twisting the flesh.
- (22) Grabbing the clavicle.
- (23) Holding the shorts or wrists of an opponent.
- (24) Spitting at an opponent.
- (25) Holding the ropes or the fence.
- (26) Using abusive language in the ring or fenced area.
- (27) Interference by the corner.

**B.** It is within the discretion of the referee to determine whether the offending contestant should merely be warned, or have points deducted, for committing a minor foul.

**C.** If a fighter injures themselves while attempting to intentionally foul their opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

[15.6.19.27 NMAC - N, 6/11/2021]

#### **15.6.19.28 REFEREE'S NOTICE TO JUDGES CONCERNING FOULS:**

**A.** In the event that the referee determines that a foul has been committed, he shall notify the judges immediately.

**B.** The judges shall deduct one point from the offending contestant's scores.

**C.** On any illegal blow to the body the referee may order a deduction of points and will give the necessary time for recovery to the injured fighter (with a maximum of five minutes) after consulting with the ringside physician. If the referee rules this foul was accidental and after five minutes the injured fighter can't continue, the rules governing accidental fouls shall apply. A contestant who is hit with an accidental low blow must continue after the five-minute rest or he will lose the bout.

**D.** There may be a deduction of points by the referee at any time for illegal blows or conduct by the fighter or their corner men.

**E.** In the case of a clear and intentional foul that causes an injury and the contest can still continue, the contestant who was doing the fouling will have two points deducted.

**(1)** The referee must stop the action and inform all judges and the commission or commission representative of this deduction.

**(2)** Point deductions for intentional fouls will be at the referee discretion.

**(3)** The referee has the authority to stop a bout or contest at any stage on account of an intentional foul being committed by either contestant. In such an event, in a bare-knuckle contest the referee may award the decision to the boxer who was intentionally fouled.

[15.6.19.28 NMAC - N, 6/11/2021]

#### **15.6.19.29 CONDITIONS FOR COUNTING A CONTESTANT OUT:**

A fighter who is hit with an accidental low blow must continue the contest after a reasonable time, but no more than five minutes, or he will lose the contest.

[15.6.19.29 NMAC - N, 6/11/2021]

#### **15.6.19.30 WRITTEN REPORT TO COMMISSION REGARDING FOULS:**

If, in any contest, a contestant is penalized with the loss of three or more rounds due to fouls, the referee and each judge must report the matter to the commission, in writing, within 24 hours.

[15.6.19.30 NMAC - N, 6/11/2021]

#### **15.6.19.31 TECHNICAL KNOCKOUTS; TECHNICAL DECISIONS; TECHNICAL DRAWS; DISQUALIFICATIONS; NO CONTESTS:**

##### **A. Technical knockouts.**

**(1)** When a cut is produced by a legal punch and the contest is stopped because of that cut, the injured fighter shall lose by a technical knockout and the commissions shall enter the letters TKO in the record.

**(2)** When a referee stops a contest to save any contestant from further punishment, he must award the other contestant the decision by a technical knockout.

(3) If a fighter sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured fighter will lose by a TKO.

(a) Any contestant losing by a TKO shall receive a minimum of a 30 day medical suspension.

(b) Any contestant losing by a KO shall receive a minimum of a 60 day medical suspension.

#### **B. Technical decisions.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, the injured contestant will win by a technical decision if he is ahead on the score cards.

(2) If the accidental foul occurs after the completion of four rounds and the bout must be stopped immediately because the fouled contestant is injured severely enough that he cannot continue, a technical decision shall be awarded to the contestant who is ahead on the score cards at the time the bout is stopped.

(a) Partial or incomplete rounds will be scored.

(b) At the discretion of the Judges, if no action has occurred, the round may be scored as an *even* round.

(3) If in the later rounds, the injury has worsened as a result of legal blows, and the injured fighter cannot continue, a decision shall be rendered by referring to the scorecards. The judges, who must inform the commission and both contestants that the foul is the result of an accidental foul, shall score partial rounds.

#### **C. Technical draws.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a *later* round, a technical draw will be declared if the injured contestant is even or behind on the scorecards.

(2) If an accidental foul occurs before the completion of four rounds and the injured contestant cannot continue, the contest will be declared a technical draw.

#### **D. Disqualifications.**

(1) In the case where an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately; the contestant causing the injury shall lose by disqualification, even if he is the injured contestant.

(2) If the referee deems that a contestant has conducted himself in an un-sportsman-like manner, he may stop the bout and disqualify that contestant.

**E. No contests:** If, before four rounds are completed in a contest, an accidental foul causes an injury severe enough for the referee to stop the bout immediately, the bout will result in a no contest.

[15.6.19.31 NMAC - N, 6/11/2021]

### **15.6.19.32 COUNTING:**

**A. Timekeeper calls off the seconds:** When a contestant is down, the timekeeper shall immediately commence calling off the seconds indicating the count with a motion of his arm.

**B. Referee picks up the count:** When the timekeeper commences calling off the seconds, the referee must immediately order the other contestant to a neutral corner and shall pick up the count from the timekeeper, indicating the count with a motion of his arm.

### **C. Reaching the count of ten.**

(1) If a contestant is unable to continue at the count of 10, the referee shall declare the other contestant the winner by a knockout.

(2) If a contestant who has fallen or has been knocked out of the ring during the contest fails to be on his feet in the ring before the expiration of 10 seconds, the referee shall count him out as if he were down.

(3) A contestant who has fallen or has been knocked out of the ring must return to the ring unassisted.

(4) If a contestant who has fallen fails to be on his feet in the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 10. If the contestant fails to rise before the count of 10, the bout shall be awarded to the other contestant by a knockout in the round just ended.

(5) If a contestant has been knocked out of the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 20. If the contestant fails to rise before the count of 20, the bout shall be awarded to the other contestant by a knockout in the round just ended. The contestant must return to the ring unaided.

[15.6.19.32 NMAC - N, 6/11/2021]

### **15.6.19.33 WEIGHT LIMITS FOR BARE-KNUCKLE CONTESTS:**

**A.** The classes for bare-knuckle fighters competing in contests or exhibitions and the weights for each class are shown in the following schedule.

- (1) Atomweight: 105 to 115 lbs.
- (2) Strawweight: over 115 to 125 lbs.
- (3) Flyweight: over 125 to 135 lbs.
- (4) Featherweight: over 135 to 145 lbs.
- (5) Lightweight: over 145 to 155 lbs.
- (6) Welterweight: over 155 to 170 lbs.
- (7) Middleweight: over 170 to 185 lbs.
- (8) Light heavyweight: over 185 to 205 lbs.
- (9) Heavyweight: over 205 to 265 lbs.
- (10) Super heavyweight: anything over 265 lbs.

**B.** Weight loss of up to two lbs. is allowed. Fighters have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in. Unarmed combatants over weight may be fined, have their license suspended, and have their license revoked by the commission.

[15.6.19.33 NMAC - N, 6/11/2021]

## **PART 20: MIXED MARTIAL ARTS CONTESTS AND EXHIBITIONS**

### **15.6.20.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.20.1 NMAC - N, 08-26-2012]

### **15.6.20.2 SCOPE:**

The provisions in Part 20 apply to all licensees of the commission.

[15.6.20.2 NMAC - N, 08-26-2012]

### **15.6.20.3 STATUTORY AUTHORITY:**

Part 20 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Section 60-2A-4, which authorizes the New Mexico athletic commission to adopt reasonable rules and regulations to implement the purposes of the commission.

[15.6.20.3 NMAC - N, 08-26-2012]

**15.6.20.4 DURATION:**

Permanent.

[15.6.20.4 NMAC - N, 08-26-2012]

**15.6.20.5 EFFECTIVE DATE:**

August 26, 2012, unless a later date is cited at the end of a section.

[15.6.20.5 NMAC - N, 08-26-2012]

**15.6.20.6 OBJECTIVE:**

The objective of Part 20 of Chapter 6 is to set forth commission regulations regarding mixed martial arts contests and exhibitions.

[15.6.20.6 NMAC - N, 08-26-2012]

**15.6.20.7 DEFINITIONS:**

[RESERVED]

[15.6.20.7 NMAC - N, 08-26-2012]

**15.6.20.8 MIXED MARTIAL ARTS INVOLVING FULL CONTACT: USE OF OFFICIAL RULES; DUTIES OF SPONSORING ORGANIZATION OR PROMOTER; APPROVAL OF COMMISSION REQUIRED:**

- A. All full-contact mixed martial arts are forms of unarmed combat.
- B. The provisions pertaining to licenses, fees, dates of programs and disciplinary action in the laws and regulations on unarmed combat apply to events of such martial arts.
- C. An event, contest or exhibition of mixed martial arts must be conducted pursuant to the official rules for the particular form. The sponsoring organization or promoter must submit a copy of the official rules with the commission before it will be approved to hold the events.

(1) To ensure the rules submitted for the particular form get commission approval before the event, the sponsoring organization or promoter shall submit their rules no later than the last regularly-scheduled commission meeting before the date of the planned event.

(2) The commission shall review and examine aforementioned rules, and may question the sponsoring organization or promoter before voting to approve the rules.

[15.6.20.8 NMAC - N, 08-26-2012; A, 01-15-2015]

#### **15.6.20.9 CONDUCT OF CONTESTS AND EXHIBITIONS; APPLICABILITY OF PROVISIONS:**

A. All events of mixed martial arts must be conducted under the supervision and authority of the commission.

B. With prior approval from the commission, a promoter may request the following special rules for each amateur contest:

(1) no elbow strikes to the head;

(2) no knees to the head;

(3) three minute rounds; or

(4) any other rules deemed appropriate for the safety and protection of the amateur unarmed combatant.

[15.6.20.9 NMAC - N, 08-26-2012]

#### **15.6.20.10 REQUIREMENTS FOR CAGE OR FENCED AREA; USE OF VIDEO SCREENS:**

A. Mixed martial arts events shall be held in a fenced area.

B. A fenced area used in a contest or events exhibition of mixed martial arts must meet the following requirements.

(1) The fenced area must be circular or have equal sides and must be no smaller than 14 feet wide and no larger than 32 feet wide.

(2) The floor must be padded with ensolite or other similar closed-cell foam, with at least a 1-inch layer of foam padding, with a top covering of canvas, duck or similar material tightly stretched and secured to the platform of the fenced area. Material that tends to gather in lumps or ridges must not be used.

(3) The platform must not be more than four feet above the floor of the building and must have suitable steps for the use of the unarmed combatants.

(4) Fence posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the fenced area, and must be properly padded in a manner approved by the commission.

(5) The fencing used to enclose the fenced area must be made of a material that will prevent an unarmed combatant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.

(6) Any metal portion of the fenced area must be covered and padded in a manner approved by the commission and must not be abrasive to the unarmed combatants.

(7) The fenced area should have no more than two entrances. One entrance is at the discretion of the commission.

(8) There must not be any obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.

[15.6.20.10 NMAC - N, 08-26-2012]

#### **15.6.20.11 DURATION:**

**A.** A non-championship contest or exhibition of mixed martial arts may last up to five rounds in duration.

**B.** A championship contest of mixed martial arts must be five rounds in duration.

**C.** A period of unarmed combat in a contest or exhibition of mixed martial arts must be three or five minutes in duration. A period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts must be one minute in duration.

[15.6.20.11 NMAC - N, 08-26-2012]

#### **15.6.20.12 WEIGHT CLASSES OF UNARMED COMBATANTS; WEIGHT LOSS AFTER WEIGH-IN:**

**A.** The classes for unarmed combatants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule.

(1) Atom weight up to 105 lbs.

- (2) Straw Weight up to 115 lbs.
- (3) Flyweight: up to 125 lbs.
- (4) Bantamweight: over 125 to 135 lbs.
- (5) Featherweight: over 135 to 145 lbs.
- (6) Lightweight: over 145 to 155 lbs.
- (7) Welterweight: over 155 to 170 lbs.
- (8) Middleweight: over 170 to 185 lbs.
- (9) Light heavyweight: over 185 to 205 lbs.
- (10) Heavyweight: over 205 to 265 lbs.
- (11) Super heavyweight: all over 265 lbs.

**B.** Weight loss of up to two lbs. is allowed. Unarmed combatants have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in. Unarmed combatants over weight may be fined, have their license suspended, and have their license revoked by the commission.

[15.6.20.12 NMAC - N, 8/26/2012; A, 1/15/2015; A, 1/30/2024]

### **15.6.20.13 PROPER ATTIRE AND PHYSICAL APPEARANCE FOR UNARMED COMBATANTS:**

An unarmed combatant competing in a contest or exhibition of mixed martial arts.

**A.** Must wear shorts approved by the commission or the commission's representative.

**B.** May not wear shoes or any padding on his feet during the contest however tape is allowed with approval of the commission, to knees, ankles or feet.

**C.** All male fighters must wear an approved groin protector.

**D.** All female fighters must.

(1) Wear a sports bra type garment.

(2) Have hair secured in a manner that does not interfere with the vision or safety of either unarmed combatants.

**(3)** Use a minimum of cosmetics.

**E.** All fighters must wear fitted mouthpieces.

**F.** The commission reserves the right to disapprove of any or all uniforms or garments to be worn.

**G.** Gloves.

**(1)** All gloves must be of a professional quality and must be approved by the commission's representative. All gloves worn shall fit the hands of the fighter. Gloves cannot be less than four ounces and not more than eight ounces.

**(2)** The make and type of all gloves must be approved in advance by the commission's representative. Gloves must be put on in the presence of the deputy inspector and he must approve any tape used on the gloves.

**(3)** Gloves may not be squeezed, manipulated, kneaded, crushed or altered to change the original shape.

**H.** Hand wraps: Hand wraps/bandages are for the protection of the unarmed combatant's hands during a contest from injury. All mixed martial arts contestants shall be required to gauze and tape their hands prior to all contests.

**(1)** In all weight classes, the bandages on each contestants hand shall be restricted to soft gauze not more than 20 yards in length and no more than two inches in width, held in place by not more than 10 feet of surgeons adhesive tape, no more than one and one half inch in width, for each hand.

**(2)** The tape may be placed directly on and may cross the back of the hand twice, but may not extend within three-fourths of an inch of the knuckles when the hand is clenched to make a fist. The bandages shall be evenly distributed across the hand. Building of wraps is prohibited. After gauze has been applied tape still may not be within three-fourths of an inch of knuckles when hand is clenched to make a fist.

**(3)** Only one strip of tape between the fingers, not to exceed one quarter inch in width, shall be allowed.

**(4)** Any wrap or tape applied to the hand, knee, ankle or foot must be approved by the commission representative/inspector, as well as signed off prior to unarmed combatant entering the cage. All wraps must be applied in the presence of the commission representative/inspector. No exceptions.

**(5)** Any gauze/tape approved by the commission representative/inspector once applied to combatant's hands may not be altered or tampered with in any way,

shape or form to include, but not limited to the application of: water, plaster, ointments, vaseline and glues to the hand wraps or bandages.

**(6)** Either unarmed combatant may waive his privilege of witnessing the bandaging of his opponent's hands.

**(7)** Inspectors or the commission may request any hand bandages or gloves be removed and reapplied should there be any doubt regarding the legality of any applications. Any gloves or hand wraps may be confiscated by the commission for any reason.

**(8)** The commission reserves the right to allow or disallow name brand products on a case by case basis.

**I.** Unarmed combatants shall not apply any foreign substance to the hair, body, clothing or gloves immediately prior to or during a contest or exhibition that could result in an unfair advantage.

**(1)** Each contestant must be free of grease or any other foreign substance, including without limitation, grooming creams, lotions or sprays, colognes, may not be used on the face, hair or body of a contestant.

**(2)** The referee or the commission representative/inspector shall cause any foreign substance to be removed.

[15.6.20.13 NMAC - N, 08-26-2012]

#### **15.6.20.14 METHOD OF JUDGING:**

**A.** Each judge of a contest or exhibition of mixed martial arts that is being judged shall score the contest or exhibition and determine the winner through the use of the following 10 point must system.

**(1)** The better unarmed combatant of a round receives 10 points and his opponent proportionately less.

**(2)** If the round is even, each unarmed combatant receives 10 points.

**(3)** No fraction of points may be given.

**(4)** Points for each round must be awarded immediately after the end of the period of unarmed combat in the round.

**B.** After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the commission's desk.

**C.** The majority opinion is conclusive. If there is no majority, the decision is a draw.

**D.** When the commission's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall inform the audience of the decision over the speaker system.

[15.6.20.14 NMAC - N, 08-26-2012]

#### **15.6.20.15 ACTS CONSTITUTING FOULS:**

The following acts constitute fouls in a contest or exhibition of mixed martial arts:

- A.** butting with the head;
- B.** eye gouging of any kind;
- C.** biting;
- D.** hair pulling;
- E.** fish hooking;
- F.** groin attacks of any kind;
- G.** putting a finger into any orifice or into any cut or laceration on an opponent;
- H.** small joint manipulation;
- I.** striking to the spine or the back of the head;
- J.** striking downward using the point of the elbow;
- K.** throat strikes of any kind, including, without limitation, grabbing the trachea;
- L.** clawing, pinching or twisting the flesh;
- M.** grabbing the clavicle;
- N.** kicking the head of a grounded opponent;
- O.** kneeing the head of a grounded opponent;
- P.** stomping a grounded opponent;
- Q.** kicking to the kidney with the heel;

- R. spiking an opponent to the canvas on his head or neck;
- S. throwing an opponent out of the ring or fenced area;
- T. holding the shorts or gloves of an opponent;
- U. spitting at an opponent;
- V. engaging in any unsportsmanlike conduct that causes an injury to an opponent;
- W. holding the ropes or the fence;
- X. using abusive language in the ring or fenced area;
- Y. attacking an opponent on or during the break;
- Z. attacking an opponent who is under the care of the referee;
- AA. attacking an opponent after the bell has sounded the end of the period of unarmed combat;
- BB. flagrantly disregarding the instructions of the referee;
- CC. timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury;
- DD. interference by the corner; or
- EE. throwing in the towel during competition.

[15.6.20.15 NMAC - N, 08-26-2012]

#### **15.6.20.16 FOULS; DEDUCTION OF POINTS:**

- A. If an unarmed combatant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, whether or not the foul was intentional.
- B. When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.
- C. The referee shall, as soon as is practical after the foul, notify the judges and both unarmed combatants of the number of points, if any, to be deducted from the score of the offender.

**D.** Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

[15.6.20.16 NMAC - N, 08-26-2012]

**15.6.20.17 FOULS; ACCIDENTAL:**

**A.** If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the unarmed combatant who has been found can continue or not. If the unarmed combatant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the unarmed combatant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the unarmed combatants, the referee shall inform the commission's representative of his determination that the foul was accidental.

**B.** If the referee determines that a contest or exhibition of mixed martial arts may not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition must be declared a no contest if the foul occurs during:

**(1)** the first two rounds of a contest or exhibition that is scheduled for three rounds or less; or

**(2)** the first three rounds of a contest or exhibition that is scheduled for more than three rounds.

**C.** If an accidental foul renders an unarmed combatant unable to continue the contest or exhibition after:

**(1)** the completed second round of a contest or exhibition that is scheduled for three rounds or less; or

**(2)** the completed third round of a contest or exhibition that is scheduled for more than three rounds, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

**D.** If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome must be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibitions.

[15.6.20.17 NMAC - N, 08-26-2012]

**15.6.20.18 RESULTS OF CONTEST:**

A contest of mixed martial arts may end under the following results.

**A. Knockout (KO):** as soon as a fighter becomes unconscious due to strikes, his opponent is declared the winner (because MMA rules allow ground fighting, the fight is stopped to prevent further injury to an unconscious fighter).

**B. Submission:** a fighter may admit defeat during a match by:

- (1) tapping three times on his opponent's body;
- (2) tapping three times on the mat or floor; or
- (3) verbal announcement.

**C. Technical knockout (TKO).**

(1) Referee stoppage: the referee may stop a match in progress if:

(a) a fighter becomes dominant to the point where the opponent is unable to intelligently defend himself from attacks (this may occur as quickly as a few seconds);

(b) a fighter appears to be unconscious from a grappling hold; or

(c) a fighter appears to have developed significant injuries (such as a broken bone) in the referee's view.

(2) Doctor stoppage: the referee will call for a time out if a fighter's ability to continue is in question as a result of apparent injuries (such as a large cut). The ring doctor will inspect the fighter and stop the match if the fighter is deemed unable to continue safely, rendering the opponent the winner. However, if the match is stopped as a result of an injury from illegal actions by the opponent, either a disqualification or no contest will be issued instead. In order to avoid doctor stoppages, fighters employ cut men, whose job is to treat cuts and hematomas between rounds to prevent them from becoming significant enough to cause a doctor stoppage.

**D. Decision:** if the match goes the distance, then the outcome of the bout is determined by three judges. The judging criteria are organization-specific via the scorecards, including:

- (1) unanimous decision;
- (2) split decision;
- (3) majority decision;
- (4) draw; or

(5) technical decision.

**E. Forfeit:** a fighter or his representative may forfeit a match prior to the beginning of the match, thereby losing the match.

**F. Disqualification:** a "warning" will be given when a fighter commits a foul or illegal action or does not follow the referee's instruction. Three warnings will result in disqualification. Moreover, if a fighter is injured and unable to continue due to a deliberate illegal technique from his opponent, the opponent will be disqualified.

**G. No Contest:** in the event that both fighters commit a violation of the rules, or a fighter is unable to continue due to an injury from an accidental illegal technique, the match will be declared a "no contest".

[15.6.20.18 NMAC - N, 08-26-2012]

#### **15.6.20.19 CERTAIN RULES APPLICABLE:**

**A.** There may be three licensed cornermen for all non-title fights or four for a title fight, positioned in a designated area by a cage or fenced area or positioned in each corner.

**B.** Two cornermen may enter the cage or fenced area to tend a fighter between rounds and at the end of the fight. At no time will more than two cornermen be allowed in the cage with the fighter, if a cut man is being utilized then only one cornermen will be allowed in the cage with the fighter. Cut man counts as a cornerman during the bout.

**C.** Any person violating any rule working the corner may be disqualified for the remainder of the event and may be suspended.

**D.** Weigh in rules meeting shall be conducted before or immediately following the weigh-in of contestants to communicate certain rules and procedures for the event, not limited to such things as hand wraps, arrival times, garments, or uniforms.

**E.** Pre-fight rules meeting shall be held in both a group setting, where rules are reviewed by referees contracted, as well as any individual question and answer sessions as needed, per fighter.

[15.6.20.19 NMAC - N, 8/26/2012; A, 1/30/2024]

#### **15.6.20.20 MUAY THAI FIGHTING:**

Muay thai fighting is considered a mixed martial art. Most commonly known as the "art of eight limbs" All rules stated herein apply to the combative sport of muay thai fighting with the exception of 15.6.20.1 NMAC -15.6.20.27 NMAC unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails. The sponsoring

organization or promoter must file a copy of the official rules with the commission before it will approve the holding of the contest or exhibition.

**A.** Muay thai is form of mixed martial arts competition in which a person utilizes punches, elbows, and knees. Muay thai also involves the practicing of pre-fight rituals performed by each contestant prior to the start of the contest and such rituals must be permitted with a limit of no more than three minutes per fighter. (The rambuling).

**B.** It is permissible to strike an opponent's legs, arms, body, face, and head using the shin, knee, gloved fist or elbow.

**C.** Contests will be scheduled for no more than five rounds, no longer than five minutes with maximum one minute rest periods. The commission reserves the right to allow three minute rounds with one minute rest periods.

**D.** Contestants must wear gloves weighing not less than eight oz.

**E.** Ankles may be taped or wrapped with approved non-metallic athletic medical wrap.

**F.** Male contestants must wear a foul-proof groin protector. Female contestants shall wear a sports bra type garment. Female contestants may use a foul proof breast protector if desired.

**G.** Spinning back fist blows are allowed, so long as contact is made only with the padded part of the glove.

**H.** The following tactics are fouls and may result in disqualification or the deduction of one or more points, at the discretion of the referee:

- (1) head butts;
- (2) striking a downed opponent;
- (3) kicks, punches or any strikes to the groin, kidneys or spine;
- (4) eye gouging, pricking or pressing or attacking eyes;
- (5) spitting or biting;
- (6) striking the throat area;
- (7) hair pulling;
- (8) wrestling or throwing opponent to the ground;

- (9) performing any illegal holding or wrestling technique not part of muay thai;
- (10) holding or stepping on one of the ropes while fighting, elbowing or striking;
- (11) any un-sportsmanlike conduct;
- (12) attacking on the break;
- (13) attacking after the bell has sounded; or
- (14) throwing in the towel during competition.

I. The determination of the winner shall be as follows:

- (1) knockout;
- (2) technical knockout;
- (3) points on judges' scorecards, with at least two rounds of five-round fights being completed, if both fighters are injured or counted out, and are unable to continue;
- (4) referee stopping a match based upon a ring physician's advice;
- (5) referee stopping a match when one fighter is outclassing the other;
- (6) contestants corner stopping the bout; or
- (7) referee disqualifying a contestant for a violation of the rules.

J. Weight classes: it is recommended that the unwritten custom of the one pound allowance for non-title bouts be continued, but only if provided for in the written bout contract or by regulation:

- (1) mini flyweight from: 100 pounds but not over 105 pounds;
- (2) light flyweight must be over: 105 pounds but not over 108 pounds;
- (3) flyweight must be over: 108 pounds but not over 112 pounds;
- (4) super flyweight must be over: 112 pounds but not over 115 pounds;
- (5) bantamweight must be over: 115 pounds but not over 118 pounds;
- (6) super bantamweight must be over: 118 pounds but not over 122 pounds;
- (7) featherweight must be over: 122 pounds but not over 126 pounds;

- (8)** super featherweight must be over: 126 pounds but not over 130 pounds;
- (9)** lightweight must be over: 130 pounds but not over 135 pounds;
- (10)** super lightweight must be over: 135 pounds but not over 140 pounds;
- (11)** welterweight must be over: 140 pounds but not over 147 pounds;
- (12)** super welterweight must be over: 147 pounds but not over than 154 pounds;
- (13)** middleweight must be over: 154 pounds but not over than 160 pounds;
- (14)** super middleweight must be over: 160 pounds but not over than 168 pounds;
- (15)** light heavyweight must be over: 168 pounds but not over 175 pounds;
- (16)** cruiserweight must be over: 175 pounds but not over than 190 pounds;
- (17)** super cruiserweight must be over: 190 pounds but not over 210 pounds;
- (18)** heavyweight must be over: 210 pounds but not over 230 pounds;
- (19)** super heavyweight 230 pounds and up.

**K.** No unarmed combatants may engage in a contest or exhibition, without the approval of the commission or the commission's representative if the difference in weight between unarmed combatants exceeds the allowance shown in the following schedule:

- (1)** up to 118 lbs: not more than three lbs.;
- (2)** 118 lbs to 126 lbs not more than five lbs.;
- (3)** 126 lbs.-160 lbs: not more than seven lbs.;
- (4)** 175 lbs.-195 lbs: not more than 12 lbs.;
- (5)** 195 lbs. and over no limit.

**L.** Muay thai scoring will be on a 10 point must system.

**(1)** A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows dominance in a round.

**(2)** A round is to be scored as a 10-9 round when a contestant wins by a close but clear margin, landing the greater number of effective legal strikes and other maneuvers.

**(3)** A round is to be scored as a 10-8 round when a contestant wins a round by a wide margin and damages his opponent.

**(4)** A round is to be scored as a 10-7 round when a contestant totally and completely dominates in a round and damages his opponent.

[15.6.20.20 NMAC - N, 08-26-2012]

#### **15.6.20.21 MUAY THAI FOULS:**

**A.** Direct kicks (side kick style) to the front of the fighter's legs.

**B.** Hip throws:

**(1)** over the hip throws such as in Japanese arts like judo, jujitsu, karate, sambo, or san shou;

**(2)** a fighter is not allowed to step across or in front of an opponent's leg with his/her own leg and bring the opponent over his/her hip;

**(3)** a fighter is not allowed to twist and pull an opponent over the side of his/her body and then land on top;

**(4)** it is an intentional foul when a fighter plans, with the sole intention of falling on top of his/her opponent, to either strike with the knee or to intentionally hurt the opponent while down, by contriving to make it look like an accident; or

**(5)** stepping on a fallen opponent.

**C.** Trips. The leg must clear immediately after the opponent is pulled or tripped over the knee. Clear means that the leg must be moved out of the way before the opponent hits the canvas by skipping the leg or slightly jumping to the side, as long as it is moved from the original position. Taking out an opponent's footing is legal only if the tripping leg is withdrawn from contact as he/she falls to the ground. The following shall be illegal trips:

**(1)** if a fighter positions a foot next to the opponent and twists him/her over the leg, it is an illegal trip unless the leg is cleared as the opponent falls;

**(2)** if a fighter spins or pulls the opponent over the inside or outside of the leg and dumps him/her on the ground, it is an illegal trip when the leg being used to manipulate and dump the opponent stays in that position as he/she goes down; or

(3) if the leg is set and stays in that position, it is an illegal throw or trip.

**D. Neck wrestling:**

(1) if in a clinch with arms around each other's shoulder, such as to deliver or defend from an elbow

strike, twisting the opponent using the upper body in such a way that he/she will fall to the ground is allowed;

(2) by using neck and shoulder manipulation, it is legal for a fighter to spin and throw/dump an opponent to the canvas without using any part of his/her body as a barrier.

**E. Lifting:** It is illegal in any way to lift an opponent off the ground and throw the opponent on the canvas.

**F. Hand wraps:** Unless otherwise specified, hand wraps are subject to the same provisions as in 15.6.20.13 NMAC with the exception that under no circumstances is 'topping up' allowed. New hand wraps shall be applied using soft gauze and tape at each fight, and the commission reserves the right to confiscate any hand wraps applied at the end of each contest.

[15.6.20.21 NMAC - N, 08-26-2012]

**15.6.20.22 FIRST AID EQUIPMENT:**

**A.** No spirits of ammonia may be used in the ring/cage.

**B.** Only discretionary use of petroleum jelly may be used on the face prior to start of fight. Namman muay is not allowed.

**C.** In case of cuts, only the following are allowed and all other solutions are prohibited:

(1) a sealed solution of adrenaline 1/1000 at ringside;

(2) aventine;

(3) thrombin.

**D.** All first-aid equipment used by a second, trainer, or manager shall in all cases and at all times be subject to inspection by the commission or its representative, or the assigned physician and the decision as to the use shall be final.

E. No prescribed inhalers or any other type of aerosol inhaler may be used in the corner of any fighter. A prescribed inhaler may be given to the ringside physician prior to the start of the bout.

[15.6.20.22 NMAC - N, 08-26-2012]

**15.6.20.23 REPORTING RESULTS:**

All results of all fights shall be reported to the fightfax.com, mixedmartialarts.com or any other national or industry recognized by the New Mexico athletic commission. Results must be reported within 72 hours of the event.

[15.6.20.23 NMAC - N, 08-26-2012]

**PART 21: BARE KNUCKLE MODIFIED**

**15.6.21.1 ISSUING AGENCY:**

New Mexico Athletic Commission.

[15.6.21.1 NMAC - N, 01/30/2024]

**15.6.21.2 SCOPE:**

The provisions in Part 21 apply to all licensees of the commission.

[15.6.21.2 NMAC - N, 01/30/2024]

**15.6.21.3 STATUTORY AUTHORITY:**

Part 21 of Chapter 6 of Title 15 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30, NMSA 1978 (1980 Repl. Pamp.); specifically Sections 60-2A-2, 60-2A-4, 60-2A-8, 60-2A-9, 60-2A-10, 60-2A-20, 60-2A-21, 60-2A-29, and 60-2A-31.

[15.6.21.3 NMAC - N, 01/30/2024]

**15.6.21.4 DURATION:**

Permanent.

[15.6.21.4 NMAC - N, 01/30/2024]

**15.6.21.5 EFFECTIVE DATE:**

January 30, 2024, unless a later date is cited at the end of a section.

[15.6.21.5 NMAC - N, 01/30/2024]

**15.6.21.6 OBJECTIVE:**

The objective of Part 21 of Chapter 6 is to set forth all commission requirements for the conduct of any bare-knuckle modified contests regulated by the commission.

[15.6.21.6 NMAC - N, 01/30/2024]

**15.6.21.7 DEFINITIONS:**

**A. "Contests"** are considered **"bare-knuckle modified contests"** and not **"fights"** or **"prize fights."**

**B. "Down"** means that some part of the contestant's body other than their feet is on the ring floor; or the contestant is hanging helplessly on the ring ropes/cage; or the contestant is rising from a down position.

**C. "KO"** means loss by a knockout.

**D. "TKO"** means loss by a technical knockout and refers to the ending of a bout by a referee for any reason other than a count-out or a disqualification.

[15.6.21.7 NMAC - N, 01/30/2024]

**15.6.21.8 CHANGES IN ANNOUNCED OR ADVERTISED BARE-KNUCKLE MODIFIED PROGRAMS:**

**A. Notice of change required:** A notice of any change in the announced or advertised programs for any main event contest must be filed with, and approved by, the commission at least 48 hours before the weighing-in time of the contest.

**B. Posting of notice:** Notices of any such change or substitution must also be conspicuously posted at all box offices on the premises and announced from the ring before the opening contest.

**C. Refund policy:** If any patrons apply for refunds on their purchased tickets, the promoter or promoting corporation shall make such refunds upon demand, provided such tickets are presented at the box office on the day or night of the contest.

[15.6.21.8 NMAC - N, 01/30/2024]

**15.6.21.9 DURATION OF MATCHES:**

All matches must be between three and five rounds with all championship fights lasting five rounds.

[15.6.21.9 NMAC - N, 01/30/2024]

**15.6.21.10 BARE-KNUCKLE MODIFIED ROUNDS:**

**A. Number of rounds allowed:** There shall be no less than 17 scheduled rounds on any one program, unless otherwise approved by the commission.

**B. Round duration and intermission between rounds for contestants:** Each round shall be no more than two minutes in duration and there shall be a 60 second rest period intermission allowed between rounds.

[15.6.21.10 NMAC - N, 01/30/2024]

**15.6.21.11 CONTESTANTS' SECONDS:**

**A. Approval of seconds by commission:** the commission must approve all seconds.

(1) Each contestant must submit the name of his chief second and his assistant second to the commission for approval.

(2) Only seconds approved by the commission shall be permitted in the contestant's corner.

(3) Before the fight begins, the referee must be informed who the chief second is.

**B. Number of seconds per contestant:**

(1) The maximum number of seconds a contestant may have is three.

(2) Only one of a fighter's seconds will be permitted inside the ring/ropes/cage between rounds.

**C. Conduct of seconds:**

(1) Seconds must remain seated during each round.

(2) Seconds must not interfere with or move a fighter who has been knocked down until they are instructed to do so by the ringside physician.

(3) Seconds are prohibited from entering the ring between rounds and assisting a contestant back to his corner unless the contest has been terminated by the referee or ringside physician.

(4) A second may step on the ring apron to retire their fighter in defeat.

[15.6.21.11 NMAC - N, 01/30/2024]

### **15.6.21.12 CONTESTANTS' EQUIPMENT:**

**A. Wrapped Hands:** The following requirements apply to the wrapping of a fighter's hands for a bareknuckle fight.

(1) Hands shall be wrapped with gauze and athletic tape that ends no closer than one inch from the fighter's knuckles. The wrap must include the wrist and may travel up to three inches past the junction of the wrist bone.

(2) Gauze may be applied to the wrist, palm of the hand, back of the hand, and thumb. The length of gauze to be utilized may not exceed a length of 10 feet per hand.

(3) Tape may be applied to the wrist, palm of the hand, back of the hand, and thumb. The tape shall not be greater than one inch in width and shall not exceed 10 feet in length per hand.

(4) The use of water, plaster, ointments, Vaseline, glues or any other liquid or materials to the hand wraps or bandages is strictly prohibited.

**B. Gloves:** The following requirements apply to the gloves that must be used by contestants in an event.

(1) Gloves for main events shall be new.

(2) Gloves are to be furnished by the licensed promoter or licensed promoter corporation and approved by the Commission.

(3) No contestant shall supply his or her own gloves for participation unless approved by the commission.

(3) Gloves used in any amateur bare knuckle modified event must weigh at least six ounces.

(4) Gloves shall be identical and shall not be altered in any manner.

**C. Shoes:** Shoes are required and must be soft material that are not fitted with spikes, cleats, hard soles, or hard heels shall be permitted in the ring.

**D. Mouthpieces:** Each contestant shall wear an individually fitted mouthpiece that shall remain in the contestant's mouth at all times during the competition.

(1) The round cannot begin until the contestants are wearing mouthpieces.

(2) If the mouthpiece is dislodged during competition, the referee will call time at the first opportune moment without interfering with the immediate action and have the mouthpiece replaced.

(3) The referee shall direct the other contestant to the farthest neutral corner and escort the contestant with the dislodged mouthpiece to the contestant's corner to have the mouthpiece rinsed and replaced.

(4) The referee may deduct points or disqualify a participant if he deems that the mouthpiece is being intentionally spit out.

**E. Abdominal guards:** Contestants may wear an abdominal guard of a standard type that provides sufficient protection to withstand any low blow. The use of this equipment shall be determined by the fighters or promotion on an individual basis.

**F. Attire and groin protection:** All contestants shall be required to wear shorts or boxing trunks, the belt of which shall not extend above the waistline and protective cups/groin protectors that are properly fitted and shall be firmly in place before the contestant enters the ring. All trunks shall be without pockets.

[15.6.21.12 NMAC - N, 01/30/2024]

#### **15.6.21.13 NUMBER OF BARE-KNUCKLE CONTEST OFFICIALS REQUIRED:**

There shall be at least two physician in attendance at all times, one of which must remain ringside. In addition, at least the following officials shall be present at each contest:

- A. one referee;
- B. three judges;
- C. one timekeeper; and
- D. one announcer.

[15.6.21.13 NMAC - N, 01/30/2024]

#### **15.6.21.14 POSITION OF JUDGES AND PHYSICIANS:**

**A. Judges:** The judges shall be stationed at opposite sides of the ring.

**B. Physicians:** The physician shall be stationed at places designated by the commission representative in charge.

[15.6.21.14 NMAC - N, 01/30/2024]

#### **15.6.21.15 FEMALE FIGHTERS:**

The weight classes for female fighter shall be the same as used by male fighters.

- A.** A female fighter shall not engage in a contest with a male fighter.
- B.** Female contestants shall be permitted to wear a body shirt or blouse without buttons, buckles or ornaments. Other apparel or equipment is prohibited.
- C.** All female fighters must provide a negative pregnancy test prior to each bout.

[15.6.21.15 NMAC - N, 01/30/2024]

#### **15.6.21.16 BARE-KNUCKLE MODIFIED CONTESTANTS:**

**A. All event contestants:** All contestants, participating in the program must report to the designated dressing room of the event premises no later than one hour before the commencement of the first scheduled contest unless otherwise permitted by the New Mexico athletic commission.

**B. Confinement to dressing rooms:** All contestants will remain in their dressing rooms until ordered to the ring by the commission representative in charge.

**C. Physical appearance:** All finger nails must not extend past the tip of the fingers and thumbs.

**D. Contestant's ring costume:**

(1) Each contestant on a program must provide himself with a ring costume approved by the commission.

(2) No makeup or cosmetics shall be applied to a fighter's face.

**E. Contestant's conduct after contest is finished:** After the decision of any contest has been announced, each contestant and his seconds must leave the ring at once and retire to the contestant's dressing room after being cleared by a ring-side physician.

**F. Contestant's minimum age:** No fighter shall be less than 18 years old at the time the sign a contract to fight.

[15.6.21.16 NMAC - N, 01/30/2024]

#### **15.6.21.17 WEIGHING-IN CEREMONIES:**

**A. Schedules of ceremonies:** The times and places of all weigh-in ceremonies for indoor or outdoor programs shall be determined by the commission. However, all weigh-ins shall take place no later than 12 o'clock noon on the day of the contest.

**B. Contestant weigh-ins:** All contestants shall be weighed-in on scales approved by the commission, and in the presence of their opponents and the commission representative.

**C. Postponement of weigh-in:** In the event a contest is postponed, for any reason whatsoever, more than 24-hours prior to the contest, a second weigh-in and additional physical examinations may be required on the day to which the contest has been rescheduled.

[15.6.21.17 NMAC - N, 01/30/2024]

#### **15.6.21.18 LICENSURE OF AGENTS REQUIRED:**

The commission shall issue licenses to all agents present to perform functions representative of the commission at a bare-knuckle program. This requirement shall include, cut men, seconds, managers, and any others performing duties specified and ordered by the commission at a program.

[15.6.21.18 NMAC - N, 01/30/2024]

#### **15.6.21.19 THE REFEREE:**

**A. Referee's wearing apparel:** The commission shall prescribe the type, style, and color of the referee's apparel.

**B. Referee instructs the contestants:** Before the start of each contest, the referee must call the contestants together for final instructions. Each contestant may only be accompanied by his chief second, except in cases where a contestant also requires the services of an interpreter. After receiving the referee's instructions, the contestants shall shake hands and retire to their respective corners to await the gong for the first round.

[15.6.21.19 NMAC - N, 01/30/2024]

#### **15.6.21.20 INSPECTORS:**

**A. Appointed by the commission:** The commission shall appoint inspectors to be present at all contests. Inspectors shall work in cooperation and in conjunction with any police officers as may be detailed for this duty at contests.

**B. Prohibitions to assigning officials:** The commission will not and shall not assign officials who are directly or indirectly associated with, including but not limited to

any financial interest in, the management of any contestant; or who is an individual promoter; or who is a stockholder in, or employee of, a promoter corporation or an unincorporated club or association engaged in the promotion of contests.

[15.6.21.20 NMAC - N, 01/30/2024]

#### **15.6.21.21 PROHIBITED ACTIVITIES:**

**A. Excessive spraying of water on contestant:** Any excessive or undue spraying or throwing of water on any contestant between rounds is forbidden.

**B. Application of monsel's solution:** The application of monsel's solution, or any use of its derivatives on the body of the contestant between rounds, is prohibited.

**C. Persons forbidden to coach contestants:** The licensed promoter, matchmaker and any promotion employees or contract employees are forbidden from coaching any contestant at any time during the progress of any contest.

**D. Persons disqualified from officiating:** Officials, directors, matchmakers, or stockholders of any promoting corporation or licensed club are disqualified from officiating in any capacity at any contest conducted by such corporation. They are also prohibited from interfering in any way with the contestants participating in said program.

**E. Persons prohibited from holding financial interest in contest:** No official or employee of this commission, or of its medical panels or medical advisory board, and no judge or referee licensed by this commission may, directly or indirectly, have any financial interest in any contestant, wrestler, promoting corporation, or in any manager's contract with any licensed athlete, or in any assignment thereof.

[15.6.21.21 NMAC - N, 01/30/2024]

#### **15.6.21.22 OUTDOOR CONTESTS:**

The following special rules and regulations pertain to outdoor programs only. All other rules and regulations of the commission not affected or modified below remain in full force and effect for all outdoor contests, as well as, other programs.

**A. Postponement of event:** In the event of rain immediately before or during the course of any outdoor program, except during the course of the main event, the promoter may postpone the program to a time and place approved by the commission.

(1) An announcement giving the full details of the postponement shall be made by the promoter.

(2) Any patron desiring a refund of the purchase price of his ticket may apply for the refund at the box office on the premises, except when the main contest is held on the scheduled date or one of the successive rain-out dates indicated on the ticket.

(3) All contestants who have fulfilled their contracts before the rain-out, shall be paid in full by the promoter.

(4) On the date to which the program is postponed, the promoter shall have scheduled substitute contests in such number and duration as directed by the commission.

**B. Rearrangement or shortening of program:** In the event of threatening weather and rain, the program of contests may be rearranged or shortened by the promoter with the consent of the commission representative in charge.

**C. Reimbursement of expenses to contestants:** All contestants in a contest who were unable to compete because of weather conditions or a rearrangement or shortening of the program, shall have their expenses and other fees paid by the promoter as the commission representative in charge may direct.

**D. Stopping the contest because of rain:** In the event that rain occurs after the main event is completed, the program shall be considered as having been completed.

(1) In the event of rain during the progress of the main event, the contest shall be continued or stopped at the discretion of the commission representative in charge.

(2) If the main contest is stopped, the provisions of Subsection A of 15.6.21.22 NMAC as to postponement and refunds shall apply.

[15.6.21.22 NMAC - N, 01/30/2024]

#### **15.6.21.23 UNIFORM REGULATIONS FOR BARE KNUCKLE MODIFIED:**

**A. Contest elements considered:** In scoring a contest, the elements of offense, defense, clean hitting, ring generalship and sportsmanship shall be carefully considered.

**B. Scoring judges:** Three judges approved by the commission shall evaluate each contest and score the contest.

**C. "10 point" must system:** The 10-point must system will be the standard system of scoring a bare-knuckle contest.

**D. Winner's points:** The winner of any round is marked a "10".

**E. Loser's points:** The loser of any round is marked "one" to "nine".

**F. Mandatory eight-count:** Mandatory eight-count will be the standard procedure in all contests.

**G. Three knockdown rule:** There shall be NO three-knockdown rule called in any contest.

**H. 20 second count:** A contestant shall receive a 20-second count if he is knocked out of the ring and onto the floor.

**I. Referee is sole arbiter:** The referee is the sole arbiter of a contest and is the only individual authorized to stop a bout.

**J. Knockdown rated:** The referee shall call a knockdown as such as soon as it occurs.

**K. Ring generalship:** The contestant who takes advantage of the full "nine" count should be credited with "ring generalship", which would not be credited to him if he arose immediately and tried to continue in a possibly groggy condition.

**L. Foul blows:** The use of foul blows and other tactics shall result in a penalty of one point for each foul committed, and the referee shall advise the judges immediately of the number of points to be deducted.

**M. Disqualification for second's assist:** Contestants are to be unassisted by their seconds. If a contestant is assisted by his second, the referee shall disqualify the fighter.

**N. Saved by the bell:** A contestant who has been knocked down cannot be saved by the bell in any round.

[15.6.21.23 NMAC - N, 01/30/2024]

#### **15.6.21.24 KNOCKDOWNS:**

**A. Judges scoring knockdowns:** The judges may score a knockdown in any one round as either one or two points in favor of a contestant who scored the knockdown.

**B. Judges score independently:** Each judge must determine for himself which value shall be placed on the knockdown.

[15.6.21.24 NMAC - N, 01/30/2024]

#### **15.6.21.25 PROTOCOL FOR USING SCORECARDS, THE TALLY AND DECISION:**

**A. The Rounds Scoring:** Judges shall clearly write their decision and sign their scorecards; and they must mark their cards in ink or in indelible pencil at the end of each round.

**B. The tally:** At the conclusion of the round, each judge must tally up the points he has awarded each contestant and submit the scorecard to the referee.

**C. The decision:** After the scorecards have all been checked by the commission representative, they must be returned to the announcer who shall announce the decision of the judges from the ring.

**D. Main event protocol on announcing the decision:** In main events, the announcer shall call out the points awarded by each judge. The decision must then be awarded to the contestant with the greatest number of points on two of the scorecards.

[15.6.21.25 NMAC - N, 01/30/2024]

#### **15.6.21.26 MAJOR FOULS:**

**A.** The following are major fouls.

- (1) Hitting an opponent who is down or who is rising from the down position.
- (2) Using the knee against the opponent.
- (3) Purposely going down without being hit.
- (4) Failure to heed the referee's warning concerning low blows or other minor fouls.
- (5) Any dangerous and un-sportsmanlike conduct in the ring.
- (6) Throwing an opponent out of the ring or fenced area.
- (7) Attacking an opponent who is under the care of the referee.
- (8) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.
- (9) Tripping an opponent.
- (10) Use of body lock throws to move your "opponent."

**B.** The referee may disqualify the offending contestant and award the bout or any points to the contestant being fouled.

**C.** Disqualification on fouls to the body may only occur if the referee deems that these fouls are flagrant or continual.

[15.6.21.26 NMAC - N, 01/30/2024]

**15.6.21.27 MINOR FOULS:**

**A.** The following are minor fouls.

- (1) Holding an opponent.
- (2) Hitting with the inside or butt of the hand, the wrist, or the elbow.
- (3) Backhanded blows.
- (4) Low blows.
- (5) Hitting or flicking with an open hand.
- (6) Wrestling or roughing the ropes.
- (7) Deliberately striking at the part of the body over the kidneys.
- (8) Use of a pivot blow or rabbit punch.
- (9) Hitting on the break.
- (10) Butting with the head.
- (11) Eye gouging of any kind.
- (12) Biting.
- (13) Hair pulling.
- (14) Fish hooking.
- (15) Groin attacks of any kind.
- (16) Putting a finger into any orifice or into any cut or laceration on an opponent
- (17) Small joint manipulation.
- (18) Striking to the spine or the back of the head.

- (19) Throat strikes of any kind, including, without limitation, grabbing the trachea.
- (20) Clawing, pinching or twisting the flesh.
- (21) Grabbing the clavicle.
- (22) Holding the shorts or wrists of an opponent.
- (23) Spitting at an opponent.
- (24) Holding the ropes or the fence.
- (25) Using abusive language in the ring or fenced area.
- (26) Interference by the corner.

**B.** It is within the discretion of the referee to determine whether the offending contestant should merely be warned, or have points deducted, for committing a minor foul.

**C.** If a fighter injures themselves while attempting to intentionally foul their opponent, the referee will not take any action in his favor, and this injury will be the same as one produced by a fair blow.

**D.** The use of body grease, gels, balms, lotions, oil or other substances is a violation and is prohibited from being applied to the hair, face, or body. This includes excessive amounts of water being discarded in a manner at the designated time could be penalized or subject to disqualification.

[15.6.21.27 NMAC - N, 01/30/2024]

#### **15.6.21.28 LEGAL TECHNIQUES:**

Legal strikes are considered those done with a clenched fist, which is a punch thrown with fists between opponents. Standard face-to-face punches are legal from the waist to the top of the head, including fighting in the clinch. Participants in the clinch may hold their opponent by the back of the neck in a downward position and punch any legal strike zone of the opponent, with the exception of punches to the back of the head.

[15.6.21.28 NMAC - N, 01/30/2024]

#### **15.6.21.29 REFEREE'S NOTICE TO JUDGES CONCERNING FOULS:**

**A.** In the event that the referee determines that a foul has been committed, he shall notify the judges immediately.

**B.** The judges shall deduct one point from the offending contestant's scores.

**C.** On any illegal blow to the body the referee may order a deduction of points and will give the necessary time for recovery to the injured fighter (with a maximum of five minutes) after consulting with the ringside physician. If the referee rules this foul was accidental and after five minutes the injured fighter can't continue, the rules governing accidental fouls shall apply. A contestant who is hit with an accidental low blow must continue after the five-minute rest or he will lose the bout.

**D.** There may be a deduction of points by the referee at any time for illegal blows or conduct by the fighter or their corner men.

**E.** In the case of a clear and intentional foul that causes an injury and the contest can still continue, the contestant who was doing the fouling will have two points deducted.

(1) The referee must stop the action and inform all judges and the commission or commission representative of this deduction.

(2) Point deductions for intentional fouls will be at the referee discretion.

(3) The referee has the authority to stop a bout or contest at any stage on account of an intentional foul being committed by either contestant. In such an event, in a bare-knuckle contest the referee may award the decision to the boxer who was intentionally fouled.

[15.6.21.29 NMAC - N, 01/30/2024]

#### **15.6.21.30 CONDITIONS FOR COUNTING A CONTESTANT OUT:**

A fighter who is hit with an accidental low blow must continue the contest after a reasonable time, but no more than five minutes, or he will lose the contest.

[15.6.21.30 NMAC - N, 01/30/2024]

#### **15.6.21.31 WRITTEN REPORT TO COMMISSION REGARDING FOULS:**

If, in any contest, a contestant is penalized with the loss of three or more rounds due to fouls, the referee and each judge must report the matter to the commission, in writing, within 24 hours.

[15.6.21.31 NMAC - N, 01/30/2024]

#### **15.6.21.32 TECHNICAL KNOCKOUTS; TECHNICAL DECISIONS; TECHNICAL DRAWS; DISQUALIFICATIONS; NO CONTESTS:**

**A. Technical knockouts.**

(1) When a cut is produced by a legal punch and the contest is stopped because of that cut, the injured fighter shall lose by a technical knockout and the commissions shall enter the letters TKO in the record.

(2) When a referee stops a contest to save any contestant from further punishment, he must award the other contestant the decision by a technical knockout.

(3) If a fighter sustains an injury from a fair blow and the injury is severe enough to terminate the bout, the injured fighter will lose by a TKO.

(a) Any contestant losing by a TKO shall receive a minimum of a 30 day medical suspension.

(b) Any contestant losing by a KO shall receive a minimum of a 60 day medical suspension.

## **B. Technical decisions.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a later round, the injured contestant will win by a technical decision if he is ahead on the score cards.

(2) If the accidental foul occurs after the completion of four rounds and the bout must be stopped immediately because the fouled contestant is injured severely enough that he cannot continue, a technical decision shall be awarded to the contestant who is ahead on the score cards at the time the bout is stopped.

(a) Partial or incomplete rounds will be scored.

(b) At the discretion of the Judges, if no action has occurred, the round may be scored as an even round.

(3) If in the later rounds, the injury has worsened as a result of legal blows, and the injured fighter cannot continue, a decision shall be rendered by referring to the scorecards. The judges, who must inform the commission and both contestants that the foul is the result of an accidental foul, shall score partial rounds.

## **C. Technical draws.**

(1) In the case where a clear and intentional foul causes an injury and the injury results in the contest being stopped in a later round, a technical draw will be declared if the injured contestant is even or behind on the scorecards.

(2) If an accidental foul occurs before the completion of four rounds and the injured contestant cannot continue, the contest will be declared a technical draw.

#### **D. Disqualifications.**

(1) In the case where an intentional foul causes an injury, and the injury is severe enough to terminate the bout immediately; the contestant causing the injury shall lose by disqualification, even if he is the injured contestant.

(2) If the referee deems that a contestant has conducted himself in an un-sportsman-like manner, he may stop the bout and disqualify that contestant.

**E. No contests:** If, before four rounds are completed in a contest, an accidental foul causes an injury severe enough for the referee to stop the bout immediately, the bout will result in a no contest.

[15.6.21.32 NMAC - N, 01/30/2024]

#### **15.6.21.33 COUNTING:**

**A. Timekeeper calls off the seconds:** When a contestant is down, the timekeeper shall immediately commence calling off the seconds indicating the count with a motion of his arm.

**B. Referee picks up the count:** When the timekeeper commences calling off the seconds, the referee must immediately order the other contestant to a neutral corner and shall pick up the count from the timekeeper, indicating the count with a motion of his arm.

#### **C. Reaching the count of ten.**

(1) If a contestant is unable to continue at the count of 10, the referee shall declare the other contestant the winner by a knockout.

(2) If a contestant who has fallen or has been knocked out of the ring during the contest fails to be on his feet in the ring before the expiration of 10 seconds, the referee shall count him out as if he were down.

(3) A contestant who has fallen or has been knocked out of the ring must return to the ring unassisted.

(4) If a contestant who has fallen fails to be on his feet in the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 10. If the contestant fails to rise before the count of 10, the bout shall be awarded to the other contestant by a knockout in the round just ended.

(5) If a contestant has been knocked out of the ring at the time the round terminates, the timekeeper or referee, whoever has the count at the time, shall continue the count to 20. If the contestant fails to rise before the count of 20, the bout shall be

awarded to the other contestant by a knockout in the round just ended. The contestant must return to the ring unaided.

[15.6.21.33 NMAC - N, 01/30/2024]

#### **15.6.21.34 WEIGHT LIMITS FOR BARE-KNUCKLE MODIFIED CONTESTS:**

**A.** The classes for bare-knuckle modified fighters competing in contests or exhibitions and the weights for each class are shown in the following schedule.

- (1) Atomweight 105 to 115 lbs.
- (2) Strawweight: over 115 to 125 lbs.
- (3) Flyweight: over 125 to 135 lbs.
- (4) Featherweight: over 135 to 145 lbs.
- (5) Lightweight: over 145 to 155 lbs.
- (6) Welterweight: over 155 to 170 lbs.
- (7) Middleweight: over 170 to 185 lbs.
- (8) Light heavyweight: over 185 to 205 lbs.
- (9) Heavyweight: over 205 to 265 lbs.
- (10) Super heavyweight: anything over 265 lbs.

**B.** Weight loss of up to two lbs. is allowed. Fighters have up to one hour to lose weight. The weight loss described must not occur later than one hour after the initial weigh-in. Unarmed combatants over weight may be fined, have their license suspended, and have their license revoked by the commission.

[15.6.21.34 NMAC - N, 01/30/2024]

## **CHAPTER 7: [RESERVED]**

## **CHAPTER 8: TOBACCO PRODUCTS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: DEFINITIONS**

**15.8.2.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.2.1 NMAC – N, 1/1/2021]

**15.8.2.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.2.2 NMAC – N, 1/1/2021]

**15.8.2.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.2.3 NMAC – N, 1/1/2021]

**15.8.2.4 DURATION:**

Permanent.

[15.8.2.4 NMAC – N, 1/1/2021]

**15.8.2.5 EFFECTIVE DATE:**

January 1, 2021 unless a later date is cited at the end of a section.

[15.8.2.5 NMAC – N, 1/1/2021]

**15.8.2.6 OBJECTIVE:**

This rule is intended to locate all definitions of terms used in the act or in Title 15, Chapter 8 in one rule.

[15.8.2.6 NMAC – N, 1/1/2021]

**15.8.2.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

**A. "The Act"** means the New Mexico Tobacco Products Act, Sections 61-37-1 through 61-37-25 NMSA 1978.

**B. "Age-controlled locations"** means an area of a licensed location that is restricted to persons age 21 and older.

**C. "Approved operator"** means the licensee approved by the division to operate a license pursuant to the act.

**D. "Director"** means the director of the alcoholic beverage control division.

**E. "Division"** means the alcoholic beverage control division of the New Mexico regulation and licensing department.

**F. "Employee"** means any person, whether paid or not, who works under the direction of a licensee or a licensee's designate selling tobacco products, for whom which the licensee is responsible for.

**G. "Licensed location"** means the contiguous areas or areas connected by indoor passageways of a structure that are under the direct control of the licensee and from which the licensee is authorized to manufacture or sell tobacco products under the provisions of its license.

**H. "Manufacture"** means the process of a licensee using the licensee's equipment and ingredients on the licensed location to make, produce, create, fabricate, assemble, combine or mix tobacco products.

**I. "School"** means:

(1) a public or private educational institution accredited as such by the state or federal government;

(2) a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school, or combination thereof; or

(3) a center for attendance where educational instruction is offered by certified school instructors; a "school" must be located in a zoning area in which the local municipality or county permits schools, but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.

[15.8.2.7 NMAC – N, 1/1/2021]

## **PART 3: APPLICATIONS AND RENEWALS**

### **15.8.3.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.3.1 NMAC – N, 1/1/2021]

**15.8.3.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.3.2 NMAC – N, 1/1/2021]

**15.8.3.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.3.3 NMAC – N, 1/1/2021]

**15.8.3.4 DURATION:**

Permanent.

[15.8.3.4 NMAC – N, 1/1/2021]

**15.8.3.5 EFFECTIVE DATE:**

January 1, 2021, unless a later date is cited at the end of a section.

[15.8.3.5 NMAC – N, 1/1/2021]

**15.8.3.6 OBJECTIVE:**

This rule is intended to establish general standards for the application, renewal, and transfer of licenses under the act.

[15.8.3.6 NMAC – N, 1/1/2021]

**15.8.3.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.3.7 NMAC – N, 1/1/2021]

**15.8.3.8 APPLICATIONS FOR NEW LICENSES:**

**A.** The director is authorized to prescribe all forms necessary for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.

**B.** All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown by the applicant.

**C.** All applications for licenses issued pursuant to the act shall be made on the forms prescribed by the director whether filed electronically, by mail, or in person.

[15.8.3.8 NMAC – N, 1/1/2021]

### **15.8.3.9 MANUFACTURER LICENSE REQUIREMENTS:**

An application for a manufacturer license or manufacturer license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location where the applicant manufactures tobacco products;

**C.** Documentation as required by the division affirming that the applicant will comply with applicable and proper tobacco products manufacturing practices as required pursuant to 21 USCA Section 387d(a) and will comply with any applicable health directives issued by the department of health pursuant to the Public Health Act;

**D.** Documentation as required by the division affirming that the applicant will submit the applicable ingredient listing to the federal secretary of health and human services as required pursuant to 21 USCA Section 387d(a)(1);

**E.** Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements;

**F.** A list of all distributors in which the manufacturer sells tobacco products; and

**G.** A non-refundable application fee.

[15.8.3.9 NMAC – N, 1/1/2021]

**15.8.3.10 DISTRIBUTOR LICENSE REQUIREMENTS:**

An application for a distributor license or distributor license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location from which the applicant distributes tobacco products;

**C.** Documentation as required by the division establishing compliance with all state taxation and revenue department requirements;

**D.** A list of all manufacturers the applicant purchases from and all retailers applicant distributes to; and

**E.** A non-refundable application fee.

[15.8.3.10 NMAC – N, 1/1/2021]

**15.8.3.11 RETAILER LICENSE REQUIREMENTS:**

An application for a retailer license or retailer license renewal shall include:

**A.** The name, telephone number, mailing address and email address of the applicant and:

**(1)** if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

**(2)** if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

**B.** The address of the applicant's principal place of business and every location from which the applicant sells tobacco products;

**C.** A list of all distributors from whom the applicant received tobacco products;

**D.** Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements; and

**E.** A non-refundable application fee.

[15.8.3.11 NMAC – N, 1/1/2021]

#### **15.8.3.12 NEED FOR MULTIPLE LICENSE TYPES:**

**A.** A manufacturer license does not allow a licensee to distribute tobacco products or sell tobacco products directly to consumers.

**B.** A distributor license does not allow a licensee to manufacture tobacco products or sell tobacco products directly to consumers.

**C.** A retailer license does not allow a licensee to manufacture tobacco products or distribute tobacco products to retailers for resale.

**D.** Licensees who wish to conduct any combination of manufacturing, distributing, or retailing tobacco products at a single location must obtain each of the necessary license types.

**E.** Licensees are not prohibited from holding multiple license types at one location.

[15.8.3.12 NMAC – N, 1/1/2021]

#### **15.8.3.13 LICENSE LOCATION TO BE AT LEAST 300 FEET FROM A SCHOOL:**

**A.** A license shall not be issued, retained, transferred or renewed if the location for the license or license transfer is within three hundred feet of a school; provided that this restriction does not apply to a location at which tobacco products have been lawfully manufactured, distributed or sold prior to July 1, 2020.

**B.** For purposes of the act, the distance to be measured is the distance between the outer boundary of the licensed location, that is the premises actually used to sell tobacco products, and the school.

**C.** Applicant is responsible from providing proof of distance from a school in a form required by the division.

[15.8.3.13 NMAC – N, 1/1/2021]

**15.8.3.14 DESIGNATION OF RESIDENT AGENT:**

**A.** Except for sole proprietors, every licensee shall designate a "resident agent" to accept service of all orders and notices of the division. The resident agent must have:

(1) authority to bind the applicant to matters related to tobacco product sales and operations;

(2) authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and

(3) residency in the state of New Mexico.

**B.** To designate a resident agent a licensee shall file an application on a division approved form. The designation of resident agent may be terminated upon written notification to the department by either the licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent.

**C.** A licensee may designate as many resident agents as it deems necessary for the operation of business.

**D.** The designation of a resident agent shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.

[15.8.3.14 NMAC – N, 1/1/2021]

**15.8.3.15 RENEWAL OF LICENSES:**

**A.** A complete renewal application and payment of all applicable renewal fees shall be filed with the division no earlier than sixty days and no later than 30 days before the license is set to expire.

**B.** Applicant must provide proof of meeting all state taxation and revenue department requirements.

**C.** The renewal application shall be in a form prescribed by the director.

**D.** All licensees who fail to renew their licenses or who are not issued a renewed license shall suspend all tobacco product operations until such time as a renewed license is issued and displayed at the licensed location.

**E.** Licenses shall be renewed in the name of the licensee shown on division records, regardless of who pays the renewal fee.

**F.** Any licensee that fails to submit a properly completed renewal application, including all applicable fees, by the renewal deadline must pay a late renewal fee in the amount of three hundred fifty dollars (\$350) plus ten dollars (\$10) per day for each additional day the renewal application is late.

**G.** The division may waive late fees if the licensee shows good cause for not filing a timely renewal application, taking into consideration hardship to the licensee, and whether the licensee filed a late renewal application the preceding five years.

**H.** Any license not renewed shall be subject to cancellation and shall not be reinstated, unless the renewal application is filed with the division within 30 days of the expiration date of the license. All applicable fees must be paid and all citations must be resolved prior to a license being reinstated after being subject to cancellation.

**I.** A licensee who fails to get its license reinstated following expiration may apply for a new license by filing an application with the division.

**J.** A license shall not be renewed with any outstanding citations for violations of the act, or these rules, unless the applicant is currently making good faith efforts to resolve said citations with the division.

[15.8.3.15 NMAC – N, 1/1/2021]

**15.8.3.16 APPLICATION FEES AND RENEWAL FEES:**

**A.** Manufacturer license application fees are as follows:

- (1)** Application fee for each licensed location: \$750;
- (2)** Renewal fee for each licensed location: \$400;

**B.** Distributor license application fees are as follows:

- (1)** Application fee for each licensed location: \$750;
- (2)** Renewal fee for each licensed location: \$400;

**C.** Retailer license application fees are as follows:

- (1) Application fee for each licensed location: \$750;
- (2) Renewal fee for each licensed location: \$400.

[15.8.3.16 NMAC – N, 1/1/2021]

#### **15.8.3.17 CHANGE IN OWNERSHIP:**

##### **A.** A change in ownership occurs when:

(1) if the licensee is a corporation: when a total of ten percent or more of its stock is transferred or when there is a merger or consolidation of the licensee with another entity;

(2) if the licensee is a limited liability company: when ten percent or more of the membership interests are transferred or when there is a merger or consolidation of the licensee with another entity;

(3) if the licensee is a general partnership: when there is any change or removal of any general partners;

(4) if the licensee is a limited partnership: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;

(5) if the licensee is a trust: when there is any change in the trustees or beneficiaries; or

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

**B.** Within 60 days of a change in ownership, licensee must submit an application with the division for issuance of an initial license as licenses shall not be transferred from licensee to another person pursuant to Section 61-37-10 NMSA 1978.

**C.** A temporary license may be issued if application process exceeds the 60 days. Issuance of a temporary license, pending the application process for a new license due to a change in ownership, does not indicate or guarantee the issuance of a new license to applicant.

[15.8.3.17 NMAC – N, 1/1/2021]

### **15.8.3.18 BUSINESS NAME CHANGE:**

**A.** Any licensee that changes the doing business name under which it operates a license issued pursuant to the act must file an application for change of DBA ("doing business as") name with the division together with the application filing fee.

**B.** DBA name change, or any change, shall not be knowingly attractive to minors.

**C.** If the division approves the application, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued.

[15.8.3.18 NMAC – N, 1/1/2021]

### **15.8.3.19 TRANSFER OF LOCATION:**

**A.** Approval from the division is required before a licensee may transfer a license from one location to another.

**B.** Licensee must submit an application in a form prescribed by the division along with all supporting documents to establish the license is not within 300 feet of a school and does not violate a zoning or other ordinance of the governing body of the location, as required by the act.

[15.8.3.19 NMAC – N, 1/1/2021]

## **PART 4: GENERAL OPERATIONS REQUIREMENTS**

### **15.8.4.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.4.1 NMAC – N, 1/1/2021]

### **15.8.4.2 SCOPE:**

These rules apply to all licensees under the New Mexico Tobacco Products Act.

[15.8.4.2 NMAC – N, 1/1/2021]

### **15.8.4.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.4.3 NMAC – N, 1/1/2021]

**15.8.4.4 DURATION:**

Permanent.

[15.8.4.4 NMAC – N, 1/1/2021]

**15.8.4.5 EFFECTIVE DATE:**

January 1, 2021, unless a later date is cited at the end of a section.

[15.8.4.5 NMAC – N, 1/1/2021]

**15.8.4.6 OBJECTIVE:**

These regulations are intended to establish standards for the general operation and maintenance of licensed location.

[15.8.4.6 NMAC – N, 1/1/2021]

**15.8.4.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.4.7 NMAC – N, 1/1/2021]

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

**A.** No person other than the approved operator or employees of the approved operator shall sell tobacco products at a licensed location.

**B.** Only the approved operator shall directly profit from the sale of tobacco products sold pursuant to a license. A person directly profits from the sale of tobacco products in violation of this rule when any person other than the approved operator receives any portion of the profits earned, or receipts, from the sale of tobacco products, except:

- (1) payment of rent based in whole or in part on the licensee's gross sales;
- (2) payment of employees;
- (3) revenues received by an affiliate of the licensee from the sale of products other than tobacco products;

**C.** It is a violation of the act for any licensee to divide, split, or in any way share the right to sell tobacco products with any person not named as a licensee on the license.

[15.8.4.8 NMAC – N, 1/1/2021]

#### **15.8.4.9 LIGHTING OF LICENSED LOCATION:**

At any licensed location open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance and age of all persons purchasing tobacco products.

[15.8.4.9 NMAC – N, 1/1/2021]

#### **15.8.4.10 SANITATION REQUIREMENTS:**

All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico and local sanitation ordinances, including but not limited to public health orders issued by New Mexico department of health.

[15.8.4.10 NMAC – N, 1/1/2021]

#### **15.8.4.11 DISPLAY OF LICENSE:**

The current tobacco products license, or licenses, shall be prominently displayed within the licensed location so that it is in full public view at all times. A copy or scanned image or facsimile of the license may be displayed only for 30 days or until the original license is received by the licensee, whichever occurs first, provided the copy or scanned image or facsimile is of the original, current, and duly issued license.

[15.8.4.11 NMAC – N, 1/1/2021]

#### **15.8.4.12 POSTERS:**

**A.** Licensees that sell tobacco products directly to the public shall display a printed sign or decal, in full public view within the licensed location at a point of sale and where a tobacco product vending machine is located, that reads "IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS."

**B.** The sign or decal shall be of a size prescribed by the director, except that the licensee may make the sign or decal larger than what is prescribed. The division will provided access to an electronic copy to be printed and displayed by licensee.

**C.** Licensees may, with the director's prior approval, develop and use printed signs or decals that contain the same information required in this section. Any such sign or decal shall be valid only if bearing the director's stamp of approval.

[15.8.4.12 NMAC – N, 1/1/2021]

#### **15.8.4.13 NONCOMPLIANCE WITH REQUIREMENTS:**

Noncompliance with the requirements of Chapter 8 Part 4 of these rules shall be deemed a violation of the Act.

[15.8.4.13 NMAC – N, 1/1/2021]

**15.8.4.14 CONTINUING NONCOMPLIANCE:**

**A.** After notification of a violation, the requirements of Chapter 8 Section 4 of these rules, a licensee's continued noncompliance with the requirements shall be deemed a separate and additional violation of the act.

**B.** Continuing noncompliance shall also be considered an aggravating factor for penalty enhancement purposes.

[15.8.4.14 NMAC – N, 1/1/2021]

**PART 5: PROHIBITED ACTS**

**15.8.5.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.5.1 NMAC – N, 1/1/2021]

**15.8.5.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.5.2 NMAC – N, 1/1/2021]

**15.8.5.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.5.3 NMAC – N, 1/1/2021]

**15.8.5.4 DURATION:**

Permanent.

[15.8.5.4 NMAC – N, 1/1/2021]

**15.8.5.5 EFFECTIVE DATE:**

January 1, 2021, unless a later date is cited at the end of a section.

[15.8.5.5 NMAC – N, 1/1/2021]

**15.8.5.6 OBJECTIVE:**

This rule is intended to establish conduct prohibited by the Act.

[15.8.5.6 NMAC – N, 1/1/2021]

**15.8.5.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.5.7 NMAC – N, 1/1/2021]

**15.8.5.8 UNLICENSED SALE BY NONLICENSEES:**

**A.** Unlicensed sale of tobacco products by person occurs when a person manufactures, distributes, or sells tobacco products without first obtaining a manufacturer, distributor, or retailer license issued by the division.

**B.** The unlicensed sale of tobacco products may be subject to criminal penalties, administrative penalties, or both.

[15.8.5.8 NMAC – N, 1/1/2021]

**15.8.5.9 UNLICENSED SALE BY LICENSEE:**

**A.** The unlicensed sale of tobacco products by a licensee occurs when:

**(1)** A person holding a license issued pursuant to the act then manufactures, distributes, or sells tobacco products at a location that is not a licensed location;

**(2)** A licensee who has experienced a change in ownership, without submitting an application for a new license continues to manufacture, distribute, or sell tobacco products; or

**(3)** A licensee who has manufactured, distributed, or sold tobacco products after letting their license expire.

**B.** Unlicensed sale of tobacco products includes:

**(1)** A manufacturer licensee distributing tobacco products without being issued a distributor license or selling tobacco products to consumers without being issued a retailer license;

**(2)** A distributor licensee manufacturing tobacco products without being issued a manufacturer license or selling tobacco products to consumers without being issued a retailer license; and

**(3)** A retailer licensee manufacturing tobacco products without being issued a manufacturer license or distributing tobacco products to retailers for resale without being issued a distributor license.

[15.8.5.9 NMAC – N, 1/1/2021]

**15.8.5.10 SALES TO MINORS:**

**A.** is a violation of the act for a licensee or their employee to knowingly, intentionally, or negligently sell, offer to sell, barter, or give a tobacco product to a person under 21 years of age.

**B.** Use of third-party age verification service may be evidence of mitigating factors.

[15.8.5.10 NMAC – N, 1/1/2021]

**15.8.5.11 FAILURE TO VERIFY AGE:**

It is a violation of the act for a retailer or an employee of a retailer to knowingly, intentionally, or negligently fail to verify the age of before selling, or providing, tobacco products to the consumer.

[15.8.5.11 NMAC – N, 1/1/2021]

**15.8.5.12 MINORS IN AGE-CONTROLLED LOCATIONS:**

It is a violation of the act for licensee to allow persons under the age of 21 into age controlled locations where tobacco products vending machines and the sales and display of cigars are present.

[15.8.5.12 NMAC – N, 1/1/2021]

**15.8.5.13 SALES OF TOBACCO PRODUCTS NOT IN ORIGINAL SEALED PACKAGE:**

It is a violation of the act for a licensee to sell, offer to sell, or deliver a tobacco product in a form other than original manufacturer-sealed package, except for individually sold cigars or loose leaf pipe tobacco.

[15.8.5.163NMAC – N, 1/1/2021]

**15.8.5.14 SALE OF TOBACCO PRODUCT NOT IN CHILD-RESISTANT PACKAGING:**

**A.** It is a violation of the act for a licensee to sell, offer to sell, or deliver nicotine liquid unless such liquid is in child-resistant packaging.

**B.** For the purpose of Section A, nicotine liquid does not include nicotine liquid in a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

[15.8.5.14 NMAC – N, 1/1/2021]

**15.8.5.15 SALE OF TOBACCO PRODUCTS KNOWINGLY ATTRACTIVE TO MINORS:**

It is a violation of the act for a manufacturer to produce and a distributor or retailer to sell, or provide, tobacco products that are knowingly attractive to minors.

[15.8.5.15 NMAC – N, 1/1/2021]

**15.8.5.16 PROVIDING FREE SAMPLES:**

**A.** It is violation of the act to provide free samples of tobacco products without the written approval of the director.

**B.** Subsection A shall not apply to an individual who provides free samples of tobacco products, e-cigarettes, or nicotine liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act.

[15.8.5.16 NMAC – N, 1/1/2021]

**PART 6: FINES AND PENALTIES**

**15.8.6.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.6.1 NMAC – N, 1/1/2021]

**15.8.6.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.6.2 NMAC – N, 1/1/2021]

**15.8.6.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.6.3 NMAC – N, 1/1/2021]

**15.8.6.4 DURATION:**

Permanent.

[15.8.6.4 NMAC – N, 1/1/2021]

**15.8.6.5 EFFECTIVE DATE:**

January 1, 2021, unless a later date is cited at the end of a section.

[15.8.6.5 NMAC – N, 1/1/2021]

**15.8.6.6 OBJECTIVE:**

This rule is intended to establish violations of the Act and the fines and penalties for such violations.

[15.8.6.6 NMAC – N, 1/1/2021]

**15.8.6.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.6.7 NMAC – N, 1/1/2021]

**15.8.6.8 PENALTIES:**

The division, when it finds that the licensee, an employee of the licensee, or a contractor acting on behalf of the licensee has violated a provision of the act or these rules, may:

- A. Suspend or revoke a license of a licensee;
- B. Require the use of identification verification software for a designated period of time;
- C. Impose an administrative penalty against a licensee in an amount not to exceed ten thousand dollars; or
- D. any combination thereof.

[15.8.6.8 NMAC – N, 1/1/2021]

**15.8.6.9 PENALTIES FOR VIOLATION OF SALES TO MINORS:**

**A.** Generally, after a first violation, at a location, imposition of an one-day suspension and \$1,000 fine;

**B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of a seven-day suspension and \$4,000 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a thirty-day suspension and \$7,000 fine;

**D.** Generally, after a fourth violation at a location within three years of the first such violation, permanent revocation of the licensee's license will be imposed.

[15.8.6.9 NMAC – N, 1/1/2021]

**15.8.6.10 PENALTIES FOR ALL OTHER VIOLATIONS INVOLVING MINORS:**

**A.** Generally, after a first violation, at a location, imposition of a \$1,000 fine;

**B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of one-day suspension and \$2,000 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a seven-day suspension and a \$5,000 fine;

**D.** Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a fourteen-day suspension and a \$10,000 fine.

[15.8.6.10 NMAC – N, 1/1/2021]

**15.8.6.11 PENALTIES FOR NON-AGE SPECIFIC VIOLATIONS:**

**A.** Generally, after a first violation, at a location, imposition of a \$100 fine;

**B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of a \$200 fine;

**C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a \$400 fine;

**D.** Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a \$750 fine;

[15.8.6.11 NMAC – N, 1/1/2021]

**15.8.6.12 COMPROMISING LIABILITY:**

The division is authorized to compromise the penalty for any violations of the act or of any division regulation or order when it is deemed in the best interest of the state.

[15.8.6.12 NMAC – N, 1/1/2021]

**15.8.6.13 ENHANCEMENT OF SCHEDULED PENALTIES:**

Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.

[15.8.6.13 NMAC – N, 1/1/2021]

**PART 7: HEARING PROCEDURE**

**15.8.7.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.7.1 NMAC – N, 1/1/2021]

**15.8.7.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.7.2 NMAC – N, 1/1/2021]

**15.8.7.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.7.3 NMAC – N, 1/1/2021]

**15.8.7.4 DURATION:**

Permanent.

[15.8.7.4 NMAC – N, 1/1/2021]

**15.8.7.5 EFFECTIVE DATE:**

January 1, 2021, unless a later date is cited at the end of a section.

[15.8.7.5 NMAC – N, 1/1/2021]

**15.8.7.6 OBJECTIVE:**

This rule is intended to establish the hearing procedures for the suspension or revocation of a license and the imposition of administrative penalties.

[15.8.7.6 NMAC – N, 1/1/2021]

**15.8.7.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.7.7 NMAC – N, 1/1/2021]

**15.8.7.8 COMPLAINTS AND INVESTIGATION:**

**A.** The division, the department of public safety, and the appropriate law enforcement authorities in each county and municipality may investigate any allegation of a violation and inspect licensed locations for compliance with the act and the rules promulgated thereof, and licensee's compliance during an inspection is required.

**B.** Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such violation and a copy of the citation shall be filed in the division.

[15.8.7.8 NMAC – N, 1/1/2021]

**15.8.7.9 INFORMAL CONFERENCE:**

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

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

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

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

**E.** Any portion of the fine or penalties imposed may be suspended.

[15.8.7.9 NMAC – N, 1/1/2021]

**15.8.7.10 ADMINISTRATIVE PROCEEDINGS, ORDER TO SHOW CAUSE AND HEARING:**

**A.** If a violation of the act is not resolved through informal conference, a formal charge document shall be filed in the division. Charges filed in the division against a licensee will state the nature of the grounds relied upon for the filing, the approximate date of the alleged violation, and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

**B.** Licensees will receive an order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

**C.** A hearing officer will be appointed no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why licensee's license should not be revoked or suspended or why the licensee should not be fined, or both.

**D.** At any hearing on an order to show case, a record of hearing will be made, to include:

- (1)** the style of the proceedings;
- (2)** the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3)** the place, date, and time of the hearing and all continuances or recesses of the hearing;
- (4)** the appearance or nonappearance of the licensee;
- (5)** if the licensee appears with an attorney, the name and address of the attorney;
- (6)** a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7)** the findings of fact and law as to whether or not the licensee has violated the Act as set out in the charge; and
- (8)** the decision of the director.

**E.** If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the nonappearance of the licensee will be entered in the record of hearing and an order revoking or suspending

the license or imposing a fine, or both, on all the grounds alleged in the charge. In such case, there shall be no reopening, appeal or review of the proceedings.

**F.** If the licensee admits guilt on all grounds set out in the charge, an order revoking or suspending the license or imposing a fine on licensee, or both. In such a case, there shall be no reopening, appeal or review of the proceedings.

**G.** If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the director or the hearing officer will administer oaths to all witnesses, the division will cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the licensee, or licensee's attorney, will be allowed the opportunity to cross-examine all witnesses;

(2) the licensee will be allowed to present testimony and evidence in denial or in mitigation of the grounds set out in the charge;

(3) the division will have the opportunity to cross-examine the licensee or any witness testifying in licensee's favor;

(4) the division will have the opportunity to present any evidence or testimony in rebuttal of that produced by the licensee;

(5) the director or the hearing officer will make a finding on each ground alleged and a finding of guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any ground alleged and proved, the director will make his order of revocation or suspension of the license or fine of the licensee, or both; and

(7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

[15.8.7.10 NMAC – N, 1/1/2021]

## **PART 8: MISCELLANEOUS FEES**

### **15.8.8.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.8.1 NMAC – N, 1/1/2021]

**15.8.8.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.8.2 NMAC – N, 1/1/2021]

**15.8.8.3 STATUTORY AUTHORITY:**

Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.8.3 NMAC – N, 1/1/2021]

**15.8.8.4 DURATION:**

Permanent.

[15.8.8.4 NMAC – N, 1/1/2021]

**15.8.8.5 EFFECTIVE DATE:**

January 1, 2021 unless a later date is cited at the end of a section.

[15.8.8.5 NMAC – N, 1/1/2021]

**15.8.8.6 OBJECTIVE:**

This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.

[15.8.8.6 NMAC – N, 1/1/2021]

**15.8.8.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.8.7 NMAC – N, 1/1/2021]

**15.8.8.8 INITIAL APPLICATION FEES:**

- A. Manufacturer license: \$750, per location;
- B. Distributor license: \$750, per location;
- C. Retailer license: \$750, per location.

[15.8.8.8 NMAC – N, 1/1/2021]

**15.8.8.9 RENEWAL APPLICATION FEES:**

- A. Manufacturer license: \$400, per location;
- B. Distributor license: \$400, per location;
- C. Retailer license: \$400, per location.

[15.8.8.9 NMAC – N, 1/1/2021]

**15.8.8.10 DESIGNATION OF RESIDENT AGENT FEE:**

- A. Designation of resident agent during initial application for license: \$0;
- B. Designation of resident agent during any time other than initial application: \$50.

[15.8.8.10 NMAC – N, 1/1/2021]

**15.8.8.11 CHANGE OF OFFICERS:**

- A. Change of officers, per location, during renewal: \$10;
- B. Change of officers, per location, at any time other than initial application or along with a renewal application: \$50.
- C. When a licensee holds a license and multiple locations, the change of officer fee may be reduced by the division.

[15.8.8.11 NMAC – N, 1/1/2021]

**15.8.8.12 CHANGE IN DBA FEE:**

- A. Change in DBA application during renewal: \$10;
- B. Change in DBA at any time other than initial application or along with a renewal application: \$50.

[15.8.8.12 NMAC – N, 1/1/2021]

**15.8.8.13 CHANGE IN LOCATION FEE:**

Any time a change of location application is filed with the division, it shall be accompanied by a \$100 change of location fee.

[15.8.8.13 NMAC – N, 1/1/2021]

**15.8.8.14 LATE FEES:**

**A.** The division may impose a late fee of up to \$350 plus ten dollars per day for each additional day an application is late.

**B.** Late fees may be applied to all applications with timelines or time periods, in which they should be filed.

[15.8.8.14 NMAC – N, 1/1/2021]

**15.8.8.15 FEES MAY BE WAIVED OR REDUCED:**

**A.** The division shall have the authority to reduce or waive any of the fees required by the act, upon a showing of good cause by licensee as to why the reduction or waiver is necessary.

**B.** Upon a showing of good cause, the following fees may be reduced or waived:

- (1) Change of officers fee;
- (2) Change in DBA fee; and
- (3) Late fees.

[15.8.8.15 NMAC – N, 1/1/2021]

## **CHAPTER 9: STATE LOTTERY [RESERVED]**

## **CHAPTER 10: ALCOHOLIC BEVERAGES GENERAL PROVISIONS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: DEFINITIONS**

**15.10.2.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.2.1 NMAC - Rp, 15 NMAC 10.1.1.1, 4/25/2017; A, 9/28/2021]

#### **15.10.2.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.

[15.10.2.2 NMAC - Rp, 15 NMAC 10.1.1.2, 4/25/2017]

#### **15.10.2.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the Liquor Control Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.2.3 NMAC - Rp, 15 NMAC 10.1.1.3, 4/25/2017]

#### **15.10.2.4 DURATION:**

Permanent.

[15.10.2.4 NMAC - Rp, 15 NMAC 10.1.1.4, 4/25/2017]

#### **15.10.2.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.2.5 NMAC - Rp, 15 NMAC 10.1.1.5, 4/25/2017]

#### **15.10.2.6 OBJECTIVE:**

This rule is intended to locate all definitions of terms used in the act, or in Title 15, Chapters 10 and 11, in one rule.

[15.10.2.6 NMAC - Rp, 15 NMAC 10.1.1.6, 4/25/2017]

#### **15.10.2.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 15, Chapter 10 and Chapter 11, have the same meanings as set forth in the Liquor Control Act.

**A. "The Act"** means the New Mexico Liquor Control Act, Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A of Chapter 60 NMSA 1978.

**B. "Affiliate of the licensee"** means any of the following:

(1) A corporation is an affiliate of a licensee if:

(a) the corporation, or its officers, directors or controlling shareholders, owns a majority of stock of a licensee that is itself a corporation; or

(b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, if the licensee owns a majority of the corporation; or

(c) the company is owned by the same entities or individuals that own the licensee.

(2) A limited liability company is an affiliate of a licensee if:

(a) the limited liability company, or its manager or controlling members, owns a majority of the stock of a licensee that is a corporation;

(b) a licensee that is itself a corporation, or its officers, directors or controlling shareholders, owns the controlling membership interest in the limited liability company; or

(c) a licensee that is a corporation is the manager of the limited liability company; or

(d) the limited liability company is owned by the exact same entities or individuals that own the licensee.

(3) Any other entity is an affiliate if there is a demonstration of common ownership with the entity holding the license.

**C. "Alcoholic beverage display area"** means that portion of a licensee's premises in which all alcoholic beverages on display for sale are contained.

**D. "Applicant"** means (a) an individual 19 years of age or older seeking a server permit under the Alcohol Server Education Article of the Liquor Act; or (b) a person or legal entity applying for a liquor license.

**E. "Approved operator"** means the the following:

(1) a licensee or lessee approved by the division to operate a liquor license;

(2) the licensee's or lessee's officers, directors, managers, and members owning a ten percent interest or greater in the licensee or lessee; and

(3) the licensee's or lessee's principle officer or an individual appointed to act on the principle officer's behalf.

**F. "Bartender"** means a person who pours alcohol into a container, or who opens alcohol in containers, for immediate service and consumption on the premises, except for the service of wine or beer at a customer's table in a restaurant.

**G. "Bed and breakfast"** means a business establishment that offers temporary lodging with meals included and has a guest capacity of 20 or fewer persons.

**H. "Bona fide guest"** means a person whose presence in a non-profit club is in response to a specific invitation by a member of the club and for whom the member assumes responsibility.

**I. "Cider"** means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears that contains not less than one-half of one percent alcohol by volume and not more than eight and one-half percent of alcohol by volume.

**J. "Commercial gambling"** means any of the following:

- (1) participating in the earnings of or operating a gambling place;
- (2) receiving, recording or forwarding bets or offers to bet;
- (3) possessing one or more facilities with the intent to receive, record or forward bets or offers to bet;
- (4) becoming a custodian of anything of value that was bet or offered to be bet;
- (5) conducting a lottery in which either the consideration or the prize are of value;
- (6) possessing one or more facilities to conduct a lottery or betting with intent to do so; or
- (7) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game.

**K. "Commercial gambling"** does not mean the following:

- (1) activities authorized pursuant to the New Mexico Lottery Act;
- (2) the conduct of activities on the licensed premises of the holder of a club license that is regulated by the New Mexico Bingo and Raffle Act at Sections 60-2B-1 to -14 NMSA 1978, or is specifically exempted from regulation by the provisions of the New Mexico Bingo and Raffle Act; and

(3) gaming authorized pursuant to the Gaming Control Act, Sections 60-2E-1 to -62 NMSA 1978, on the premises of a gaming operator licensee licensed pursuant to that act.

**L. "Controlling shareholders"** means persons or entities who own fifty percent or more of the outstanding shares of stock in a corporation.

**M. "Controlled access area"** means that portion of a licensed premises under the licensee's or lessee's direct control where the licensee or lessee stores, sells, serves, delivers, and provides a place for patrons to consume alcoholic beverages.

**N. "Craft distiller"** means a person or entity that is engaged in bona fide manufacture of spirituous liquors, holds a valid federal license to produce spirituous liquors, and owns or controls fully operational distilling equipment.

**O. "Delivery"** means the transporting of alcoholic beverages from a licensed premises to consumers, off of a licensed premises, at or near the time of purchase, constituting a sale of alcoholic beverages. Delivery does not include curbside pickup by consumers while seated in a motor vehicle, unless written approval has been granted by the division.

**P. "Director"** means the director of the alcohol and gaming division.

**Q. "Division"** means the alcoholic beverage control division of the New Mexico regulation and licensing department.

**R. "Employee"** means any person, whether paid or not, who works under the direction of a licensee or lessee or a licensee's or lessee's designate selling or serving alcoholic beverages.

**S. "Fast food establishment"** means an establishment dispensing food for consumption on and off premises that tends to have any of the following characteristics: a menu consisting solely of pre-cooked items or items prepared in advance and heated quickly, placement of orders at a fast serve drive-through window, service of food solely in disposable wrapping or containers, or a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods.

**T. "Growler"** means a clean, refillable, resealable container, including crowlers, that traditionally has a liquid capacity of sixty-four fluid ounces, but does not exceed one gallon, and that is intended and used for the sale of beer, wine, or cider for consumption off-premises.

**U. "Howler"** means a clean, refillable, resealable container, that has a liquid capacity that does not exceed thirty-two fluid ounces, and is intended and used for the sale of cocktails containing spirituous liquor.

**V. "Independent contractor"** means a person who has obtained the right to own, teach or otherwise use an approved alcohol server education program.

**W. "Large premises licensee"** means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains 20,000 or more square feet of merchandise display space.

**X. "Legal entity"** means a corporation, general partnership, limited partnership, limited liability company, association or other entity, including but not limited to, entities for which registration is required with the New Mexico office of the secretary of state, other than an individual.

**Y. "Licensee"** means the holder of any license or permit authorizing the sale of alcoholic beverages issued under the provisions of the act, but does not mean the holder of a server permit.

**Z. "Manufacture"** means the process of a licensee using the licensee's own equipment on the licensed premises to do one of the following:

(1) for small brewers or winegrowers, or any large manufacturer of wine or beer, the creation of ethyl alcohol, from basic ingredients through a fermentation process;

(2) for craft distillers, brandy manufacturers and any large manufacturer of distilled spirits, the purification of ethyl alcohol from basic ingredients through a distillation process;

(3) for rectifiers and wine blenders, the blending or mixing of spirituous liquors with other alcoholic or non-alcoholic liquids, or non-alcoholic substances.

**AA. "Member"** means:

(1) a person who pays annual membership dues to a holder of a club license pursuant to Section 60-6A-5 NMSA 1978, at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has been voted as a member by the current membership, and has all voting rights and full membership privileges as described in Subsection E of Section 60-3A-3 NMSA 1978;

(2) the adult spouse and the adult children of a member or of a deceased member as defined in Paragraph (1) of Subsection B of 15.10.54.7 NMAC;

(3) a member of an official auxiliary or subsidiary group of a club licensed pursuant to Section 60-6A-5 NMSA 1978, who has been issued a personal identification card in accordance with the rules of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director, upon request, of the

applicable rules governing personal identification cards, and of the relationship between the club and the official auxiliary or subsidiary group; or

**(4)** a person who pays membership dues and is a member of a class of a club licensed pursuant to Section 60-6A-5 NMSA 1978, but are persons without full voting rights or full membership privileges, so long as such members are provided for in the articles of incorporation, bylaws, charter, constitution or resolution of the board of directors or other appropriate governing body of the entity holding the club license; members described in this paragraph may not purchase, be served or consume alcoholic beverages within the bar or lounge area of the licensed premises, but may purchase, be served or consume alcoholic beverages in other areas of the licensed premises while engaged in activities whose primary purpose is other than the consumption of alcoholic beverages.

**BB. "Primary activity", "primarily" or "primarily engaged in"** means the principal use of a licensed premises or area within a licensed premises at any given time. If more than fifty percent of the annual total gross receipts are derived from the sale of alcoholic beverages for consumption on the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption on the licensed premises. If more than sixty percent of the annual total gross receipts are from the sale of alcoholic beverages for consumption off the licensed premises, the primary activity shall be deemed to be the sale of alcoholic beverages for consumption off the licensed premises.

**CC. "Principal officer"** means an officer of the organization who, regardless of title, has responsibility for implementing the decisions of the organization's governing body with respect to the liquor license, or for supervising the management, administration, or operation of the organization's interest in the license. Such officer may include the president, one or more vice-presidents, secretary, or treasurer of the licensee, the manager or managers of a limited liability company, a managing member of a member-managed, LLC or the president, vice-president, secretary or treasurer of any corporation, or the manager or managers of a limited liability company holding a direct or indirect interest in the license, which requires that corporation or limited liability company to be disclosed if that officer or manager has the authority to do any act on behalf of the licensee.

**DD. "Priority application"** means one of the first 10 applications received during any filing period or, if more than 10 are received on the first day of the filing period, the 10 applications randomly selected by the director pursuant to 15.11.27.10 NMAC.

**EE. "Private party"** means an event open only to invited guests and not open or advertised to the general public in which there is no financial consideration in exchange for alcoholic beverages. "Private party" does not include alcohol industry promotional events or other events with a commercial purpose.

**FF. "Public Celebration"** means any state fair, county fair, community fiesta, cultural or artistic performance or event, professional athletic competition and events or activities held on an intermittent basis that are open or advertised to the general public.

**GG. "Public nuisance"** means loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, consumption of alcoholic beverages in the parking lot of the licensed premises, use of weapons on the licensed premises or in the parking lot, lack of adequate security outside of the licensed premises, lack of adequate lighting outside of the licensed premises, vandalism to vehicles or other property, or other disturbances or activities offensive to the average citizen or to the residents of the neighborhood in which the licensed premises are located or failure to comply with all Public Health Orders issued during a Public Health Emergency.

**HH. "Restaurant"** means any establishment, except a "fast food " establishment, having a New Mexico resident as a proprietor or manager that is held out to the public as a place where food is prepared on-site from basic ingredients and served primarily for on-premises consumption to the general public in consideration of payment; that has a dining room, a commercial kitchen, and the employees necessary for preparing, cooking and serving meals.

**II. "Restaurant with beer and wine license"** means a restaurant A license.

**JJ. "Restaurant with spirits license"** means a restaurant B license.

**KK. "Restricted area"** means an area of a licensed premises that is restricted to persons age 21 and older in accordance with the act and these rules where the primary activity in that area is the sale or consumption of alcoholic beverages.

**LL. "School"** means:

(1) a public or private educational institution accredited as such by the state or federal government;

(2) a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school or combination thereof; or

(3) a center for attendance where educational instruction is offered by certified school instructors; a "school" must be located in a zoning area of the local option district that permits schools, but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.

**MM. "Securities listed on a national securities exchange"** means securities listed or approved for listing on the New York stock exchange or American stock

exchange, or designated or approved for designation for inclusion on the national market system by the national association of securities dealers, inc.

**NN.** "Serve" means to pour, or otherwise personally provide alcoholic beverages to another person.

**OO.** "Shipping" means the use of a registered common carrier by a licensee to transport alcoholic beverages. Shipping does not include delivery of alcoholic beverages.

**PP.** "Small brewer" means a person or entity that is engaged in bona fide manufacture of beer, holds a valid New Mexico small brewer license and federal brewer's notice of license to produce malt beverages, demonstrates bona fide brewing operations; owns or controls fully operational brewing equipment such as two or more of the following: fermenting vessels, brew house, and brite or holding tanks with capacity for commercial production, and does not produce more than 200,000 barrels of total product per year.

**QQ.** "Small premises licensee" means a retailer or a dispenser for which alcoholic beverages constitute less than sixty percent of sales, and whose establishment contains less than 20,000 square feet of merchandise display space.

**RR.** "Split" means a half-bottle of wine or champagne containing not more than 375 ml of wine or champagne.

**SS.** "Taste" or "tastes " means offering smaller than usual drink sizes of alcoholic beverages to the public at no cost for the sole purpose of promoting the product, in quantities of .5 ounces or less if the product is undiluted spirituous liquors, and 1.5 ounces or less for all other alcoholic beverages.

**TT.** "Transferable license" means a license that may be assigned, transferred or leased pursuant to Section 60-6A-19 NMSA 1978, provided that the license holder has met all requirements of the act and these rules.

**UU.** "Unaccompanied minor" means a minor that is not under the direct supervision of their parent, adult spouse, or adult legal guardian.

**VV.** "Unbroken, original package" means the sealed, unopened glass, plastic or aluminum container holding the alcoholic beverage, but does not mean the cardboard or other packaging holding the containers together.

**WW.** "Unrestricted area" means an area of a licensed premises in which minors are allowed to enter unaccompanied by a parent, adult spouse or legal guardian, because the primary activity in that area is not the sale, service or consumption of alcoholic beverages.

**XX.** "Winegrower " means a person or entity that is engaged in bona fide manufacture of wine, holds a valid New Mexico winegrower's license and federal basic permit to manufacture wine, who owns or controls fully operational winemaking equipment with capacity for commercial production.

[15.10.2.7 NMAC - Rp, 15 NMAC 10.1.1.7, 4/25/2017; A, 9/28/2021]

## **PART 3-30: [RESERVED]**

## **PART 31: PREMISES - GENERAL REQUIREMENTS**

### **15.10.31.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.31.1 NMAC - Rp, 15.10.31.1 NMAC, 9/28/2021]

### **15.10.31.2 SCOPE:**

These regulations apply to all licensees under the New Mexico Liquor Control Act.

[15.10.31.2 NMAC - Rp, 15.10.31.2 NMAC, 9/28/2021]

### **15.10.31.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978, of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.31.3 NMAC - Rp, 15.10.31.3 NMAC, 9/28/2021]

### **15.10.31.4 DURATION:**

Permanent.

[15.10.31.4 NMAC - Rp, 15.10.31.4 NMAC, 9/28/2021]

### **15.10.31.5 EFFECTIVE DATE:**

September 28, 2021, unless a later date is cited at the end of this section.

[15.10.31.5 NMAC - Rp, 15.10.31.5 NMAC, 9/28/2021]

### **15.10.31.6 OBJECTIVE:**

These rules are intended to establish standards for the general operation and maintenance of licensed premises.

[15.10.31.6 NMAC - Rp, 15.10.31.6 NMAC, 9/28/2021]

#### **15.10.31.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.

[15.10.31.7 NMAC - Rp, 15.10.31.7 NMAC, 9/28/2021]

#### **15.10.31.8 LIGHTING OF LICENSED PREMISES:**

At any licensed premises open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance, age and conduct of all persons on the premises where alcoholic beverages are sold, served or consumed.

[15.10.31.8 NMAC - Rp, 15.10.31.8 NMAC, 9/28/2021]

#### **15.10.31.9 SANITATION REQUIREMENTS:**

All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico, this is to include all requirements set forth in any Public Health Order issued pursuant to Sections 24-1-1 through 24-1-40 NMSA 1978, of the Public Health Act, Sections 12-10A-1 through 12-10A-19 NMSA 1978, of the Public Health Emergency Response Act, and Sections 9-7-1 through 9-7-18 NMSA 1978, of the Department of Health Act and local sanitation ordinances. Failure to comply shall be deemed a violation of this rule.

[15.10.31.9 NMAC - Rp, 15.10.31.9 NMAC, 9/28/2021]

### **PART 32: PREMISES - LOCATION AND DESCRIPTION OF LICENSED PREMISES**

#### **15.10.32.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.32.1 NMAC - Rp, 15 NMAC 10.3.2.1, 4/25/2017; A, 9/28/2021]

#### **15.10.32.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act.

[15.10.32.2 NMAC - Rp, 15 NMAC 10.3.2.2, 4/25/2017]

**15.10.32.3 AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.32.3 NMAC - Rp, 15 NMAC 10.3.2.3, 4/25/2017]

**15.10.32.4 DURATION:**

Permanent.

[15.10.32.4 NMAC - Rp, 15 NMAC 10.3.2.4, 4/25/2017]

**15.10.32.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.32.5 NMAC - Rp, 15 NMAC 10.3.2.5, 4/25/2017]

**15.10.32.6 OBJECTIVE:**

These rules are intended to establish standards for the location and description of areas identified as licensed premises.

[15.10.32.6 NMAC - Rp, 15 NMAC 10.3.2.6, 4/25/2017]

**15.10.32.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.

**15.10.32.8 LOCATION NEAR CHURCH, SCHOOL OR MILITARY INSTALLATION:**

All measurements for the purpose of determining the location of a licensed premises in relation to churches or schools shall be the shortest direct line measurement between the actual limits of the real property of the church or school in which there is regularly conducted church services or educational functions, and the controlled access area of the licensed premises where alcoholic beverages are proposed to be sold. If the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied by a certified report of a registered engineer or duly licensed surveyor. A license may be granted for a proposed location if a person has obtained a waiver from a local option district governing body for the proposed location.

[15.10.32.8 NMAC - Rp, 15 NMAC 10.3.2.8, 4/25/2017; A, 9/28/2021]

**15.10.32.9 PREMISES WHERE ALCOHOL WAS SOLD PRIOR TO 1981:**

**A.** For purposes of transfer and issuance of liquor licenses, a location where alcoholic beverages were sold prior to July 1, 1981, is a location that was licensed for the sale of alcoholic beverages by the division prior to July 1, 1981. For purposes of special dispenser's permits, a location where alcoholic beverages were sold prior to July 1, 1981, includes church and school property where alcoholic beverages were traditionally sold prior to July 1, 1981, at events, such as annual church fiestas or school fundraisers, even if the premises were not licensed by the division prior to July 1, 1981.

**B.** If an applicant seeks to have a location approved as a licensed premises where alcoholic beverages were sold prior to July 1, 1981, and if alcoholic beverages have not been sold on the previously licensed premises for a period of 12 months or more, the applicant has the burden of showing the church or school has not detrimentally relied on the lack of sales or closing of the previously licensed premises. An applicant for a special dispenser's permit on church or school property has the burden of establishing that sales of alcoholic beverages occurred on the church or school property on an annual or other regular basis prior to July 1, 1981.

[15.10.32.9 NMAC - Rp, 15 NMAC 10.3.2.9, 4/25/2017]

**15.10.32.10 LICENSED PREMISES AND CONTROLLED ACCESS AREAS:**

**A.** Nothing in these rules shall prohibit the licensure of the entire premises, including more than one structure, of the controlled access areas of the grounds of any hotel, golf course, ski area, racetrack, distillery, brewery, or vineyard of a winery, as defined in the act, or any restaurant, identified in Subsection O of Section 60-3A-3 NMSA 1978, when any of these types of licenses are operated by the licensee who profits directly and exclusively from the operation of the license;

**B.** An accurate description of the licensed premises with the proposed controlled access areas clearly marked, must be filed with the division;

**C.** The sale, service and consumption of alcoholic beverages is limited to to controlled access areas;

**D.** Roads are not to be included in controlled access areas, except within golf courses, in which the boundaries of golf cart and pedestrian crossings are clearly marked by permanent marking on the surface of the roads by white or yellow reflective painting or striping material similar to pedestrian crossing markings found on city and state streets and roads; and

**E.** Parking lots and fuel pump stations, unless granted written approval by the division, may not be included in controlled access areas.

F. A licensee may obtain an exception to these requirements with written approval issued by the Division.

[15.10.32.10 NMAC - Rp, 15 NMAC 10.3.2.10, 4/25/2017; A, 9/28/2021]

**15.10.32.11 [RESERVED]:**

[15.10.32.11 NMAC - Rp, 15 NMAC 10.3.2.11, 4/25/2017; Repealed 9/28/2021]

**15.10.32.12 CHANGE OR EXPANSION OF LICENSED PREMISES:**

Floor plans that accurately reflect the controlled access areas of a licensee's licensed premises must be kept current by filing an application to change a floor plan within 30 days of a change, and to expand a floor plan by filing an application prior to the expansion, or upon request by the director. If the total square footage of the controlled access area of the licensed premise will increase by more than twenty-five percent pursuant to the floor plan change, the licensee may be required to file an application for change of location on a form approved by the division.

[15.10.32.12 NMAC - Rp, 15 NMAC 10.3.2.13, 4/25/2017; A, 9/28/2021]

**15.10.32.13 [RESERVED]:**

[15.10.32.13 NMAC - Rp, 15 NMAC 10.3.2.14, 4/25/2017; Repealed 9/28/2021]

**15.10.32.14 OUTDOOR CONTROLLED ACCESS AREAS:**

Controlled access areas of a licensed premises that are outdoors must be enclosed by a continuous physical barrier of sufficient height in order to physically separate the controlled access area from the surrounding area. The division may allow exceptions to this requirement upon written request by a licensee.

[15.10.32.14 NMAC – N, 9/28/2021]

**PART 33: PREMISES - MINORS ON LICENSED PREMISES**

**15.10.33.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.33.1 NMAC - Rp, 15 10.33.1 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.33.2 SCOPE:**

These rules apply to all licensees under the act.

[15.10.33.2 NMAC - Rp, 15 10.33.2 NMAC, 4/25/2017]

**15.10.33.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.33.3 NMAC - Rp, 15 10.33.3 NMAC, 4/25/2017]

**15.10.33.4 DURATION:**

Permanent.

[15.10.33.4 NMAC - Rp, 15 10.33.4 NMAC, 4/25/2017]

**15.10.33.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.33.5 NMAC - Rp, 15 10.33.5 NMAC, 4/25/2017]

**15.10.33.6 OBJECTIVE:**

These rules are intended to classify the types of licensed premises or areas of licensed premises where minors may be present.

[15.10.33.6 NMAC - Rp, 15 10.33.6 NMAC, 4/25/2017]

**15.10.33.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act.

[15.10.33.7 NMAC - Rp, 15 10.33.7 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.33.8 MINORS ON LICENSED PREMISES:**

**A.** A licensee shall not allow an unaccompanied minor on restricted premises.

**B.** If a licensee chooses to allow minors on the licensed premises for any reason except a bona fide emergency, the licensee must, in an annual application filed with the division, designate the licensed premises as either entirely a restricted area, entirely an unrestricted area, or both restricted and unrestricted areas, showing such designations on a correct floor plan of the licensed premises.

(1) The designations shall be approved or disapproved by the division. The applicant shall also indicate the nature and extent of security that will be provided to control restricted areas.

(2) If the licensed premises are designated as both restricted and unrestricted areas, and the division approves the designations, restricted areas of the licensed premises must be clearly posted and marked so that they are unmistakable from unrestricted areas.

**C.** A licensee who chooses to allow minors on the licensed premises must:

(1) ensure that no minor is sold or served, purchases, possesses or consumes an alcoholic beverage on the premises; and

(2) post in restricted areas of the licensed premises conspicuous signs that state that "minors are not permitted in this area, unless accompanied by a parent, adult spouse or legal guardian".

**D.** A licensee shall maintain the plans, public notices and access restrictions required by this rule, and shall properly designate restricted areas on its licensed premises. Failure to do so shall be a violation of this rule.

**E.** The director shall consider all violations of this rule by a licensee which occurred within the preceding five years of a pending application, and may consider any corrective measure adopted by the licensee, to determine whether to grant or deny an application for minors on licensed premises.

[15.10.33.8 NMAC - Rp, 15 10.33.8 NMAC, 4/25/2017]

#### **15.10.33.9 EMPLOYMENT OF MINORS:**

**A.** No person may employ a minor to participate in the sale or service of alcoholic beverages, or to supervise other employees with respect to the sale or service of alcoholic beverages, except as provided in this section.

**B.** In accordance with Subsection B of Section 60-7B-11 NMSA 1978, a holder of a dispenser's, restaurant or club license that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, may employ minors 18 years of age or older to sell or serve alcoholic beverages, except that a person younger than 21 years of age shall not be employed as a bartender. Otherwise, no person may employ a minor to participate in the sale or service of alcoholic beverages, except as provided below.

**C.** A holder of a restaurant, dispenser's, or club license, or a special dispenser's permit, may allow minors to enter a restricted area to remove and dispose of alcoholic

beverage containers in the course of their employment as bus persons provided that such employees remain in the restricted area no longer than necessary to carry out those duties.

**D.** A holder of a wholesaler's, retailer's, or manufacturer's license, or a holder of a dispenser's license who sells by the package, may employ minors to stock and handle alcoholic beverages in unopened containers on or around the licensed premises if an adult 21 years of age or older is on duty directly supervising such activities.

**E.** A licensee may permit the following minors to enter and remain in a restricted area of a licensed premise during the course of their employment or official duties if the minors are at least 18 years of age:

(1) professional musicians, disc jockeys or other entertainers engaged in their professional capacities, or sound or lighting technicians actively engaged in support of professional musicians, disc jockeys, or other entertainers;

(2) persons performing janitorial services, but only when the licensed premises are closed;

(3) employees of amusement device companies for the purpose of installing, maintaining, repairing or removing any lawful amusement device or vending machine; and

(4) security and law enforcement officers.

**F.** In accordance with Subsection C of Section 60-7B-10 NMSA 1978, a minor 18 years of age or older who is licensed under the New Mexico Commercial Driver's License Act may, during the scope of their employment by a New Mexico wholesaler, handle alcoholic beverages while in transit to and while on a licensed premises.

[15.10.33.9 NMAC - Rp, 15 10.33.9 NMAC, 4/25/2017; A, 9/28/2021]

#### **15.10.33.10 NO SALE, SERVICE, POSSESSION OR CONSUMPTION PERMITTED:**

Under no circumstances, may minors purchase, be served, possess or consume alcoholic beverages on a licensed premises, and nothing in these rules, including provisions permitting minors on licensed premises, shall be construed as permitting the sale or service to, or possession or consumption of any alcoholic beverage by, a minor on a licensed premises.

[15.10.33.10 NMAC - Rp, 15 10.33.11 NMAC, 4/25/2017]

#### **15.10.33.11 DEFENSE TO SALE TO A MINOR:**

If the licensee can establish all of the following, it shall be a valid defense to the administrative charge of a sale to a minor:

**A.** the purchaser falsely represented his or her age by producing, at the time of the alleged illegal sale, a photo identification card which appears to have been issued by a federal, state, county or municipal government, or sub department or agency thereof, and which shows the purchaser to be 21 years of age or older; and

**B.** the purchaser appeared to be 21 years of age or older; and

**C.** the seller reasonably relied on the false identification presented and on the purchaser's appearance, thereby believing the purchaser to be 21 years of age or older.

[15.10.33.11 NMAC - Rp, 15 10.33.12 NMAC, 4/25/2017]

**15.10.33.12 MINORS PROHIBITED FROM PARTICIPATING IN THE DELIVERY OF ALCOHOLIC BEVERAGES:**

**A.** Licensees are prohibited from allowing minors to participate in the delivery of alcoholic beverages.

**B.** A minor participates in the delivery of alcoholic beverages when:

(1) a minor loads the alcoholic beverages into the delivery vehicle; or

(2) a minor is the driver, or passenger, of a vehicle being used to deliver alcoholic beverages to consumers.

[15.10.33.12 NMAC – N, 9/28/2021]

**PART 34-50: [RESERVED]**

**PART 51: SALES - RESTRICTIONS ON SALES**

**15.10.51.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.51.1 NMAC - Rp, 15 10.51.1 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.2 SCOPE:**

These regulations apply to all licensees and applicants for licensure under the act.

[15.10.51.2 NMAC - Rp, 15 10.51.2 NMAC, 4/25/2017]

**15.10.51.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.51.3 NMAC - Rp, 15 10.51.3 NMAC, 4/25/2017]

**15.10.51.4 DURATION:**

Permanent

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

**15.10.51.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.51.5 NMAC - Rp, 15 10.51.5 NMAC, 4/25/2017]

**15.10.51.6 OBJECTIVE:**

This rule is intended to establish standards by which licensees may sell and serve alcoholic beverages under the act.

[15.10.51.6 NMAC - Rp, 15 10.51.6 NMAC, 4/25/2017]

**15.10.51.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act:

[15.10.51.7 NMAC - Rp, 15 10.51.7 NMAC, 4/25/2017]

**15.10.51.8 SALES FROM LICENSED PREMISES ONLY:**

Licensees shall sell, offer to sell, and serve alcoholic beverages for promotional or otherwise commercial purposes only from the controlled access area of a licensed premises approved by the director, including premises licensed through special event permits pursuant to 15.11.25 NMAC.

[15.10.51.8 NMAC - Rp, 15 10.51.8 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.51.9 OPEN CONTAINER RESTRICTIONS:**

**A.** No one shall provide a person with an open container of an alcoholic beverage for consumption off the licensed premises or permit removal of an open container from the licensed premises.

**B.** No person shall remove an open container of an alcoholic beverage from a licensed premise.

**C.** All alcoholic beverages sold by package, including growlers, must be consumed off-premises.

**D.** Nothing in this rule shall prohibit a dispenser or restaurant licensee from allowing the removal of a partially consumed bottle of wine from the premises pursuant to Section 60-3A-12 NMSA 1978.

**E.** A licensee may permit a customer to remove a growler from the licensed premises, provided that the licensee cleans the growler before filling it, re-seals the growler, and provides a sales receipt to the customer.

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

#### **15.10.51.10 AFTER HOURS SALES OR SERVICE OF ALCOHOLIC BEVERAGES:**

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

**B.** A licensee whose primary business activity on the licensed premises is the sale of alcoholic beverages for consumption on the licensed premises may not open the licensed premises to the public or to club members for any purpose or business after the lawful established closing times provided for in the Liquor Control Act, unless permitted by the director in writing.

[15.10.51.10 NMAC - Rp, 15 10.51.10 NMAC, 4/25/2017; A, 9/28/2021]

#### **15.10.51.11 SALES TO INTOXICATED PERSONS:**

**A.** No licensee shall sell, serve, deliver, procure or aid in the procurement of alcoholic beverages to an intoxicated person if the licensee knows or has reason to know that the person is obviously intoxicated. In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on breath or blood test taken not more than one and one-half hour or 90 minutes after sale, service, delivery or consumption of alcoholic beverages shall be presumptive evidence that the person was intoxicated at the time of the last sale. For purposes of this rule, a "sale " shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person, or when the alcoholic beverage is delivered to the intoxicated person's address for delivery, when applicable.

**B.** The following practices are prohibited on a licensed premises:

- (1)** games or contests that involve drinking alcoholic beverages or the awarding of alcoholic beverage drinks as prizes;
- (2)** the sale or delivery to a person of an unlimited number of alcoholic beverage drinks during any set period of time for a fixed price;
- (3)** the sale or delivery of two or more alcoholic beverage drinks for the price of one;
- (4)** the sale or delivery of alcoholic beverages by the drink for less than half the usual, customary, or established price for a drink of that type on the licensed premises;
- (5)** the sale or delivery of alcoholic beverages by the drink for less than cost;
- (6)** the advertising of the practices prohibited by this regulation; or
- (7)** the sale or service of a bottle of spirits for on-premises consumption.

**C.** The two drink rule:

**(1)** No licensee shall serve or otherwise allow any person to have more than two unconsumed, opened alcoholic beverage drinks on a licensed premises at any one time.

**(2)** Examples of Paragraph **(1)** of Subsection C of 15.10.51.11 NMAC, include but are not limited to, the following:

**(a)** a licensee shall not sell, serve or allow any person to have at any one time a beer flight that exceeds the equivalent total volume of two drinks;

**(b)** a licensee shall not sell, serve, or allow any person to have at any one time a wine flight that exceeds the equivalent total volume of two drinks; and

**(c)** a licensee shall not sell, serve or allow any person to have at any one time a spiritous liquor flight that exceeds the equivalent total volume of two drinks.

**D.** Nothing contained in this regulation shall prohibit a licensee from:

- (1)** including one alcoholic beverage drink per person as part of a meal package when approved by the director in writing;
- (2)** selling wine by the bottle or carafe when sold with a meal;

(3) selling wine by the bottle or carafe, or beer in a pitcher, to more than one person;

(4) offering free tastes;

(5) offering free alcoholic beverage drinks to registered guests in its hotel when approved by the director in writing;

(6) utilizing a "free drink coupon " which is limited to one drink per day per patron or giving a patron a free drink as a gesture of good will or friendship; free drinks as a gesture of good will or friendship may not be advertised and may not be given at any established interval or based on the purchases by the customer; or

(7) offering to customers product promotions such as sweepstakes, rebates on non-alcoholic beverage items, or goods that are not or do not include alcoholic beverages.

[15.10.51.11 NMAC - Rp, 15 10.51.11 NMAC, 4/25/2017; A, 9/28/2021]

#### **15.10.51.12 "BYOB" EXCEPTION: PRIVATE PARTIES ON LICENSED PREMISES:**

No person or entity may bring alcoholic beverages, previously purchased, onto a licensed premises or onto any public premises, or consume alcoholic beverages purchased by package on a licensed premises, except as provided in this section.

**A.** A licensee may allow a private party at which the host provides his own alcoholic beverages to be held on the licensed premises, the host must be able to provide the licensee with a receipt for the alcohol being served at the event, showing where the alcohol was purchased.

**B.** If the host provides his own alcoholic beverages, no alcoholic beverages may be sold to any guest at the private party by the host, the licensee, or anyone else. The alcoholic beverages must be served to the guests by persons who hold valid current server permits.

**C.** If the private party is held during hours that the licensed premises is open to the public, the area where the private party is to be held must be closed to the public and security provided to prevent persons without invitations from entering.

**D.** Private parties must be held on days and at times during which the licensee is authorized to sell or serve alcoholic beverages.

**E.** A licensee may receive alcoholic beverages donated by a licensed New Mexico wholesaler to the host of the private party and may serve the donated alcoholic beverages at a private party if the wholesaler provides the licensee with an invoice for the donated alcoholic beverages.

[15.10.51.12 NMAC - Rp, 15 10.51.12 NMAC, 4/25/2017; A, 9/28/2021]

### **15.10.51.13 ALCOHOL SERVICE BY EMPLOYEES ONLY:**

**A.** All alcoholic beverages sold or served to members of the public pursuant to a liquor license must be sold or served by a person who has a valid alcohol server permit and is an employee or independent contractor of the licensee.

**B.** Except as provided in this sub-section, self-service of alcoholic beverages is not permitted in an establishment licensed to sell alcohol:

**(1)** A person may self-serve beer from a pitcher that has been previously served to that person if in compliance with Subsection D of 15.10.51.11 NMAC, above.

**(2)** A person may self-serve wine from a bottle or carafe that has been previously served to that person if in compliance with Subsection D of 15.10.51.11 NMAC, above.

**C.** Devices that allow a non-employee in a licensed premises to self-serve themselves an alcoholic beverage are prohibited, except that nothing in this paragraph shall prevent the otherwise lawful sale or service of alcoholic beverages from a "mini-bar" in a "hotel" as defined in Subsection N of 60-3A-3 NMSA 1978.

**D.** No licensee, agent, lessee, contractor or employee of the licensee shall consume alcoholic beverages while on duty with the following exceptions:

**(1)** owners, employees, contractors, licensed wholesalers and licensed retailers may drink alcoholic beverages for product training and evaluation purposes, but must not become impaired;

**(2)** entertainers who contract with a licensed establishment and are not involved in the sale or service of alcoholic beverages may consume alcoholic beverages; and

**(3)** the licensee, lessee, or an owner or operator may consume alcoholic beverages provided that such consumption does not result in impairment.

[15.10.51.13 NMAC; N, 4/25/2017; A, 9/28/2021]

### **15.10.51.14 GAMBLING ON LICENSED PREMISES:**

An entity holding a valid license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 NMSA 1978.

[15.10.51.14 NMAC; N,4/25/2017; A, 9/28/2021]

#### **15.10.51.15 SALES OF CERTAIN SPIRITOUS LIQUORS:**

**A.** A licensee shall not sell spiritous liquor in a closed container of three fluid ounces or less, for consumption off the licensed premises, except for:

**(1)** Sales in which 10 containers of three fluid ounces or less are packaged together by the manufacturer and meant for sale as a single unit.

**(2)** Sales in which a container of three fluid ounces or less are packaged by the manufacturer, as a value-added product, in conjunction with a spirits purchase of 750 milliliters or larger.

**B.** Nothing within this section shall prohibit the sales of spiritous liquors in open containers of three fluid ounces or less, for consumption on the licensed premises.

**C.** The division reserves the right to prohibit sales of containers of three fluid ounces or less, of alcoholic beverages with an alcohol by volume of fifteen percent or greater.

[15.10.51.15 NMAC – N, 9/28/2021]

#### **15.10.51.16 SALES OF ALCOHOLIC BEVERAGES TO MOTOR VEHICLES PROHIBITED:**

An entity holding a valid license issued under the act shall not sell, serve, or deliver alcoholic beverages to a customer in a motor vehicle through a drive-up window, curbside pickup, or other means in which the customer remains in the motor vehicle during the transfer of the alcoholic beverage, unless written approval is granted by the division.

[15.10.51.16 NMAC – N, 9/28/2021]

### **PART 52: SALES - SEGREGATED ALCOHOL SALES**

#### **15.10.52.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.52.1 NMAC - Rp, 15 NMAC 10.5.2.1, 4/25/2017; A, 9/28/2021]

#### **15.10.52.2 SCOPE:**

These rules apply to all licensees under the act.

[15.10.52.2 NMAC - Rp, 15 NMAC 10.5.2.2, 4/25/2017]

### **15.10.52.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.52.3 NMAC - Rp, 15 NMAC 10.5.2.3, 4/25/2017]

### **15.10.52.4 DURATION:**

Permanent.

[15.10.52.4 NMAC - Rp, 15 NMAC 10.5.2.4, 4/25/2017]

### **15.10.52.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.52.5 NMAC - Rp, 15 NMAC 10.5.2.5, 4/25/2017]

### **15.10.52.6 OBJECTIVE:**

These rules are intended to comply with Section 60-6B-19 NMSA 1978 of the act by creating procedures and requirements for segregated alcohol sales applicable to two different classes of licensed premises based on the size of the establishment.

[15.10.52.6 NMAC - Rp, 15 NMAC 10.5.2.6, 4/25/2017]

### **15.10.52.7 DEFINITIONS:**

[RESERVED].

[15.10.52.7 NMAC - Rp, 15 NMAC 10.5.2.7, 4/25/2017]

### **15.10.52.8 LARGE PREMISES LICENSEES:**

**A.** Large premises licensees must consolidate all alcoholic beverages in an alcoholic beverage display area located within a clearly designated and marked area of the controlled access area of the licensed premises. Growler sales for beer and cider may be located in a separate, clearly designated and marked display area from other alcoholic beverage sales. Both the storage area and the area where growlers will be filled must be designated. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed or stored in small quantities in no more than two locations outside the designated alcoholic beverage display area provided that all display areas can be roped off, chained off, or covered during non-alcoholic sale hours or days. Licensees must file floor plans with the division for approval showing the consolidated and segregated areas where

alcoholic beverages, including growler sales, are displayed within the licensed premises.

**B.** An employee who is at least 21 years of age and has a valid alcohol server permit shall be responsible for the overall supervision of both the receiving and sale of alcoholic beverages, including supervision of the alcoholic beverage display area. The licensee shall designate employees within the licensed premises to serve in this capacity as part of their job description, and shall ensure that such a designated employee is on duty on the licensed premises during alcoholic beverage sale hours.

**C.** Small displays of chips, snacks, or similar items may be displayed for sale in the alcoholic beverage display area so long as those items are also available in other parts of the licensed premises outside the alcoholic beverage display area. Except for such small displays, displays of food or other merchandise that would require shoppers to enter the alcoholic beverage display area for food or other merchandise are not permitted.

[15.10.52.8 NMAC - Rp, 15 NMAC 10.5.2.8, 4/25/2017; A, 9/28/2021]

#### **15.10.52.9 SMALL PREMISES LICENSEES:**

Small premises licensees must use diligent, good faith efforts to consolidate alcoholic beverages within a clearly designated and marked alcoholic beverage display area of the controlled access area of the licensed premises. Except for table wines and other beverages as defined in Subsection C of 60-6B-19 NMSA 1978, alcoholic beverages may also be displayed outside the alcoholic beverage display area provided that all display areas can be roped off, chained off or covered during non-alcoholic sale hours or days.

[15.10.52.9 NMAC - Rp, 15 NMAC 10.5.2.9, 4/25/2017; A, 9/28/2021]

#### **15.10.52.10 SIGNS FOR DAYS WHEN SALES NOT PERMITTED:**

[RESERVED]

[15.10.52.10 NMAC - Rp, 15 NMAC 10.5.2.10, 4/25/2017]

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

AGD Regulation 6B-19, Segregated Alcohol Sales, filed 12/20/93.

#### **History of Repealed Material:**

15 NMAC 10.52, Segregated Alcohol Sales, filed 03/14/1997 - Repealed effective 4/25/2017.

## **PART 53: SALES - WHOLESALERS**

### **15.10.53.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.53.1 NMAC - Rp, 15 NMAC 10.5.3.1, 4/25/2017; A, 9/28/2021]

### **15.10.53.2 SCOPE:**

These rules apply to all licensees under the act.

[15.10.53.2 NMAC - Rp, 15 NMAC 10.5.3.2, 4/25/2017]

### **15.10.53.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.53.3 NMAC - Rp, 15 NMAC 10.5.3.3, 4/25/2017]

### **15.10.53.4 DURATION:**

Permanent.

[15.10.53.4 NMAC - Rp, 15 NMAC 10.5.3.4, 4/25/2017]

### **15.10.53.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.53.5 NMAC - Rp, 15 NMAC 10.5.3.5, 4/25/2017]

### **15.10.53.6 OBJECTIVE:**

This part is intended to establish reporting, sales, credit, and other requirements applicable to persons licensed as wholesalers under the act.

[15.10.53.6 NMAC - Rp, 15 NMAC 10.5.3.6, 4/25/2017]

### **15.10.53.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

[15.10.53.7 NMAC - Rp, 15 NMAC 10.5.3.7, 4/25/2017]

**15.10.53.8 PAYMENT, REFUND AND EXCHANGE:**

**A.** If any invoice for alcoholic beverages sold to any licensee remains unpaid for more than 30 days the wholesaler may not sell alcoholic beverages to that licensee except on a cash basis.

**B.** Cash means a cash payment, a check, or electronic funds transfer, however, if a licensee tenders a check for a sale required to be cash under this regulation and that check is dishonored, the wholesaler may not accept any further checks from that licensee for sales required to be cash under this rule for a period of three months from the date the check is dishonored. Wholesalers who accept checks in payment for alcoholic beverages must present the checks for payment in the normal course of business.

**C.** A wholesaler may not use a promissory note or other similar obligation from a licensee as a device to avoid the credit prohibition set forth in the act and this rule. As long as a promissory note, or other similar obligation, remains outstanding for alcoholic beverages, the licensee must pay in cash.

**D.** Limitations on product returns:

**(1)** Wholesalers are permitted to accept a return of alcohol beverages for ordinary and usual commercial reasons.

**(2)** Ordinary and usual commercial reasons for returns include defective products, broken or short filled containers caused by error or omission of the manufacturer or the wholesaler or agent of the wholesaler, errors in products delivered, discontinued products, manufacturer's product change, manufacturer quality standards, lawful exercise of creditor claims to secured inventory, and unsold and unopened event inventory when a special event permit was obtained from the division. Ordinary and usual commercial reasons for return do not include overstock of inventory, slow inventory sales, breakage or other damage by the retailer or limited and seasonal demand inventory.

**E.** A wholesaler may share information with other wholesalers regarding any unpaid invoices described in A, above, limited to the identity of the licensee, and the amount due and duration of the unpaid invoices.

[15.10.53.8 NMAC - Rp, 15 NMAC 10.5.3.8, 4/25/2017; A, 9/28/2021]

**15.10.53.9 DONATIONS AND DISCOUNTS OF ALCOHOLIC BEVERAGES:**

**A.** A licensed New Mexico wholesaler may donate alcoholic beverages or sell alcoholic beverages at a discount to licensees if the purpose of the donation or discount

is not to induce the licensee to purchase alcoholic beverages from that wholesaler to the exclusion of another wholesaler. The licensee may sell or give the donated or discounted alcoholic beverages to members of the public, or may give the donated or discounted alcoholic beverages away, in accordance with the provisions of the act and these rules. Donations or discounts allowable under this sub-section shall be limited as follows:

(1) no free samples may be provided for items currently provided to the licensee by the wholesaler; and

(2) no more than one bottle not to exceed 750 milliliters of wine or spirits, or one case of beer may be provided as a free sample per item.

**B.** A licensed New Mexico wholesaler may donate alcoholic beverages to a non-licensee for an event, including charity and non-profit purposes, but the non-licensee may not sell the donated alcoholic beverages under any circumstances. Any unopened alcoholic beverages not consumed at the event may be returned to the wholesaler or kept for personal use by the non-licensee, but may not be sold under any circumstances.

**C.** Any delivery of donated or discounted alcoholic beverages by a licensed New Mexico wholesaler must be accompanied by an invoice indicating the licensee's name, d/b/a name, liquor license number, the amount and type of alcoholic beverages delivered, the market value of the delivered alcoholic beverages, the place where the alcoholic beverages were delivered, and the date. The invoice must show a sum due of zero for donated alcoholic beverages or the discounted amount of the purchase.

[15.10.53.9 NMAC - Rp, 15 NMAC 10.5.3.9, 4/25/2017]

#### **15.10.53.10 COMMERCIAL COERCION AND BRIBERY:**

**A.** The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 NMSA 1978, of the Act.

**B.** The Director shall enforce the prohibitions against unlawful inducements as set forth in Section 60-8A-1.1 NMSA 1978, of the Act.

**C.** Sections 60-8A-1 and 60-8A-1.1 NMSA 1978, of the Act shall incorporate the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.

(1) Wholesalers and manufacturers shall not provide money or any other thing of substantial value to a retailer, restaurant, club, governmental or any other type

of dispensing licensee, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand of alcoholic beverage.

**(2)** Retailers, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, shall not receive or ask for money or any other thing of substantial value from a wholesaler or manufacturer, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand or kind of alcoholic beverage.

**(3)** Things are of substantial value when it has a value greater than three hundred dollars.

**(4)** Generally, product displays, point of sale advertising materials, temporary signage valued at three hundred dollars or less are permissible.

**(5)** Fixtures, capital improvements and equipment, including refrigeration units, keg coolers, and permanent signage are not permissible unless there is a written contract to buy or lease the item, at fair market value, between the retailer, restaurant, club, governmental, or any other type of dispensing licensee and the wholesaler or manufacturer.

[15.10.53.10 NMAC; N, 4/25/2017; A, 9/28/2021]

## **PART 54: SALES - CLUBS**

### **15.10.54.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.54.1 NMAC - Rp, 15 NMAC 10.5.4.1, 4/25/2017; A, 9/28/2021]

### **15.10.54.2 SCOPE:**

These rules apply to all club licensees under the act.

[15.10.54.2 NMAC - Rp, 15 NMAC 10.5.4.2, 4/25/2017]

### **15.10.54.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.54.3 NMAC - Rp, 15 NMAC 10.5.4.3, 4/25/2017]

### **15.10.54.4 DURATION:**

Permanent

[15.10.54.4 NMAC - Rp, 15 NMAC 10.5.4.4, 4/25/2017]

**15.10.54.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.54.5 NMAC - Rp, 15 NMAC 10.5.4.5, 4/25/2017]

**15.10.54.6 OBJECTIVE:**

This part is intended to establish additional standards by which club licensees may sell and serve alcoholic beverages under the act.

[15.10.54.6 NMAC - Rp, 15 NMAC 10.5.4.6, 4/25/2017]

**15.10.54.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

[15.10.54.7 NMAC - Rp, 15 NMAC 10.5.4.7, 4/25/2017; A, 9/28/2021]

**15.10.54.8 SALES LIMITED TO MEMBERS AND GUESTS:**

**A.** Whenever a member invites one or more bona fide guests, as defined by Subsection A of 15.10.54.7 NMAC onto a club's licensed premises, the club shall be responsible for identifying each bona fide guest and the club member responsible for such guest by maintaining a sign in sheet identifying the guest and the member, including the member identification number. The club should be able to produce the sign in sheet upon request by the director or the special investigations unit of the department of public safety or other peace officer within the scope of their jurisdiction. Members may not be stationed at the door signing in people who were not previously invited as their guests.

**B.** A member who has invited bona fide guests to use club facilities shall be responsible at all times while the guests are on the club premises. Except as otherwise permitted by law, no person other than the club members, bona fide guests, and club employees shall be allowed on any part of the licensed premises where alcoholic beverages are being sold, served, or consumed under the club license.

[15.10.54.8 NMAC - Rp, 15 NMAC 10.5.4.8, 4/25/2017]

**15.10.54.9 GAMES OF CHANCE:**

**A.** An entity holding a valid club license issued under the act may conduct any activities on the licensed premises that are excluded from the definition of commercial gambling pursuant to Subsection C of Section 60-7A-19 NMSA 1978, of the Act.

**B.** Nothing within this section shall be deemed to allow for commercial gambling, as defined by Subsection C of Section 60-7A-19 NMSA 1978, of the Act.

[15.10.54.9 NMAC - Rp, 15 NMAC 10.5.4.9, 4/25/2017; A, 9/28/2021]

#### **15.10.54.10 FUND RAISING EVENTS:**

A club may allow its facilities, including its licensed premises, to be used by another non-profit organization four times in a calendar year for a fund raising event that is open to the public if the club submits an application on the form provided by the division not less than 10 days before the date of the proposed event and receives written approval from the division for the event.

[15.10.54.10 NMAC - Rp, 15 NMAC 10.5.4.10, 4/25/2017; A, 9/28/2021]

#### **15.10.54.11 ADVERTISING FOR SPECIAL EVENTS:**

**A.** A club may advertise a special event for the purposes of soliciting new club members or to notify existing members. Any advertisement, either printed, electronic or otherwise, must clearly state that the event is restricted to members of the club and their bona fide guests. If soliciting new members, the advertisement must state "to become a member, please contact" and provide contact information of a club member.

**B.** Examples of special events include, but are not limited to, musical and other artistic performances, speaking engagements, and promotions by commercial entities.

**C.** Special events that also constitute "fund raising events" pursuant to section 10, above, are not subject to this advertising rule.

**D.** Any advertising described in Subsection A of 15.10.54.11 NMAC shall not include references to specific drinks or prices of drinks.

[15.10.54.11 NMAC - Rp, 15 NMAC 10.5.4.11, 4/25/2017]

#### **15.10.54.12 CHANGE IN OFFICERS:**

A club must report a change in officers at time of renewal on an application prescribed by the director, including but not limited to, submission of fingerprints, personal affidavits, meeting minutes from the election and a copy of the club's filing with the New Mexico secretary of state that lists its current officers, as part of the annual renewal application.

[15.10.54.12 NMAC - Rp, 15 NMAC 10.5.4.12, 4/25/2017; A, 9/28/2021]

#### **15.10.54.13 LICENSE RENEWAL REQUIREMENT:**

In addition to the other requirements provided by law, as part of its annual renewal application, and upon request by the director, a club must furnish proof of its number of members by providing either:

**A.** a roster of its current members which includes the name, address and phone number of each member; or

**B.** a sworn statement by either a certified public accountant or an attorney, duly licensed in the state, attesting that during the preceeding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations; or

**C.** a sworn statement by an officer of the statewide or national non-profit organization associated with the club attesting that during the preceeding 12 months, the club has had no more than 250 members, based upon a personal review of the club's operations.

[15.10.54.13 NMAC - Rp, 15 NMAC 10.5.4.13, 4/25/2017]

### **PART 55: INTERNET SALES**

#### **15.10.55.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.1.55.1 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.10.55.2 SCOPE:**

These rules apply to all retailers, and to dispensers authorized to sell alcoholic beverages in unbroken packages and all licensees allowed to sell alcoholic beverages through delivery, under the act.

[15.1.55.2 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.10.55.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

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

**15.10.55.4 DURATION:**

Permanent.

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

**15.10.55.5 EFFECTIVE DATE:**

April 25, 2017 unless a later date is cited at the end of a section.

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

**15.10.55.6 OBJECTIVE:**

These rules are intended to regulate purchasing cooperatives authorized pursuant to the act.

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

**15.10.55.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

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

**15.10.55.8 THIRD-PARTY, INTERNET SALES:**

**A.** Except as provided in this section, no licensee may accept or fulfill any offer for the sale of any alcoholic beverages to New Mexico residents through a third-party internet web site for shipping alcoholic beverages to customers.

**B.** The holder of a New Mexico winegrower's license that also holds a direct wine shipment permit may sell and ship wine through an internet website to residents of New Mexico. Through a website of a third-party intermediary, and regardless of whether the transaction is administered by the licensee or the licensee's agent, the holder of a New Mexico winegrower's license may sell wines of the winegrower's own production, or wine produced by another New Mexico winegrower, but not any other alcohol, to:

(1) a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license;

(2) a New Mexico winegrower's agent;

(3) a New Mexico resident;

(4) a resident in any other state or foreign jurisdiction, as authorized by that jurisdiction; and

(5) the holder of a license in any other state or foreign jurisdiction issued under the authority of that jurisdiction that authorizes the purchase of wine.

C. The holder of a direct wine shipment permit that is a person licensed in a state other than New Mexico that holds a winery license in that state may sell and ship wines that are otherwise in accordance with Subsection B, above, to the extent not prohibited by the laws of that state.

D. All third-party internet sales described in this part are subject to the restrictions on direct wine shipment permits as provided by Sections 60-6A-11.1 and Subsection F of Section 60-7A-3 NMSA 1978 of the act.

[15.1.55.8 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.10.55.9 USE OF INTERNET WEBSITE AND APPLICATION BASED PLATFORMS FOR DELIVERY SALES:**

A. Licensees issued an alcoholic beverage delivery permit may sell alcoholic beverages, allowed by their license type, through an internet website or application to customers.

B. The internet website or application platform may be provided by a third-party intermediary, for use by the licensee, in accordance with the act.

[15.1.55.9 NMAC – N, 9/28/2021]

#### **PART 56-60: [RESERVED]**

#### **PART 61: CITATIONS - FINES AND PENALTIES**

##### **15.10.61.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.61.1 NMAC - Rp, 15 10.61.1 NMAC, 4/25/2017; A, 9/28/2021]

##### **15.10.61.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act.

[15.10.61.2 NMAC - Rp, 15 10.61.2 NMAC, 4/25/2017]

**15.10.61.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.61.3 NMAC - Rp, 15 10.61.3 NMAC, 4/25/2017]

**15.10.61.4 DURATION:**

Permanent.

[15.10.61.4 NMAC - Rp, 15 10.61.4 NMAC, 4/25/2017]

**15.10.61.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.10.61.5 NMAC - Rp, 15 10.61.5 NMAC, 4/25/2017]

**15.10.61.6 OBJECTIVE:**

This rule is intended to comply with Subsection M of Section 60-6C-4 NMSA 1978 which requires the director to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director. It is also intended to establish violation codes for consistent tracking within the division.

[15.10.61.6 NMAC - Rp, 15 10.61.6 NMAC, 4/25/2017]

**15.10.61.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

[15.10.61.7 NMAC - Rp, 15 10.61.7 NMAC, 4/25/2017; A, 9/28/2021]

**15.10.61.8 SCHEDULE OF PENALTIES:**

**A.** Any portion of the fines or penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case and where warranted by the evidence and the interests of public health, safety and welfare.

**B. Violations involving sales to minors or intoxicated persons by licensee:**

<b>Code</b>	<b>Description</b>
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90 Sale to intoxicated person

105 Sale to a minor

(1) The first offense within a 12 month period will result in a fine ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) and suspension of all alcohol sales for a minimum of one business day.

(2) The second offense within a 12 month period will result in a fine ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) and suspension of all alcohol sales for seven business days or possible revocation of the license if the licensee's citation history shows a pattern warranting revocation.

(3) Three or more offenses within a 12 month period shall result in a fine of ten thousand dollars (\$10,000) and revocation of the liquor license. The director may allow a reasonable period of time for the licensee to sell the license in lieu of revocation, provided that the licensee places the license into voluntary suspension until the date of sale or revocation.

(4) Any combination of three offenses involving sales to minors or sales to intoxicated persons occurring within a 12 month period shall result in a fine of ten thousand dollars (\$10,000) and revocation of the liquor license.

**C. Violations involving sales to minors or intoxicated persons by server:**

**Code Description**

313 Sale to minor or to an intoxicated person

(1) the first offense may result in a fine up to \$500, up to a 30-day suspension, or both;

(2) the second offense may result in a fine up to \$500, up to a one-year suspension, or both;

(3) the third offense may result in a fine of up to \$500, a suspension of greater than one year, or revocation.

**D. Violations involving licensing issues:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines within the ranges shown below. Penalties may also include suspension or revocation of the liquor license.

Code	Description	Fine
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117	more than one entity profiting	two thousand dollars (\$2,000) to ten thousand dollars (\$10,000)
118	unauthorized entity profiting or operating	one thousand five hundred dollars (\$1,500) to ten thousand dollars (\$10,000)
119	failure to report change of ownership or structure	two hundred fifty dollars (\$250) to three thousand dollars (\$3,000)
135	failure to renew license	five hundred dollars (\$500) to three thousand dollars (\$3,000)
205	unauthorized transfer of a liquor license	three thousand dollars (\$3,000) to ten thousand dollars (\$10,000)
300	persons prohibited from holding a license	three thousand dollars (\$3,000) to ten thousand dollars (\$10,000)

**E. Illegal sale, delivery or possession of alcoholic beverages:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to ten thousand dollars (\$10,000). Penalties may also include suspension or revocation of the liquor license.

**Code      Description**

160      sale/possession - illegal

**F. Public nuisance violations:**

**Code      Description**

125      public nuisance

(1) Penalties imposed for public nuisance violations will be determined depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines and penalties shown below.

(2) The first offense will result in a fine of two thousand dollars (\$2000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the division notifies the licensee, or the citation may be referred to a formal hearing.

(3) Failure to correct the violations as agreed will result in an additional fine of three thousand dollars (\$3,000) and immediate suspension of the license until the corrections are completed.

(4) The second offense within a 24-month period will result in a fine of four thousand dollars (\$4000). A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the department notifies the licensee, or the citation may be referred to a formal hearing. After the plan of

correction is agreed to, the license will be immediately suspended until completion of the corrections.

(5) The third offense in a 36-month period will result in revocation of the license.

**G. Violations involving commercial gambling:** Penalties imposed for commercial gambling violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include the administrative fines shown below. Penalties may also include suspension or revocation of the liquor license.

<b>Code</b>	<b>Description</b>
40	commercial gambling
(1)	The first offense will result in a fine of three thousand dollars (\$3,000).
(2)	The second offense will result in a fine of four thousand dollars (\$4,000).
(3)	The third offense will result in a fine of five thousand dollars (\$5,000).
(4)	Four or more offenses will result in a fine of ten thousand dollars (\$10,000).

**H. Violations involving club sales provision:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to five thousand dollars (\$5,000). Penalties may also include suspension or revocation of the liquor license.

<b>Code</b>	<b>Description</b>
35	liquor sales to non-members
37	other violations of club sales restrictions

**I. Violations of a tasting permit:**

<b>Code</b>	<b>Description</b>
36	tasting permit
(1)	For a first violation, a fine no greater than one thousand dollars (\$1,000) or a suspension of the tasting permit for a period of two months, or both;

(2) For a second violation within a year of the first violation, a fine no greater than two thousand dollars (\$2,000) or a suspension of the tasting permit for a period of six months, or both; and

(3) For a third violation within a year of the first violation, a citation against the master license, a fine no greater than five thousand dollars (\$5,000), and a suspension of the tasting permit for one year.

**J. Violation for Illegal Extension of Credit by Wholesalers:** Any wholesaler that extends credit for the sale of alcoholic beverages for any period more than thirty days shall be subject to a fine of ten thousand dollars (\$10,000) for each violation. Additional violations within a year of the first violation may also result in suspension or revocation of the license.

**Code Description**

38 credit extension

**K. Violations involving other licensing, sales and service matter:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from five hundred dollars (\$500) to five thousand dollars (\$5,000). Penalties may also include suspension or revocation of the liquor license.

<b>Code</b>	<b>Description</b>
1	unauthorized package sale
3	unattended alcoholic beverages
27	purchase from other than a wholesaler
28	alcohol server training program - failure to complete
29	alcohol server training certification - failure to renew
45	removal of open container from licensed premises
66	violation of restaurant license restriction
80	employing an underage person
87	dispenser, drink or price violation
107	minor in possession/consuming
110	unaccompanied minor in restricted area of premises
120	operating hours - improper or illegal
145	unauthorized sale by the drink
146	filling of bottles
155	sale from other than controlled access area of licensed premises
157	change of floor plan without approval
180	special dispenser's, private celebration or public celebration permit violation
215	violation of wholesaler license restriction
301	obstruction of the administration of the liquor control act

302	private party violation
320	employee drinking on duty
321	segregated sales violation

**L. Miscellaneous violations of the liquor control act or regulations:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines ranging from two hundred fifty dollars (\$250) to three thousand dollars (\$3,000). Penalties may also include suspension or revocation of the liquor license.

Code	Description
5	advertising - illegal
10	agency responsibility/authority
25	failure to engage in business
26	failure to suspend license
50	unauthorized display of copy/facsimile of license
100	improper lighting
116	unauthorized change of dba name
175	sanitation violation
303	beer keg labeling violation
304	unauthorized change of corporate name
314	required documents on licensed premises
323	violation of a bed and breakfast rule

**M. Other violations not specifically listed:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and may include administrative fines up to ten thousand dollars (\$10,000) and suspension or revocation of the liquor license.

**Code      Description**

999          miscellaneous

**N. Violations involving providers:** Penalties imposed for the following violations will depend upon the facts and circumstances of each case and, unless enhanced or suspended in whole or in part, will include administrative fines up to five hundred dollars (\$500).

Code	Description
305	failure to notify of sale, right to own, teach, or use of program to any person
306	providing false information regarding certified program completion
307	failure to conduct the program as certified by the division

308	filing an application for certification of a provider, instructor, or program with false information
310	failure to comply with provisions of alcohol server education article or rules promulgated thereunder

**O. Violations of the alcohol server education article involving licensees:**

Penalties imposed for the following violations will be as listed below unless enhanced or suspended in whole or in part and depend upon the facts and circumstances of each case.

<b>Code</b>	<b>Description</b>
316	Employing a person without a server permit up to five hundred dollars (\$500)
317	failure to maintain copies of server permits on the licensed premises: twenty dollars (\$20) per permit
318	failure to produce a copy of an employee's server permit: twenty dollars (\$20) per permit
319	Permitting a person with a suspended or revoked permit to serve alcoholic beverages: up to five hundred dollars (\$500)

**P. Suspension of alcoholic beverage sales:**

(1) When suspension of alcoholic beverage sales is a penalty for violation of the Liquor Control Act, suspension will be addressed as follows:

(a) for a one-day suspension, the licensee will be required to suspend alcohol sales on the same day of the week that the violation occurred, except that if the violation occurred earlier than 3:00 a.m., then the licensee will be required to suspend alcohol sales on the day of the week immediately prior to the day that the violation occurred;

(b) for a suspension of more than one day, the licensee will be required to suspend alcohol sales for consecutive days, beginning on the same day of the week that the violation occurred, except that if the violation occurred earlier than 3:00 a.m., then the licensee will be required to suspend alcohol sales beginning on the day of the week immediately prior to the day that the violation occurred.

(2) If the penalty for a violation is suspension, no fine is payable in lieu of suspension.

(3) Signs provided by the division must be posted on all cash registers and entrances to the restricted area on days that alcohol sales are suspended because of violations of the act.

[15.10.61.8 NMAC - Rp, 15 10.61.8 NMAC, 4/25/2017; A, 5/30/2017; A, 9/28/2021]

**15.10.61.9 ENHANCEMENT OF SCHEDULED PENALTIES:**

Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.

[15.10.61.9 NMAC - Rp, 15 10.61.9 NMAC, 4/25/2017]

**15.10.61.10 ENHANCEMENT OF SCHEDULED PENALTIES FOR VIOLATIONS INVOLVING THE USE OF ALTERNATIVE FORMS OF ALCOHOL:**

In recognition of the heightened public policy concerns regarding the greater potential for abuse and greater need for deterrence, whenever a violation identified in this part involves the sale, service or consumption of alternative forms of alcohol, including but not limited to powdered, vaporized or freeze-dried alcohol, the penalty otherwise set forth in this part shall be enhanced up to the maximum allowed by the act.

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

**15.10.61.11 COMPROMISE:**

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

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

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

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

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

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

**PART 62-69: [RESERVED]**

**PART 70: OPERATION AND PROFITING BY AUTHORIZED PERSONS**

**15.10.70.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.10.70.1 NMAC - Rp, 15 NMAC 10.7.1, 4/25/2017; A, 9/28/2021]

**15.10.70.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act.

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

**15.10.70.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

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

**15.10.70.4 DURATION:**

Permanent.

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

**15.10.70.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

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

**15.10.70.6 OBJECTIVE:**

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

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

**15.10.70.7 DEFINITIONS:**

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

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

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

**A.** No person other than the licensee or lessee or employees of the licensee or lessee, shall sell or serve alcoholic beverages at the licensed premises.

**(1)** All orders, sales, service, dispensing, delivery and receipt of payment for alcoholic beverages must be completed by the licensee or lessee, or employees of the licensee or lessee, or the employees of a third-party delivery licensee contracted with for delivery purposes.

**(2)** Sales of alcoholic beverages by a licensee or lessee may not be combined with any sales of another person or entity that is not the licensee or lessee. Nothing in this section shall prohibit the a licensee and a third-party delivery licensee from contracting for the delivery of alcoholic beverages to consumers.

**B.** Only the licensee or lessee shall directly profit from the sale of alcoholic beverages sold pursuant to a license. A person directly profits from the sale of alcoholic beverages in violation of this rule when any person other than the licensee or lessee receives any portion of the profits earned, or receipts, from the sale of alcoholic beverages, except for:

**(1)** the payment of rent for the licensed premises based in whole or in part on a percentage of the licensee's gross sales;

**(2)** the payment to employees of incentive compensation based upon a percentage of gross sales;

**(3)** revenues received by an affiliate of the licensee from the sale of products other than alcoholic beverages on the licensed premises;

**(4)** revenues split by a liquor licensee and its lessee pursuant to a hotel management agreement approved by the division, provided that operational control of the licensed premises remain at all times with the lessee and the split of revenue is reasonable;

**(5)** such other reasonable splitting of revenues specifically approved by the director, who may require additional disclosures and sworn statements as condition for such approval; or

**(6)** such agreements reviewed and approved by the division in regards to licensees and third-party delivery licensees contracting for delivery services to consumers.

**C.** Except as provided in this part, it is a violation of the act for any licensee to divide, split, or in any way share the right to sell alcoholic beverages, with any person not named as a licensee on the license.

**D.** Upon 30 days' written notice, a licensee shall demonstrate compliance with this rule. Failure to demonstrate compliance will result in initiation of proceedings against the licensee by the director, pursuant to Section 60-6C-1 NMSA 1978 et seq. Evidence of compliance will be provided as follows:

(1) proof that all employees are paid by the approved operator or that the employees are providing such services as bona fide volunteers, consisting of copies of canceled paychecks or equivalent documents for the most recent three-month period; and

(2) proof that receipts of the licensed business are deposited directly into a bank account in the sole name of the approved operator, consisting of copies of bank records showing deposits and the name of the approved operator and signatories on the account; and

(3) proof of operation by the licensee or lessee, consisting of copies of all real estate lease agreements, concession agreements, management agreements, contracts for delivery or contracts of any kind to which the licensee or lessee is a party with other persons for operation or profit-sharing in the operation; and

(4) proof that receipts of the business are not shared with non-licensed parties, consisting of copies of all canceled checks for the most recent three-month period with explanations of payments to persons other than suppliers, the approved operator, or employees of the approved operator.

[15.10.70.8 NMAC - Rp, 15 NMAC 10.7.8, 4/25/2017; A, 9/28/2021]

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

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

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

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

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

**A.** An "alternating proprietorship" is an arrangement in which two or more entities may alternate using a licensed premises, equipment and employees to manufacture

alcoholic beverages. Alternating proprietorships allow existing, duly licensed New Mexico winegrowers, small brewers and craft distillers to use excess capacity and provide opportunity to begin on a small scale, without investing in premises and equipment.

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

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

**D.** Filing of written agreement:

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

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

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

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

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

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

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

## **CHAPTER 11: ALCOHOLIC BEVERAGES LICENSING**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: REQUIRED DOCUMENTS ON LICENSED PREMISES**

### **15.11.2.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.2.1 NMAC - Rp, 15 NMAC 11.1.1.1, 4/25/2017; A, 9/28/2021]

### **15.11.2.2 SCOPE:**

This rule applies to all licensees and applicants for licensure under the act.

[15.11.2.2 NMAC - Rp, 15 NMAC 11.1.1.2, 4/25/2017]

### **15.11.2.3 AUTHORITY:**

Sections 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.2.3 NMAC - Rp, 15 NMAC 11.1.1.3, 4/25/2017]

### **15.11.2.4 DURATION:**

Permanent.

[15.11.2.4 NMAC - Rp, 15 NMAC 11.1.1.4, 4/25/2017]

### **15.11.2.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.2.5 NMAC - Rp, 15 NMAC 11.1.1.5, 4/25/2017]

### **15.11.2.6 OBJECTIVE:**

This rule is intended to establish requirements for licensees' display of all required documents pursuant to the act, and other information that shall be kept on all licensed premises to comply with the provisions of the act and its accompanying rules.

[15.11.2.6 NMAC - Rp, 15 NMAC 11.1.1.6, 4/25/2017]

### **15.11.2.7 DEFINITIONS:**

Unless otherwise defined in 15.10, 2 NMAC, terms used in these rules have the same meanings as set forth in the act.

[15.11.2.7 NMAC - Rp, 15 NMAC 11.1.1.7, 4/25/2017]

**15.11.2.8 DISPLAY OF LICENSE:**

The current liquor license shall be prominently displayed within the licensed premises so that it is in full public view at all times. A copy or scanned image or facsimile of the license may be displayed only for 30 days or until the original license is received by the licensee, whichever occurs first, provided that the copy or scanned image or facsimile is of the original, current and duly issued license.

[15.11.2.8 NMAC - Rp, 15 NMAC 11.1.1.8, 4/25/2017]

**15.11.2.9 POSTERS:**

**A.** Licensees that sell alcoholic beverages directly to the public shall display the following posters in full public view within the licensed premises. The director will prescribe the forms and sizes of the posters except that the licensee may make the poster larger than what is prescribed. The director will make copies available to all licensees:

(1) posters giving notice that the law prohibits the carrying of any operative firearm on a licensed premises, except where the licensed premises is subject to the concealed carry exception, the licensee may display a poster giving notice of the concealed carry exception, as long as the poster also gives notice that the law prohibits all other operative firearms on the licensed premises;

(2) posters warning of the dangers of drinking alcoholic beverages during pregnancy; and

(3) posters identifying all restricted areas of the licensed premises in which minors are prohibited, unless accompanied by a parent, adult spouse or legal guardian, except that such posters are not required for premises licensed as a restaurant serving beer and wine

**B.** Licensees may, with the director's prior approval, develop and use posters of their own design that contain the same information required in this sections. Any such posters shall be valid only if bearing the director's stamp of approval.

[15.11.2.9 NMAC - Rp, 15 NMAC 11.1.1.10, 4/25/2017; A, 9/28/2021]

**15.11.2.10 FLOOR PLAN:**

All licensees and their employees shall have access on the licensed premises to a hard copy of the current floor plan approved by the Division.

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

#### **15.11.2.11 STATUTES AND RULES:**

All licensees and their employees shall have access on the licensed premises to either a hard or electronic copy of the most current versions of the act and the rules promulgated thereunder.

[15.11.2.11 NMAC - Rp, 15 NMAC 11.1.1.11, 4/25/2017; A, 9/28/2021]

#### **15.11.2.12 INVOICES:**

All licensees shall keep on the licensed premises copies of all invoices received in the preceding two years from all suppliers of all inventory on the licensed premises. A licensee may maintain true and correct electronic copies of original invoices but shall make all documents or electronic copies immediately available and open for inspection during all usual business hours upon request of the division, the special investigations unit of the department of public safety or the taxation and revenue department.

[15.11.2.12 NMAC - Rp, 15 NMAC 11.1.1.12, 4/25/2017]

#### **15.11.2.13 [RESERVED]:**

[15.11.2.13 NMAC - Rp, 15 NMAC 11.1.1.13, 4/25/2017; Repealed 9/28/2021]

#### **15.11.2.14 SERVER CERTIFICATIONS:**

For all server certifications required pursuant to Section 60-6E-6 NMSA 1978 of the act, all licensees shall keep a current list of all such certifications, including server number and expiration date, available at the licensed premises in either hard or electronic copy to be made available upon request. In the event that proof of such server certification is only available as a temporary, written document, such temporary proof shall be available at the licensed premises in either a hard copy or as a scanned electronic copy to be made available upon request. The licensee or lessee, not any server, is responsible for compliance with this section.

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

#### **15.11.2.15 DOCUMENTS REQUIRED FOR DELIVERY OF ALCOHOLIC BEVERAGES:**

**A.** A licensee holding an alcoholic beverage delivery permit, or a third-party delivery license, must cause all delivery employees to have on their person, during delivery, the following:

**(1)** The original, or an electronic or physical copy, of the permittees alcoholic beverage delivery permit;

(2) A physical or electronic copy of the delivery personnel's server certification;

(3) A physical copy of the receipt printout accompanying all alcoholic beverages out for delivery; and

**B.** A license holding an alcoholic beverage delivery permit, or a third-party delivery license must save for a period of six months, at their licensed establishment, documentation containing the following information:

(1) The name and age information for the customer who ordered and paid for the alcoholic beverages;

(2) The address alcoholic beverages are to be delivered to;

(3) The quantity and type of alcoholic beverage being delivered; and

(4) The time of alcoholic beverage delivery.

[15.11.2.15 NMAC – N, 9/28/2021]

### **PART 3-19: [RESERVED]**

## **PART 20: LICENSES AND PERMITS – ALCOHOLIC BEVERAGE DELIVERY**

### **15.11.20.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.20.1 NMAC - N, 9/28/2021]

### **15.11.20.2 SCOPE:**

These rules apply to all licensees under the New Mexico Liquor Control Act.

[15.11.20.2 NMAC - N, 9/28/2021]

### **15.11.20.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.20.3 NMAC - N, 9/28/2021]

**15.11.20.4 DURATION:**

Permanent.

[15.11.20.4 NMAC - N, 9/28/2021]

**15.11.20.5 EFFECTIVE DATE:**

September 28, 2021, unless a later date is cited at the end of a section.

[15.11.20.5 NMAC - N, 9/28/2021]

**15.11.20.6 OBJECTIVE:**

This rule is intended to establish standard procedures for obtaining and operating alcoholic beverage delivery permits and third-party alcohol delivery licenses.

[15.11.20.6 NMAC - N, 9/28/2021]

**15.11.20.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.

[15.11.20.7 NMAC - N, 9/28/2021]

**15.11.20.8 ALCOHOLIC BEVERAGE DELIVERY PERMIT:**

An alcoholic beverage delivery permit may be issued, at the discretion of the director, to the holder of a retailer's, dispenser's, craft distiller's, winegrower's, small brewer's, restaurant a, or restaurant b license upon submission of an application to the division.

**A.** For purposes of this section dispenser's licenses shall include dispenser's, inter-local dispenser's, canopy, and lottery licenses.

**(1)** Those licenses that no longer have package sales capabilities, for consumption off of the licensed premises, to be limited in alcoholic beverage quantities established in Subsection B of 15.11.20.10 NMAC and Subsection C of 15.11.20.10 NMAC.

**(2)** Nothing within these rules allows licensees to allow for to go sales of alcoholic beverages for consumption off of the licensed premises, if the license does not allow for package sales.

**B.** The holder of an alcoholic beverage delivery permit may do the following:

(1) Deliver alcoholic beverages only in unbroken packages or sealed growlers;

(2) Deliver alcoholic beverages only within the geographical boundaries of the county and the local option district the licensee is located, unless written approval to deliver into an adjoining county has been given by the division;

(3) Deliver alcoholic beverages only during the hours allowed by the Act, based on the license type; and

(4) Contract for the delivery of alcoholic beverages with the holder of a third-party delivery license issued in accordance with the act.

**C. The holder of an alcoholic beverage delivery permit:**

(1) Shall receive payment for alcoholic beverages only at the licensed premises of the licensee personally, telephonically, electronically, via website or application, or other internet platform;

(2) Shall not change the price charged for an alcoholic beverage because it was purchased for delivery, provided they may charge a separate delivery fee disclosed at the time of the purchase;

(3) Shall not delivery an alcoholic beverage to a business, a commercial establishment, a college or university, or a school campus;

(4) Shall obtain valid proof of the delivery recipient's identity and age and keep records of such in accordance with 15.11.2.15 NMAC;

(5) Shall not deliver alcoholic beverages to intoxicated persons or to anyone unable to demonstrate that they are 21 years of age or older; and

(6) Shall have only alcoholic beverages that have been purchased for delivery, in their vehicle, while transporting alcoholic beverages for delivery.

**D.** If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.

**E.** Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent these rules.

[15.11.20.8 NMAC - N, 9/28/2021]

**15.11.20.9 DELIVERY RESTRICTIONS AND REQUIREMENTS IN CLASS A COUNTIES:**

**A.** The division shall follow the county classifications established by the local government division of the department of finance and administration.

**B.** Licensees otherwise qualified to be issued an alcoholic beverage delivery permit, with an indoor retail space greater than 10,000 square feet, located in a class A county shall:

(1) Use an identification verification system approved by the division. The system must have the capabilities to establish identification of the purchaser was checked and scanned for each delivery and store such information;

(2) Only sell for delivery beer and wine.

(3) Provide to the division proof of liquor liability endorsement in the amount of five million dollars (\$5,000,000) or greater; and

(4) Only utilize employees of the licensee for purposes of delivery of alcoholic beverages.

[15.11.20.9 NMAC - N, 9/28/2021]

**15.11.20.10 DELIVERY RESTRICTIONS AND REQUIREMENTS FOR RESTAURANT LICENSES:**

**A.** Restaurant licenses are limited to the delivery of alcoholic beverage types allowed by their license.

**B.** Alcoholic beverages shall only be delivered to customers concurrently with the delivery of a minimum of ten dollars (\$10.00) worth of food.

**C.** Delivery of alcoholic beverages to one location, during a three hour period of time, shall not exceed:

(1) 750 milliliters of wine;

(2) six 12-ounce containers of prepackaged wine, beer, cider;

(3) three 12-ounce containers of manufacturer canned or bottled ready to drink cocktails containing spiritous liquors with an alcoholic by volume of thirteen percent;

(4) one growler or crowler of product manufactured by a small brewer; or

(5) one howler of a cocktail, mixed by the licensee, containing no more than four and one-half ounces of spiritous liquors, in order to comply with Paragraph (6) of Subsection F of Section 60-6A-4 NMSA 1978, of the act. The howlers used must

contain the DBA of the licensee etched onto the glass or have the receipt secured onto the container.

**D.** Contracting with the holder of a third-party delivery license shall not be used as a means to circumvent these rules.

[15.11.20.10 NMAC - N, 9/28/2021]

#### **15.11.20.11 THIRD-PARTY ALCOHOL DELIVERY LICENSE:**

**A.** A person may be issued a third-party alcohol delivery license upon submission of a completed application or renewal application to the division, on a form to be prescribed by the director. Applications and renewal applications must be accompanied by:

- (1)** Documentation of delivery employees state issued server permits;
- (2)** Proof of general liability insurance coverage, providing coverage for employees and independent contractors of applicant, in an amount of one million dollars (\$1,000,000) or greater, per occurrence;
- (3)** Proof of applicant being authorized to do business in the state; and
- (4)** An exemplar copy of a contract to be used between applicant and licensees holding alcoholic beverage delivery permits, with executed contracts to be submitted after execution.

**B.** The holder of a third-party alcohol delivery license may:

- (1)** Contract with licensees issued an alcoholic beverage delivery permit for the purpose of delivering alcoholic beverages to customers;
- (2)** Deliver alcoholic beverages, in accordance with the act and these rules, from a licensed premises of a licensee to customers.
- (3)** Have in their possession only alcoholic beverages purchased by a customer and received from a licensee's stock.

**C.** If for any reason a delivery of alcoholic beverages cannot be completed, the alcoholic beverages shall be returned to be entered into the licensee's stock and the customer shall be refunded for the payment collected prior to delivery.

**D.** A third-party alcohol delivery licensee shall not:

- (1)** Share in the profits of the sale of alcoholic beverages with a licensee;

(2) Buy, hold or deliver alcoholic beverages under a third-party alcohol delivery license; or

(3) Assist licensees in the delivery of alcoholic beverages in violation of these rules.

(4) Nothing in this section shall preclude a third-party alcohol delivery licensee from holding any other license issued pursuant to the Liquor Control Act.

[15.11.20.11 NMAC - N, 9/28/2021]

## **PART 21: LICENSES AND PERMITS - APPLICATIONS**

### **15.11.21.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.21.1 NMAC - Rp, 15 NMAC 11.2.1.1, 4/25/2017; A, 9/28/2021]

### **15.11.21.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act.

[15.11.21.2 NMAC - Rp, 15 NMAC 11.2.1.2, 4/25/2017]

### **15.11.21.3 STATUTORY AUTHORITY:**

Sections 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.21.3 NMAC - Rp, 15 NMAC 11.2.1.3, 4/25/2017]

### **15.11.21.4 DURATION:**

Permanent.

[15.11.21.4 NMAC - Rp, 15 NMAC 11.2.1.4, 4/25/2017]

### **15.11.21.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.21.5 NMAC - Rp, 15 NMAC 11.2.1.5, 4/25/2017]

### **15.11.21.6 OBJECTIVE:**

This rule is intended to establish general standards for the application and issuance of licenses under the act.

[15.11.21.6 NMAC - Rp, 15 NMAC 11.2.1.6, 4/25/2017]

**15.11.21.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

[15.11.21.7 NMAC - Rp, 15 NMAC 11.2.1.7, 4/25/2017]

**15.11.21.8 LICENSE APPLICATION:**

**A.** The director is authorized to prescribe all forms called for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.

**B.** All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown.

**C.** All applications for liquor licenses shall be made on the forms prescribed by the director whether filed electronically, by mail or in person.

**D.** All substantially complete applications received shall be date and time stamped by the division. Applications that are not substantially complete will not be processed and returned to the applicant with a notice of all deficiencies.

[15.11.21.8 NMAC - Rp, 15 NMAC 11.2.1.8, 4/25/2017]

**15.11.21.9 RESIDENT AGENT DESIGNATION:**

**A.** Except for sole proprietors, every licensee shall designate a "resident agent" to accept service of all orders and notices of the division. The resident agent must have:

**(1)** no conviction for:

(a) any felony in any jurisdiction, or

(b) two convictions for violations of the act within any twelve-month period;

**(2)** limited power of attorney and authority to bind the applicant to matters related to liquor sales and operations;

**(3)** authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and

**(4)** residency in the state of New Mexico.

**B.** To designate a resident agent, a licensee shall file, with the division, an application on division forms. The designation of resident agent may be terminated upon written notification to the department by either the licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent. Any application filed more than 10 days from the date of termination of the resident agent shall be accompanied by an additional fee as set forth at 15.11.26.9 NMAC.

**C.** A licensee may designate as many resident agents as it deems necessary for the operation of the business.

**D.** The application fee for designation of each resident agent shall be as set forth at 15.11.26.9 NMAC.

**E.** The designation of a resident agent shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.

[15.11.21.9 NMAC - Rp, 15 NMAC 11.2.1.9, 4/25/2017]

#### **15.11.21.10 DISCLOSURE OF OWNERSHIP:**

**A.** Applicants must fully disclose all ownership interest in the liquor license, as required by Subsection A of Section 60-6B-2 NMSA, upon application for a liquor license, or for transfer of ownership of a liquor license, or for change in structure, or for lease of a license, by filing an application on forms prescribed by the director.

**B.** The following shall be fully disclosed in writing to the division:

**(1)** if the licensee is a corporation or limited liability company, the principal officers, directors, and each stockholder known to the corporation as owning more than ten percent of the stock in the corporation, or the manager or members owning more than ten percent of the membership interests in the limited liability company;

**(2)** if the licensee is a trust, the trustee and any persons entitled to receive regular and substantial distributions of principal and income or benefit from the trust. The director may request a copy of the trust agreement for review, but need not make the trust agreement part of the application;

**(3)** if the licensee is an association, all principal officers, and directors;

(4) if the licensee is a subsidiary, all principal officers, directors and stockholders of the parent; however, in the case of a publicly traded corporation, only the names and addresses of those stockholders known to the corporation to own ten percent or more of such securities need be disclosed;

(5) if the licensee is a partnership or joint venture, all of the general partners, limited partners or joint venturers entitled to ten percent or more of the profits earned or other income paid by the partnership;

(6) if the parent company, general partner, limited partner or joint venturer of any licensee is itself a corporation, limited liability company, trust, association, subsidiary, partnership or joint venture, then all of the information required shall be disclosed for the entity as if it were itself a licensee, so that full disclosure of ultimate ownership is achieved;

(7) if one person owns interests in a corporation, limited liability company, partnership, trust, joint venture or as an individual, in any combination, that add up to ten percent or more of the total ownership of the license; and

(8) The director may require disclosure of additional information to assure full disclosure of the applicant's structure and financial responsibility, including structure and financial arrangements enabling actual control and profiting by ineligible persons or entities.

**C.** The director may determine that any or all of the documents required in Subsection B of 15.11.21.10 NMAC are confidential, and shall be returned to the applicant after sufficient division review and not made a part of the application file. The application file shall note such determinations.

**D.** Percent ownership in stock of a corporation or other entity shall be determined based on the percent ownership in the total amount of stock that has been issued, excluding treasury stock issued to the corporation or other entity.

**E.** If any person or entity holding an office or an interest in the license that is required to be disclosed has been convicted of a felony in any jurisdiction, it shall be disclosed.

**F.** If there is a change in any of the information required to be disclosed by statute or these rules, the licensee shall provide the necessary information to the division within 30 days of the change unless earlier disclosure or approval is required by the act or these rules.

[15.11.21.10 NMAC - Rp, 15 NMAC 11.2.1.10, 4/25/2017]

#### **15.11.21.11 FINGERPRINTS:**

**A.** Applicants shall provide fingerprints in compliance with Subsection B of Section 60-6B-2 NMSA 1978.

**B.** Unless otherwise determined by the director, a licensee is not required to submit new fingerprints when an application is filed for any of the following reasons:

(1) to add a licensee's spouse to the license; however, the spouse must submit fingerprints;

(2) when a husband and wife are the licensees, to transfer the ownership interest of a deceased licensee to his or her surviving spouse; however, if any part of the interest of the deceased spouse goes to any person other than the surviving spouse, that person must submit fingerprints; or

(3) by a licensee with no prior arrest record to obtain an ownership interest in an additional license or to lease another license.

**C.** Fingerprints shall be taken:

(1) under the supervision of, and certified by a New Mexico state police officer, a county sheriff or a municipal chief of police, or, if a nonresident, under the supervision and certification of comparable officers in the applicant's state of residence; or

(2) in the discretion of the division, by a private agency qualified to take and certify fingerprints, provided the private agency submits to the division written authorization from any of the agencies referenced in Paragraph (1) of Subsection C of 15.11.21.11 NMAC.

**D.** Any applicant required to submit fingerprints must separately submit a completed personal data affidavit page of the application for liquor license, current within one year from the date the application is submitted.

**E.** If the applicant is a publicly traded corporation, no fingerprints or affidavits shall be required, and no further disclosure shall be required beyond the requirements of Subsection B of 15.11.21.10 NMAC.

**F.** Where each applicant required to be fingerprinted by these rules submits a sworn and notarized affidavit stating that he or she has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for 90 days may be issued if the applicant satisfies all other application requirements.

**G.** An applicant who files a false affidavit shall be denied a license, and any false affidavit is grounds for revocation of a license.

[15.11.21.11 NMAC - Rp, 15 NMAC 11.2.1.11, 4/25/2017]

#### **15.11.21.12 LICENSED PREMISES:**

**A.** The applicant shall provide the division with proof of the applicant's right to sole occupancy of the real property or the portion of the real property where the proposed license is to be operated in the form of a valid lease, deed, management agreement, or an equivalent legal document in the name of the applicant. All documents submitted must be fully executed and dated.

**B.** Upon request, the applicant shall provide the division with proof of the current owner of record for the real property or portion thereof.

**C.** Floor plans for the controlled access area within the licensed premises must be provided showing the entrances and exits, kitchen, storage, sale, service and consumption areas. All areas must be clearly labeled on 8 and ½ by 11 inch paper, either hand-drawn or professionally rendered.

**D.** Floor plans must show:

**(1)** every level of the controlled access area of a licensed premises including the square footage for the controlled access area of the licensed premises as a whole, and separately for each level and for any patio;

**(2)** all clearly labeled areas where alcoholic beverages are sold, served or consumed;

**(3)** an exterior footprint of the licensed premises, including any patios, fences, walls, and dimensions;

**(4)** if the applicant is a hotel whose entire establishment will be the licensed premises, floor plans must be submitted for each floor where public rooms in which alcoholic beverages will be sold, served or consumed are located, clearly designating the public rooms;

**(5)** the interior and exterior premises through photographic pictures, if requested by the director; and

**(6)** orientation of the premises relative to the nearest streets and to at least one cardinal direction.

**E.** In the event that the premises are proposed for a structure to be built, the applicant shall provide sufficient architectural plans that reflect the exact location and layout of the structures and patios to serve as the controlled access area of the licensed premises.

[15.11.21.12 NMAC - Rp, 15 NMAC 11.2.1.12, 4/25/2017; A, 9/28/2021]

### **15.11.21.13 LEASES OF LIQUOR LICENSES:**

**A.** A person who operates a liquor license under a lease agreement with the licensee must be a licensed "agent lessee". The agent lessee compensates the licensee for use of the license and is entitled to all profits, and is responsible for all losses, from the operation of the license.

**B.** To designate an agent lessee there shall be filed with the division such fees, forms, documents and information as are required by the division. The lease agreement must contain provisions that the license is leased in its entirety.

**C.** The designation of an agent lessee shall not require posting of the licensed premises or a hearing by the state or local governing body, if the license to be leased is located at the latest approved licensed premises for the license.

**D.** The designation of agent lessee may be terminated by mutual written agreement between the parties, by court order or in accordance with terms of the lease agreement.

**E.** The division will not approve the designation of any person as agent lessee who does not possess the same qualifications required of persons to obtain a license under the act.

**F.** An application fee of two hundred fifty dollars (\$250) will be paid for each designation of agent lessee.

**G.** The designation of an agent lessee shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.

**H.** A lease of a license will not be approved when the licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act issued more than three months prior to the date of the lease application are unresolved at the time of filing the lease application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

[15.11.21.13 NMAC - Rp, 15 NMAC 11.2.1.13 4/25/2017]

### **15.11.21.14 COMPLIANCE WITH FEDERAL LAW:**

Applicants, including but not limited to, applicants to either manufacture or sell alcohol as a wholesaler, must submit proof of compliance with all applicable federal laws pertaining to liquor licensure, including, but not limited to, all necessary permits approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau.

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

#### **15.11.21.15 GROUNDS FOR DENIAL OF LICENSES:**

The director may deny any application on any of the following grounds:

- A.** failure to satisfy any of the applicable requirements of this part upon final review;
- B.** any fraudulent statement or evidence submitted in connection with an application;
- C.** upon finding that prior violations demonstrate a pattern or practice of violations contrary to public health and safety and the purposes of the act;
- D.** if granting of an application would result in a person holding a ten percent or more interest in a license when such person would not satisfy the requirements of Section 60-6B-1 NMSA 1978;
- E.** if granting the application is contrary to the public health, safety, or morals; or
- F.** if the application does not include all completed pages of the required form, all necessary fees, corporate documents, conveyance instruments, fingerprint cards, zoning clearances, and affidavits regarding distances from a church or school that will require waivers from the local governing body and waivers.

[15.11.21.15 NMAC - N, 4/25/2017; A, 5/30/2017]

### **PART 22: LICENSES AND PERMITS - RENEWAL AND SUSPENSION**

#### **15.11.22.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.22.1 NMAC - Rp, 15 NMAC 11.2.2.1, 4/25/2017; A, 9/28/2021]

#### **15.11.22.2 SCOPE:**

These rules apply to all licensees under the act.

[15.11.22.2 NMAC - Rp, 15 NMAC 11.2.2.2, 4/25/2017]

#### **15.11.22.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.22.3 NMAC - Rp, 15 NMAC 11.2.2.3, 4/25/2017]

**15.11.22.4 DURATION:**

Permanent.

[15.11.22.4 NMAC - Rp, 15 NMAC 11.2.2.4, 4/25/2017]

**15.11.22.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.22.5 NMAC - Rp, 15 NMAC 11.2.2.5, 4/25/2017]

**15.11.22.6 OBJECTIVE:**

These rules are intended to establish standards for the renewal and suspension of licenses issued under the act.

[15.11.22.6 NMAC - Rp, 15 NMAC 11.2.2.6, 4/25/2017]

**15.11.22.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

[15.11.22.7 NMAC - Rp, 15 NMAC 11.2.2.7, 4/25/2017]

**15.11.22.8 RENEWAL OF LICENSE:**

**A.** A complete renewal application, including a current and accurate list of servers and the payment of all applicable fees for renewal, shall be filed with the division as follows:

**(1)** Retailer's, dispenser's and direct ship license renewal applications must be postmarked or filed in person with the division on or before April 1 of each year.

**(2)** Wholesaler's, manufacturer's, restaurant and club license renewal applications must be postmarked or filed in person with the division on or before August 1 of each year.

**(3)** Non-resident licenses and common carrier registrations must be postmarked or filed in person with the division on or before April 1 every third year.

**(4)** All other licenses, including but not limited to, limited wine and beer wholesaler's, wine bottler's, public service, governmental, winegrower's, wine blender's,

brandy manufacturer's, wine exporter's, small brewer's, beer bottler's, craft distiller, third-party delivery and wine wholesaler's license renewal applications must be postmarked or filed in person with the division on or before December 1 of each year that the license is up for renewal.

**B.** A renewed license will not be issued in the situations listed in Paragraphs (1) through (6), below:

**(1)** The licensee is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license.

**(2)** If citations for violations of the act issued more than three months prior to the filing date for renewal applications are unresolved at the time of filing the renewal application, unless the licensee and the division are involved in a formal administrative or judicial resolution process; in such event, the division shall issue a temporary license until the citation is fully adjudicated.

**(3)** For non-resident licensees and every wholesaler or rectifier selling or shipping alcoholic beverages to a New Mexico wholesaler, failure to file duplicate invoices with the division that satisfy the requirements of Subsection D of Section 60-6A-7 NMSA 1978. The director may waive this renewal condition. To facilitate compliance, the division shall maintain an electronic mail address identified on a website maintained by the division where licensees may file such invoices.

**(4)** For non-resident licensees, failure to file certificates of label approval as required under federal law. The director may waive this renewal condition. To verify compliance, division staff may conduct regular searches of certificates filed with private entities that maintain databases searchable via the internet.

**(5)** any material false statement or concealment of any material facts on the renewal application, or

**(6)** any other good cause, as determined by the director based upon substantial evidence.

**C.** All licensees who fail to renew their licenses or who are not issued a renewed license shall suspend all alcoholic beverage operations until such time as a renewed license is issued and displayed on the licensed premises. A temporary suspension must be obtained if the license ceases to operate for more than 10 consecutive days.

**D.** A license that is in litigation or bankruptcy at the time of renewal shall be renewed in the same manner as other licenses. Licenses shall be renewed in the name of the licensee shown on division records, regardless of who pays the renewal fee.

**E.** Any licensee that fails to apply for renewal of its license as required by the act and this rule will be subject to the fines and penalties set forth in 15.10.61 NMAC.

**F.** The licensee shall provide the division with a current floor plan of the licensed premises for approval pursuant to Subsection D of 15.11.21.12 NMAC within 30 days of the director's request.

[15.11.22.8 NMAC - Rp, 15 NMAC 11.2.2.8, 4/25/2017; A, 9/28/2021]

#### **15.11.22.9 LATE RENEWAL OF LICENSE:**

**A.** Any licensee who fails to submit a properly completed renewal application, including all applicable fees, by the renewal deadline must pay a late renewal fee in the amount of three hundred fifty dollars (\$350) plus ten dollars (\$10) per day for each additional day the renewal application is late.

**B.** The division may waive late fees if the licensee shows good cause for not filing a timely renewal application, taking into consideration hardship to the licensee, and whether the licensee filed a late renewal application the preceding five years. Except for licenses transferable under the act, including retailer and dispenser licenses, any license not renewed shall be subject to cancellation and shall not be reinstated, unless the renewal application is filed with the division within 12 months of the expiration date of the license. All applicable filing fees, taxes charged against the license, and other fees owed to the state of New Mexico must be paid and all citations must be resolved prior to a license being reinstated, unless the licensee and the division are involved in a formal administrative or judicial resolution process. A licensee who fails to get its license reinstated following expiration may apply for a new license by filing an application with the division.

[15.11.22.9 NMAC - Rp, 15 NMAC 11.2.2.9, 4/25/2017]

#### **15.11.22.10 SUSPENSION:**

**A.** Upon application to the division, licenses may be temporarily suspended from operation as provided in the act for up to one year at a time.

**B.** All applications for a temporary suspension from the operation of the liquor license, together with a filing fee of twenty dollars (\$20), must be filed with the division upon the cessation of business for more than 10 consecutive days. Any application for suspension filed after the license has ceased operation for more than 10 days or after the expiration of a prior approved suspension, shall pay an additional flat fee of fifty dollars (\$50).

**C.** No licensee shall resume operations prior to the date granted by the director as the ending day of suspension, without prior written notice.

D. A temporary suspension may be extended beyond one year upon separate application of the licensee at the discretion of the director if good cause is shown.

E. A license that is temporarily suspended under this subpart shall be considered to be engaged in business for the duration of such suspension for purposes of Section 60-6B-7, NMSA 1978.

F. A license in suspension remains subject to all renewal requirements.

[15.11.22.10 NMAC - Rp, 15 NMAC 11.2.2.10, 4/25/2017]

## **PART 23: LICENSES AND PERMITS - CHANGE IN LICENSEE**

### **15.11.23.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.23.1 NMAC - Rp, 15 NMAC 11.2.3.1, 4/25/2017; A, 9/28/2021]

### **15.11.23.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act, and to persons who obtain possession of a liquor license through death, foreclosure or bankruptcy.

[15.11.23.2 NMAC - Rp, 15 NMAC 11.2.3.2, 4/25/2017]

### **15.11.23.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.23.3 NMAC - Rp, 15 NMAC 11.2.3.3, 4/25/2017]

### **15.11.23.4 DURATION:**

Permanent.

[15.11.23.4 NMAC - Rp, 15 NMAC 11.2.3.4, 4/25/2017]

### **15.11.23.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.23.5 NMAC - Rp, 15 NMAC 11.2.3.5, 4/25/2017]

#### **15.11.23.6 OBJECTIVE:**

This rule is intended to establish criteria and procedures for reporting changes in ownership, structure, or name of a licensee, including changes or transfers resulting from death, foreclosure or bankruptcy of a licensee, and transfers within a local option district.

[15.11.23.6 NMAC - Rp, 15 NMAC 11.2.3.6, 4/25/2017]

#### **15.11.23.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule has the same meanings as set forth in the act.

[15.11.23.7 NMAC - Rp, 15 NMAC 11.2.3.7, 4/25/2017]

#### **15.11.23.8 CHANGE OF OWNERSHIP:**

**A.** All licensees must notify the division of any reportable change of ownership of the licensee or agent lessee by filing an application for change in ownership with the division, together with the filing fee shown on the fee schedule of these rules. The division shall determine whether the reportable change of ownership requires an application for change in ownership or an application for change in structure.

**B.** A reportable change of ownership in a transferrable license arises when any of the following events occurs since the last application was filed with the division:

**(1)** if the licensee is a corporation: when a total of ten percent or more of its stock is transferred, when an existing stockholder previously not disclosed, pursuant to Section 60-6B-2 of the act, NMSA 1978, now holds ten percent or more stock in licensee or when there is a merger or consolidation of the licensee with another entity;

**(2)** if the licensee is a limited liability company: when ten percent or more of the membership interests are transferred, when an existing member previously not disclosed, pursuant to Section 60-6B-2 of the act, NMSA 1978, now holds ten percent or more of the membership interest in licensee or when there is a merger or consolidation of the licensee with another entity;

**(3)** if the licensee is a general partnership: when there is any change or removal of any general partners;

**(4)** if the licensee is a limited partnership: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;

(5) if the licensee is a trust: when there is any change in the trustees or beneficiaries; or

(6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

[15.11.23.8 NMAC - Rp, 15 NMAC 11.2.3.8, 4/25/2017; A, 9/28/2021]

#### **15.11.23.9 REPORTABLE CHANGE IN STRUCTURE:**

**A.** All licensees must notify the division of reportable changes in the structure of the licensee by filing an application with the division, together with the filing fee shown on the fee schedule of these rules.

**B.** A change in structure arises when the persons or entities with ultimate ownership interests in a license do not change, but the means by which they exercise control will change. A reportable change in structure is limited to any of the following events:

- (1) any change of manager;
- (2) any change in a principal officer or directors of a licensee that is a corporation or limited liability company;
- (3) any change in the legal entity under which the licensee operates, for example, an individual licensee changing to a corporation which is wholly-owned by the same licensee or between corporate entities wholly owned by the same licensee;
- (4) any change in general partners, or in limited partners who already own ten percent or more, of a partnership;
- (5) any change in ownership between the shareholders who continue to own ten percent or more of any corporate entity;
- (6) a change in subsidiary ownership within the same parent company;
- (7) any change in the trustee or beneficiary of a trust who has control over trust property and income or receives substantial and regular distributions from the trust; or
- (8) when a manager, principal officer or director, shareholders or partners appoint a power of attorney in relation to the license.

**C.** A reportable change of structure required by this section does not require a hearing by the division or by the local governing body. A reportable change of structure may require compliance with Section 60-6B-2 of the act, NMSA 1978.

**D.** The division must be notified within 30 days of a reportable change in structure by filing application for change of structure and providing all documents and information the division deems necessary to ensure full disclosure and qualification of all persons and entities.

[15.11.23.9 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.23.10 PROHIBITED CHANGES IN OWNERSHIP OR STRUCTURE:**

**A.** A person may not hold a ten percent or more interest in a license when such person would not satisfy the requirements of Sections 60-6B-1 or 60-6B-1.1 NMSA 1978.

**B.** A noncitizen may hold an interest in a license, subject to other qualifications provided in the act and these rules, unless the director determines that holding such interest in a license would be contrary to the public health, safety and morals of the state, or any community therein.

**C.** This rule does not authorize the transfer of any stock or other ownership interest of any licensee whose license is not otherwise transferable under the provisions of the act.

**D.** The director, upon notification of any change in ownership or structure, may require any entity or person who has obtained an interest in any license, or other entity, to complete and provide all documents and information the director deems necessary to ensure full disclosure and qualification of all persons and entities.

**E.** No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application.

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

#### **15.11.23.11 CORPORATION NAME CHANGE; BUSINESS NAME CHANGE:**

**A.** A licensee that is a corporation that changes the name of the corporation must file a written notification with the division, together with a fee of fifty dollars (\$50). The licensee must also file with the division a copy of the certificate of the amended articles of incorporation issued by the state in which the corporation was formed reflecting the name change. The name change must also be registered with the state of New Mexico.

**B.** Any licensee that changes the doing business name under which it operates a liquor license must file an application for change of DBA ("doing business as") name with the division together with the application filing fee.

**C.** If the division deems the name change acceptable, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued.

**D.** Upon receipt of the license reflecting the new name, the licensee shall return the old license to the division.

[15.11.23.11 NMAC - Rp, 15 NMAC 11.2.3.9, 4/25/2017]

**15.11.23.12 TRANSFER OR CHANGE OF OWNERSHIP UPON DEATH, FORECLOSURE, OR BANKRUPTCY:**

**A.** Dispenser's licenses and retailer's licenses may be transferred as personal property upon attachment, execution, repossession by a secured party or lien holder, foreclosure by a creditor, appointment of a receiver for the licensee, death of the licensee, filing of a petition of bankruptcy by or for the licensee, incapacity of the licensee or dissolution of the licensee.

**B.** Any receiver, trustee, conservator, personal representative, special master or other person who obtains control over a license, shall notify the division within 30 days of his or her appointment by filing an application including fees and providing the division with all relevant documents relating to the appointment, which may include but not be limited to, death certificates, wills, and court orders.

**C.** The division will presume that such person or entity will intend to operate said license if the license is not placed into voluntary suspension pursuant to Section 60-6B-7 NMSA 1978 within 30 days of the event that resulted in possession, except in cases where the person or entity is:

- (1) a special master appointed by a court; or
- (2) a financial institution.

**D.** Any subsequent transfer by a person who obtains possession of a license because of circumstances described in this section shall be subject to all provisions of the act relating to the transfer of licenses.

**E.** No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application.

[15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.10, 4/25/2017]

**15.11.23.13 SERVER REPORTS:**

Licensees must submit reports quarterly to the department listing all servers employed by the licensee in the previous quarter.

[15.11.23.13 NMAC - Rp, 15 NMAC 11.2.3.11, 4/25/2017]

**PART 24: LICENSES AND PERMITS - RESTAURANT LICENSE**

**15.11.24.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.24.1 NMAC - Rp, 15 NMAC 11.2.4.1, 4/25/2017; A, 9/28/2021]

**15.11.24.2 SCOPE:**

These rules apply to all restaurant licensees and applicants for restaurant licensure under the act.

[15.11.24.2 NMAC - Rp, 15 NMAC 11.2.4.2, 4/25/2017]

**15.11.24.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.24.3 NMAC - Rp, 15 NMAC 11.2.4.3, 4/25/2017]

**15.11.24.4 DURATION:**

Permanent.

[15.11.24.4 NMAC - Rp, 15 NMAC 11.2.4.4, 4/25/2017]

**15.11.24.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.24.5 NMAC - Rp, 15 NMAC 11.2.4.5, 4/25/2017]

**15.11.24.6 OBJECTIVE:**

These rules are intended to establish additional standards applicable to persons obtaining restaurant licenses under the act.

[15.11.24.6 NMAC - Rp, 15 NMAC 11.2.4.6, 4/25/2017]

#### **15.11.24.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

[15.11.24.7 NMAC - Rp, 15 NMAC 11.2.4.7, 4/25/2017]

#### **15.11.24.8 LIMITATIONS ON RESTAURANT LICENSE TYPES:**

A person holding a restaurant with beer and wine license or a restaurant with spirits license is subject to the following limitations:

**A.** The primary source of revenue for a restaurant holding any restaurant license must be the sale of food, meaning that sixty percent or more of the gross receipts must be derived from the sale of food, not alcoholic beverages, which must be demonstrated to the satisfaction of the division upon renewal of the license.

**B.** All restaurant licensees are prohibited from selling alcoholic beverages for consumption off the licensed premises except as provided by Subsection D of 15.10.51.9 NMAC or, when issued an alcoholic beverage delivery permit, through appropriate delivery methods.

**C.** All restaurant licensees are prohibited from serving alcoholic beverages after the restaurant ceases the sale of food or 11:00 p.m., whichever is earlier.

**D.** A restaurant with beer and wine license is non-transferable from person to person or from location to location. A restaurant with spirits license is non-transferable from person to person, but may be transferred from location to location within its local option district.

**E.** The sale of alcohol through a restaurant beer and wine license is limited to beer and wine, unless the restaurant a licensee has applied for and been granted a New Mexico spirituous liquors permit. A New Mexico spirituous liquors permit holder may sell beer, wine, and spirits made by a New Mexico craft distiller.

**F.** A restaurant may only purchase alcohol through a duly licensed wholesaler, except that a restaurant licensee that also holds a small brewer's or winegrower's license may be duly licensed as a wholesaler, solely for the purpose of selling beer or wine to the licensee's restaurant that it has manufactured through its own license.

[15.11.24.8 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.24.9 APPLICATION FOR ALL RESTAURANT LICENSE TYPES:**

An applicant for any restaurant license shall satisfy the director that the applicant is a restaurant as defined in these rules and its primary purpose is not the sale or service of alcohol, by submitting the following:

**A.** Documentation showing that the applicant holds a valid food service establishment permit, and has a dining room and a kitchen for preparation of food for on premises consumption. Documentation shall include photos of kitchen equipment.

**B.** A menu showing that the food items available are not fast foods, consistent with the definition of a restaurant as defined in these rules. The menu must contain entrees that are available during all usual and customary hours of operation, and identify the hours of operation.

**C.** A detailed floor plan and photos of the proposed licensed premises that depicts and labels all areas of the restaurant including, but not limited to the kitchen, dining, storage and patio areas. Outdoor patios must be enclosed by a fence or wall to physically separate the outdoor portion of the controlled access area from the surrounding area. The enclosure must enclose the majority of the outdoor patio, but may have a small opening or a gate to allow patrons to enter and exit, unless the director finds good cause to require the patio to be completely enclosed or to waive this requirement subject to any necessary restrictions where the outdoor patio areas are sited within a licensed premise comprised of areas and facilities, provided that the totality of the controlled access area of the licensed premise is physically or otherwise appropriately separated from the surrounding areas. The enclosure for an outdoor area does not have to be permanent, but the enclosure must be erected any time alcoholic beverages are being served to patrons seated in the outdoor patio.

**D.** Except for food counters where patrons may sit to order food and drinks, a restaurant may not have any counters dedicated primarily to the display, service, or consumption of alcoholic beverages, with incidental food service; and.

**E.** All areas of the licensed premises must have food service as the primary commercial purpose.

[15.11.24.9 NMAC - N, 4/25/2017A, 9/28/2021]

#### **15.11.24.10 REQUIREMENTS FOR RENEWAL:**

**A.** In addition to any applicable requirements in 15.11.21 NMAC, the director shall condition renewal of restaurant license upon a requirement that at least sixty percent of the preceding year's gross receipts were derived from the sale of food and submission of documentation to that effect.

**B.** For annual renewal, a licensee shall submit a signed, notarized affidavit showing the total gross receipts, the gross receipts from the sale of food and the gross receipts from the sale of alcoholic beverages.

**C.** The director may require additional documentation, including, but not limited to, sales invoices and filings with the New Mexico taxation and revenue department, and may inspect the financial records of the licensee that relate to the operation of the restaurant.

[15.11.24.10 NMAC - N, 4/25/2017; A, 9/28/2021]

## **PART 25: LICENSES AND PERMITS - SPECIAL DISPENSER AND SUNDAY SALES PERMITS**

### **15.11.25.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.25.1 NMAC - Rp, 15 NMAC 11.2.5.1, 4/25/2017; A, 9/28/2021]

### **15.11.25.2 SCOPE:**

These rules apply to all licensees under the New Mexico Liquor Control Act.

[15.11.25.2 NMAC - Rp, 15 NMAC 11.2.5.2, 4/25/2017]

### **15.11.25.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.25.3 NMAC - Rp, 15 NMAC 11.2.5.3, 4/25/2017]

### **15.11.25.4 DURATION:**

Permanent.

[15.11.25.4 NMAC - Rp, 15 NMAC 11.2.5.4, 4/25/2017]

### **15.11.25.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.25.5 NMAC - Rp, 15 NMAC 11.2.5.5, 4/25/2017]

#### **15.11.25.6 OBJECTIVE:**

This rule is intended to establish standard procedures for obtaining and operating special dispensers' permits and public or private celebration permits.

[15.11.25.6 NMAC - Rp, 15 NMAC 11.2.5.6, 4/25/2017; A, 5/30/2017; A, 9/28/2021]

#### **15.11.25.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the Liquor Control Act.

[15.11.25.7 NMAC - Rp, 15 NMAC 11.2.5.7, 4/25/2017]

#### **15.11.25.8 SPECIAL DISPENSER'S PERMIT:**

**A.** A special dispenser's permit may be issued, at the discretion of the director, to the holder of a dispenser's, rural dispenser's, interlocal dispenser's, lottery, or canopy license which is not in suspension for any reason on application submitted to the division at least ten days prior to the event.

**(1)** Permits for applications received less than ten days prior to June 30, for events to be held after July 1, will not be issued until after July 1 to ensure that the license has been renewed.

**(2)** Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

**(3)** All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

**(4)** No permit shall be issued for more than twelve hours on any single day.

**B.** For an event in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted, the application is limited to sales and service of beer and wine, and must be accompanied by a grant of concession from the body in charge of the public celebration or catered event after a resolution by the local option district pursuant to Section 60-6A-12 NMSA 1978.

**C.** The application for a special dispenser's permit must be accompanied by written permission from the governing body of the local option district where the public or private event is held.

**D.** The application must contain a floor plan of the location of the celebration or event that is compliant with Subsections C and D of 15.11.21.12 NMAC.

**E.** Special dispenser's permits will not be issued for more than three consecutive days, unless the director shall find good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than twelve hours on a single day.

**F.** The application shall contain a statement of the number of people expected to consume alcoholic beverages and the number, placement and assigned duties of security personnel to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

**G.** The licensee must be the holder of a valid dispenser's, rural dispenser's, interlocal dispenser's, lottery, or canopy license, and authorized to sell or serve alcoholic beverages in the local option district where the public or private event to be catered is to be held.

**H.** No alcoholic beverages shall be sold or served in unbroken packages or for consumption off the area authorized by the special dispenser's permit.

**I.** Special dispenser's permits shall not be issued for an existing licensed premises unless the license on the licensed premises is in voluntary suspension or the director is satisfied the portion of the licensed premises covered by the special dispenser's permit can be separated to clearly identify and provide for two separate operations.

**J.** Special dispenser's permits shall not be issued to the holder of a rural dispenser's license for a function or event which is located within 10 miles of another licensed premises.

**K.** A copy of the approved special dispenser's permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises, together with a current list of servers.

[15.11.25.8 NMAC - Rp, 15 NMAC 11.2.5.8, 4/25/2017]

#### **15.11.25.9 SMALL MANUFACTURER'S PRIVATE CELEBRATION PERMITS:**

**A.** A small brewer, winegrower or craft distiller may apply for a private celebration permit for a private event, in which the organizers of the event wish for alcoholic beverages to be sold, served, and consumed by guests, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

**(1)** Permits for applications received less than seven days prior to February 28th for events to held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

**(2)** Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

**(3)** All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

**B.** The application for a private celebration permit must be accompanied by written permission from the governing body of the local option district where the private celebration is held.

**C.** The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit photographs or electronic images of the proposed location.

**D.** Private celebration permits will not be issued for more than three consecutive days, unless the director finds good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

**E.** The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

**F.** Private celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

**G.** A copy of the private celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

**H.** A small brewer, winegrower, or craft distiller may sell the beer, wine, and spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

I. Private celebration permits are not subject to any Sunday sales restrictions in the local option district where the celebration is to be held.

J. Outdoor areas to be permitted pursuant to this section shall satisfy the requirements of 15.10.32.13 NMAC.

[15.11.25.9 NMAC – N, 9/28/2021]

#### **15.11.25.10 SMALL MANUFACTURER’S PUBLIC CELEBRATION PERMITS:**

A. A small brewer, winegrower or craft distiller may apply for a public celebration permit for any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis, provided that the license is not in suspension and the licensee submits the application at least 10 days prior to the event, subject to the following requirements:

(1) permits for applications received less than seven days prior to February 28th for events to be held after March 1st may not be issued until after March 1st to ensure that the license has been renewed;

(2) Applications must have an original signature, or electronic signature pursuant to Section 14-16-1 et seq., NMSA 1978, accompanied by the required fee and all required information before they will be processed. Incomplete applications will be returned to the applicant.

(3) All fees submitted are non-refundable, regardless of whether the permit has been issued, the event is postponed, or the event is cancelled for any reason.

B. The application for a public celebration permit must be accompanied by written permission from the governing body of the local option district where the public celebration is held.

C. The application must contain a diagram, site plan or floor plan of the location of the celebration or event that complies with the requirements of Subsections C and D of 15.11.21.12 NMAC, and which designates the location where alcoholic beverages will be dispensed and consumed. The applicant may be requested by the director to submit photographs or electronic images of the proposed location.

D. Public celebration permits will not be issued for more than three consecutive days, unless the director finds good cause to justify a longer period. A separate application fee must be paid for each day requested. No permit will be issued for more than 12 hours on a single day.

E. The application shall contain a statement of the number of people expected to consume alcoholic beverages and a plan for security, including appropriate number, placement and assigned duties of security personnel, to ensure compliance with the

liquor control act and these rules. If the director deems the security plan insufficient, the director may deny the permit or require additional security measures as a condition of approval.

**F.** Public celebration permits shall not be issued for an existing licensed premises unless the license on the licensed premises, or the appropriate portion of the licensed premises, is in voluntary suspension.

**G.** A copy of the public celebration permit and the posters required by 15.11.2.9 NMAC must be prominently displayed at the bar station on the specially licensed premises.

**H.** A small brewer, winegrower, or craft distiller may sell the beer, wine, and spiritous liquors of other small brewers, winegrowers, and craft distillers pursuant to a permit issued under this section.

**I.** Public celebration permits are not subject to any Sunday sales restrictions in the local option district where the celebration is to be held.

**J.** Outdoor areas to be permitted pursuant to this section shall satisfy the requirements of 15.10.32.13 NMAC.

[15.11.25.10 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.25.11 COMPLIANCE WITH DOCUMENTS REQUIRED ON PREMISES:**

All premises subject to any permit issued pursuant to this part shall comply with the requirements of 15.11.2 NMAC as if the premises is a licensed premises.

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

### **PART 26: LICENSES AND PERMITS - FEES**

#### **15.11.26.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.26.1 NMAC - Rp, 15 NMAC 11.2.6.1, 4/25/2017; A, 9/28/2021]

#### **15.11.26.2 SCOPE:**

These rules apply to all licensees and applicants for licensure under the act.

[15.11.26.2 NMAC - Rp, 15 NMAC 11.2.6.2, 4/25/2017]

**15.11.26.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.26.3 NMAC - Rp, 15 NMAC 11.2.6.3, 4/25/2017]

**15.11.26.4 DURATION:**

Permanent.

[15.11.26.4 NMAC - Rp, 15 NMAC 11.2.6.4, 4/25/2017]

**15.11.26.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.26.5 NMAC - Rp, 15 NMAC 11.2.6.5, 4/25/2017]

**15.11.26.6 OBJECTIVE:**

This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.

[15.11.26.6 NMAC - Rp, 15 NMAC 11.2.6.6, 4/25/2017]

**15.11.26.7 DEFINITIONS:**

[RESERVED]

[15.11.26.7 NMAC - Rp, 15 NMAC 11.2.6.7, 4/25/2017]

**15.11.26.8 ANNUAL FEES:**

Every application for the issuance or renewal of the following licenses shall be accompanied by an annual fee in the following specified amounts:

- A. manufacturer's license as a distiller, except a brandy manufacturer: \$3,000;
- B. manufacturer's license as a brewer: \$3,000;
- C. manufacturer's license as a rectifier: \$1,050;
- D. wholesaler's license to sell all alcoholic beverages for resale only: \$2,500;
- E. wholesaler's license to sell spirituous liquors and wine for resale only: \$1,750;

- F.** wholesaler's license to sell spirituous liquors for resale only: \$1,500;
- G.** wholesaler's license to sell beer and wine for resale only: \$1,500;
- H.** wholesaler's license to sell beer for resale only: \$1,000;
- I.** wholesaler's license to sell wine for resale only: \$750;
- J.** retailer's license: \$1,300;
- K.** dispenser's license: \$1,300;
- L.** canopy license: \$1,300;
- M.** restaurant A license: \$1,050;
- N.** restaurant A license: \$10,000;
- O.** club license, for clubs with more than 250 members: \$1,250; and for clubs with 250 members or fewer: \$250;
- P.** wine bottler's license to sell to wholesalers only: \$500;
- Q.** public service license: \$1,250;
- R.** non-resident licenses, for a total billing to New Mexico wholesalers, in excess of:
 

<b>(1)</b>	\$3,000,000 annually:	\$10,500;
<b>(2)</b>	\$1,000,000 annually:	\$5,250;
<b>(3)</b>	\$500,000 annually:	\$3,750;
<b>(4)</b>	\$200,000 annually:	\$2,700;
<b>(5)</b>	\$100,000 annually:	\$1,800;
<b>(6)</b>	\$50,000 annually:	\$900; and
<b>(7)</b>	\$1 annually:	\$300.
- S.** limited wine wholesaler's license, for persons with sales of 5,000 gallons of wine per year or less: \$25.00; and for persons with sales in excess of 5,000 gallons of wine per year: \$100; and
- T.** beer bottler's license: \$200;
- U.** brandy manufacturer's license: \$750;
- V.** small brewer's license: \$750;

W. winegrower's license, computed on the basis of total annual wine produced or blended:

- (1) less than 5,000 gallons per year: \$25;
- (2) between 5,000 and 100,000 gallons per year: \$100;
- (3) over 100,000 gallons per year: \$250.

X. wine blender's license: \$750;

Y. wine exporter's license: \$500;

Z. direct wine shipment permit: \$50, only required if the applicant does not hold a separate winegrower's license;

AA. bed and breakfast dispensing license: \$100;

BB. small brewer's off-premises permit: \$200 for each off-premises location;

CC. craft distiller's license: \$750;

DD. craft distiller's off-premises permit: \$200 for each off-premises location;

EE. winegrower's off-premises permit: \$200 for each off-premises location;  
and

FF. limited winegrower's or small brewer's wholesaler's license:

- (1) in excess of 5,000 gallons: \$100;
- (2) 5,000 gallons or less: \$25.

GG. third-party alcohol delivery license: \$1,000;

HH. alcoholic beverage delivery permit: \$300.

II. New Mexico spirituous liquors permit: \$500.

[15.11.26.8 NMAC - Rp, 15 NMAC 11.2.6.8, 4/25/2017; A, 9/28/2021]

#### **15.11.26.9 MISCELLANEOUS FEE SCHEDULE:**

In addition to the fees set forth in the act, the following fees apply:

<b>type of service</b>	<b>fee</b>
------------------------	------------

application for licensure	\$200;
renewal of license - late fee late;	\$350 plus \$10 for each additional day
change or expansion of licensed premises	\$75;
designation of agent lessee	\$250;
designation of resident agent (per agent)	\$50;
new resident agent - late fee	\$100;
transfer of ownership additional license;	\$200 for first license, plus \$10 for each
change of structure additional license;	\$200 for first license, plus \$10 for each
corporate name change; change in DBA	\$50;
temporary suspension of license	\$20;
temporary suspension of license - late application	\$50;
certification of alcohol server training instructor	\$350 per provider, plus \$100 per
program and annual renewal of program;	
renewal late fee for certification of alcohol server provider, instructor or program;	\$10 per day
full license listing- electronic format	\$100;
paper or electronic copies of documents	0.25 cents per page.

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

#### **15.11.26.10 EVENT PERMITS:**

The following are permit fees per each event:

- A.** special dispenser's permit for public celebrations, \$50;

- B. special dispenser's permit for catering an off-premises function, \$25;
- C. craft distiller's public or private celebration permit, \$10;
- D. winegrower's public or private celebration permit, \$10; and
- E. small brewer's public or private celebration permit, \$10.

[15.11.26.10 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.26.11 ANNUAL TASTING PERMIT:**

for Dispenser's, retailer's, resident manufacturer's, non-resident manufacturer's, wholesaler's, or winegrower license, \$100.

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

#### **15.11.26.12 PRORATION OF FEES:**

**A.** License fees for new licenses issued after the beginning of the license year shall be prorated.

**B.** Dispenser, retailer, restaurant A, restaurant B, club, and public service license fees shall be prorated as follows:

**(1)** licenses issued in the first quarter of the license year for each license type shall be subject to the full amount of the annual license fee;

**(2)** licenses issued in the second quarter of the license year for each license type shall be subject to three-fourths of the annual license fee;

**(3)** licenses issued in the third quarter of the license year for each license type shall be subject to one-half of the annual license fee; and

**(4)** licenses issued in the fourth quarter of the license year for each license type shall be subject to one-fourth of the annual license fee.

**C.** License fees for all new licenses not provided for in Subsection B of 15.11.26.12 NMAC, except Non-resident licenses and common carrier registrations, shall not be prorated but shall be subject to payment of the full amount of the annual license fee.

**D.** Non-resident licenses and common carrier registrations shall be issued for a three-year period. The three-year license for Non-resident licenses and for common carrier registrations begins July 1, 2013 and every third year subsequently. Non-resident licenses and common carrier registrations issued at any time during the:

- (1) first license year must pay the full amount of the three-year license fee;
- (2) second license year must pay two-thirds of the three-year license fee; and
- (3) third license year must pay one-third of the three-year license fee.

[15.11.26.12 NMAC - N, 4/25/2017; A, 9/28/2021]

## **PART 27: LICENSES AND PERMITS - INTER-LOCAL OPTION DISTRICT TRANSFERS**

### **15.11.27.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.27.1 NMAC - Rp, 15 NMAC 11.2.7.1, 4/25/2017; A, 9/28/2021]

### **15.11.27.2 SCOPE:**

These rules apply to all licensees and applicants for inter-local option district transfers under the act.

[15.11.27.2 NMAC - Rp, 15 NMAC 11.2.7.2, 4/25/2017]

### **15.11.27.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.27.3 NMAC - Rp, 15 NMAC 11.2.7.3, 4/25/2017]

### **15.11.27.4 DURATION:**

Permanent.

[15.11.27.4 NMAC - Rp, 15 NMAC 11.2.7.4, 4/25/2017]

### **15.11.27.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.27.5 NMAC - Rp, 15 NMAC 11.2.7.5, 4/25/2017]

### **15.11.27.6 OBJECTIVE:**

These rules are intended to establish procedures for filing and processing applications for inter-local option district transfers, applicable to dispenser, and retailer licenses.

[15.11.27.6 NMAC - Rp, 15 NMAC 11.2.7.6, 4/25/2017]

#### **15.11.27.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in this rule have the same meanings as set forth in the act.

[15.11.27.7 NMAC - Rp, 15 NMAC 11.2.7.7, 4/25/2017]

#### **15.11.27.8 GENERAL APPLICATION REQUIREMENTS:**

An application for an inter-local option district transfer shall satisfy the general requirements for applications set forth at 15.11.21 NMAC, as applicable, in addition to the requirements set forth in this part.

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

#### **15.11.27.9 FILING PERIOD:**

**A.** The filing period for determining priority of inter-local option district transfers is beginning at 8:00 a.m. on October 1, and ending at 12:00 p.m. on December 31, or upon receipt by the division of the 10th priority application, whichever is later.

**B.** In the event that the division receives more than ten applications within a single calendar year for a single inter-local option district, such transfers will be accepted by the division only during the filing period each year for the next calendar year's transfers.

**C.** Any application received before 8:00 a.m. on October 1 will be returned with a letter requesting that the applicant resubmit the application during the appropriate filing period.

**D.** Any application received after the end of the filing period will be considered untimely and will be returned to the applicant.

[15.11.27.9 NMAC - Rp, 15 NMAC 11.2.7.8, 4/25/2017]

#### **15.11.27.10 PRIORITY:**

**A.** All substantially complete applications submitted on October 1 after 8:00 a.m. and before 5:00 p.m., regardless of the time submitted, will be considered to have been received at the same time on that date. If more than 10 applications are received on that

date, priority applications will be determined by random selection by the director without reference to the contents of the application.

**B.** Remaining applications submitted on October 1, if more than one, will be selected for processing by random selection if one or more of the priority applications selected is withdrawn or disapproved.

[15.11.27.10 NMAC - Rp, 15 NMAC 11.2.7.9, 4/25/2017]

#### **15.11.27.11 APPLICATION PROCESSING:**

**A.** All substantially complete applications received shall be date and time stamped by the division. Applications that are not substantially complete will not be processed and returned to the applicant with a notice of all deficiencies.

**B.** When the division receives more than ten applications within a single local option district, only priority applications will be processed for transfer during any calendar year.

**C.** Other substantially complete applications received beyond the priority applications will be date and time stamped and a record kept of their receipt. To avoid having to deposit the filing fees, the division will photocopy the applications and return them to the applicants with letters advising how many applications are being processed before theirs and that they will be notified if and when their applications will be considered. Those applications will be given first consideration if any of the priority applications are withdrawn or disapproved. Applications not considered or approved for one calendar year's transfers may not be resubmitted until the filing period for the next calendar year.

[15.11.27.11 NMAC - Rp, 15 NMAC 11.2.7.10, 4/25/2017]

#### **15.11.27.12 AMENDMENTS:**

All applications will be processed based on the information originally submitted. If an application is substantially changed at the request of the applicant, the application may be considered by the division to have been withdrawn. Any application considered by the division to be withdrawn must be resubmitted as required by this rule and will lose any priority for processing it may have received when first filed. If there is a substantial change made to an application after it has been approved or disapproved by the local option district at hearing, including but not limited to a change in transferee, a change of ten percent or more in stock ownership, a change in the named transferee, a change in an officer or director, any change in location, a substantial change to the floor plan or any other terms and conditions deemed substantial by the director, the director may require the amended application be resubmitted to the local option district for approval.

[15.11.27.12 NMAC - Rp, 15 NMAC 11.2.7.11, 4/25/2017]

### **15.11.27.13 PROHIBITED TRANSFERS:**

**A.** This rule does not authorize the transfer of any stock or other ownership interest of any licensee whose license is not otherwise transferable under the provisions of the act.

**B.** The director, upon notification of any change in ownership or structure, may require any entity or person who has obtained an interest in any license, or other entity, to complete an application and provide all documents and information the director deems necessary to ensure full disclosure and qualification of all persons and entities.

**C.** No license will be issued when the applicant is delinquent in the payment of any taxes, fees, fines, costs or penalties collected by the state of New Mexico, the liability for which arises out of the exercise of the privilege of a liquor license; or if citations for violations of the act are unresolved at the time of filing the application, unless the licensee and the division are involved in a formal administrative or judicial resolution process.

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

## **PART 28: LICENSES AND PERMITS - BED AND BREAKFAST LICENSE**

### **15.11.28.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.28.1 NMAC - N, 4/25/2017; A, 9/28/2021]

### **15.11.28.2 SCOPE:**

These rules apply to all special bed and breakfast dispensing licensees and applicants for special bed and breakfast dispensing licensure under the act.

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

### **15.11.28.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

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

### **15.11.28.4 DURATION:**

Permanent.

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

**15.11.28.5 EFFECTIVE DATE:**

April 25, 2017 unless a later date is cited at the end of a section.

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

**15.11.28.6 OBJECTIVE:**

These rules are intended to establish standards and guidelines applicable to persons obtaining special bed and breakfast dispensing licenses under the act.

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

**15.11.28.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

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

**15.11.28.8 BED AND BREAKFAST LICENSE:**

The owner or operator of a bed and breakfast, as defined in 15.10.2 NMAC, may apply for and receive a special bed and breakfast dispensing license.

**A.** Service of beer and wine is permitted in common areas only in conjunction with the service of food. Service of up to two twelve-ounce servings of beer or two six-ounce servings of wine per 24 hours of lodging is allowed to each registered guest over 21 years of age.

**B.** Unless otherwise provided in this rule, service of alcohol shall be in accordance with the provisions of the act and division rules.

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

**15.11.28.9 APPLICATION REQUIREMENTS FOR BED AND BREAKFAST LICENSE:**

Before a special bed and breakfast dispensing license may be issued, an application shall be submitted to the division and shall contain the following fees and documentation:

**A.** the application fee of \$100.00, which shall not be pro-rated;

**B.** a completed application on the form prescribed by the division, signed by the applicant and notarized; and

**C.** proof that applicant meets the definition of "bed and breakfast" contained in 15.10.2 NMAC, requiring applicant to be a business establishment that offers temporary lodging with meals included and has a guest capacity of twenty or fewer persons.

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

## **PART 29: LICENSES AND PERMITS - TASTING PERMITS**

### **15.11.29.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.29.1 NMAC - N, 4/25/2017; A, 9/28/2021]

### **15.11.29.2 SCOPE:**

These rules apply to licensed dispenser, retailer, resident manufacturer, non-resident manufacturer, wholesaler or winegrower license holders applying for a tasting permit under the act.

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

### **15.11.29.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division. Section 60-3A-33 authorizes the division to issue tasting permits.

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

### **15.11.29.4 DURATION:**

Permanent.

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

### **15.11.29.5 EFFECTIVE DATE:**

April 25, 2017 unless a later date is cited at the end of a section.

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

#### **15.11.29.6 OBJECTIVE:**

These rules are intended to establish standards applicable to persons obtaining tasting permits under the act.

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

#### **15.11.29.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

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

#### **15.11.29.8 TASTING PERMIT, GENERAL PROVISIONS:**

A licensed dispenser, retailer, resident manufacturer, wholesaler, winegrower, non-resident manufacturer or an agent or lessee of any such licensed entity may apply for and receive a tasting permit on a licensed premises that sells alcoholic beverages directly to the public and shall adhere to the following limitations of the permit:

- A.** The liquid volume of all pours of alcoholic beverages must be no larger than a taste.
- B.** All tastes must be given free of charge.
- C.** All tastes must be poured by the permit holder, or an employee, agent or contractor of the licensee, with a valid server certification. Any such employee, agent or contractor must be directly paid by the licensee holding the tasting permit, not through a third party.
- D.** The permit holder, and its employees, agents or contractors may not sell any alcoholic beverages while operating the tasting permit.
- E.** The licensee shall notify the division in writing or via email at least 48 hours prior to conducting any tasting event, disclosing the date, time and location of the tasting event.

[15.11.29.8 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.29.9 APPLICATION REQUIREMENTS FOR AN ANNUAL TASTING PERMIT:**

Before an annual tasting permit may be issued, an application shall be submitted to the director for approval, shall be signed by the licensee, and shall contain the following fees and documentation:

A. money order or check for the annual fee in the amount of \$100.00; and

B. a completed, signed application on the form prescribed by the director for:

(1) a non-resident licensee, by a person authorized to legally bind the licensee, or

(2) for all other licensees, a person fingerprinted in connection with their interest in the licensee pursuant to Section 60-6B-2(B) NMSA 1978.

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

#### **15.11.29.10 NO TASTING PERMIT ON SAME PREMISES REQUIRED FOR LICENSES ALLOWING SALES BY THE DRINK:**

Nothing in this part requires a holder of a license for sales of alcoholic beverages by the drink to obtain any additional permit to offer tastes in the controlled access area on their own licensed premises, except that any service of free alcoholic beverages shall comply with Subsection C of 15.10.51.11 NMAC regarding free drinks.

[15.11.29.10 NMAC - N, 4/25/2017; A, 9/28/2021]

### **PART 30: PURCHASING COOPERATIVES**

#### **15.11.30.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.30.1 NMAC - N, 4/25/2017; A, 9/28/2021]

#### **15.11.30.2 SCOPE:**

These rules apply to all retailers, and to dispensers authorized to sell alcoholic beverages in unbroken packages, under the act.

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

#### **15.11.30.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

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

#### **15.11.30.4 DURATION:**

Permanent.

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

**15.11.30.5 EFFECTIVE DATE:**

April 25, 2017 unless a later date is cited at the end of a section.

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

**15.11.30.6 OBJECTIVE:**

These rules are intended to regulate purchasing cooperatives authorized pursuant to the act.

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

**15.11.30.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

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

**15.11.30.8 COOPERATIVE AGREEMENT REGISTRATION REQUIREMENTS:**

**A.** Any number of retailers, or dispensers licensed to sell alcoholic beverages by package, may pool their purchases of alcoholic beverages from a wholesaler, and may also collectively advertise the purchase of alcoholic beverages, provided such cooperative purchases and advertising are pursuant to a written and fully executed cooperative agreement filed with the division.

**B.** The cooperative agreement to be filed with the division shall include the following:

(1) a list of all members of the cooperative attached as a schedule to the agreement, identifying the license number for each member, to be updated in accordance with 15.11.30.10 NMAC;

(2) separate invoicing of all purchases made by each member pursuant to the agreement and pursuant to Section 60-8A-3 NMSA 1978 of the act;

(3) separate delivery of all purchases to each member's licensed premises pursuant to the agreement;

(4) if the agreement provides for the employment of any employees by the cooperative, such employee may not have a financial interest in, or receive financial compensation from, any individual member;

(5) a provision that, with a minimum of notice of 30 days, the cooperative may cancel the membership of any member;

(6) no prohibition against any member joining any other trade organization or entity, except, at the option of the cooperative, a prohibition against joining other purchasing cooperatives authorized by the act;

(7) a provision that any member may withdraw from the cooperative with a minimum of 30-day notice without penalty for such withdrawal;

(8) no prohibition on any member from selling any product at an otherwise lawful price; and

(9) a provision that any advertising purchased by the cooperative shall either identify all members equally in the advertisement, or identify the name of the cooperative only.

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

#### **15.11.30.9 CORPORATE ENTITIES PERMITTED:**

The members of a purchasing cooperative may organize and conduct business personally or through any corporate structure allowable under state law.

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

#### **15.11.30.10 DIVISION RECORDS:**

The division shall maintain, through its website, a list of the names of all cooperatives that have complied with the requirements of this part. A copy of the cooperative agreement for each listed cooperative shall be available from the division upon request. Each cooperative may, at its discretion, submit an updated schedule of its members, but shall submit an updated copy of its cooperative agreement in the event of any material change to the agreement.

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

### **PART 31: ALCOHOL SERVER TRAINING - CERTIFICATION**

#### **15.11.31.1 ISSUING AGENCY:**

The New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.11.31.1 NMAC - Rp, 15 NMAC 11.3.1.1, 4/25/2017; A, 9/28/2021]

**15.11.31.2 SCOPE:**

This rule applies to all act licensees, lessees, servers, and alcohol server training providers and instructors.

[15.11.31.2 NMAC - Rp, 15 NMAC 11.3.1.2, 4/25/2017]

**15.11.31.3 STATUTORY AUTHORITY:**

Section 60-3A-10 NMSA 1978 of the Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.11.31.3 NMAC - Rp, 15 NMAC 11.3.1.3, 4/25/2017]

**15.11.31.4 DURATION:**

Permanent.

[15.11.31.4 NMAC - Rp, 15 NMAC 11.3.1.4, 4/25/2017]

**15.11.31.5 EFFECTIVE DATE:**

April 25, 2017, unless a later date is cited at the end of a section.

[15.11.31.5 NMAC - Rp, 15 NMAC 11.3.1.5, 4/25/2017]

**15.11.31.6 OBJECTIVE:**

This rule is intended to establish standards and procedures for training persons employed in the alcoholic beverage service industry to enhance their professionalism and to reduce the incidence of alcohol-related problems statewide, and to comply with the provisions of the act and the alcohol server education article of the act.

[15.11.31.6 NMAC - Rp, 15 NMAC 11.3.1.6, 4/25/2017]

**15.11.31.7 DEFINITIONS:**

Unless otherwise defined in 15.10.2 NMAC, terms used in these rules have the same meanings as set forth in the act and the alcohol server education act:

**A. "Applicant"** means a person or entity applying to the division for certification as a provider, instructor or program.

**B. "Approved test"** means a test proctored by a live instructor or a test administered on-line that has been approved by the division and incorporates at least 20 questions from a list of questions provided by the division. An approved test that is proctored by a live instructor must be graded by the instructor.

**C. "Certified program"** means an on-line or classroom program that is certified by the division.

**D. "Classroom program"** means a program certified by the division in accordance with these rules that is administered, at least in part by a live instructor and may or may not include the use of a computer.

**E. "Classroom hour"** means 50 minutes of instruction time and 10 minutes of break time.

**F. "On-line program"** means a program certified by the division in accordance with these rules that is designed to be administered via the internet, including the exam, without the presence of a live instructor.

**G. "Personal identifier"** means a person's social security number or, if a person does not have a social security number, the person's individual taxpayer identifier number.

**H. "Proctored test"** means a test administered and supervised by a live instructor.

**I. "Server permit"** means an unexpired permit issued by the division to a person who has met all the requirements to become a server as required by these rules.

**J. "Student"** means an applicant for a server permit that participates in a certified program.

[15.11.31.7 NMAC - Rp, 15 NMAC 11.3.1.7, 4/25/2017]

#### **15.11.31.8 SERVER PERMITS; ISSUANCE, DISTRIBUTION, REPLACEMENT:**

**A. Server permit required.** Every licensee or lessee who is directly involved in sale, delivery or service of alcoholic beverages, and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed premises, or participate in the delivery of alcoholic beverages unless that person first obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

**B. Server permit issuance.** Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

**C. Providers' duty to inform the division of student's satisfactory completion.** Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the director a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the director on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

**D. Division will distribute permits.** The division will prepare and distribute the server permits to the student within 120 days of satisfactory completion of a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

**E. Temporary Server Permits.** Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the director, upon satisfactory completion of the program by student. Temporary server permits are valid for 120 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit the server may obtain one from the provider.

**F. Replacement server permits.** Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form of a cashier's check or money order. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

**G. 18, 19 and 20 year olds.** Pursuant to Subsection B of 60-7B-11 NMSA 1978, a person between the ages of 18 years and 21 years old may only serve alcohol in a restaurant. A provider may offer its program to a student between the ages of 18 years and 21 years old, provided that the student is given notice that the server permit will only allow the student to serve in a restaurant and that he or she will not be eligible to participate in the delivery of alcoholic beverages, serve in a bar or retail location, or in a restaurant as a bartender, even with a server permit, until he or she reaches the age of 21 years.

[15.11.31.8 NMAC - Rp, 15 NMAC 11.3.1.8; A, 9/28/2021]

#### **15.11.31.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:**

**A. Certification required:** Any person seeking certification as a provider, instructor or program must submit an application to the director for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

**B. Applications for providers and programs:**

**(1) Providers and instructors:**

**(a)** the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

**(b)** for providers, a surety bond from a surety company authorized to transact business in New Mexico, or other evidence of financial responsibility, covering all instructors in the amount of five thousand dollars (\$5,000). Any independent contractor who obtains the right to own, teach or otherwise use a program, but is not covered under the provider's surety bond, will be required to obtain certification as a provider, including posting a surety bond as required in the alcohol server education article or providing other evidence of financial responsibility. The surety bond shall be continuous, shall name the division as payee, and shall assure the satisfactory performance of all

contracts with students, including tuition refund agreements, and the maintenance of student records;

**(c)** for in-classroom providers and instructors, the physical addresses of each location where the program will be offered and the dates when the program will be offered. A maximum of 40 students per class or the maximum occupant load permitted by the state or local fire marshal, whichever is less, will be permitted;

**(d)** for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

**(e)** fees that will be charged to take the program;

**(f)** for providers a copy of applicant's business license;

**(g)** for providers a copy of applicant's tax registration certificate;

**(h)** a form, prescribed by the director, authorizing a background check for all providers and instructors. Persons convicted of a felony or crimes of moral turpitude may not be certified as providers or instructors at the discretion of the director. Additional documentation regarding disposition of any charges may be requested by the director prior to approval of any application for certification;

**(i)** application fees in the amount of three hundred fifty dollars (\$350) per provider and one hundred dollars (\$100) per instructor; in instances where the applicant is applying to be both a provider and instructor, i.e. the provider and instructor are the same person, only the three hundred fifty (\$350) application fee is required to be paid; and

**(j)** any other relevant information as may be required by the director.

**(2)** Programs:

**(a)** a description of program content that meets the minimum requirements contained in Subsection D of 15.11.31.9 NMAC and 15.11.31.10 NMAC, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

**(b)** all proposed programs must include a minimum of four and one-half (4 ½) classroom hours or the equivalent for on-line programs;

**(c)** a copy of applicant's business license;

**(d)** a copy of applicant's tax registration certificate;

(e) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the director, and in a format approved by the director;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the director that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the director that students cannot fast-forward or skip through the course materials.

(f) any other reasonably relevant information as may be required by the director;

**C. Completeness check:** When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

**D. Standards for certification:** An application for certification may be granted if the standards identified in this section are met.

(1) **Providers and instructors:** In reviewing applications for certification as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of alcoholic beverages;

(c) the results of the background check;

(d) whether applicant is 21 years of age or older;

(e) whether applicant has ever been found guilty of or admitted guilt to a violation of the liquor control act;

(f) whether applicant intends to teach a program certified by the state of New Mexico in accordance with these rules;

(g) any other reliable and relevant information, as determined by the director.

**(2) Programs:** In reviewing applications for certification as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in Subsection B of 60-6E-5 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of alcohol for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes photos and examples of bars, restaurants, convenience stores and other retail settings, including self-checkout, to ensure a balance in preparing servers to sell alcohol for consumption both on-premise and off-premise;

(f) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(g) whether the program is reviewed and revised annually to ensure current comprehensive training;

(h) whether the program is interactive and includes real life instructional examples;

(i) for on-line programs whether it is easy to navigate and user-friendly; and

(j) any other reliable and relevant information, as determined by the director.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server certification at all times when providing instruction.

**E. Expiration of certification:** Provider, instructor and program certificates expire on December 31 each year.

**F. Renewal:** Renewal applications for provider, instructor and program certifications must be submitted no later than November 30 of each year. Renewal applications must include renewal fees in the amount of three hundred and fifty dollars (\$350) per provider, one hundred dollars (\$100) per instructor. Late renewal applications will be subject to a late fee of thirty dollars (\$30) per day.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

**G. Pro-rated fees:** The initial certification fee for providers, programs and instructors will be prorated, as follows:

(1) certification obtained before April 1 of any year will be subject to the full amount of the annual certification fee;

(2) certification obtained on or after April 1 and before July 1 will be subject to three-fourths of the annual fee;

(3) certification obtained on or after July 1 and before October 1 will be subject to one-half of the annual fee; and

(4) certification obtained on or after October 1 will be subject to one-fourth the annual fee.

**H. Transferability:** Provider, instructor and program certifications are non-transferrable.

**I. Probation, suspension or revocation:** The director may place a provider or instructor on probation if the director has a reasonable belief that the provider or instructor is not in compliance with one or more of the requirements of the statutes or division rules. The director shall send a notice of probation to the provider, instructor or both specifying the provisions with which the provider or instructor is not in compliance along with an order to show cause why the provider or instructor certification should not be suspended. If the provider or instructor fails to show cause why his or her certification should not be suspended, the director may suspend the provider or instructor certification for a reasonable period of time. The director shall determine the period of probation or suspension depending upon the number and nature of the violations. If the provider or instructor is placed on probation, the director shall review the provider or instructor's operations periodically during the probationary period. At anytime, a provider or instructor that is placed on probation or suspension may request a hearing. The director may only revoke a provider or instructor certification for cause after a hearing.

**J. Cancellation:** A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.

[15.11.31.9 NMAC - Rp, 15 NMAC 11.3.1.9, 4/25/2017]

#### **15.11.31.10 ADMINISTRATION OF CERTIFIED SERVER TRAINING PROGRAM:**

**A. Providers' responsibility in administering a certified program:** It is the responsibility of providers to ensure that they and any instructors employed by them are teaching a certified program.

**B. Course materials:** Providers shall ensure that each student is provided complete course materials at the beginning of each certified program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.

**C. Prior approval required:** Providers must obtain prior approval from the director before changing the required content of a certified program.

**D. Proctored tests:** Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an

applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

**E. On-line tests:** On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the director to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

**F. ADA compliance:** Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable accommodation for instructional and learning purposes to the extent required by law.

**G. Administration of on-line programs:** Providers who administer an on-line program without the presence of a live instructor must ensure the following:

- (1) a secure login process is in place to confirm the identity of the person taking the course;
- (2) students may not be allowed to fast-forward through the instruction portion of the course;
- (3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;
- (4) no advertisements appear during course instruction; and
- (5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[15.11.31.10 NMAC - Rp, 15 NMAC 11.3.1.10, 4/25/2017]

**15.11.31.11 SURETY BOND; EVIDENCE OF FINANCIAL RESPONSIBILITY:**

The purpose of the surety bond is to ensure that the provider's students will be reimbursed for fees paid for the program if the provider or instructor fails to conduct the program to completion.

[15.11.31.11 NMAC - Rp, 15 NMAC 11.3.1.12, 4/25/2017]

#### **15.11.31.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS:**

The director may fine or decertify any program, or refuse to renew certification, when the director determines that:

**A.** a provider, instructor or an agent, knowingly provided false information to the director, advisory committee or division with regard to completion of a certified program by any person;

**B.** a provider, instructor or an agent, failed to conduct the program as certified by the division;

**C.** any person filing an application with the division for certification of a provider, instructor or program knowingly submitted false information to the director, advisory committee or division;

**D.** a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

**E.** a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[15.11.31.12 NMAC - Rp, 15 NMAC 11.3.1.13, 4/25/2017]

#### **15.11.31.13 [RESERVED]**