

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 2 DEFINITIONS

15.10.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.
[15.10.2.1 NMAC - Rp, 15 NMAC 10.1.1.1, 4/25/2017]

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 licensee or lessee approved by the division to operate a liquor license.

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. “Cider” means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit that contains not less than one-half of one percent alcohol by volume and not more than seven percent of alcohol by volume.

I. “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.

J. “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.

K. “Controlling shareholders” means persons or entities who own fifty percent or more of the outstanding shares of stock in a corporation.

L. “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.

M. “Craft distiller” means a person or entity that is engaged in bona fide manufacture of spiritous liquors, holds a valid federal license to produce spiritous liquors, and owns or controls fully operational distilling equipment.

N. “Director” means the director of the alcohol and gaming division.

O. “Division” means the alcohol and gaming division of the New Mexico regulation and licensing department.

P. “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.

Q. “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.

R. “Growler” means a clean, refillable, resealable container, including crowlers, that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine, or cider for consumption off-premises.

S. “Independent contractor” means a person who has obtained the right to own, teach or otherwise use an approved alcohol server education program.

T. “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.

U. “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.

V. “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.

W. “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.

X. “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.

Y. “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.

Z. “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.

AA. “Private party” means an event open only to invited guests and not open or advertised to the general public. “Private party” does not include alcohol industry promotional events or other events with a commercial purpose.

BB. “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.

CC. “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.

DD. “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 full meals are 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.

EE. “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.

FF. “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.

GG. “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.

HH. “Serve” means to pour, or otherwise personally provide alcoholic beverages to another person.

II. “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.

JJ. “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.

KK. “Split” means a half-bottle of wine or champagne containing not more than 375 ml of wine or champagne.

LL. “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.

MM. “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.

NN. “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.

OO. “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]

HISTORY OF 15.10.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

ABC Regulation No. 4B-5, Definition Regulation 4B-5 Interpreting and Exemplifying Section 60-4B-5 NMSA 1978 (1981 Repl. Pamp.), filed 03/23/1982.

ABC Regulation No. 4B-5.(B), Definition Regulation 4B-5.(B), Interpreting and Exemplifying Section 60-4B-5 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD Regulation 4B-5(B), Definition, filed 09/25/1990.

ABC Regulation No. 6B-10(2), Definition of School” Interpreting and Exemplifying Section 60-6B-10 NMSA 1978, filed 12/16/1983.

ABC Regulation No. 6B-10(B), Definition of School” Regulation 6B-10(B), Interpreting and Exemplifying Section 60-6B-10 NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD Regulation 6B-10(B), Definition of School,” filed 09/25/1990.

AGD 6B-10(C), Premises Licensed Prior to 1981, filed 09/25/1990.

AGD Regulation 7A-1(C), After Hours, filed 09/25/1990.

ABC Regulation No. 6C-1(3).(A), Public Nuisances Regulation 6C-1(3).(A), Interpreting and Exemplifying Section 60-6C-1(3) NMSA 1978 (1981-1984 Supp.), filed 11/04/1985.

AGD 6C-1, Public Nuisances, filed 09/25/1990.

History of Repealed Material:

15 NMAC 10.1.1, Definitions, filed 07/02/1999 - Repealed effective 4/25/2017.