

This rule was filed as 15 NMAC 10.1.1.

**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.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.2        SCOPE:** These regulations apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.3        STATUTORY AUTHORITY:** Sections 9-16-6(D) and 9-16-6(B)(2) NMSA 1978 of the Regulation and Licensing Department Act authorize the superintendent, or the superintendent's designee, to make and adopt such rules and regulations as necessary to carry out the duties of the department. Section 60-3A-7 NMSA 1978 gives the regulation and licensing department authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.4        DURATION:** Permanent.  
[7/15/99; Recompiled 12/31/01]

**15.10.2.5        EFFECTIVE DATE:** July 15, 1999, unless a later date is cited at the end of a section or paragraph.  
[7/15/99; Recompiled 12/31/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**15.10.2.6        OBJECTIVE:** This regulation is intended to locate all definitions of terms used in the Liquor Control Act, or in these regulations in one regulation.  
[7/15/99; Recompiled 12/31/01]

**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. "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.
  - (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) licensee that is a corporation is the manager of the limited liability company.
- B. "Alcoholic beverage display area" means that portion of a licensee's premises in which all alcoholic beverages on display for sale are contained.
- C. "Applicant" means (a) an individual 19 years of age or older seeking a server permit under the Alcohol Server Education Article of the Liquor Control Act; or (b) a person applying for a liquor license.
- D. "Approved operator" means the licensee or lessee approved by the department to operate a liquor license.

E. "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.

F. "Bona fide guest" means a person who is invited personally by the host at no charge to the guest to attend.

G. "Controlling shareholders" means persons or entities who own 50 percent or more of the outstanding shares of stock in a corporation.

H. "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.

I. "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.

J. "Filing period" means the period beginning at 8:00 a.m. on October 1, and ending at 12:00 p.m. on December 31, or upon receipt by the department of the tenth priority application, whichever is later.

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

L. "large premises licensee" means a retailer or a dispenser for which alcoholic beverages constitute less than 60 percent of sales, and whose establishment contains 20,000 or more square feet of merchandise display space.

M. "Legal entity" means a corporation, general partnership, limited partnership, limited liability company, association or other entity recognized under the law, other than an individual.

N. "Licensee" means the holder of any license or permit authorizing the sale of alcoholic beverages issued under the provisions of the Liquor Control Act, but does not mean the holder of a server permit.

O. "Member" means:

(1) a person who pays membership dues at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, has all voting rights and full membership privileges as described in Section 60-3A-3(D) NMSA 1978;

(2) the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues as described in Section 60-7A-13 NMSA 1978;

(3) a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club, as described in Section 60-7A-13 NMSA 1978; the club licensee must furnish proof to the director of the applicable rules and regulations 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 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.

P. "Primary activity" means the principal, but not necessarily exclusive, use of an area of a licensed premises at any given time. If more than 50 percent of the annual total gross receipts are 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.

Q. "Principal officer" means the president, vice-president, secretary, or treasurer of the licensee, the manager or managers of a limited liability company, 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.

R. "Priority application" means one of the first ten applications received during any filing period or, if more than ten are received on the first day of the filing period, the ten applications randomly selected by the director pursuant to 15 NMAC 11.2.7.9 [now 15.11.27.9 NMAC].

S. "Private party" means an event held on a licensed premises in response to a written invitation to bona fide guests, but not advertised to the general public.

T. “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.

U. “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 meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment; that has a dining room, a kitchen, and the employees necessary for preparing, cooking and serving meals.

V. “Restricted area” means an area of a licensed premises in which minors are not allowed to enter, unless the minor is accompanied by a parent, adult spouse or legal guardian, because the primary activity in that area is the sale, service or consumption of alcoholic beverages.

W. “School” means a public or private educational institution teaching any of the grades of one (1) through 12, a junior college, four-year college, university or other post-secondary educational institution, if it is accredited by the north central accrediting association. “School” shall also mean a center for attendance where instruction is offered by certified school instructors and is discernible as a building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school or combination thereof. It shall not include home school as defined in Public School Code. “School” shall also include any state educational institution listed in Article XII, Section 11, New Mexico Constitution.

X. “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.

Y. “Small premises licensee” means a retailer or a dispenser for which alcoholic beverages constitute less than 60 percent of sales, and whose establishment contains less than 20,000 square feet of merchandise display space.

Z. “Substantially complete” means the completed application for inter-local option district transfer (including all completed pages), all necessary fees, corporate documents, conveyance instruments, fingerprint cards, leases of real property, zoning clearances and affidavits regarding distances from a church or school that will require waivers from the local governing body and waivers.

AA. “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.

[7/15/99, A, 2/29/00; Recompiled 12/31/01]

#### **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 3/23/82;

ABC Regulation No. 4B-5.(B), Definition Regulation 4B-5.(B), Interpreting and Exemplifying Section 60-4B-5 NMSA 1978 (1981-1984 Supp.), filed 11/4/85; and

AGD Regulation 4B-5(B), Definition, filed 9/25/90;

ABC Regulation No. 6B-10(2), Definition of School” Interpreting and Exemplifying Section 60-6B-10 NMSA 1978, filed 12/16/83;

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 11/4/85;

AGD Regulation 6B-10(B), Definition of School,” filed 9/25/90;

AGD 6B-10(C), Premises Licensed Prior to 1981, filed 9/25/90;

AGD Regulation 7A-1(C), After Hours, filed 9/25/90;

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 11/4/85; and

AGD 6C-1, Public Nuisances, filed 9/25/90.

History of Repealed Material: [RESERVED]