

This rule was filed as 15 NMAC 10.7.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 70 OPERATION AND PROFITING BY AUTHORIZED PERSONS

15.10.70.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.
[7/15/99; Recompiled 12/31/01]

15.10.70.2 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]

15.10.70.3 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]

15.10.70.4 DURATION: Permanent
[7/15/99; Recompiled 12/31/01]

15.10.70.5 EFFECTIVE DATE: July 15, 1999, unless a later date is cited at the end of a section or paragraph. Portions of certain paragraphs remain unchanged from the following rules: 15 NMAC 10.5.1.9 [now 15.10.51.9 NMAC], operation and profiting by authorized persons, filed 3/31/97; and 15 NMAC 11.2.1.9.11 [now Subsection K of 15.11.21.9 NMAC], resident agent designation; agent lessee designation, filed 3/31/97.
[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[Compiler's note: The words, *or paragraph*, above, are no longer applicable.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.]

15.10.70.6 OBJECTIVE: This regulation is intended to establish standards by which licensees may sell alcoholic beverages under the Liquor Control Act.
[7/15/99; Recompiled 12/31/01]

15.10.70.7 DEFINITIONS: Unless otherwise defined in 15 NMAC 10.1.1 [now 15.10.2 NMAC], terms used in these regulations have the same meanings as set forth in the Liquor Control Act.
[7/15/99; Recompiled 12/31/01]

15.10.70.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:

A. No person other than the approved operator or employees of the approved operator, shall sell or serve alcoholic beverages at the licensed premises. Only the approved operator shall directly profit from the sale of alcoholic beverages pursuant to the license.

(1) All orders, sales, service, dispensing, and receipt of payment for alcoholic beverages must be done by the approved operator or employees of the approved operator.

(2) Sales of alcoholic beverages by an approved operator may not be combined with any sales of another person or entity that is not an approved operator.

B. A person directly profits from the sale of alcoholic beverages in violation of this regulation when any person other than the approved operator 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; or

(4) revenue from the sale of alcoholic beverages by an employee of an affiliate of the licensee when combined with the sales of other products when performed on the licensed premises. Each affiliate must be disclosed to the department and specifically approved by the director in writing as an affiliate.

C. It is a violation of the Liquor Control 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. The director may, upon 30 days' written notice to a licensee, require the licensee to demonstrate compliance with this regulation. 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 approved operator, consisting of copies of all real estate lease agreements, concession agreements, management agreements, or contracts of any kind to which the approved operator 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.

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

HISTORY OF 15.10.70 NMAC: [RESERVED]