

This rule was filed as 15 NMAC 10.6.1.

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 10 ALCOHOLIC BEVERAGES GENERAL PROVISIONS
PART 61 CITATIONS - FINES AND PENALTIES

15.10.61.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcohol and Gaming Division.
[3/31/97; Recompiled 12/31/01]

15.10.61.2 SCOPE: These regulations apply to all licensees and applicants for licensure under the New Mexico Liquor Control Act.
[3/31/97; Recompiled 12/31/01]

15.10.61.3 STATUTORY AUTHORITY: Section 60-6C-4(M) NMSA 1978 of the Liquor Control Act authorizes the director to adopt reasonable regulations setting forth uniform standards of penalties with respect to fines and suspensions. More generally, Section 60-4B-5 NMSA 1978 of the Liquor Control Act authorizes the director to issue and file all regulations and orders necessary to implement and enforce the provisions of the Liquor Control Act. In addition, 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.
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.61.4 DURATION: Permanent
[3/31/97; Recompiled 12/31/01]

15.10.61.5 EFFECTIVE DATE: March 31, 1997, unless a later date is cited at the end of a section or paragraph. Repromulgated and reformatted for New Mexico Administrative Code (NMAC) effective March 31, 1997. Certain paragraphs within this subpart [now part] remain unchanged from the following rule: AGD Regulation 6C-9, Compromise, filed 9-25-90.
[3/31/97; 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[Compiler's note: The words, *or paragraph*, above, are no longer applicable.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.]

15.10.61.6 OBJECTIVE: These regulations set forth uniform standards for penalties which may be imposed by the superintendent of the regulation and licensing department or the superintendent's designee. This schedule of penalties will be used as a guide for the settlement of citations in those cases where a formal hearing is not requested and will also be followed generally in cases where a formal hearing is requested. These regulations are intended to comply with Section 60-6C-4(M) NMSA 1978 which requires the director (superintendent) to adopt reasonable regulations setting forth standards of penalties concerning penalties imposed by the director (superintendent). They are also intended to establish violation codes for consistent tracking within the alcohol and gaming department of the regulation and licensing department.
[3/31/97; 7/15/99; 2/29/00; Recompiled 12/31/01]

15.10.61.7 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. This paragraph 15 NMAC 10.6.1.7.1 has been moved and renumbered to 15 NMAC 10.1.1.7.20 [now Subsection T of 15.10.2.7 NMAC]
[3/31/97; 7/15/99; Recompiled 12/31/01]

15.10.61.8 SCHEDULE OF PENALTIES:

A. Violations involving sales to minors or intoxicated persons within a twelve (12) month period.

Code	Description
90	sale to intoxicated person
105	Sale to a minor

B. Penalties for violations involving sales to minors within a twelve (12) month period are as follows:

(1) The first offense will result in a fine ranging from \$1,000 to \$2,000 and suspension of all alcohol sales for one (1) business day.

(2) The second offense will result in a fine ranging from \$2,000 to \$3,000 and suspension of all alcohol sales for seven (7) business days.

(3) The third offense will result in a fine ranging from \$3,000 to \$4,000 and suspension of all alcohol sales for fourteen (14) business days.

(4) Four or more offenses shall result in a fine of \$10,000 and revocation of the liquor license.

~~The fourth offense will result in a fine ranging from \$4,000 to \$5,000 and suspension of all alcohol sales for 30 business days.~~

~~(5) Five or more offenses will result in a fine of \$10,000 and revocation of the liquor license.~~

C. Penalties for violations involving sales to intoxicated persons within twelve a (12) month period are as follows:

(1) The first offense shall result in a fine ranging from \$1,000 to \$2,000 and suspension of all alcohol sales for one (1) business day.

(2) Two or more offenses shall result in a fine of \$10,000 and revocation of the liquor license, provided, however, that the Director may consider mitigating circumstances in determining whether or not to revoke the liquor license.

D. Any combination of four (4) offenses involving sales to minors and/or sales to intoxicated persons occurring within a twelve (12) month period shall result in a fine of \$10,000 and revocation of the liquor license, provided, however, that the Director may consider mitigating circumstances in determining whether or not to revoke the liquor license.

BE. Violations involving licensing issues: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines within the ranges shown below. Penalties may also include suspension or revocation of the liquor license.

Code	Description	Fine
117	more than one entity profiting	\$2,000 to \$10,000
118	unauthorized entity profiting or operating	\$1,500 to \$10,000
119	failure to report change of ownership or structure	\$250 to \$3,000
135	failure to renew license	\$500 to \$3,000
205	unauthorized transfer of a liquor license	\$3,000 to \$10,000
300	persons prohibited from holding a license	\$3,000 to \$10,000

CE. Illegal sale or possession of alcoholic beverages: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$10,000. Penalties may also include suspension or revocation of the liquor license

Code	Description
160	sale/possession – illegal

DE. Public nuisance violations:

Code	Description
125	public nuisance

(1) Penalties imposed for public nuisance violations will be determined by the director 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 \$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 Department receives the citation, or the citation will be referred to a formal hearing.

(3) Failure to correct the violations as agreed will result in an additional fine of \$3000 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 \$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 receives the citation, or the citation will 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.

E-H Violations involving commercial gambling: Penalties imposed for commercial gambling violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines shown below. Penalties may also include suspension or revocation of the liquor license.

Code Description

40 commercial gambling

- (1) The first offense will result in a fine of \$3,000.
- (2) The second offense will result in a fine of \$4,000.
- (3) The third offense will result in a fine of \$5,000.
- (4) Four or more offenses will result in a fine of \$10,000.

F-I Violations involving club sales provision: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$5,000. Penalties may also include suspension or revocation of the liquor license.

Code Description

35 liquor sales to non-members

37 other violations of club sales restrictions

G-L Violations involving other licensing, sales and service matter: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$5,000. Penalties may also include suspension or revocation of the liquor license.

Code Description

1 unauthorized package sale

2 unauthorized sunday sale by drink

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 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 designated premises

157 change of floor plan without approval

180 special dispenser's permit violation

185 unauthorized sunday sale - package

195 failure to obtain sunday sales permit

215 violation of wholesaler license restriction

301 obstruction of the administration of the liquor control act

302 private party violation

H-K Miscellaneous violations of the liquor control act or regulations: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$250 to \$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 of premises
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

H. L. Other violations not specifically listed: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and may include administrative fines and/or suspension or revocation of the liquor license.

Code	Description
999	miscellaneous

J. M. Violations involving providers: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines up to \$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 department
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 regulations promulgated thereunder

K. N. Violations involving servers: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case unless enhanced.

- (1) Failure to have server permit in possession [code 311]. Fine up to \$250, suspension up to 14 consecutive days, or both.
- (2) Serving alcoholic beverages without a valid, current server permit [code 312]. Fine up to \$500.
- (3) Sale to minor or intoxicated person [code 313]:
 - (a) The first offense may result in a fine of up to \$500, a 30-day suspension, or both.
 - (b) The second offense may result in a fine of up to \$500, a 1 year suspension, or both.
 - (c) The third offense may result in a fine, suspension, or revocation.

L. O. Violations of the alcohol server education article involving licensees: Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case unless enhanced.

Code	Description
316	employing a person without a server permit up to \$500
317	failure to maintain copies of server permits on the licensed premises: \$20 per permit
318	failure to produce a copy of an employee's server permit: \$20 per permit
319	permitting a person with a suspended or revoked permit to serve alcoholic beverages: up to \$500

M. 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. For example, if the violation occurred on a Thursday, the suspension day will be a Thursday.

(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.

(2) If the penalty for a violation is suspension, no fine is payable in lieu of suspension.

(3) Signs provided by the department 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 Liquor Control Act. [3/31/97; 7/15/99; 2/29/00; Recompiled 12/31/01]

15.10.61.9 ENHANCEMENT OF SCHEDULED PENALTIES: The director may increase any penalty set forth in these regulations if the facts and circumstances warrant enhancement of the penalties, as determined by the director. [3/31/97; 7/15/99; 2/29/00; Recompiled 12/31/01]

15.10.61.10 COMPROMISE:

A. Whenever probable cause exists that a licensee has violated a provision of the Liquor Control Act or department regulations, a citation may be issued to the licensee for such violation. The director or the director's designated employee may hold a conference 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 department.

D. The fines and suspension which the director or the director's designated employee may impose shall not exceed those which could be imposed after hearing.

E. The director or the director's designated employee may suspend any portion of the fine imposed. [3/31/97; 7/15/99; Recompiled 12/31/01]

HISTORY OF 15.1.61 NMAC:

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

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;

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

ABC Regulation 6C-9, Penalty Compromise Regulation 6C-9, Interpreting and Exemplifying Section 60-6C-9 NMSA 1978, filed 8/13/82;

ABC Regulation No. 6C-9, Penalty Compromise Regulation 6C-9, Interpreting and Exemplifying Section 60-6C-9 NMSA 1978, filed 4/19/84;

ABC Regulation No. 6C-9(A), Penalty Compromise Regulation 6C-9(A), Interpreting and Exemplifying Section 60-6C-9 NMSA 1978 (1981-1984 Supp.), filed 11/4/85; and

AGD Regulation 6C-9, Compromise, filed 9/25/90.

History of Repealed Material: [RESERVED]