

**TITLE 15        GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 1      GAMES AND GAMING GENERAL PROVISIONS**  
**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:
  - (1)        purchase prices of non-cash prizes;
  - (2)        security and surveillance expenses;
  - (3)        independent accountant’s fees;
  - (4)        license fees, including renewals and gaming machine license fees;
  - (5)        utilities attributable to the licensed premises;
  - (6)        installment payments to an independent administrator or lease payments for licensed gaming machines;
  - (7)        gaming device repair and maintenance;
  - (8)        gaming employee salaries and employment taxes;
  - (9)        gaming supplies;
  - (10)       approved management fees; and
  - (11)       licensed premises repair and maintenance;

**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]

#### **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 the actual cost to the licensee of any personal property awards with a value of five hundred dollars (\$500.00) or more as the result of a legitimate waiver 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 racetrackgaming 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 four thousand dollars (\$4,000). 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.

**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]

**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 sixty 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]

### **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 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 re-payment 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]

**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]

**HISTORY OF 15.1.10 NMAC:**

**Pre NMAC History: None.**

**History of Repealed Material:** 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act, filed 12-14-98 - repealed effective 10-15-15.

15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act, filed 9-30-15, repealed effective 1/29/2016]

**Other History:**

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act, effective 12-31-98.

15 NMAC 1.10, Conduct Of Gaming Activity Under The Gaming Control Act (filed 12-14-98) renumbered, reformatted and amended to 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control, effective 03-31-00.

15.11.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control Act (filed 9-30-15) was replaced by 15.1.10 NMAC, Conduct Of Gaming Activity Under The Gaming Control, effective 1-29-16.