

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 5 APPLICATION FOR LICENSURE UNDER THE GAMING CONTROL ACT

15.1.5.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[15.1.5.1 NMAC - Rp, 15.1.5.1 NMAC, 6/30/2016]

15.1.5.2 SCOPE: This rule applies to all licensees or applicants for licensure, certification, registration, renewal, finding of suitability, or other approval under the New Mexico Gaming Control Act.
[15.1.5.2 NMAC - Rp, 15.1.5.2 NMAC, 6/30/2016]

15.1.5.3 STATUTORY AUTHORITY: Paragraph (3) of Subsection B of Section 60-2E-7 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. Paragraph (1) of Subsection C of 60-2E-8 NMSA 1978 specifically directs the board to adopt regulations prescribing the method and form of application to be filed by the applicant.
[15.1.5.3 NMAC - Rp, 15.1.5.3 NMAC, 6/30/2016]

15.1.5.4 DURATION: Permanent.
[15.1.5.4 NMAC - Rp, 15.1.5.4 NMAC, 6/30/2016]

15.1.5.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.
[15.1.5.5 NMAC - Rp, 15.1.5.5 NMAC, 6/30/2016]

15.1.5.6 OBJECTIVE: This rule establishes standards and requirements for licensure, certification, registration, renewal, finding of suitability, and other approval under the Gaming Control Act.
[15.1.5.6 NMAC - Rp, 15.1.5.6 NMAC, 6/30/2016]

15.1.5.7 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 New Mexico Gaming Control Act.

B. “Auxiliary member” means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code, Section 501(c)(19) or (23) and applicable regulations; “auxiliary member” does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee’s tax exempt status.

C. “Component” means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, erasable programmable read-only memory (EPROM), bill acceptor, progressive system, monitoring system, meter; and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine’s operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

D. “Control,” when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person 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 applicant or licensee; when used as a verb, “control” means to exert, directly or indirectly, such power, or to be in a position to exert such power.

E. “Key executive” means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds \$250,000.

F. “Foreign institutional investor” means a government related pension plan or a person that meets the requirements of a qualified institutional buyer as defined by the governing financial regulatory agency of the

country where the company primary operations are located, and is registered or licensed in that country as a bank; an insurance company; an investment company; an investment advisor; collective trust funds; an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or a group comprised entirely of entities specified by this subsection.

G. “Gaming protection plan” means a written plan delineating the electronic and physical security measures to be taken by a licensee to insure the integrity of each game and any associated equipment including, if applicable, progressive gaming systems, bonusing or points systems and slot accounting systems. A gaming protection plan shall include a plan for data backup and recovery.

H. “Licensed premises” means the area that has been approved for gaming on the premises that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

I. “Limited use distributor’s license” means a restricted authorization to sell gaming machines or associated equipment.

J. “Majority interest” means an ownership interest, whether direct or indirect, of more than fifty percent in the licensee.

K. “Manage” means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

L. “Manufacturer” means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the state or for sale, lease or distribution outside the state from any location within the state.

M. “Member” means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization’s charter, articles of incorporation, bylaws, or rules, and who is in good standing.

N. “Modification” means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; “modification” does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

O. “Person” means a legal entity or an individual.

P. “Premises” means the land together with all buildings improvements and personal property located on the land.

Q. “State” means the state of New Mexico.

R. “Technical violation” means a violation of board rules or the gaming laws and regulations of any jurisdiction that does not reflect adversely on the applicant’s moral character, honesty and integrity, business probity or financial viability.

S. “This title” means Title 15, Chapter 1 of the New Mexico Administrative Code.

[15.1.5.7 NMAC - Rp, 15.1.5.7 NMAC, 6/30/2016]

15.1.5.8 NATURE OF LICENSE AND APPLICATION REQUEST:

A. Any license, certification, registration, renewal, finding of suitability, or other approval issued by the board is deemed a revocable privilege. No person holding such a license, certification, registration, renewal, finding of suitability, or other approval is deemed to have any rights therein.

B. Any application submitted under the provisions of the act or this rule constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

C. Any application for license, certification, registration, renewal, finding of suitability, or other approval from the board will constitute a request to the board for a decision on the applicant’s general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board. Without limiting the foregoing, the investigation shall include a background investigation and a credit check of the applicant and all persons having a substantial interest in the applicant.

D. By applying for and obtaining any license, certification, registration, renewal, finding of suitability, or other approval from the board, the holder agrees to abide by all provisions of the act and this rule.

E. By applying for a license, certification, registration, renewal, finding of suitability, or other approval from the board, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages,

or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the board.

[15.1.5.8 NMAC - Rp, 15.1.5.8 NMAC, 6/30/2016]

15.1.5.9 LICENSE CLASSIFICATIONS:

A. Licenses include:

(1) manufacturer's license, which authorizes the approved licensee to manufacture, fabricate, assemble, produce, program, make modifications to, or sell to licensed distributors or licensed gaming operators, any gaming machine or associated equipment in accordance with the act and board rules;

(2) distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any gaming machine or associated equipment in or outside the State in accordance with the act and board rules;

(3) gaming operator's license, which authorizes the approved licensee to acquire, own, lease, possess, and operate gaming devices on its licensed premises; a gaming operator's license may be issued to a nonprofit organization or to a racetrack licensed by the state racing commission pursuant to the New Mexico Horse Racing Act;

(4) gaming machine license, pursuant to which an approved gaming machine is licensed for the play of authorized games on a licensed premises under a gaming operator's license; and

(5) a limited use distributor's license which authorizes the approved licensee to sell, on a limited basis, gaming machines and associated equipment.

B. Certifications, registrations, and other approvals include:

(1) certification of finding of suitability, which is a determination by the board that the applicant is suitable to be associated with a licensee for the specific involvement sought;

(2) approval of gaming machine, associated equipment, modification, or game, under which a particular brand and type of gaming device, an equipment modification, or a game, is authorized for sale, distribution, and operation;

(3) if a company applicant or licensee is or becomes a subsidiary, registration of each non-publicly traded holding company and intermediary company with respect to the subsidiary company;

(4) approval to amend a gaming operator's license to show a change in the number of authorized gaming machines on the licensed premises; and

(5) work permit, which authorizes the employment of the holder as a gaming employee.

[15.1.5.9 NMAC - Rp, 15.1.5.9 NMAC, 6/30/2016]

15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES - FORM AND GENERAL REQUIREMENTS:

A. Every application, statement, and notice required to be filed under the act or this rule shall be submitted on forms supplied or approved by the board and shall contain such information and documents as specified.

B. The applicant shall file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the 10-year period immediately preceding the filing date of the application.

C. Upon request of the board, the applicant shall further supplement any information provided in the application. The applicant shall provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

D. An applicant shall submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board shall consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

E. All information required to be included in an application shall be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant shall file a written amendment in accordance with this rule.

F. The application and any amendments shall be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

G. The applicant shall cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board shall examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

H. The board shall automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the act and this rule.

I. Neither the state, the board, any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, shall be held liable for any inaccurate information obtained through such an investigation.

J. All new applications submitted to the New Mexico gaming control board shall be completed within 120 days of receipt of the application, which time may be extended by the board upon good cause. Failure to complete the application within such time period shall result in the forfeiture of all licensing fees. Applicant shall be required to re-submit a new application with licensing fees should the applicant still wish to pursue licensure. [15.1.5.10 NMAC - Rp, 15.1.5.10 NMAC, 6/30/2016]

15.1.5.11 SEPARATE APPLICATIONS REQUIRED; HOLDING OF MULTIPLE LICENSE TYPES PROHIBITED:

A. A licensee shall not be issued more than one type of license. A licensee shall not own a majority interest in, manage, or otherwise control a holder of another type of license issued pursuant to the provisions of the act.

B. No affiliate or affiliated company shall hold any type of license except the type held by the affiliated licensee unless the affiliate or affiliated company does not own a majority interest in, manage, or otherwise control the affiliated licensee and the board determines that such licensure shall not unduly impair competition in the state gaming industry or otherwise be contrary to the public health, safety, morals, or general welfare.

C. This rule is not intended to prohibit a gaming operator licensee from obtaining licensure of its gaming machines as required by the act and this rule or from transferring or disposing of a gaming machine in accordance with this title.

[15.1.5.11 NMAC - Rp, 15.1.5.11 NMAC, 6/30/2016]

15.1.5.12 ORGANIZATION AND MEMBERSHIP REQUIREMENTS FOR NONPROFIT ORGANIZATIONS; GAMING MACHINES FOR MEMBERS ONLY:

A. Only active members and auxiliary members of a nonprofit organization gaming operator licensee shall play gaming machines on the licensed premises. No guest or member of the public shall play a gaming machine licensed to a nonprofit organization gaming operator licensee. No member of the public shall enter the licensed premises except during the course of authorized business and provided the person remains on the licensed premises no longer than reasonably necessary to conduct such business.

B. To qualify to hold and operate a gaming operator's license, the nonprofit organization shall have at least 50 bona fide active, sworn members who pay dues on a monthly, quarterly, annual, or other periodic basis. The organization may have, in addition to its regular members, auxiliary members, but auxiliary members may not be counted in order to meet the minimum membership requirements described in this subsection.

C. The applicant shall submit to the board, with the initial application, a copy of the applicant's current charter, articles of incorporation, bylaws, or rules that establish membership requirements. In addition, with the initial application and license renewal applications, the organization shall submit evidence of good standing and the names and addresses of the applicant's current bona fide members and any auxiliary members. In lieu of the membership list, the board may accept, in its discretion, a statement from the highest ranking official of the nonprofit organization attesting to the fact that the organization meets the membership requirements described in this subsection. The applicant shall also submit the name, home address, phone number and email address of each member of the governing board.

[15.1.5.12 NMAC - Rp, 15.1.5.12 NMAC, 6/30/2016]

15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS:

A. To qualify to hold and operate a gaming operator's license, a racetrack shall be licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races.

B. The applicant shall submit to the board a copy of the applicant's current license from the horse racing commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year. Thereafter, a licensee shall submit to the board, within 10 ten days of issuance by the state horse racing commission, a copy of the licensee's current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year.

C. Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed 18 hours and no more than 112 hours in a one-week period, beginning on Tuesday at 8 a.m. and ending at 8 a.m. on the following Tuesday, at the licensee's discretion. "Daily period" means the 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.
[15.1.5.13 NMAC - Rp, 15.1.5.13 NMAC, 6/30/2016]

15.1.5.14 BUSINESS PLAN:

A. The applicant for a gaming operator's license shall submit with the application a proposed business plan for the conduct of gaming. The plan shall include the following:

(1) an 8-1/2" x 11" drawing to scale of the building in which the applicant proposes to conduct gaming, with the area designated as the proposed licensed premises clearly outlined;

(2) a description of the type and number of gaming machines proposed for operation, including details of machine features, such as whether the machines are video versus spinning reel or are coin-in/coin-out versus coin-in/credit-out machines;

(3) generic description of the games to be played on the machines and the proposed placement of the machines on the licensed premises;

(4) administrative, accounting, and internal control procedures, including monetary control operations;

(5) security plan;

(6) staffing plan for gaming operations, including identification of key executives and employees;

(7) advertising and marketing plan;

(8) method to be used for prize payouts;

(9) details of any proposed progressive systems;

(10) gaming protection plan; and

(11) any other information requested by the board or its agents.

B. The business plan must provide for the following accounts:

(1) an escrow account or accounts to be established and maintained in accordance with board requirements for the purpose of holding in reserve large or progressive prizes to be won by participants; and

(2) a depository account exclusively for the collection and payment of the gaming tax in accordance with the provisions of the Tax Administration Act, Chapter 7, Article 1 NMSA 1978.

C. The business plan shall provide for payment from gaming machines such that the payouts are not less than eighty percent over the lifetime of the machine.

D. A gaming operator's license shall not be granted unless the board first determines that the business plan submitted is suitable for the type of operation proposed and otherwise complies with the requirements of the act and this rule.

[15.1.5.14 NMAC - Rp, 15.1.5.14 NMAC, 6/30/2016]

15.1.5.15 COMPULSIVE GAMBLING ASSISTANCE PLAN:

A. An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education, and treatment of compulsive gambling. The plan shall include all information required in 15.1.18 NMAC.

B. No gaming operator's application shall be approved unless the board first approves the applicant's compulsive gambling assistance plan.

C. Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer the plan once implemented shall be grounds for suspension or revocation of the gaming operator's license, assessment of a fine, or both.

D. The ~~board shall establish~~ applicant shall follow the minimum standards for the content, structure and implementation of, and periodic reporting requirements on, the compulsive gambling assistance plan.

E. The board may contract with the state of New Mexico department of health or such other entity deemed qualified by the department of health to provide technical assistance in reviewing and recommending to the board approval of compulsive gambling assistance plans.

[15.1.5.15 NMAC - Rp, 15.1.5.15 NMAC, 6/30/2016]

15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

A. The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

B. Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee shall submit an application of finding of suitability within 30 days of the first day of employment as a key executive. The licensee shall send a facsimile or e-mail notice to the board no later than 96 hours after the first day of employment listing the date of employment, name, and title of position of the key executive.

C. The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of five percent or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of ten percent or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee:
(a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee;

(b) officers with check-writing authority or other financial responsibility;

(c) board members;

(d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and

(e) any person who has access to the internal structure or software of any gaming machine or associated equipment;

(11) the person with primary ownership interest in or managerial responsibility for an applicant for a limited use distributor's license, provided, however, that the board may provide for an expedited application process for such an applicant; and

(12) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

D. A finding of suitability relates only to the involvement specified in the application. A key executive shall seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

E. The board may waive the requirement for finding of suitability of an institutional investor or foreign institutional investor unless the board determines that public policy requires that the institutional investor or foreign institutional investor apply for such a finding. A waiver of certification of finding of suitability shall be valid for three years, after which the institutional investor or foreign institutional investor may reapply for a waiver.

F. A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph (8) of Subsection C of 15.1.5.16 NMAC or Paragraph (9) of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

G. In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

H. The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

I. Upon final determination by the board of the applicant's suitability, the board shall issue a certification of such finding to the applicant.

J. A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

K. An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

L. No licensee shall employ as a key executive any person who has failed to file an application for finding of suitability as required by this rule. A licensee shall ensure that each key executive has made the required application.

[15.1.5.16 NMAC - Rp, 15.1.5.16 NMAC, 6/30/2016]

15.1.5.17 APPLICATION FOR WORK PERMIT:

A. Application for a work permit shall be made in the same manner as set forth in the act or this rule for other applications. At the board's discretion, the board may delegate authority to the executive director or another designee to process and make the initial determination on all work permits. Except as provided for in Subsection I of Section 15.1.5.17 NMAC, no person shall be employed as a gaming employee unless the board, the executive director or the board's designee has first approved the application for such a permit.

B. The applicant shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs shall be taken no earlier than three months before the date the application for work permit was filed.

C. In addition to grounds for denial of an application described in the act and this rule, the board shall deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

D. A work permit issued to a gaming employee shall have clearly imprinted on the permit a statement that the permit is valid for gaming purposes. A licensee who employs an employee currently holding a valid work permit shall ensure that the employee registers his or her employment with the board in writing within three days of the employee's date of hire.

E. A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

F. A licensee shall notify the board in writing that a work permittee has terminated his or her employment with the licensee within three business days of the termination.

G. Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

H. Upon the receipt of a completed application, an applicant shall be provided a provisional work permit which shall expire 60 days after the date of issuance, upon the issuance of a permanent work permit or upon the written determination by the board to deny the work permit, whichever occurs first. An applicant whose provisional work permit expires after 60 days may apply for an extension of the provisional work permit not to exceed an additional 60 days. The board or its designee may allow the 60 day extension for good cause shown. [15.1.5.17 NMAC - Rp, 15.1.5.17 NMAC, 6/30/2016]

15.1.5.18 APPLICATION FOR GAMING MACHINE LICENSE:

A. Application for a gaming machine license shall be made, processed, and determined in the same manner as set forth in the act and this rule for other applications. No gaming machine or associated equipment shall be used for gaming by any licensee without prior written approval of the board.

B. No gaming machine shall be licensed unless it is of a brand, type, and series that has been approved by the board pursuant to the mandatory testing procedures set forth in this title. In addition, each individual gaming machine shall be licensed by the board before the gaming machine shall be used in any gaming activity. Such licensure shall include a license number assigned by the board to the individual gaming machine.

C. The application for a gaming machine license shall include a detailed description of the gaming machine for which approval is sought, including the manufacturer's name, the model, and the permanent serial number.

D. A gaming operator licensee shall license all gaming machines maintained on its gaming premises, up to the maximum number of gaming machines the gaming operator is statutorily permitted to operate, whether or not such machines are in operation on the gaming floor.

E. If a gaming operator licensee maintains gaming machines on its licensed premises in excess of the maximum number of gaming machines the gaming operator is statutorily permitted to operate, the gaming operator shall register such machines in accordance with 15.1.16.13 NMAC.

F. A gaming operator licensee that maintains one or more gaming machines solely to provide spare parts is not required to license such machines, but shall register such machines in accordance with 15.1.16.13 NMAC.

[15.1.5.18 NMAC - Rp, 15.1.5.18 NMAC, 6/30/2016]

15.1.5.19 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:

A. A person may act as a manufacturer, distributor or limited use distributor only if that person has received from the board a license specifically authorizing that person to act as a manufacturer, distributor, or limited use distributor or is a manufacturer of associated equipment that has been issued a waiver pursuant to Subsection D of Section 60-2E-13 of the act.

B. Applications for manufacturer's, distributor's or limited use distributor's licenses shall be made, processed, and determined in the same manner as applications for other gaming licenses as set forth in the act and this rule.

C. An applicant for a manufacturer's, distributor's or limited use distributor's license may be required to post, as a condition of issuance of the license, a bond or irrevocable letter of credit in a manner and in an amount established by the board. Any such instrument shall be issued by a surety company authorized to transact business in New Mexico and shall be satisfactory to the board.

[15.1.5.19 NMAC - Rp, 15.1.5.19 NMAC, 6/30/2016]

15.1.5.20 APPLICATION AMENDMENT AND WITHDRAWAL:

A. If there is any change in the information submitted to the board in the application, the applicant shall file, within 10 days of the change, a written amendment disclosing all facts necessary to adequately inform the board of the change in circumstances before the board takes the requested action.

B. An applicant may amend the application at any time prior to final action by the board. The date of receipt of the amendment by the board shall establish the new filing date of the application with respect to the time requirements for action on the application.

C. An amendment to an application filed by the applicant after the date on which the board has taken the action sought under the application, if the amendment is approved by the board, shall become effective on the date determined by the board.

D. An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the board.
[15.1.5.20 NMAC - Rp, 15.1.5.20 NMAC, 6/30/2016]

15.1.5.21 LIMITED USE DISTRIBUTOR'S LICENSE; CONDITIONS: A limited use distributor's license is subject to the following conditions:

A. A limited use distributor shall not maintain an office or physical location within the state. If the limited use distributor opens an office or physical location within the state, the distributor shall apply to convert the license to a distributor's license pursuant to 15.1.5.21 NMAC.

B. A limited use distributor shall maintain an office or physical location in another jurisdiction and shall be in good standing with all applicable regulatory agencies within that jurisdiction and any jurisdiction where the limited use distributor is located.

C. A limited use distributor shall be limited to selling gaming machines and associated equipment to a person with a distributor's license issued by the board.

D. All gaming machines sold by a limited use distributor shall have been manufactured by a manufacturer licensed by the board, shall be approved for use in this state pursuant to all applicable board regulations, shall meet all technical standards established by the board and shall be compatible with the board's central monitoring system.

E. Both the limited use distributor and the licensed distributor purchasing gaming machines from the limited use distributor shall be responsible for compliance with all board rules relating to the sale, transportation, technical specifications and licensing of all gaming machines sold and purchased pursuant to the limited use distributor's license.

F. A limited use distributor's license shall not be subject to renewal.
[15.1.5.21 NMAC - N, 6/30/2016]

15.1.5.22 LIMITED USE DISTRIBUTOR'S LICENSE; PROCEDURES: The application procedures for a limited use distributor's license shall be as follows:

A. The applicant shall complete a licensing application prescribed by the board and shall pay the applicable application fee and costs for any background investigation.

B. The applicant shall not transport any gaming machines into the state until a license is granted by the board.

C. The limited use distributor selling the gaming machines and the distributor purchasing the gaming machines shall notify the board on forms prescribed by the board prior to transporting any gaming machines into the state.

D. In addition to the application fee, a limited use distributor shall pay to the board a transaction fee of \$1,500 for each transaction in which the limited use distributor sells gaming machines to a distributor prior to completing the transaction.

E. A limited use distributor shall not conduct more than two transactions per license year unless the limited use distributor obtains a distributor's license prior to conducting the third transaction.

F. A limited use distributor may request to convert its limited use distributor's license to a distributor's license by submitting an additional fee of \$1,000 plus the costs of conducting a background investigation to the board and completing an application prescribed by the board prior to the expiration of the limited use distributor's license. All fees paid prior to the application for a distributor's license shall be applied to the application.

G. A distributor's license issued as a result of a conversion from a limited use distributor's license shall be valid for one year from the initial limited use licensure.
[15.1.5.22 NMAC - N, 6/30/2016]

15.1.5.23 APPLICATION FEES:

A. The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

- (1) gaming machine manufacturer's license, \$10,000;
- (2) associated equipment manufacturer's license, \$2,500;
- (3) gaming machine distributor's license, \$5,000;

- (4) associated equipment distributor's license, ~~\$1,000~~ \$2,500;
- (5) gaming operator's license for racetrack, ~~\$25,000~~ \$37,500;
- (6) gaming operator's license for nonprofit organization, ~~\$100~~ \$250;
- (7) gaming machine license, ~~\$100~~ \$200 per machine;
- (8) work permit, \$75 work permit update \$25;
- (9) certification of finding of suitability, \$100 ~~for each person requiring investigation; update to certification of finding of suitability \$50~~;
- (10) limited use distributor's license, ~~\$1,000~~ \$2,500; and
- (11) replacement fee for identification badge, \$10.

C. In addition to any nonrefundable license or approval fee paid, the applicant shall pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack shall pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation; upon completion of the investigation and determination of the actual fees and costs, the board shall refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants shall reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants shall fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

D. Investigative fees are charged at the rate of ~~\$50~~ \$75 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses shall be reimbursed ~~based on state mileage and per diem rules~~ actual cost, and office expenses, document copying costs, and other reasonable expenses incurred. Checks shall be made payable to the New Mexico ~~gaming control board~~ Gaming Control Board.

E. In addition to any nonrefundable application and supplementary investigation fees and costs, licensed manufacturers and distributors shall pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor shall pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board shall refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor shall fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of ~~\$50~~ \$75 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

F. The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall be debarred from filing any other application with the board until all such fees and costs are paid in full.

G. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board ~~shall may~~ shall discontinue investigation and processing of the application and ~~shall may~~ shall issue a final, written order denying the application.

H. The maximum fee for processing any application shall not exceed \$100,000, regardless of actual costs of supplemental investigations.

I. The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

J. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

K. Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[15.1.5.23 NMAC - Rp, 15.1.5.21 NMAC, 6/30/2016]

15.1.5.24 DISCLOSURE OF GAMING CONTRACTS:

A. An applicant or a licensee shall submit to the board copies of all written gaming contracts and summaries of all oral gaming contracts under which the contractor receives, directly or indirectly, any compensation

based on earnings, profits, receipts, or net take from gaming in the state. The board may review the contracts and require the applicant or licensee to modify the gaming contracts to conform to the provisions of the act or this title. Failure to modify the contracts as required by the board shall be grounds for denial of the application or for other action against the licensee.

B. Every person who is a party to any such contract with an applicant or a licensee shall provide any information requested by the board, including filing an application for finding of suitability, if requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, reputation, and all other information requested by the board.

C. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's gaming contract with any person who failed to provide the requested information.

[15.1.5.24 NMAC - Rp, 15.1.5.22 NMAC, 6/30/2016]

15.1.5.25 CONDITIONS OF APPROVAL OF APPLICATION: The approval of any application or renewal of licensure is subject to the following conditions and constitutes the following agreements by the licensee:

A. The licensee shall at all times make its gaming establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement.

B. The licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an affiliate, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its authorized representative, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or representative to examine such documents.

C. The licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the board.

D. With respect to new license applications, the licensee shall commence the activity approved by the board within 90 days after the date of approval by the board on the application. Failure to commence the approved activity voids the board's approval, and the licensee shall file a new application. The board, in its discretion, may waive the requirements of a new application. The licensee shall make written application for waiver to the board within 30 days of the date the board's action on the original application becomes void.

E. The licensee shall be responsible for all registration, taxation, and licensing imposed by the act or other state law upon the license, gaming machine, or associated equipment. Nothing in this subsection shall be construed as authorizing the imposition of any license fee or tax in contravention of Section 60-2E-39 of the act.

[15.1.5.25 NMAC - Rp, 15.1.5.23 NMAC, 6/30/2016]

15.1.5.26 GROUNDS FOR DENIAL OF APPLICATION; CONDITIONAL LICENSES:

A. The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including the background investigation;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of a civil judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to demonstrate adequate financing for the operation proposed in the application;

(9) failure to satisfy any requirement for application or to timely respond to any request by the board for additional information;

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction; or

(11) approval of the application would otherwise be contrary to New Mexico law or public policy.

B. The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on gaming activities permitted under the license, administrative fines, or such other terms as the board requires.

[15.1.5.26 NMAC - Rp, 15.1.5.24 NMAC, 6/30/2016]

15.1.5.27 RESTRICTION ON REAPPLICATION: Any applicant whose application has been denied or whose license has been permanently suspended, revoked, or subjected to other limiting action in any jurisdiction shall not reapply for licensing or approval by the board at any time.

[15.1.5.27 NMAC - Rp, 15.1.5.25 NMAC, 6/30/2016]

15.1.5.28 CHANGE IN NUMBER OF GAMING MACHINES; APPLICATION TO AMEND GAMING OPERATOR LICENSE: A gaming operator licensee shall not increase the number of gaming machines on, or remove a gaming machine from, the licensed premises without prior written approval from the board.

A. If the requested change is an increase in the number of gaming machines on the licensed premises, the applicant shall also submit, in accordance with this rule and with 15.1.18 NMAC, an application for gaming machine license or a registration form for each additional machine. The licensee also shall submit a detailed diagram of the licensed premises showing the proposed location of all gaming machines.

B. If the requested change is a reduction in the number of machines due to the sale, transfer or disposal of one or more machines, the applicant shall ensure that such sale, transfer, or disposal is made in accordance with the procedures set forth in 15.1.16 NMAC.

[15.1.5.28 NMAC - Rp, 15.1.5.26 NMAC, 6/30/2016]

15.1.5.29 REGISTRATION OF NONPUBLICLY TRADED HOLDING AND INTERMEDIARY COMPANIES:

A. If a company applicant or company licensee is or becomes a subsidiary, each non-publicly traded holding company or intermediary company with respect to the subsidiary company shall:

(1) qualify to do business in the state of New Mexico; and

(2) register with the board.

B. Registration shall be accomplished by notifying the board in writing of the registrant's status as a nonpublicly traded holding or intermediary company, specifically identifying the company applicant or licensee that is the registrant's subsidiary and specifically describing the relationship between the registrant and the company applicant or licensee, and providing to the board all information required by Paragraph (2) of Subsection A of Section 60-2E-21 of the act.

C. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

D. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection C of 15.1.5.29 NMAC, it is unlawful for the unsuitable person to:

(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

E. A holding company or intermediary company subject to the provisions of Subsection A of 15.1.5.29 NMAC shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

F. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 of the Gaming Control Act.
[15.1.5.29 NMAC - Rp, 15.1.5.27 NMAC, 6/30/2016]

HISTORY OF 15.1.5 NMAC:

Pre NMAC History: None.

History of Repealed Material:

15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, filed 3-16-00 - Repealed effective 6/30/2016.

Other History:

15 NMAC 1.5, Application for Licensure Under the Gaming Control Act, effective 11/30/1998.

15 NMAC 1.5, Application for Licensure Under the Gaming Control Act (filed 11/13/1998) reformatted, renumbered, amended and replaced by 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, effective, 03/31/2000.

15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, (filed 3/16/2000) was repealed and replaced by 15.1.5 NMAC, Application for Licensure Under the Gaming Control Act, effective 6/30/2016.