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**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 1                    GENERAL PROVISION**

**15.4.1.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.1.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.1.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The New Mexico Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.1.4                    DURATION:** Permanent.

**15.4.1.5                    EFFECTIVE DATE:** PUBLICATION DATE, unless a later date is cited at the end of a section.

**15.4.1.6                    OBJECTIVE:** This rule establishes definitions of terms used in this Chapter, clarifies the role of the New Mexico Gaming Control Board in promulgating regulations and establishes the scope and severability of such rules.

**15.4.1.7                    ADOPTION, AMENDMENT AND REPEAL:** The New Mexico Gaming Control Board is authorized to adopt regulations pursuant to the New Mexico Bingo and Raffle Act, Sections 60-2F-1 through 60-2F-26 NMSA 1978. From time to time as the board deems necessary, the board will adopt, amend and repeal such regulations, consistent with the policy, objectives, and purposes of the New Mexico Bingo and Raffle Act.

**15.4.1.8 CONSTRUCTION:** Nothing contained in Title 15, Chapter 4 will be construed so as to conflict with any provision of the New Mexico Bingo and Raffle Act or any other applicable statute.

**15.4.1.9 SEVERABILITY:** The sections and subsections of the parts in Chapter 4 of Title 15 promulgated by the board are deemed severable. If any section or subsection is found invalid, unconstitutional, or otherwise contrary to the laws of New Mexico by opinion of a court of competent jurisdiction or by legislative enactment, the opinion or enactment will invalidate only that particular section or subsection. All other provisions of Title 15, Chapter 4 will remain in full force and effect.

**15.4.1.10 DEFINITIONS:** Unless otherwise defined below, terms used in this Chapter have the same meanings as set forth in the New Mexico Bingo and Raffle Act. The definitions set forth below shall be applicable to all Parts of this Chapter.

- A. **“Act”** means the New Mexico Bingo and Raffle Act;
- B. **“Agent”** means any member or employee of the New Mexico Gaming Control Board or any other person authorized to act on the board’s behalf;
- C. **“Appellant”** means a person aggrieved by an action of the New Mexico Gaming Control Board, who files a request for hearing before the board;
- D. **“Appellee”** means the New Mexico Gaming Control Board, its agents or its representatives;
- E. **“Applicant”** means a person who has applied for a license or approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Act;
- F. **“Approved record”** means those records required by the Act, or regulations promulgated there under which shall be maintained on forms prescribed by the New Mexico Gaming Control Board;
- G. **“Alternate bingo manager”** means an assistant to the bingo manager licensed by the board who assumes overall responsibility for supervising and managing the operation of games of chance in the bingo manager’s absence;

H. **“Audit”** means an examination of an applicant’s or licensee’s accounting records, financial situation, and business practices to determine compliance with generally accepted auditing standards, state law, or rules adopted by the New Mexico Gaming Control Board;

I. **“Auxiliary”** means an organization that has a qualified affiliation with a licensee in accordance with a national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary organization;

J. **“Bingo”** means a game of chance in which each player has one or more cards printed with twenty-four (24) different numbers between the numbers one (1) and seventy-five (75) and one (1) “free space” on which to place markers when the respective numbers are randomly drawn and announced by a caller;

K. **“Change fund”** means the cash given to each bingo worker to use for making change;

L. **“Completed application”** means that the application has been entirely filled in, the appropriate fee is attached, additional documentation requested is provided and signatures with proper notary are included;

M. **“Deal”** means a predetermined pool of pull-tabs with the same serial number and a predetermined number of winners;

N. **“Door-Prize”** means a promotional drawing where no additional consideration is charged for the chance to play;

O. **“Electronic Transfer”** means transactions initiated through a financial institution which include ATM transactions, direct deposits, withdrawals or point-of-sale transactions;

P. **“Employee”** means a person, paid or volunteer, connected directly with a game of chance but does not include nongaming personnel such as bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages; secretarial or janitorial personnel; or stage, sound and light technicians;

Q. **“Executive director”** means the chief administrative officer appointed by the board;

R. **“Extra cards”** means other cards sold at the door along with the master card. These cards are controlled by a separate color or size and serial number from the master card. This does not include special cards;

S. **“Fee”** includes all license, approval, investigative costs, taxes and fines imposed by the board;

T. **“Game of Chance”** means an event in which payment for participation is required, a winner or winners are identified by an act of fate and prizes are awarded to the winners;

U. **“Hard cards”** means a reusable bingo card;

V. **“House Rules”** means rules established by each licensee for items not covered by the Act, or regulations promulgated under the Act or other provisions of law;

W. **“Hybrid game”** is a game of chance played using pull-tabs from a deal that has more than five (5) instant winners with the prizes equal or greater than the price of one (1) pull-tab per one hundred-fifty (150) pull-tabs and the non instant winners are selected using a bingo blower. This game is commonly referred to as “Lighting” but may have other names;

X. **“Legal premise”** means the place known as the administrative office of the licensee;

Y. **“Licensed premises”** means the area that has been approved to conduct games of chance;

Z. **“Licensee”** means a person to whom a valid license, including a staff permit, has been issued;

AA. **“Master board”** means the tray with five (5) rows and fifteen (15) columns that holds bingo balls removed from the hopper in spaces specifically designated for each ball. This is the official score board for a bingo game;

BB. **“Master card”** means the main bingo card in use for the occasion that each player is required to have in their possession to play bingo. This is sometimes referred to as the door or admission card. This card is usually controlled by using only one color or size card;

CC. **“Permittee”** means the bingo manager, alternate bingo manager and caller;

DD. **“Person”** means a legal entity or individual;

EE. **“Petitioner”** means the board or the board’s representative;

FF. **“Premises”** means the land together with all building’s improvements and personal property located on the land;

GG. **“Promotional games”** means all bingo games, raffle tickets and pull-tabs that are awarded as a door prize, bingo prize, pull-tab prize or a free or reduced priced game, offered to any player for any reason;

HH. **“Records”** mean inventory records, bank records, accounting records, receipts, invoices, deposits, employee logs, payroll, taxes, bingo and occasion documentation, and any other document that is required under the current rules and the Act;

II. **“Respondent”** means a licensee or person to which an approval has been granted and who is the subject of a complaint issued by the board;

JJ. **“Special card”** means a card used for a specific game or games which is controlled by a separate color, serial number and manufacturer’s identification number;

KK. **“Staff permit badge”** means a hard plastic card issued by the board with the licensee’s name, expiration date and photograph;

LL. **“State”** means the state of New Mexico;

MM. **“Variance”** means a temporary exemption from a specific part or subpart of Title 15, Chapter 4, not to exceed the date of renewal of a license;

NN. **“Vendor”** means distributors and manufacturers of “equipment” as defined in the Act;

#### **15.4.1.11 TELEPHONE CONFERENCES:**

A. In all cases where it is possible, board members shall attend public meetings of the board in person.

B. A member of the board may participate in a meeting of the board by means of a conference telephone when it is difficult or impossible for the member to attend the meeting in person, provided:

(1) each member participating by conference telephone can be and is identified when speaking;

(2) all participants in the telephone conference are able to hear each other at the same time; and

(3) members of the public who are attending the meeting are able to hear any member of the board who speaks during the meeting.

C. Whenever circumstances justifying participation by telephone conference arise, the board member requiring the telephone conference shall notify board staff as early in advance of the meeting as possible so that arrangements can be made to set up and operate necessary conference telephone equipment.

**15.4.1.12 RETENTION OF RECORDS:** Licensee shall maintain and keep safe the books and records necessary to substantiate the particulars of all reports submitted to the board or required by the Act or this Title for a period of three (3) years on the legal premise.

**HISTORY OF 15.4.1 NMAC:**

DRAFT

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**

**CHAPTER 4                BINGO AND RAFFLES**

**PART 2                    APPLICATION FOR LICENSURE**

**15.4.2.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.2.2                    SCOPE:** This rule applies to all licensees or applicants for licensure, or other approval under the New Mexico Bingo and Raffle Act.

**15.4.2.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The New Mexico Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.2.4                    DURATION:** Permanent.

**15.4.2.5                    EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.2.6                    OBJECTIVE:** This rule establishes standards and requirements for licensure and other approvals under the New Mexico Bingo and Raffle Act.

**15.4.2.7                    DEFINITIONS:** [Reserved]

**15.4.2.8                    NATURE OF LICENSE AND APPLICATION REQUEST:**

A.     Any license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

B. Any application for a license or other approval 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 or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

D. By applying for and obtaining any license or other approval from the board, the applicant agrees to abide by all provisions of the Act, the regulations promulgated pursuant to the Act and all other applicable laws.

E. By applying for a license 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.

**15.4.2.9 LICENSE CLASSIFICATIONS:**

A. Licenses include:

(1) manufacturer's license, which authorizes the approved licensee to manufacture, produce, or sell to licensed distributors or licensed qualified organizations, any equipment or supplies for the conduct of games of chance in the state or for sale outside the state in accordance with the Act and board rules;

(2) distributor's license, which authorizes the approved licensee to buy, sell, distribute or market any equipment or supplies for the conduct of games of chance in the state or outside the state in accordance with the Act and board rules; and

(3) and bingo and raffle operator's license, which authorizes a qualified organization to acquire equipment and supplies for the conduct of games of chance and to conduct games of chance on the licensed premises.

B. Other approvals include:

(1) staff permit, which authorizes the participation of the holder in the conduct of games of chance; staff permit for bingo caller, bingo manager, alternate bingo manager, and any other position deemed necessary by the board;

(2) approval and classification of games of chance as either bingo, raffle, or pull-tabs; and

(3) approval to amend a license to show a change in the name and address of the permittees of the licensee under whom the games of chance shall be held. Should there be any change to the permittees listed on the license; the licensee shall be responsible for submitting the proper documentation within ten (10) days.

**15.4.2.10 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 prescribed by the board and shall contain such information and documents as specified.

B. The applicant shall file with the application all requested information requested by the board. The application requires full disclosure of all information requested therein. The failure to provide all required and/or requested information may result in denial or delay in consideration of the application.

C. Upon request of the board, the applicant shall provide any additional information. 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 thirty (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 the applicant can show good cause.

D. All information required to be included in a renewal 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 submitted to the board in the renewal application, the applicant shall file, within five (5) 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.

E. The application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

F. At the board's discretion an applicant may be required to submit to a background investigation.

G. Neither the State, the board, or 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.

H. The applicant shall cooperate fully with the board and its agents 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 may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

I. The board may deny the application of any applicant that refuses or fails to provide any information requested by the board, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determines is necessary to evaluate the qualifications for a suitability of the applicant.

J. All new applications submitted to the board shall be completed within thirty (30) days of the initial submission 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.

K. 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.

L. 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.

M. 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.

**15.4.2.11 REQUIREMENTS FOR DISCLOSURE IN APPLICATION;**

**CONTENTS OF APPLICATION:** The applicant for a bingo and raffle operator's license shall submit with the application a proposed plan for the conduct of games of chance. Failure to include any of the following shall constitute an incomplete application. The plan shall include the following:

- A. a physical address where games of chance will be conducted, mailing and physical address of the administrative office where all documentation for games of chance are kept;
- B. a floor plan;
- C. a copy of the applicant's current charter, articles of incorporation, bylaws, or rules that establish membership requirements;
- D. evidence of good standing with the Public Regulation Commission, parent organization, and the Attorney General's office if applicable;
- E. a description of the specific games of chance that the licensee will conduct;
- F. a payout schedule of the games of chance. If the applicant chooses to award prizes contingent on the number of patrons who play, separate payout schedules shall be submitted to the board in addition to announcing and posting the time of the attendance count. The attendance count shall be conducted ten (10) minutes prior to the start of each occasion. Only schedules submitted to the board shall be used to pay prizes. Issuance of the license constitutes approval of the payout schedule;
- G. the days and times of each occasion where games of chance are held;
- H. the house rules;
- I. the name, address of the in-state financial institution where a bingo operating account has been set up and into which all the receipts from games of chance will be deposited;
- J. bank signature card with the signatures and all names of all authorized signors on the bingo operating account;
- K. a copy of any contract to lease the licensed premises or bingo equipment from a lessor or distributor; and
- L. any other information requested by the board.

**15.4.2.12 ORGANIZATION AND MEMBERSHIP REQUIREMENTS FOR QUALIFIED ORGANIZATIONS:**

- A. Only active members of a Bingo and Raffle licensee shall be issued bingo manager and alternate bingo manager staff permits.
- B. Callers are not required to be a member of the licensed organization.

**15.4.2.13 APPLICATION FOR STAFF PERMIT:**

- A. An organization with a bingo and raffle license shall designate only one (1) bingo manager, but may designate any number of alternate bingo managers and bingo callers.
- B. Applicants shall submit:
  - (1) completed staff permit application;
  - (2) application fee;
  - (3) signed and notarized authorization for a background investigation; and
  - (4) self disclosure form.
- C. Applicant shall not have a warrant for their arrest in any county or jurisdiction in New Mexico or any other state or province.
- D. Each applicant shall submit a current photograph with each initial and renewal application. The photographs shall have been taken no earlier than three (3) months before the date the application was filed.
- E. A staff permit badge issued to a bingo manager, alternate manager or caller shall indicate the permittee's name, universal staff permit number, and expiration date.
- F. A staff permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished their photograph to the board.
- G. Applicants or permittees who intend to utilize their approval at a licensed venue not currently designated on the initial application shall submit notice to the board in writing prior to beginning new employment. Additionally this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.
- H. An initial application shall be reviewed, granted or denied and responded to by the board's staff within sixty (60) days of receipt of completed application.

I. All permits are valid for three (3) years from the date of issuance.

J. Bingo managers and alternate bingo managers may work at other licensed organizations but shall be active members in good standing with each of the licensed organizations.

**15.4.2.14 APPLICATION FOR MANUFACTURER'S OR DISTRIBUTOR'S LICENSE:**

A. A person shall apply for and obtain a manufacturer's or distributor's license prior to engaging in the manufacture or distribution of equipment or supplies used in the conduct of games of chance.

B. Applicants shall submit a form prescribed by the board to include the vendor's name, address, contact information, federal and state tax identification numbers, evidence of good standing with the Public Regulation Commission, all license numbers required to conduct business in New Mexico and a list of licensees with whom the applicant intends to conduct business.

C. Licenses shall be renewed every three (3) years. Any change of vendor information shall be reported in writing to the Licensing Division within ten (10) days of change.

D. Applications for manufacturer's or distributor's licenses shall be made, processed, and determined in the same manner as applications for other licenses as set forth in the Act and this rule.

**15.4.2.15 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) manufacturer's license, \$200;
- (2) distributor's license, \$200;
- (3) bingo and raffle operator's license, \$200; and
- (4) staff permit, \$50.

C. In addition to any nonrefundable license or approval fee paid, all bingo, raffle, and pull tab operators, manufacturers, and distributors shall pay supplementary investigative fees and costs, if any.

D. 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 not file any other application with the board until all such fees and costs are paid in full.

E. 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 discontinue investigation and processing of the application and shall issue a final, written order denying the application.

F. 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.

G. 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.

**15.4.2.16 CONDITIONS OF APPROVAL OF APPLICATION:** The approval of any application is subject to the following conditions and constitutes the following agreements by the licensee:

A. the licensee shall at all times make its bingo 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 account or preparer of the report, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its agents, the licensee shall authorize all third parties in possession or control of the requested documents to allow the board or its agents to examine such documents;

C. with respect to new license applications, the licensee shall commence the activity approved by the board within ninety (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 thirty (30) days of the date the board's action on the original application becomes void; and

D. the licensee shall be responsible for all registration, taxation, and licensing costs imposed by the Act or other state law.

**15.4.2.17 GROUNDS FOR DENIAL OF APPLICATION:**

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

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

(10) 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 bingo, raffle or pull-tab activities permitted under the license, administrative fines, or such other terms as the board requires.

**15.4.2.18 RESTRICTION FOR REAPPLYING:** Any applicant whose application has been denied or whose license has been suspended or revoked shall not reapply for licensing or approval by the board for the period of one (1) year.

**HISTORY OF 15.4.2 NMAC:**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**

**CHAPTER 4                BINGO AND RAFFLES**

**PART 3                    LICENSED PREMISES**

**15.4.3.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.3.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.3.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.3.4                    DURATION:** Permanent.

**15.4.3.5                    EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.3.6                    OBJECTIVE:** This rule establishes standards and requirements for premises on which licensed games of bingo, raffle and pull-tabs are operated by a licensee pursuant to the New Mexico Bingo and Raffle Act.

**15.4.3.7                    DEFINITIONS:** [Reserved]

**15.4.3.8                    SUITABILITY OF PREMISES:** The licensed premises shall meet the requirements of the Act and regulations promulgated under the Act.

A.     The proposed licensed premises shall comply with all zoning ordinance of the city or county and fire safety, health or building codes.

B. A licensee shall provide a secure area on the proposed licensed premises for funds, bingo cards, pull-tabs and raffle tickets.

**15.4.3.9 AREA OF LICENSED PREMISES; RESTRICTIONS:**

A. The licensed premises shall be clearly marked and no games of chance shall be permitted outside of the licensed premises.

B. No bingo operator's license shall encompass more than one (1) licensed premises.

C. Licensees allowing use of their licensed premises by a non-licensed organization as defined in 60-2F-4(Y) NMSA and 60-2F-26(B) NMSA in the conduct of bingo or raffle shall submit forms prescribed by the board.

D. Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises shall furnish the following information to the board within thirty (30) days of the effective date of the lease:

(1) the lessor's name and address;

(2) copy of the lease;

(3) statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and

(4) any other information requested by the board.

E. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application.

F. The licensee shall furnish to the board complete information pertaining to any change in any premises lease within thirty (30) days after the effective date of such change.

G. No licensee shall conduct any activity authorized under the Act, if the lease, rent, contract, or any other arrangements under which the right to use the premises requires rental or other payment to another, based on a percentage of receipts or profits derived from such licensed activities.

**15.4.3.10 TRANSFER OF LICENSE TO NEW PREMISES**

A. No license is transferable from the location shown on the physical license or listed in the original application without written notification to the board that shall include the

information required by the licensing division and payment of a nonrefundable fee of one hundred dollars (\$100).

B. Failure of the licensee to obtain the board's prior approval of the relocation of the license as issued under the Act may result in administrative action including but not limited to suspension, revocation, and fines to the licensee and bingo manager.

#### **HISTORY OF 15.4.3 NMAC**

DRAFT

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 4                    LICENSE AND STAFF PERMIT RENEWAL**

**15.4.4.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.4.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.4.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The New Mexico Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.4.4                    DURATION:** Permanent.

**15.4.4.5                    EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.4.6                    OBJECTIVE:** The objective of this rule is to establish standards for the annual renewal of licenses issued under the New Mexico Bingo and Raffle Act.

**15.4.4.7                    DEFINITIONS:** [Reserved]

**15.4.4.8                    NATURE OF LICENSE AND RENEWAL APPLICATION**

**REQUEST:**

A. Any renewed license or other approval issued by the board is deemed a revocable privilege. No person holding such a license or other approval is deemed to have any property rights therein.

B. Any application for a renewed license or other approval 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 renewal application for license or other approval from the board will constitute a request to the board for a decision on the applicant's general suitability, character, integrity, financial responsibility, and ability to engage in, or be associated with, the conduct of games of chance in New Mexico. By filing an application with the board, the applicant specifically consents to investigation to the extent deemed appropriate by the board.

D. By applying for and obtaining any renewed license or other approval from the board, the applicant agrees to abide by all provisions of the Act, the regulations promulgated pursuant to the Act and all other applicable laws.

E. By applying for a renewed license 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.

**15.4.4.9 RENEWAL APPLICATIONS, STATEMENTS, AND NOTICES –  
FORM AND GENERAL REQUIREMENTS:**

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

B. The applicant shall file with the renewal application all requested information requested by the board. The renewal application requires full disclosure of all information requested therein. The failure to provide all required and/or requested information may result in grounds for denial or suspension of approval.

C. Upon request of the board, the applicant shall provide any additional information. 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 thirty (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 renewal application unless good cause is shown.

D. All information required to be included in a renewal 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 submitted to the board in the renewal application, the applicant shall file, within five (5) 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.

E. The renewal application and any amendments shall be sworn to or affirmed by the applicant before a notary public.

F. At the board's discretion an applicant may be required to submit to a background investigation.

G. Neither the State, the board, or 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.

H. The applicant shall cooperate fully with the board and its agents 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 may examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

I. The board shall deny the renewal application of any applicant that refuses or fails to provide any information requested by the board, provides incomplete or false information, or refuses to submit to a background investigation to the extent the board determines is necessary to evaluate the qualifications for a suitability of the applicant.

J. All renewal applications submitted to the board shall be completed within thirty (30) days of initial submission of the renewal 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.

K. 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 renewal application with respect to the time requirements for action on the application.

L. An amendment to a renewal 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.

M. An applicant may file a written request for withdrawal of the renewal application at any time prior to final action on the application by the board.

**15.4.4.10 REQUIREMENTS FOR DISCLOSURE IN RENEWAL OF**

**LICENSE ISSUED; CONTENTS OF RENEWAL APPLICATION:** The renewal of a bingo and raffle operator's license shall be filed with the board not less than sixty (60) days prior to the expiration date. The licensee shall submit with the renewal application a proposed plan for the conduct of all games of chance. The plan shall include the following:

- A. a physical address where games of chance will be conducted as well as the mailing and physical address of the administrative office where all documentation for games of chance is kept;
- B. a copy of the licensee's amended bylaws if applicable;
- C. evidence of good standing with the Public Regulation Commission, parent organization, and the Attorney General's office if applicable;
- D. a description of the specific games of chance the licensee will conduct;
- E. a payout schedule of the games of chance. If the applicant chooses to award prizes contingent on the number of patrons who play, separate payout schedules shall be submitted to the board in addition to announcing and posting the time of the attendance count. The attendance count shall be conducted ten (10) minutes prior to the start of each occasion. Only schedules approved by the board shall be used to pay prizes. Approval of the payout schedules as provided shall be the issuance of the license;
- F. the days and times of each occasion where games of chance are held;
- G. the house rules;
- H. the name, address of the in-state financial institution where a bingo operating account has been set up and into which all the receipts from games of chance will be deposited;
- I. bank signature card with the signatures and names of all authorized signors on the bingo operating account;

J. if the applicant has entered into a contract to lease the licensed premises or bingo equipment from a lessor or distributor, a copy of the contract shall be included with the application; and

K. any other information requested by the board.

**15.4.4.11 DENIAL OR DELAY IN LICENSURE:**

A. The board may deny or delay an application for renewal if:

(1) the applicant is delinquent in the payment of any installment of the bingo tax or of any other fees, fines, costs, or penalties imposed by the state;

(2) the application is incomplete;

(3) the quarterly reports are not current; or

(4) other reasons deemed necessary by the board.

B. If the application is not properly verified or not fully, accurately and truthfully complete, any existing license may be suspended until the default has been corrected. A one hundred (\$100) fee shall be assessed.

C. The renewal application acceptance date shall not alter the anniversary date. Should the license be issued after the anniversary date as a result of a late or incomplete application, the licensee shall expire on the original anniversary date.

**15.4.4.12 RENEWAL OF STAFF PERMIT ISSUED:** Staff permits issued by the Act expire three (3) years from the date of issuance of the permit and are subject to renewal in accordance to the Act and this rule. A complete application for renewal of the staff permit shall be filed with the board at least ten (10) days prior to the date of expiration. The renewal application shall be submitted on forms prescribed by the board.

A. Applicants shall submit:

(1) a completed staff permit renewal application;

(2) application fee;

(3) signed and notarized authorization for a background investigation; and

(4) self disclosure form.

B. Permittees shall not have a warrant for their arrest in any county or jurisdiction in New Mexico or any other state or province.

C. Permittees shall submit a current photograph with each renewal application. The photographs shall have been taken no earlier than three (3) months before the renewal application was filed.

D. Permittees who intend to use their staff permit at a licensed venue not currently designated on the initial or previous renewal applications shall submit notice to the board in writing prior to beginning new employment. Additionally, this notification shall clearly specify whether the new employment is in addition to or substitute for the current employment. This shall be done on forms prescribed by the board.

**15.4.4.13 RENEWAL FEES:**

A. Renewal fees are as follows:

- (1) Manufacturer, \$200;
- (2) Distributor, \$200;
- (3) Bingo Operator, \$200;
- (4) Staff Permit, \$50; and

B. Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

**15.4.4.14 LATE RENEWAL OF LICENSE:**

A. The board may, in its discretion, accept and process a renewal application filed after the deadline established in section 15.4.14.7 above. Any such application, however, shall be subject to a late renewal fee of one hundred (\$100) dollars with an additional fee of ten dollars (\$10) per day up to thirty (30) days.

B. If the licensee fails to renew within the required amount of time, any application received up to one year after the expiration date may be considered a renewal application. All applicable late fees shall be paid upon submission of the renewal application. The licensee shall maintain the original anniversary date as stated in Section 15.4.4.8(H) of this rule. Upon showing of good cause, the applicant may submit an initial application and have any late fees waived.

**15.4.4.15 LATE RENEWAL OF A STAFF PERMIT:** If the permittee fails to submit the complete application and all fees within the required amount of time, a twenty dollar (\$20) late fee shall be assessed.

**15.4.4.16 MANDATORY CESSATION OF BINGO, RAFFLE AND PULL-TAB ACTIVITY:** No licensee shall engage in any games of chance unless the licensee has received a renewed license from the board. Any licensee that fails to renew its license as required by the Act and this rule shall cease the games of chance authorized by the license on the date the license expires. Any person engaging in any games of chance without a renewed license may be subject to criminal sanctions.

**HISTORY OF 15.4.4 NMAC**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 5                    OPERATING PROCEDURE STANDARDS**

**15.4.5.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.5.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978] by the New Mexico Gaming Control Board.

**15.4.5.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The board shall implement the state's policy on games of chance consistent with the provisions of the Act. It shall fulfill all duties assigned to it pursuant to the Act, and it shall have the authority necessary to carry out those duties.

**15.4.5.4                    DURATION:** Permanent.

**15.4.5.5                    EFFECTIVE DATE:** PUBLICATION DATE, unless a later date is cited at the end of a section.

**15.4.5.6                    OBJECTIVE:** This rule establishes requirements for operating procedures by bingo operator licensees.

**15.4.5.7                    DEFINITIONS:** [Reserved]

**15.4.5.8                    GENERAL DUTIES:**

A.     It is the responsibility of every licensee to be informed of the content of the Act, rules promulgated under the Act, and all amendments to either. Lack of knowledge of the Act, rules, or amendments thereto shall not be an excuse or defense for any violations.

B.     A licensee shall maintain all records required by the board in accordance with rule.

C. A licensee shall provide immediate access to all records and premises of the licensee for inspection at the request of the board, the special investigations division of the department of public safety and other law enforcement agencies.

D. A licensee shall keep current all payments and obligations to the licensing authority, suppliers and distributors of gaming equipment, lessors of premises, and tax payments to the taxation and revenue department.

E. A licensee shall not extend credit to a player to play in any game of chance.

F. A licensee shall not enter into any agreement with providers of equipment or services, including lessors of premises, which imposes restrictions on the licensee with respect to the use of net proceeds.

G. A licensee shall not purchase gaming supplies from an unlicensed distributor or manufacturer.

#### **15.4.5.9 METHODS OF OPERATION:**

A. All licensed premises shall be operated in a manner consistent with the Act, and the rules promulgated there under.

B. All licensees shall conduct all games of chance in a manner that does not pose a threat to the public health, safety and welfare of the citizens of New Mexico or reflect adversely on the security or integrity of charitable gaming.

C. It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy. Willful or persistent use of methods of operation deemed unsuitable, or failure of the licensee to use suitable methods, shall constitute grounds for revocation of the license and imposition of a fine or other disciplinary action by the board.

**15.4.5.10 UNSUITABLE METHODS OF OPERATION:** Any activity by any licensee or employee 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. 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;

- B. employing any person required to hold a staff permit who has been denied a staff permit, or who has failed to or refused to apply for a staff permit;
- C. failing to comply with all federal, state and local laws and regulations governing the operations of games of chance, including without limitation the payment of all fees and taxes;
- D. denying the board or its agents or other authorized persons access to a licensed premise or records;
- E. misrepresentation of any material fact or information to the board;
- F. obstructing or impeding the activities of the board or its agents;
- G. conducting or permitting the conduct, knowingly or unknowingly, of any game of chance other than that allowed pursuant to the Act;
- H. knowingly or unknowingly permitting the conduct of games of chance by any other entity at a location or premises at the time, regardless of the division or separation of rooms within the building, hall, or enclosure;
- I. failing to require employees to wear staff permits;
- J. employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license;
- K. failing to immediately award prize(s) to winning patrons;
- L. failing to adhere to and enforce house rules;
- M. allowing any of its members operating any licensed activity to directly or indirectly in the course of such operations;
  - (1) employ any device, scheme or artifice to defraud or deceive,
  - (2) make any untrue or misleading statement, or
  - (3) engage in any act, practice or course of operation that would operate as a fraud or deceit upon any person, and
- N. otherwise failing to conduct games of chance in accordance with the Act or this title.

**15.4.5.11 REPORTS OF VIOLATIONS:**

- A. Any licensee or permittee 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 or rules promulgated under the Act, or of any other local, state or federal law on the licensed premises or related to the licensed operation.

B. Each licensee shall immediately by telephone and in writing report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any game of chance offered for play, or used for any other gaming purpose within the state by such licensee. Any 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.

**15.4.5.12 PAYMENT OF WINNINGS:**

A. Upon determining a winner, the licensee shall remove the merchandise prize won immediately from display and it shall be presented to the winner. Cash prizes shall be awarded immediately.

B. Licensees offering any merchandise as a prize shall have documented proof of ownership of said item, free from any and all liens, mortgages and encumbrances prior to the sale of any bingo cards, raffle tickets or pull-tabs. This documented evidence of ownership shall be made available to the either the board or the New Mexico department of public safety upon demand.

**15.4.5.13 PATRON DISPUTES:**

A. Unresolved patron complaints shall be reported to the board's enforcement division by telephone and in writing on a form prescribed by the board within seventy-two (72) hours.

B. In the event a dispute arises with a patron concerning payment of alleged winnings, the licensee shall notify the patron in writing, at the time of the dispute, that the patron has a right to contact the board regarding the dispute.

**15.4.5.14 POSSESSION AND VERIFICATION OF STAFF PERMITS:**

A. Every permittee shall wear a valid staff permit badge that is easily visible at all times when engaged in the conduct of games of chance.

B. Refusal or failure to wear the staff permit badge as required in this rule shall be grounds for disciplinary action.

C. If a permittee's badge is lost or stolen, the permittee shall notify the board immediately and purchase a replacement badge.

**15.4.5.15 EMPLOYEE CONDUCT:** No employee may accept any type of gift, percentage of winnings, money or a thing of value from any player or any person associated with a player in exchange for influencing the outcome of a game of chance.

**15.4.5.16 SECURITY:**

A. Licensees shall implement and maintain security measures that shall ensure safe and honest operation of the bingo establishment.

B. The licensee shall identify paid security personnel, if any, by badge or uniform while games of chance are being conducted. These personnel shall not be permitted by the licensee to play or to participate in the conduct of games of chance.

**15.4.5.17 HOUSE RULES:**

A. A licensee shall establish house rules applicable to the conduct of games of chance as long as the rules do not conflict with the Act or this Title. Before any licensee enacts, adopts or modifies 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.

C. Houses rules shall be posted inside and near all entrances to the licensed premise.

D. Postings shall have at the top "HOUSE RULE" in a minimum twenty-four (24) point non-cursive font followed by the rules in a fourteen (14) point non-cursive font.

E. At a minimum house rules shall address the following:

- (1) temporary suspension of bingo occasion or game;
- (2) temporary adjustments of bingo prizes;
- (3) who must hear "bingo" called to stop the game;

- (4) bingo splits;
- (5) check cashing policy;
- (6) age requirements;
- (7) smoking;
- (8) reserving seats;
- (9) promotional games; and
- (10) tipping

**15.4.5.18 FORMS:** The board may prescribe all forms called for or required by the Act or this Title, and all filings with the board shall be accompanied by such affidavits, documents, and other supporting data as the board requires.

**15.4.5.19 RESPONSIBILITY TO POST AND HAVE IN ITS POSSESSION CERTAIN MATERIAL:**

A. A copy of the Act and Title 15, Chapter 4 of the NMAC in their entirety shall be present during the conducting of all games of chance.

B. The licensee shall post a notice in a minimum twenty-four (24) point non-cursive font in two (2) or more conspicuous places stating that copies of the Act and rules promulgated there under, and the house rules may be obtained from the bingo manager for any player to read.

**15.4.5.20 DISPLAY OF LICENSEE'S NAME:**

A. Licensees shall clearly display the name of the organization holding a bingo game in an area adjacent to the caller. The name shall be in letters at least six (6) inches high.

B. The name displayed shall be the name of the organization licensed to conduct the bingo game followed by the word "Bingo" or "Raffle".

C. The licensee shall not assume or display any other trade or fictitious name within or without the building.

D. If the premises are rented or used by more than one (1) organization, only the organization playing at that time and date will display its license.

**15.4.5.21 INSPECTION OF PREMISES, RECORDS, MACHINES & DEVICES:**

A. An agent may enter a licensee's premises without advance notice. During bingo occasions, a space shall be left behind players and between tables to allow the agent to walk down each row of tables and inspect bingo cards in play.

B. An agent may perform all or any of the following:

(1) make a count of all monies received during the operation of the licensed activities in the premises, inspect income received by the licensee and inspect records of prizes paid out;

(2) examine and copy any of the other bingo and raffle records of the licensee;

(3) examine all pieces of equipment or parts thereof, or devices of any nature which are being used to conduct the licensed activities and to require the licensee to dismantle equipment, if necessary, except during operation of a game; and

(4) Perform such other inspections as the agent deems necessary to insure compliance with the Act or rule.

**15.4.5.22 DISCLOSURE OF PRIZES DURING GAMES OF CHANCE:**

A. The licensee shall clearly and audibly disclose full information before each game concerning the number of prizes to be awarded, whether the prizes are awarded in cash or merchandise, and the cash value and the method by which such prizes may be awarded, including the cost of playing.

B. Prizes or prize money offered shall be communicated to all players thirty (30) minutes prior to the start of a game and cannot be altered.

**15.4.5.23 DOOR PRIZES:** The value of a door prize shall not exceed \$1,000.

**15.4.5.24 PROMOTIONAL GAMES OF CHANCE:** Free and discounted games of chance may be awarded to players when:

A. house rules describe how these games of chance are awarded;

B. no employee or members of employee's household are permitted to participate;

C. method of award is equitable and non-discriminatory;

D. the following information is collected, recorded and retained in accordance with the records retention requirements;

- (1) name, address and phone number of player receiving the promotional game,
- (2) the date and occasion the promotional game was played, and
- (3) the dollar value of the promotional game,

E. all promotional games awarded are subject to the bingo tax; and

F. licensee shall compute the bingo tax using the full price of a non-promotional game and not the free or reduced price.

**15.4.5.25 EMPLOYEE TERMINATION; SURRENDER AND CANCELLATION STAFF PERMIT:**

A. A permittee who is not employed by at least one (1) licensee shall surrender their staff permit badge to the board within ten (10) days.

B. Licensee shall notify the board, in writing, of a permittee termination within ten (10) days.

C. A staff permit expires if the permittee is not employed in a permitted position for a period greater than ninety (90) days.

D. Licensee shall notify the board, in writing when a permittee is not employed in a permitted position for a period greater than ninety (90) days.

**15.4.5.26 TEMPORARY CESSATION OF GAMES OF CHANCE:**

A. The licensee shall contact the board in writing prior to the suspension of one (1) or more bingo or pull tab occasions. In the event there is an emergency and prior notice can not be given, the licensee shall advise the board within three (3) business days.

B. If bingo or pull tab operations can not resume on the next scheduled occasion, the licensee shall notify the board in writing and include the dates and times of the occasions not being conducted and the reason for the closure.

C. If the suspension of occasions is more than thirty (30) days, the licensee shall notify the board in writing and include the length of the suspension, the reason for suspension, and the date the regular schedule of occasions will begin.

**15.4.5.27 CESSATION OF GAMES OF CHANCE; SURRENDER AND CANCELLATION OF LICENSE:**

A. The licensees shall notify the department of taxation and revenue of cessation of bingo and raffle activities in writing.

B. The licensee seeking to cease operations shall submit a form prescribed by the board to include the licensee's name, license number and the names of all permittees with badge numbers, and the type of property/venue to the board's licensing division no later than ten (10) days from the final occasion.

C. The licensee shall surrender all licenses issued by the board to the board's licensing division no later than ten (10) days from the final occasion.

D. All reporting requirements apply to the final quarterly report.

E. The licensee shall submit the final quarterly bingo and raffle activity reports on the prescribed quarterly report forms no later than forty-five (45) days from the final occasion conducted.

F. All monies in the bingo operating account shall be fully distributed and checks cleared no later than the forty-five (45) days from the last occasion. The bingo operating account balance should be zero. Proof of a zero balance in the bingo operating account and the closing of that account shall be sent to the board's audit and compliance division.

G. The ceasing of bingo activities does not relieve the bingo operator licensee of its obligations to pay any tax, fees or costs due or to submit any report or information required as a result of engaging in games of chance.

H. The board may take disciplinary action against any licensee that ceases games of chance activities without notice to the board, including revoking the license, imposing a fine, or both.

**HISTORY OF 15.4.5**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 6                    EQUIPMENT; BINGO, RAFFLE, PULL-TABS**

**15.4.6.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.6.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.6.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The New Mexico Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.6.4                    DURATION:** Permanent.

**15.4.6.5                    EFFECTIVE DATE:** PUBLICATION DATE, unless a later date is cited at the end of a section.

**15.4.6.6                    OBJECTIVE:** This rule establishes standards for the evaluation, testing, approval, modification, maintenance, and disposition of bingo, raffle and pull-tab equipment.

**15.4.6.7                    DEFINITIONS:** [Reserved]

**15.4.6.8                    BINGO EQUIPMENT:**

A. Authorized equipment and cards, including all bingo related items used in the conduct of bingo, shall be maintained in good repair and sound working condition. The board or its agents may order that any equipment, cards or related items immediately be repaired or replaced, if after examination, they are found to be defective.

B. All seventy-five (75) balls of equal weight and diameter shall be present for bingo games and free of creases, holes or other damage.

C. The master board is the only official scorer. A lighted display board may be used, but it is not official.

D. Disposable bingo cards shall be used in all bingo games, including specials. Each pack of disposable cards used shall be consecutively numbered from the first card to the last and each card shall contain, on its face, both its individual consecutive serial number and the identification number assigned by the manufacturer.

E. Use of hard cards is prohibited.

#### **15.4.6.9 RAFFLE TICKETS:**

A. Raffle ticket requirements:

(1) all tickets sold in any raffle shall have the state license number, the word "Raffle" and the date, time, and place of drawing printed on each ticket;

(2) all tickets shall be consecutively numbered;

(3) all major cash or merchandise prizes conspicuously printed on the ticket; and

(4) the cost of each ticket shall be printed on the front of each ticket.

B. If the ticket holder is required to be present at the drawing to be eligible for the prize, a statement setting forth this condition shall be conspicuously printed on each ticket and on all promotional material concerning the raffle.

C. When a prize exceeds \$75,000 licensee shall submit a valid copy of a raffle ticket to the board prior to selling any tickets.

#### **15.4.6.10 PULL-TAB EQUIPMENT:**

A. No licensee shall permit the display or operation of any pull-tabs which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner which may deceive the public.

B. Electronic and video pull-tab machines are prohibited.

C. Pull-tab dispensers shall be maintained in good repair and sound working condition.

D. All pull-tabs in a deal shall be sold at the same price.

- E. A deal shall not exceed 25,000 tickets.

**15.4.6.11 DISALLOWANCE OF BINGO, RAFFLE AND PULL-TAB EQUIPMENT:**

- A. The board may disallow the use of bingo, raffle or pull-tab equipment thereto when in the interest of the public.
- B. The board shall advise the manufacturer or distributor of the disallowed equipment of the date on which use of the disallowed equipment shall cease.
- C. The board shall advise the licensees or applicants of the date on which the use of the disallowed equipment shall cease.
- D. A licensee shall cease using the disallowed equipment by the date established by the board.
- E. Licensee shall not modify equipment without prior written approval of the board.

**15.4.6.12 LOSS, THEFT, MECHANICAL FAILURE, INOPERATION, DESTRUCTION OR MALFUNCTION:** The bingo manager shall report to the enforcement division each instance that a pull-tab dispensing machine in play malfunctions and each instance when play is disrupted or ceases operation regardless of the reason or length of time of disruption or malfunction or whether or not there is a monetary loss.

**HISTORY OF 15.4.6**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 7                    CONDUCT OF BINGO**

**15.4.7.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.7.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.7.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The New Mexico Gaming Control Board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978]. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

**15.4.7.4                    DURATION:** Permanent.

**15.4.7.5                    EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.7.6                    OBJECTIVE:** This rule establishes the conduct of bingo authorized by the New Mexico Bingo and Raffle Act

**15.4.7.7                    DEFINITIONS:** [Reserved]

**15.4.7.8                    BINGO GAME CONTROLS:** The bingo manager shall establish the following controls at all bingo games where the patrons exceed fifty (50) players:

- A.     disposable bingo cards shall be used in all bingo games, including specials, and adhere to the following specifications:

(1) each set of disposable cards used is consecutively numbered from the first card to the last and each card contains, on its face, both its individual consecutive serial number and the identification number assigned by the manufacturer to that set of disposable cards;

(2) each disposable card sold shall represent a specific monetary value, which has been clearly posted in advance of any player participating in the game; and

(3) each card series and serial number shall be clearly posted in advance of any player participating in the game;

B. the bingo caller shall be furnished, prior to starting each game the manufacturer's identification number and the serial numbers of all cards offered for sale for that particular game. Upon a player having completed a bingo, the caller shall require an employee on the floor checking the bingo to read off the manufacturer's identification number and serial number of each winning card. Payment shall not be made unless both numbers were among those offered for sale for that game; and

C. one (1) or more individuals shall be assigned the duty of paying off bingo winners. Winners shall not be paid by individuals selling specials from their change fund or money they have in their possession from sale of specials. After the money from each special has been turned in and counted, it may be used to make prize pay-offs.

#### **15.4.7.9 BINGO OPERATIONS:**

A. The bingo manager shall be present on the premises continuously during the games and for a period of at least thirty (30) minutes after the last game.

B. Licensees shall purchase pre-numbered paper cards from a licensed vendor.

C. An inventory of bingo cards shall be conducted by the bingo manager at the end of each.

D. Start up and close out of an occasion shall be conducted in the following manner:

(1) a payout schedule of all bingo games shall be posted thirty (30) minutes prior to the start of an occasion;

(2) prior to the start of the game, all bingo prizes or prize money shall be on the licensed premises;

(3) At the close out of each occasion, the bingo manager shall count all gross receipts to include all cash, checks, and promotional, discounted or free games at the full price. The

bingo manager shall record all gross receipts prepare and sign a bank deposit slip that reflects the final deposit. The deposit slip shall have the licensee's name and license number on it.

(4) A second worker , or authorized person shall immediately count and verify the cash and co-sign the bank deposit slip.

(5) Cash, coin and checks shall be temporarily stored in a secured area until a deposit is made. A secured area includes a locked vault on the licensed premises or the deposit drop box. In the event that non-related funds are kept in the same locked vault, bingo raffle and pull tab funds shall be kept in a separate locked band bag inside the vault. Under no circumstances shall funds be kept at a location other than the licensed premise.

(6) If the licensee conducts two or more bingo occasions and chooses not to close out at the end of each occasion, then all gross receipts for each game of chance shall be kept separate for each occasion, secured in a locked vault and shall be reconciled immediately at the close of the last occasion or no later than the following day.

(7) The Bingo Manager and one other employee, shall ensure proper separate and accurate reporting of each of the occasions to include separate deposit slips that reflect separate receipts from each occasion.

E. Paper cards shall be used for all bingo games including but not limited to master cards, extra cards or special cards. Paper cards may be used for multiple games but shall not be used for multiple occasions.

F. Licensee shall include in its count of occasions any occasion conducted by an unlicensed auxiliary.

G. No bingo occasion shall begin prior to 9:00 a.m. or later than midnight.

#### **15.4.7.10 SALE OF BINGO CARDS:**

A. Sale and use of bingo cards:

(1) bingo cards shall not be sold on credit;

(2) all sales of bingo cards shall take place upon the premises and at the time of that bingo game;

(3) no bingo cards shall be set aside or reserved for any person;

(4) if a master card or admittance card is required in order to play bingo, then no special cards will be sold to a player who has not purchased a master card;

(5) all master and extra cards other than promotional cards shall be sold at a set price. The price of each type of card shall be posted;

(6) if each person playing bingo is required to have master cards and is allowed to play extra cards in the same game, then the cash prize to be awarded on the master card and the extra cards shall be posted by the licensee at the beginning of each game; and

B. No bingo cards sold for use in an occasion shall be valid for use in another occasion.

C. If bingo cards are being sold for an occasion immediately following the current occasion and both occasions are scheduled for the same day these sales shall be kept separate from the current occasion's sales.

D. Each employee selling specials or disposable bingo cards shall be assigned a number and a matching numbered box. The assigned number shall be recorded by name on the duty record.

E. The bingo manager shall issue specials to the employees. These specials or disposable bingo cards shall be controlled by manufacturers' identification number and consecutive serial number. The exact number of specials or disposable bingo cards given each worker shall be recorded.

F. When an employee completes selling cards for a special game, that employee shall place the unsold specials and the money from such sales and change fund in their assigned box. The bingo manager shall count the money, subtract the original change fund, and compare cards sold against the cash turned in. Any shortage in the cash shall not be deducted from the gross receipts.

**15.4.7.11 CONDUCT DURING BINGO GAMES:** Authorized equipment and all related items used in the conduct of bingo, shall be maintained in good repair and sound working condition. If after examination, they are found to be defective, the board may order the defective equipment, cards or related items immediately be repaired or replaced.

A. A bingo game will begin no earlier than thirty (30) minutes after the posting of the prizes for the games to be played in the occasion and the bingo manager has provided the caller with the serial numbers of the cards sold for the game. The caller shall:

(1) remove and hold only one (1) ball at a time from the blower;

(2) call all letters and numbers clearly and repeat twice to all players present;

(3) immediately following the calling of each number in a bingo game, the caller shall turn the portion of the ball, which shows the number and the letter to the players in the game so they may know that the proper number has been called;

(4) upon discovering that a number has been called incorrectly;

(a) the game will immediately stop,

(b) announce "an error has been made, I am reading the correct number, please correct your card", and

(c) then correct the board and continue with the game,

(5) not return a ball to the blower or any part of the blower until the conclusion of the game.

B. Each bingo game will be closed with the following procedure:

(1) the game shall be stopped after the winning combination has been signaled from a player or worker;

(2) the ball the caller has in hand, or has started to call will not be called. This ball will be held by the caller until the bingo has been verified and then returned to the machine, unless there is a visible posted house rule to the contrary;

(3) if a game is stopped for a bingo which proves not to be valid, the caller will then call the ball being held at the time the game was stopped;

(4) the last number called is required for a good bingo;

(5) the worker on the floor shall place the bingo card to be checked as a winner in front of at least one other player, with that player being given an opportunity to confirm that the bingo is a valid bingo by watching the card as the numbers are called;

(6) the caller shall require the worker on the floor checking the bingo to read off the manufacturer's identification number and serial number of each winning card;

(7) the worker on the floor shall call the numbers of the winning combination to the bingo caller, or, in case of a "cover-all" bingo, the caller may call the numbers that have not been called; and

(8) the bingo caller shall then ask the players, "are there any other bingos?" If no one answers, the caller shall announce, "this game is completed".

C. The caller cannot verify the winning bingo numbers on the floor. Another employee shall call the numbers to the caller for verification.

D. In a bingo game where only a specific number of numbered balls will be called, that number shall be announced by the caller prior to the removal of the first ball from the blower. Prior to the last ball being removed from the blower the caller will announce "last ball".

E. When conducting a bingo game with the prize(s) equal to the gross receipts the bingo manager shall ensure that:

(1) the caller announces the number of cards sold and the prize amount prior to the beginning the game;

(2) a record of the game is compiled containing:

(a) the number of cards sold;

(b) the date and time the game was conducted;

(c) the winner(s) contact information;

(d) copies of any required tax reporting documents; and

(e) this record is retained in accordance with the NMAC 15.4.1.12; and

(3) the jackpots of all games in the occasion shall not exceed \$2,500.

**15.4.7.12 RECORD OF NUMBERS DRAWN:** A written record shall be compiled and retained by the licensee for a period of thirty (30) days of all bingo numbers, in the order the numbers are called, when the bingo game payoff is six hundred dollars (\$600) or more.

#### **HISTORY OF 15.4.7 NMAC**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**

**CHAPTER 4                BINGO AND RAFFLES**

**PART 8                    CONDUCT OF RAFFLE**

**15.4.8.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.8.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.8.3                    STATUTORY AUTHORITY:** Section 60-2B-4(A)(10) of the New Mexico Bingo and Raffle Act authorizes the New Mexico Gaming Control Board to develop, adopt and promulgate all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act.

**15.4.8.4                    DURATION:** Permanent.

**15.4.8.5                    EFFECTIVE DATE:** PUBLICATION DATE, unless a later date is cited at the end of a section.

**15.4.8.6                    OBJECTIVE:** This rule establishes standards for the conduct of raffle authorized by the New Mexico Bingo and Raffle Act.

**15.4.8.7                    DEFINITIONS:** [Reserved]

**15.4.8.8                    RAFFLE CONTROLS:** Raffle ticket requirements when prizes exceed \$500.00:

- A.     A valid copy of a raffle ticket for each raffle conducted by a licensee shall be maintained by the licensee.
- B.     All proceeds including donations and gifts shall be reported as gross receipts under the Act.

C. Each raffle ticket and all promotional material concerning the raffle, shall conspicuously state whether or not the ticket holder is required to be present at the raffle drawing in order to win prizes.

**15.4.8.9 RAFFLE OPERATIONS:**

A. All raffle tickets sold shall have a representation (stub) in the container prior to the start of the draw. No unsold raffle tickets shall have a representation (stub) in the container.

B. The drawing shall be open to all ticket holders.

C. The rules of the drawing shall be conspicuously posted in the immediate area of the device from which the draw occurs and will identify what a winning draw is.

D. When more than one (1) prize is to be awarded the prize shall be announced immediately preceding the drawing of each winning ticket.

**15.4.8.10 SPLIT RAFFLE:**

A. if a split is other than fifty-fifty, the winner's share shall be the first value of the expression;

B. all tickets sales and the drawing of the winner(s) shall occur at the same location on the same day;

C. there shall be a period of sufficient duration between the last ticket sold and the drawing so that the number of tickets sold and the prize(s) can be determined and announced;

D. the number of chances sold and the prize(s) shall be announced prior to the drawing of the winner(s); and

**15.4.8.11 \$75,000 OR MORE RAFFLES:** licensee shall meet all the conditions described in subpart 10 and the following requirements:

A. shall notify the board on a form prescribed by the board ten (10) days prior to any public notice; and

B. shall report to board on a form prescribed by the board within three (3) days of drawing the winner(s) name, address and phone number.

**15.4.8.12 PAYMENT OF WINNINGS:**

- A. Prizes shall be tendered in accordance with the specifications on the raffle ticket.
- B. In the event that the winner does not accept a prize and:
  - (1) is present at the drawing a second draw shall be made; or
  - (2) is not required to be and is not present at the drawing;
    - (a) the licensee shall obtain a written and signed letter declining the prize,
    - (b) the licensee shall notify the board, and
    - (c) the licensee may dispose of the prize in a manner they deem appropriate.
- C. The organization shall not discard any of the sold tickets until all prizes have been accepted.

**15.4.8.13 RAFFLE RECORDS TO BE KEPT:**

The following records shall be maintained:

- A. the number of tickets available at the beginning of the event, if limited;
- B. the number of tickets sold;
- C. the date ticket sales began and ended;
- D. the date and time the drawing was conducted;
- E. the winner(s) contact information; and
- F. any required IRS reporting documents.

**HISTORY OF 15.4.8 NMAC**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 9                    CONDUCT OF PULL-TABS**

**15.4.9.1                   ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.9.2                   SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.9.3                   STATUTORY AUTHORITY:** Section 60-2B-4(A)(10) of the New Mexico Bingo and Raffle Act authorizes the New Mexico Gaming Control Board to develop, adopt and promulgate all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act.

**15.4.9.4                   DURATION:** Permanent.

**15.4.9.5                   EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.9.6                   OBJECTIVE:** This rule establishes the conduct of pull-tabs under the New Mexico Bingo and Raffle Act.

**15.4.9.7                   DEFINITIONS:** [Reserved]

**15.4.9.8                   PULL-TAB GAME CONTROLS:**

- A.    A licensee shall not share a deal with any other licensee.
- B.    A deal shall not be co-mingled with any other deals.
- C.    A licensee may simultaneously operate separate deals at the same location and may operate the same deal at different location on the premises.

D. At the close of a deal the bingo manager shall count the cash, and prepare and sign a bank deposit slip. A second employee shall verify the count then co-sign the deposit slip. The cash and the bank deposit slip shall be placed in a locked, cash deposit bag.

E. Hybrid games with less than five (5) instant winners per one hundred fifty (150) pull-tabs shall be designated as a bingo game.

F. Second chance games, in which non-winning pull-tabs are entered into a drawing, shall adhere to NMAC 15.4.8.

G. A pay out schedule for each deal shall be posted in the immediate area where the pull-tab from that deal is being sold and shall contain;

- (1) the serial number,
- (2) the size,
- (3) the predetermined number of winners, and
- (4) the prize amounts of the winners.

H. Sales, play and payment of prizes shall be conduct only on the licensed premise.

I. Sale to non-members of the licensee organization is permissible thirty (30) minutes prior to or during a bingo occasions.

J. A sale by distributors to non licensees is prohibited.

K. Prior to the purchase of a deal, distributors shall disclose to the licensee in writing the following information:

- (1) the serial number;
- (2) the total number of pull-tabs;
- (3) the predetermined number of winning pull-tabs; and
- (4) the predetermined payout percentages.

## **HISTORY OF 15.4.9 NMAC**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 10                    ACCOUNTING REQUIREMENTS**

**15.4.10.1                ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.10.2                SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.10.3                STATUTORY AUTHORITY:** Section 60-2F-3 of the New Mexico Bingo and Raffle Act authorizes the board to develop, adopt and promulgate all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act.

**15.4.10.4                DURATION:** Permanent.

**15.4.10.5                EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.10.6                OBJECTIVE:** This rule establishes standards for accounting and financial reporting procedures for bingo, raffle and pull-tab licensees under the New Mexico Bingo and Raffle Act.

**15.4.10.7                DEFINITIONS:** [Reserved]

**15.4.10.8                AUDIT PROCEDURES:**

A.     The board shall establish and maintain an audit and compliance division that shall have the responsibility to:

(1) conduct audits on quarterly report forms and supporting documents, periodic and special audits or reviews of the books and records of licensees, examine the books and records of any licensee when conditions indicate the need for such action or upon the request of the board;

(2) review and observe methods and procedures used by licensees, which can include the counting or handling cash or cash instruments; and

(3) determine each licensee's compliance with the Act and board rules.

B. Audits shall be conducted in conformity with generally accepted auditing standards and compliance standards as established by the board.

C. If not in compliance, the licensee will have fifteen (15) days, after receiving notification from the audit and compliance division, to submit the required supporting documentation or prepare and submit an amended quarterly report.

D. During the audit, should it be determined that an error on the report resulted in an under or over reporting of tax, the audit and compliance division shall report its findings to the New Mexico taxation and revenue department, per requirements set forth in the Tax Administration Act and to the licensee.

E. Each licensee shall submit a complete quarterly report for each quarter it holds a valid bingo and raffle license. If a licensee has no bingo, raffle or pull-tab activity during any quarter, for whatever reason, the licensee shall submit a zero activity report for that quarter by the prescribed deadline.

#### **15.4.10.9 ACCOUNTING PROCEDURES:**

A. All information set forth in the Act is required to be documented on forms prescribed by the board.

B. The licensee shall separately account for the gross receipts from all games of chance on the prescribed quarterly report forms.

C. Each licensee shall maintain an independent operating bank account to be used for all games of chance, all receipts shall be deposited and all disbursements shall be made from this account.

D. Funds from all games of chance shall not be co-mingled with any other funds used by the licensee.

E. The bingo operating account shall have an end-of-month cut off date.

F. The licensees shall reconcile bank statements monthly.

G. Licensees shall use a check, not a debit card, ATM card or any form of electronic transfer to pay for any expense out of the bank operating account unless an electronic payment is required by IRS, federal, state or bank regulations.

H. Licensees with pull-tab machines shall empty and reconcile the receipts and payouts weekly and at the end of each month. The bingo manager shall ensure the audit printout is legible and retained in its original condition.

I. The receipts from all games of chance shall be deposited into the bingo operating bank account on the next business day after the completion of the gaming activity. Receipts from pull-tab dispensing machines shall be deposited into the bingo operating account on a weekly basis and at the end of each month. Pull-tab deposits shall be made no later than the end of the following business day.

J. Deposit records must be sufficient to allow a determination of deposits made from each occasion and each game of chance.

K. Signature stamps shall not be allowed.

L. Pre-signed checks shall not be allowed.

M. Checks shall be signed by two (2) authorized persons.

N. No check shall be drawn to "cash" or a fictitious payee. To withdraw funds from the bingo operating account to replenish the change fund, all checks shall be made payable to the licensee and the memo section shall state "change fund".

O. An inventory of the bingo paper and pull-tabs shall be conducted by the bingo manager at the end of each month.

P. Any deposits made into the bingo operating account from the organization for the purpose of revitalizing bingo and raffle activity shall be noted on the deposit slip. These deposits are not considered to be bingo and raffle activity receipts and therefore, not subject to bingo and raffle tax.

#### **15.4.10.10 QUARTERLY REPORTS:**

A. The licensee shall submit quarterly bingo and raffle activity reports for all games of chance on the prescribed forms on or before but no later than the 25<sup>th</sup> day of April, July, October and January. If any due date falls on Saturday, Sunday or legal holiday, the due date is the next business day.

B. Licensees shall provide bank statements, cancelled checks or check images (front only) of all checks cleared, and deposit slip images (front only) for the period that corresponds with each report.

C. Each quarterly report shall be submitted with the required supporting documentation in the following order:

- (1) Quarterly report form;
- (2) Supplement forms;
- (3) Bank statements for each month;
- (4) Copies of all check images and deposit slip images; and
- (5) Copy of quarterly tax coupon.

D. If a licensee fails to file quarterly reports within the time required, or if the reports are not properly verified, accurate, and complete, the licensee's license may be suspended until the default has been corrected:

(1) a \$100 processing fee may be assessed for quarterly reports thirty (30) days or more past due;

(2) a \$100 processing fee may be assessed if the licensee fails to submit all required supporting documentation or amended quarterly reports per section 15.4.6.8(C) within fifteen (15) days of notification by the audit and compliance division;

(3) the \$100 processing fee shall be paid within fifteen (15) days of receipt of notification along with submission of the quarterly reports and/or all items requested by the audit and compliance division; to include amended quarterly reports and required supporting documentation;

(4) failure to submit the quarterly reports or required items requested by the audit and compliance division; to include amended quarterly reports, required supporting documentation and the \$100 processing fee within fifteen (15) days of receipt of notification, may result in an administrative citation being issued; and

(5) the licensee may submit an appeal for the assessment of the processing fee to the board within fifteen (15) days of receipt of notification. The appeal shall include a written rebuttal to the assessment. Appealing the processing fee does not relieve the licensee from the obligation to pay the fee or allow the licensee additional time to submit the quarterly reports or any required supporting documentation requested by the audit and compliance division.

**15.4.10.11 REPORTING AND PAYMENT PROCEDURES:**

A. Each licensee shall prepare an approved record covering each game of chance.

This approved record shall disclose the following information:

- (1) gross receipts collected from the sale of all bingo cards, pull-tabs or raffle tickets;
- (2) the fair market value of all promotional games;
- (3) cash on hand at the commencement and at the conclusion of each occasion;
- (4) signature of the bingo manager who oversees the occasion on all paperwork; and
- (5) name, signature, and assigned duties of each employee for each occasion.

B. A bingo and raffle tax as established by statute, of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

C. The tax imposed pursuant to this section shall be submitted quarterly to the New Mexico taxation and revenue department on or before April 25, July 25, October 25 and January 25.

D. Fees required under the Act and all reports relating to taxes and fees shall be received by the board no later than the date specified.

**15.4.10.12 RETENTION OF RECORDS:** The licensee shall maintain all records required pursuant to NMAC 15.4.1.12

**HISTORY OF 15.4.10**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 11                    VARIANCE PROCEDURES**

**15.4.11.1                    ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.11.2                    SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act [60-2F-1 NMSA 1978] by the New Mexico Gaming Control Board.

**15.4.11.3                    STATUTORY AUTHORITY:** Section 60-2F-3 NMSA 1978. The board shall implement the state's policy on games of chance consistent with the provisions of the Act. It shall fulfill all duties assigned to it pursuant to the Act, and it shall have the authority necessary to carry out those duties.

**15.4.11.4                    DURATION:** Permanent.

**15.4.11.5                    EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.11.6                    OBJECTIVE:** This rule establishes procedures for requesting a temporary exemption to any rule within NMAC 15.4 that is not directed by the Act.

**15.4.11.7                    DEFINITIONS:** [Reserved]

**15.4.11.8                    GENERAL REQUIREMENTS:** Licensee may seek a variance of limited provisions of the New Mexico Bingo and Raffle Rules 15.4 NMAC.

**15.4.11.9                    VARIANCE PROCEDURES:**

A. The bingo manager may submit a variance request on a form prescribed by the board, that shall include the licensee's name, license number, address, contact information and the specific part and sub-part of NMAC 15.4 for which the variance is being sought.

B. The board shall not grant a variance to any provision of the Act.

C. The board or its agent shall review, grant or deny the request and responded to licensee within thirty (30) days of receipt of request.

D. Factors the board may consider when granting or denying a variance request include but are not limited to:

- (1) impact on game integrity;
- (2) annual gross receipts;
- (3) proximity of licensed premise;
  - (a) to the financial institution holding the operating account;
  - (b) to licensed distributor; and
  - (c) to another licensee's licensed premise;
- (4) number of occasions per annum;
- (5) staff, volunteer or paid; and
- (6) regulatory compliance history.

E. A granted variance may be for a specific period of time and shall not exceed the expiration date of the license. In the absence of a specified period, the variance shall expire on the license expiration date.

F. The bingo manager may submit a request to renew a variance with license renewal application using the form prescribed by the board and the board's staff shall review, grant or deny and respond to said request within thirty (30) days of receipt of request and independently of the approval of the license renewal. Renewal of license shall not automatically result in renewal of variance.

G. A copy of the approved variance request shall be posted adjacent to the license at the licensed premise.

**15.4.11.10 APPEAL:** The bingo manager may submit an appeal of a denial of a variance request to the board in writing within thirty (30) days of notification of denial. The appeal shall comply with NMAC 15.4.14.9 A.

**HISTORY OF 15.4.11**

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**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 12                   ENFORCEMENT PROCEEDINGS**

**15.4.12.1                ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.12.2                SCOPE:** This rule applies to all persons subject to disciplinary or other enforcement action under the New Mexico Bingo and Raffle Act.

**15.4.12.3                STATUTORY AUTHORITY:** Section 60-2F-6 of the New Mexico Bingo and Raffle Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act. Section 60-2F-6 authorizes the board to initiate hearings against licensees and staff permittees when the board determines that it should limit, condition, suspend or revoke a license or approval or impose a fine.

**15.4.12.4                DURATION:** Permanent.

**15. 4.12.5                EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.12.6                OBJECTIVE:** The objective of this rule is to establish guidelines and procedures for the conduct of enforcement proceedings initiated by the board under the New Mexico Bingo and Raffle Act.

**15.4.12.7                DEFINITIONS:** [Reserved]

**15.4.12.8                PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:**

- A. All hearings held pursuant to Section 60-2F-23 of the Act will be conducted by a hearing examiner duly appointed by the board.

B. Except for telephonic hearings, the location of the hearing shall be at the office of the board unless either party makes a written request to have the hearing conducted in the place or area affected.

C. All hearings held pursuant to the Act shall be open to the public.

D. The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.

E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

**15.4.12.9 SUMMONING OF LICENSEE:**

A. The board may summon any licensee, or its agents or employees, to appear to testify before the board or its agents concerning the conduct of a licensee or any of the licensee's agents or employees. All such testimony shall be given under oath and may cover any matter the board determines is relevant to the discharge of its duties.

B. Any person who is summoned to appear before the board or its agents has the right to be represented by legal counsel. Any testimony taken may be used by the board as evidence in any proceeding or matter then before it or which may later come before it. Failure to appear and testify at the designated time and place, unless excused by the board, constitutes grounds for the revocation or suspension of any license held by the person summoned, their principal, or employer.

**15.4.12.10 INITIATION OF HEARING; CONTENTS OF COMPLAINT; SERVICE, ANSWER:**

A. If after investigation the board determines that a license, permit or other prior approval by the board should be limited, conditioned, suspended or revoked, or that a fine should be assessed, the board shall initiate a hearing by issuing a complaint.

B. The complaint shall consist of a written statement that describes the acts or omissions with which the respondent is charged and the specific statutes or rules that the respondent is alleged to have violated or other grounds for the complaint.

C. The board shall serve the complaint, together with a summary of evidence in the board's possession and a transcript of testimony at any investigative hearing conducted in the

matter, upon the licensee. Service and proof of service shall be made in any manner permitted by the New Mexico rules of civil procedure for the district courts.

D. The respondent shall file a written answer with the board within 30 days of service of the complaint.

**15.4.12.11 RECORD OF PROCEEDING:**

A. The record of the proceeding will include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript will bear the cost of transcription.

**15.4.12.12 DISCOVERY; SUBPOENAS:**

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

D. Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to the board. The subpoena will show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any enforcement action, the respondent and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to twenty (20) including all discrete subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

#### **15.4.12.13 FAILURE OR REFUSAL TO TESTIFY:**

A. If a respondent fails to testify in its own behalf or asserts a claim of privilege with respect to any question presented to the respondent, the hearing examiner may infer from such refusal that the testimony or answer would have been adverse in the respondent's case.

B. If any affiliate, holding company, employee, or agent of a respondent fails to respond to a subpoena or asserts a claim of privilege with respect to any question presented, the hearing examiner, after considering all of the circumstances, may infer that such testimony would have been adverse to the respondent.

**15.4.12.14 PROCEDURES; EVIDENCE:**

A. The respondent may be represented by any person licensed to practice law in the state. An individual respondent may represent himself.

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge; whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

F. The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

G. A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

**15.4.12.15 CONDUCT OF ENFORCEMENT HEARING:**

A. In addition to the procedures prescribed by the Act, the following procedures shall apply, when appropriate:

(1) the board will present its opening statement on the merits. The respondent then will be permitted to make an opening statement on defense;

(2) the board will present its case in chief in support of the complaint;

(3) upon conclusion of the board's case in chief, the respondent will present its case in defense;

(4) upon conclusion of the respondent's case, the board may present rebuttal evidence; and

(5) the board will present its closing argument, the respondent will present answering argument, and the board may present rebuttal argument. Thereafter, the matter will be submitted for recommendation by the hearing examiner.

B. The hearing examiner may ask questions of witnesses and may request or allow additional evidence at any time as determined appropriate by the hearing examiner.

**15.4.12.16 CONTINUANCES:** The hearing examiner shall not grant a continuance except for good cause shown.

**15.4.12.17 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

A. Failure of the respondent either to file an answer to the complaint or to appear at the hearing on the merits personally or by telephone, without having obtained a continuance, shall constitute an admission on all matters and facts contained in the complaint filed with respect to the respondent and shall be deemed a waiver of the right to an evidentiary hearing on the matter.

B. If the respondent fails to file an answer to the complaint, the petitioner shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against respondent:

(1) The respondent shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within ten (10) calendar days of the date the motion is served. Failure of the respondent to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) If the respondent timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the respondent additional time to answer the complaint if an accident, illness or other good cause prevented the respondent from timely answering the complaint.

C. If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

**15.4.12.18 RECOMMENDED ACTION; FINAL DECISION:**

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) days from the date of continuance.

B. The hearing examiner shall prepare a written decision containing their recommendation of action to be taken by the board. The hearing examiner's recommendation may include any, or any combination, of the following:

- (1) revocation of the license or approval;
- (2) suspension of the license or approval;
- (3) limitation or conditioning of the license or approval; and
- (4) imposition of a fine not to exceed \$1,000.

C. Notice of the hearing examiner's recommended action shall be served on the parties within thirty (30) days of the conclusion of the hearing on the matter. Service shall be made by registered or certified mail.

D. The board shall accept, reject or modify the hearing examiner's recommendation by majority vote.

E. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken, including limiting, conditioning, suspending, or revoking any license or imposing a fine, or any combination thereof. The board shall not impose any sanction or order except within the board's jurisdiction or as authorized by law.

**15.4.12.19 EX PARTE COMMUNICATIONS:**

A. No party or representative of any other person shall communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board shall communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.4.12.19 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

D. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

E. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state;

(2) any party from conferring with the hearing examiner or board counsel concerning procedural; or

(3) matters that do not involve issues of fact or law related to the proceeding.

**15.4.12.20 TELEPHONIC HEARINGS:**

A. Any party requesting a telephonic hearing shall do so within ten (10) working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than ten (10) days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

C. The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

D. The petitioner shall initiate the telephone call. The respondent is responsible for ensuring that the telephone number to the respondent's location for the telephonic hearing is accurate and that the respondent is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the

commencement of the hearing shall be treated as a failure to appear and shall subject the respondent to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

**HISTORY OF 15.4.12 NMAC:**

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**TITLE 15                    GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 4                BINGO AND RAFFLES**  
**PART 13                 LICENSE OR STAFF PERMIT REVOCATION**

**15.4.13.1                ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.13.2                SCOPE:** This rule applies to all persons subject to regulations promulgated under the New Mexico Bingo and Raffle Act by the New Mexico Gaming Control Board.

**15.4.13.3                STATUTORY AUTHORITY:** Section 60-2F-6 of the New Mexico Bingo and Raffle Act authorizes the New Mexico Gaming Control Board to develop, adopt and promulgate all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act.

**15.4.13.4                DURATION:** Permanent.

**15.4.13.5                EFFECTIVE DATE:** PUBLICATION DATE, unless a later date is cited at the end of a section.

**15.4.13.6                OBJECTIVE: :** The objective of this rule is to provide to persons holding licenses or staff permits issued by the New Mexico Gaming Control Board notice of the types of circumstances under which the board may revoke the staff permit or license.

**15.4.13.7                DEFINITIONS:** [Reserved]

**15.4.13.8                REVOCABLE PRIVILEGE:** The holder of a staff permit or license issued by the board under the Act has a revocable privilege only.

**15.4.13.9                GROUNDS FOR REVOCATION OF A STAFF PERMIT OR LICENSE:**

A. The board may initiate action to revoke a staff permit or license for any cause deemed reasonable by the board, including but not limited to the following:

(1) the making 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 a background investigation, regardless of when discovered by the board;

(2) conviction of any gambling offense in any jurisdiction, or any offense involving theft, fraud, embezzlement, or any fiduciary misconduct;

(3) entry of a civil judgment against the licensee that is based, in whole or in part, on conduct that allegedly constituted a crime involving theft, fraud, embezzlement or any fiduciary misconduct;

(4) 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 conduct of games of chance;

(5) failure to timely respond to any request by, or order of, the board or its agent;

(6) revocation of a work permit, or finding of suitability issued pursuant to the New Mexico Gaming Control Act;

(7) violation of any provision of the Act or this title;

(8) failure to notify the board in writing of any criminal conviction or criminal charge pending, which is grounds for revocation under this part, against the licensee within ten (10) days of any arrest, summons, or conviction;

(9) falsification of, failure to make a required entry in, or destruction of records required to be maintained;

(10) failure to file any report as required under the Act or rules;

(11) failure to appear and testify at the designated time and place, unless excused by the board;

(12) refusal or failure to possess the licensee's staff permit badge while engaged in the conduct of games of chance;

(13) failure to follow operating procedures;

(14) failure to remain current on child support payments; and

(15) any other cause deemed appropriate by the board.

B. Any person whose staff permit has been revoked by the board may not reapply for a permit, license or finding of suitability issued by the board for the period of one (1) year.

**15.4.13.10 CRIMINAL CONVICTION AS GROUNDS FOR REVOCATION OR SUSPENSION:** The board may revoke or suspend the license, or staff permit, of a person convicted of a felony, regardless of whether that person has exhausted their post-conviction rights and remedies.

**15.4.13.11 REVOCATION PROCEEDINGS; SURRENDER OF STAFF PERMIT OR LICENSE:**

A. If after investigation the board determines that sufficient grounds exist to revoke a staff permit, the board shall initiate a hearing on the matter by issuing a complaint.

B. The required contents and service of the complaint and all other aspects of the proceeding shall be conducted in accordance with board rule 15.4.12 NMAC, "Enforcement Proceedings."

C. A staff permit badge issued by the board is State property and shall be returned to the board by the licensee upon revocation of the staff permit.

**15.4.13.12 DELEGATION OF AUTHORITY TO INITIATE REVOCATION PROCEEDINGS:**

A. At the board's discretion, the board may delegate to the executive director authority to make the initial determination to revoke a staff permit or license and to issue a complaint seeking revocation. The initial determination shall be based on evidence sufficient to support issuance of a complaint seeking to revoke the staff permit or license.

B. The board retains accountability for the authority delegated and retains the authority to make the final decision to revoke a staff permit or license following the initial decision by the executive director and public hearing before the board.

**HISTORY OF 15.4.13 NMAC:**

**TITLE 15                    GAMBLING AND LIQUOR CONTROL**

**CHAPTER 4                BINGO AND RAFFLES**

**PART 14                    ADMINISTRATIVE APPEAL**

**15.4.14.1                ISSUING AGENCY:** New Mexico Gaming Control Board.

**15.4.14.2                SCOPE:** This rule applies to all licensees, applicants for licensure, and persons aggrieved by an action of the board or its agents under the Act.

**15.4.14.3                STATUTORY AUTHORITY:** Section 60-2F-6 of the New Mexico Bingo and Raffle Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act. Section 60-2F-24 authorizes the board to adopt procedural regulations to govern the procedures to be followed in administrative appeal hearings conducted pursuant to the New Mexico Bingo and Raffle Act.

**15.4.14.4                DURATION:** Permanent.

**15.4.14.5                EFFECTIVE DATE:** **PUBLICATION DATE**, unless a later date is cited at the end of a section.

**15.4.14.6                OBJECTIVE:** The objective of this rule is to establish guidelines and procedures for the conduct of hearings under the New Mexico Bingo and Raffle Act when the hearing is initiated by a person aggrieved by an action of the board or its agent.

**15.4.14.7 DEFINITIONS: [Reserved]**

**15.4.14.8 PUBLIC HEARINGS; LOCATION; HEARING EXAMINER:**

- A. All hearings held pursuant to Section 60-2F-24 of the Act shall be conducted by a hearing examiner duly appointed by the board.
- B. Except for telephonic hearings, hearings shall be conducted at the office of the board.
- C. All hearings held pursuant to Section 60-2F-24 of the Act shall be open to the public.
- D. The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter.
- E. Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

**15.4.14.9 REQUEST FOR REVIEW OF BOARD ACTION:**

- A. Any person aggrieved by an action of the board or one of its agents may request a hearing for the purpose of review of such action. The appellant shall file the request for hearing within 30 days of the date the action is taken. The request shall include the following:
  - (1) a statement of the facts relevant to the review of the action;
  - (2) a statement of the provision of the Act and the rules promulgated under the Act that are relevant to the review of the action;
  - (3) a statement of the arguments that the appellant considers relevant to the review of the action; and

(4) any other evidence considered relevant.

B. The board will schedule the hearing as soon as practicable but in any event no later than sixty (60) days from the date it receives the appellant's request for hearing. The hearing examiner may extend the sixty (60) day time upon motion for good cause shown, or the parties may extend the sixty (60) day time period by mutual agreement. The board shall issue notice of the hearing, which shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a short and plain statement of the matters of fact and law asserted;
- (4) notice to any other parties to give prompt notice of issues controverted in fact or law; and
- (5) all necessary telephone numbers if a telephonic hearing will be conducted.

C. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.

**15.4.14.10 RECORD OF PROCEEDING:**

- A. The record of the proceeding shall include:
- (1) all pleadings, motions, and intermediate rulings;
  - (2) evidence received or considered;
  - (3) a statement of matters officially noticed;
  - (4) questions and offers of proof, objections and rulings thereon;
  - (5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

B. A party may request a transcription of the proceedings. The party requesting the transcript shall bear the cost of transcription.

**15.4.14.11 DISCOVERY; SUBPOENAS:**

A. The board may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take the deposition of witnesses, including parties.

B. The board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Subpoenas to compel any person to appear at a deposition or at a hearing on the merits of the matter shall be served no later than 10 calendar days before the deposition or hearing unless good cause is shown by the party requesting the subpoena.

C. The subpoena shall state with reasonable specificity the nature of the evidence required to be produced, the time and place of the hearing or deposition, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena. The subpoena shall be signed and attested to by the board or its designee.

D. Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided for by law.

E. Any party to the proceeding may request issuance of a subpoena by the board in connection with the proceeding. The board shall issue the subpoena upon written application to

the board. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

F. Any witness summoned may petition the board to vacate or modify the subpoena served on the witness. The board shall give prompt notice to the party, if any, who requested service of the subpoena. The board may grant the petition in whole or in part if, after the investigation it deems appropriate, the board determines that:

(1) the testimony or evidence to be produced does not reasonably relate to any matter in question;

(2) the testimony or evidence to be produced is unreasonable or oppressive;

(3) the subpoena was not issued a reasonable period of time in advance of the time when evidence is requested; or

(4) any other reason justifies vacating or modifying the subpoena.

G. In any administrative appeal, the appellant and the board may conduct discovery in accordance with the New Mexico rules of civil procedure for the district courts, except that interrogatories shall be limited in number to twenty (20), including all subparts, unless, upon motion and for good cause shown, the hearing examiner grants a party leave to file additional interrogatories.

#### **15.4.14.12 PROCEDURES; EVIDENCE:**

A. Any party may be represented by a person licensed to practice law in the state. An individual appellant may represent himself

B. The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support

a finding if it is reliable, regardless of the existence of any statutory or common law rule that might make admission of such evidence improper in a civil action. Irrelevant, immaterial, or unduly repetitious evidence may be excluded at a party's request or on the hearing examiner's own initiative.

C. Documentary evidence may be received in evidence in the form of true copies of the original.

D. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the matter in question is what its proponent claims it to be.

E. The experience, technical competence and specialized knowledge of the hearing examiner, the board, or its staff may be used in the evaluation of evidence.

F. Evidence on which the board may base its decision is limited to the following:

(1) all evidence, including any records, investigation reports, and documents in the board's possession, of which it desires to avail itself as evidence in making a decision, that is offered and made a part of the record of the proceeding;

(2) testimony and exhibits introduced by the parties; and

(3) official notice of any fact of which judicial notice may be taken and other facts within the board's specialized knowledge. Whenever the hearing examiner takes official notice of any fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing, and any party shall be given, on timely request, an opportunity to show the contrary.

G. The record will include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

H. A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five days from the scheduled hearing date to insure that the hearing examiner and other parties receive the documents before the hearing.

**15.4.14.13 CONDUCT OF PROCEEDING:**

A. Unless the hearing examiner reasonably determines that a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule.

B. In addition to any procedures described by the Act, the following procedures shall apply:

(1) the appellant may present an opening statement on the merits and the appellee may make a statement of the defense or reserve the statement until presentation of its case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of its petition;

(3) upon conclusion of appellant's case in chief, the appellee may move for dismissal of the petition. The hearing examiner may suspend the hearing and refer the motion to the board, which shall grant, deny, or reserve decision on the motion, with or without argument, as soon as practicable but in no event later than its next regularly scheduled board meeting;

(4) if no motion to dismiss is made, or if the board denies or reserves decision on the motion, the appellee shall present its case in defense;

(5) upon conclusion of the appellee's case, the appellant may present rebuttal evidence;

(6) after presentation of the evidence by the parties, the appellant may present a closing argument. The appellee then may present its closing argument, and the appellant may present a rebuttal argument; and

(7) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

**15.4.14.14 BURDEN OF PROOF:** The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the board or its agents should be reversed or modified.

**15.4.14.15 CONTINUANCES:** The hearing examiner shall not grant a continuance except for good cause shown.

**15.4.14.16 DEFAULT; PROCEDURE FOR RECOMMENDATION OF DEFAULT:**

A. Failure of the appellee to schedule a hearing within sixty (60) days, unless the sixty (60) day time period is extended, or of any party to appear at the hearing on the merits personally or by telephone, without having obtained a continuance may constitute a default and an admission on all matters and facts alleged by the opposing party and shall be deemed a waiver of the right to an evidentiary hearing on the matter. The hearing examiner may proceed to consider the matter, and the board may dispose of it, on the basis of the evidence before it.

B. If the appellee fails to schedule a hearing within sixty (60) days, the appellant shall file a motion requesting the hearing examiner to recommend to the board that default judgment be entered against the appellee:

(1) the appellee shall file a response to the motion and shall request a hearing on the motion to recommend default judgment within ten (10) calendar days of the date the motion is served. Failure of the appellee to file a response and to request a hearing shall constitute consent to the granting of the motion; and

(2) if the appellee timely files a response to the motion, the hearing examiner shall hear the matter. The hearing examiner may deny the motion and allow the appellee additional time to schedule a hearing on the merits if an accident, illness or other good cause prevented the appellee from timely scheduling a hearing.

C. If a party fails to appear at a hearing on the merits personally or by telephone the hearing examiner may hear the evidence of witnesses who appear, and make a recommendation to the board based upon such evidence. Upon recommendation of the hearing examiner the board may proceed to consider the matter and dispose of it on the basis of the record before it.

**15.4.14.17 RECOMMENDED ACTION; FINAL DECISION:**

A. At the request of the hearing examiner or upon motion by either party granted by the hearing examiner, and before the hearing examiner recommends action by the board, the parties may submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner has the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs

submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law.

B. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) days from the date of continuance.

C. Not more than thirty (30) days after completion of the hearing, the hearing examiner shall prepare a written decision containing their recommendation of action to be taken by the board. The recommendation may propose to sustain, modify, or reverse the initial decision of the board or its agent.

D. Notice of the hearing examiner's recommended action shall be served on the parties as promptly as possible but in no event later than fifteen (15) days after the date of the hearing on the matter. Service shall be made by registered or certified mail.

E. The board shall accept, reject or modify the hearing examiner's recommendation by majority vote. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons therefore, on all material issues of fact, law or discretion involved, together with the specific action taken to sustain, modify, or reverse the initial decision of the board or its agent.

**15.4.14.18 EX PARTE COMMUNICATIONS:**

A. No party or representative of any other person shall communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board shall communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of Subsections A and B of 15.4.14.18 NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential is subject to the prohibition on ex parte communications withstanding the provisions of paragraphs Subsections A and B of 15.4.14.18 NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

D. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

E. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the state; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

**15.4.14.19 TELEPHONIC HEARINGS:**

A. Any party requesting a telephonic hearing shall do so within ten (10) working days of the date of the notice. When the parties agree to conduct the hearing by telephone, notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

B. Any party that has agreed to a telephonic hearing but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than ten (10) days before the scheduled date of the hearing. The request shall specifically state the reasons the requesting party believes an in-person hearing is necessary, including, at a minimum, the issues in question, the expected conflicting testimony, and how an in-person hearing would significantly advance the hearing examiner's fact-finding ability. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. If the hearing examiner grants the request, the hearing shall be rescheduled to a time convenient for all parties. If the hearing examiner denies the request, the telephonic hearing shall proceed as scheduled.

C. The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all may hear the proceedings and documents may be transmitted between witnesses and the hearing examiner.

D. The appellee shall initiate the telephone call. The appellant is responsible for ensuring that the telephone number to the appellant's location for the telephonic hearing is accurate and that the appellant is available at that telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and will subject the petitioner to a default judgment.

E. The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

**HISTORY OF 15.4.14 NMAC:**