

**TITLE 15      GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 2    HORSE RACING**  
**PART 1        GENERAL PROVISIONS**

**15.2.1.1        ISSUING AGENCY:** New Mexico Racing Commission.  
[15.2.1.1 NMAC - Rp, 15 NMAC 2.1.1, 03/15/2001]

**15.2.1.2        SCOPE:** General Public and all persons, firms, or associations participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.2 NMAC, 15.2.3 NMAC, 15.2.4 NMAC, 15.2.5 NMAC, 15.2.6 NMAC, 15.2.7 NMAC, and 16.47.1 NMAC.  
[15.2.1.2 NMAC - Rp, 15 NMAC 2.1.2, 03/15/2001]

**15.2.1.3        STATUTORY AUTHORITY:** Sections 60-1A-1 through 60-1A-30, NMSA 1978 authorizes the New Mexico Racing Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing.  
[15.2.1.3 NMAC - Rp, 15 NMAC 2.1.3, 03/15/2001; A, 09/15/09]

**15.2.1.4        DURATION:** Permanent.  
[15.2.1.4 NMAC - Rp, 15 NMAC 2.1.4, 03/15/2001]

**15.2.1.5        EFFECTIVE DATE:** March 15, 2001 unless a later date is cited at the end of a section.  
[15.2.1.5 NMAC - Rp, 15 NMAC 2.1.5, 03/15/2001]

**15.2.1.6        OBJECTIVE:** The objective of Part 1 of Chapter 2 is to establish the authority of the racing commission for regulating the horse racing industry; establish procedures for issuance, renewal, suspension, or revocation of licenses for violations of the rules or act; and, achieve the objectives that participants and patrons be protected against all wrongful, unlawful, or unfair conduct and practices on the racetrack.  
[15.2.1.6 NMAC - Rp, 15 NMAC 2.1.6, 03/15/2001]

**15.2.1.7        DEFINITIONS:**

**A.        Definitions beginning with the letter “a”:**

(1)        **"Act"** means the New Mexico Horseracing Act, New Mexico Statutes Annotated, 1978 Compilation, and Sections 60-1A-1 through 60-1A-30 including any amendments to that statute.

(2)        **"Added money"** is the amount added into the purses for a stakes race by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from owners of horses participating in the race.

(3)        **"Age"** of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

(4)        **"Also eligible"** pertains to: a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; in a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(5)        **"Allowance race"** is an overnight race for which eligibility and weight to be carried are determined according to specified conditions which include age, sex, earnings and number of wins.

(6)        **"Appeal"** is a request for the commission or its designee to investigate, consider and review any decisions or rulings of stewards of a meeting.

(7)        **"Arrears"** are all monies owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules and are past due.

(8)        **"Association"** is an individual or business entity holding a license from the commission to conduct racing with pari-mutuel wagering.

(9)        **"Association grounds"** are all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands offices, barns, stable area, employee housing facilities and parking lots.

(10)       **"Authorized agent"** is a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

**B.        Definitions beginning with the letter “b”:**

(1) **"Beneficial interest"** is profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another.

(2) **"Betting interest"** refers to one or more contestants in a pari-mutuel contest, which are identified by a single program number for wagering purposes.

(3) **"Bleeder"** is any horse, which exhibits symptoms of epistaxis and/or respiratory tract hemorrhage.

(4) **"Bleeder list"** is a tabulation of all bleeders to be maintained by the commission.

(5) **"Board"** means the gaming control board.

(6) **"Breakage"** means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten.

(7) **"Breeder"** is the owner of the horse's dam at the time of foaling.

**C. Definitions beginning with the letter "c":**

(1) **"Carryover"** refers to non-distributed monies, which are retained and added to a corresponding pool in accordance with these rules.

(2) **"Claiming race"** is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

(3) **"Classified handicap"** is a free handicap race in which contestants are assigned weights to be carried by the handicapper for the purpose of equaling their respective chances of winning.

(4) **"Commission"** means the state racing commission.

(5) **"Conditions"** are qualifications, which determine a horse's eligibility to be entered in a race.

(6) **"Contest"** is a competitive event on which pari-mutuel wagering is conducted.

(7) **"Contestant"** is an individual participant in a contest.

(8) **"Controlled substance"** is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

(9) **"Course"** is the track over which horses race.

**D. Definitions beginning with the letter "d":**

(1) **"Day"** is a 24-hour period ending at midnight.

(a) **Dark day** - a day during a live or a simulcast race meeting when no pari-mutuel wagering is conducted.

(b) **Race day** - a day during a race meeting when pari-mutuel wagering is conducted on live racing.

(c) **Simulcast race day** - a day during a race meeting when pari-mutuel wagering is conducted on simulcast racing.

(2) **"Dead heat"** is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

(3) **"Declaration"** is the act of withdrawing an entered horse from a race prior to the closing of entries.

(4) **"Draw"** is the process of assigning postpositions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

**E. Definitions beginning with the letter "e":**

(1) **"Entry"** is: a horse eligible for and entered in a race; two or more horses entered in the same race, which have common ties of ownership, lease or training (see "coupled entry").

(2) **"Equipment"** as applied to a horse, means riding crop, blinkers, tongue strap, muzzle, hood, nose band, bit, shadow roll, martingale, breast plate, bandage, boot, plates, flipping halter and all other paraphernalia common or otherwise which might be used on or attached to a horse while racing.

(3) **"Exhibition race"** is a race for which a purse is offered but no wagering is permitted.

(4) **"Exotic wagering"** means all wagering other than on win, place or show, through pari-mutuel wagering;

(5) **"Expired ticket"** is an outstanding ticket, which was not presented for redemption within the required time period for which it was issued.

(6) **"Export"** means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location.

**F. Definitions beginning with the letter "f":**

(1) **"Financial interest"** is an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity, or other compensation or remuneration from any person. Being the lessee or lessor of a horse shall be construed as having a financial interest.

(2) **"Flat race"** is a race run over a course on which no jumps or other obstacles are placed.

(3) **"Forfeit"** is money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the stewards or the commission.

**G. Definitions beginning with the letter "g":**

(1) **"Guarantee purse money"** is the same as a stake with a guarantee by the association that the gross purse shall not be less than the amount stated.

(2) **"Guest association"** is an association, which offers licensed pari-mutuel wagering on contests conducted, by another association (the host) in either the same state or another jurisdiction.

(3) **"Guest state"** means a jurisdiction, other than a jurisdiction in which a horse race is run, in which a horse racetrack, off-track wagering facility or other facility that is a member of and subject to an interstate common pool is located.

(4) **"Guest track"** means a horse racetrack, off-track wagering facility or other licensed facility in a location other than the state in which a horse race is run that is a member of and subject to an interstate common pool.

**H. Definitions beginning with the letter "h":**

(1) **"Handicap"** is a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(2) **"Handle"** is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

(3) **"Horse"** is any horse or mule (including and designated as a mare, filly, stallion, colt, ridgling or gelding) registered for racing.

(4) **"Horse race"** means a competition among racehorses on a predetermined course in which the horse completing the course in the least amount of time generally wins.

(5) **"Host association"** is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

(6) **"Host track"** means the horse racetrack from which a horse race subject to an interstate common pool is transmitted to members of that interstate common pool, also known as a "sending track."

**I. Definitions beginning with the letter "i":**

(1) **"Import"** means to receive a live audiovisual broadcast of a horse race.

(2) **"Inquiry"** is an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

(3) **"Interstate common pool"** means a pari-mutuel pool that combines comparable pari-mutuel pools from one or more locations that accept wagers on a horse race run at a sending track for purposes of establishing payoff prices at the pool members' locations, including pools in which pool members from more than one state simultaneously combine pari-mutuel pools to form an interstate common pool.

(4) **"Invitational handicap"** is a handicap for which the racing secretary or handicapper has selected the contestants and assigned the weights.

**J. Definitions beginning with the letter "j":**

(1) **"Jockey"** is a person licensed to ride in races.

(2) **"Jockey club"** means an organization that administers thoroughbred registration records and registers thoroughbreds.

**K. Definitions beginning with the letter "k":** [Reserved.]

**L. Definitions beginning with the letter "l":** **"Licensee"** is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

**M. Definitions beginning with the letter "m":**

(1) **"Maiden"** is a horse, which shows in the *daily racing form* or the *American quarter horse chart book* as never having won a race at a recognized meeting. A maiden, which has been disqualified after finishing first in a race, is still a maiden.

(2) **"Maiden race"** is a race restricted to maidens.

(3) **"Match race"** is a race between two horses under conditions agreed to by their owners.

(4) **"Meeting"** is the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission. For purposes of this rule, the meeting begins on the

first date prior to actual racing that entries are accepted by the racing secretary. Entries shall be accepted no sooner than seven days before racing commences.

(5) **"Minus pool"** occurs when the payout is in excess of the net pool.

(6) **"Month"** is a calendar month.

(7) **"Mutuel field"** refers to two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

**N. Definitions beginning with the letter "n":**

(1) **"Net pool"** is the amount of gross ticket sales less refundable wagers and statutory commissions.

(2) **"New Mexico bred"** is a foal conceived in the state of New Mexico, foaled in the state of New Mexico, weaned in the state of New Mexico whose dam was not outside the state of New Mexico during pregnancy.

(3) **"New Mexico bred race"** is a race in which the contestants are registered as New Mexico bred horses.

(4) **"No contest"** is a race cancelled for any reason by the stewards.

(5) **"Nomination"** is the naming of a horse to a certain race or series of races.

(6) **"Nominator"** is the person or entity in whose name a horse is nominated for a race or series of races.

**O. Definitions beginning with the letter "o":**

(1) **"Objection"** is a written complaint made to the stewards concerning a horse entered in a race and filed in a timely manner prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

(2) **"Official or racing official"** means assistant racing secretary, chief of security, director of racing or similar position, clerk of scales, clocker, general manager, handicapper, horse identifier, horsemen's bookkeeper, jockey room custodian, official veterinarian, paddock judge, pari-mutuel manager, patrol judge, placing judges, racing secretary, racing veterinarian, stable superintendent, starter, steward, timer, and track superintendent.

(3) **"Official samples"** is a portion of any bodily substance or fluid, including but not limited to, tissue, hair, blood or urine obtained from a horse at the direction of the commission for the purposes of determining the presence of a prohibited substance.

(4) **"Official order of finish"** is the order of finish of the contestants in a contest as declared official by the stewards.

(5) **"Official starter"** is the official responsible for dispatching the horses for a race.

(6) **"Official time"** is the elapsed time from the moment the first horse crosses the starting point until a horse crosses the finish line.

(7) **"Off time"** is the moment, at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

(8) **"Optional claiming race"** is a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less.

(9) **"Out of competition"** is defined as not participating in a race.

(10) **"Out of competition testing"** test(s) that may be conducted on any horse that is on the grounds of a racetrack or training center under the jurisdiction of the commission; or under the care or control of a trainer or owner licensed by the commission; or whose papers are filed in the racing office; or has been nominated to a stakes race.

(11) **"Outstanding ticket"** is a winning or refundable pari-mutuel ticket, which was not cashed during the performance for which it was issued; also known as "outs".

(12) **"Overnight race"** is a race for which entries close at a time set by the racing secretary and for which the owners of the horses do not contribute to the purse.

(13) **"Owner"** is defined as a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

**P. Definitions beginning with the letter "p":**

(1) **"Paddock"** is an enclosure in which contestants scheduled to compete in a contest are confined prior to racing.

(2) **"Pari-mutuel system"** is the manual, electromechanical, or computerized system and all software (including the totalisator, account betting system and offsite betting equipment) that is used to record bets and transmit wagering data.

(3) **"Pari-mutuel wagering"** is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

(4) **"Patron"** is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

(5) **"Payout"** is the amount of money payable to winning wagers.

(6) **"Performance"** is a schedule of races run consecutively as one program.

(7) **"Person"** is one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate, or any other legal entity.

(8) **"Positive test"** means the result of a test, conducted as provided in these rules on an official sample, which indicates the presence of any prohibited substance.

(9) **"Post position"** is the pre-assigned position from which a horse will leave the starting gate.

(10) **"Post time"** is the scheduled starting time for a contest.

(11) **"Prima facie evidence"** is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

(12) **"Private barn"** is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.

(13) **"Profit"** is the net pool after deduction of the amount bet on the winners.

(14) **"Profit split"** is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two or more payout prices.

(15) **"Program Trainer"** is a licensed trainer who solely for the purpose of the official race program, is identified as the trainer of the horse that is actually under the control of, and trained by, another person who may or may not hold a current trainer's license in any jurisdiction.

(16) **"Prohibited substance"** is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, including

(a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or

(b) that may interfere with testing procedures; or

(c) that is a therapeutic medication present in excess of established acceptable levels; or

(d) that is present in the horse in excess of levels that could occur naturally; or

(e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

(17) **"Program"** is the published listing of all contests and contestants for a specific performance.

(18) **"Protest"** is a written complaint alleging that a horse is or was ineligible to race.

(19) **"Purse"** is the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

**Q. Definitions beginning with the letter "q":** [Reserved]

**R. Definitions beginning with the letter "r":**

(1) **"Race"** is a contest between contestants at a licensed meeting.

(2) **"Restricted area"** is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

(3) **"Result"** is that part of the official order of finish to determine the pari-mutuel payout of pools for each individual contest.

**S. Definitions beginning with the letter "s":**

(1) **"Scratch"** is the act of withdrawing an entered horse from a contest after the closing of entries.

(2) **"Scratch time"** is the deadline set by the association for withdrawal of entries from a scheduled performance.

- (3) **"Simulcast"** refers to the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.
- (4) **"Single price pool"** is an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.
- (5) **"Sponsor added money"** is added to a race in return for name and/or advertising recognition and is not added money.
- (6) **"Stable name"** is a name used other than the actual legal name of an owner or lessee and registered with the commission.
- (7) **"Stakes race"** is a contest in which nomination, entry and/or starting fees contribute to the purse. No overnight race shall be considered a stakes race.
- (8) **"Starter"** refers to a horse, which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.
- (9) **"Starter allowance"** is a race in which a horse establishes eligibility by starting for a claimed price pursuant to the conditions of the race.
- (10) **"Steeplechase race"** is a contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.
- (11) **"Steward"** is a duly appointed racing official with powers and duties specified by the act and these rules.

**T. Definitions beginning with the letter "t":**

- (1) **"Takeout"** is the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.
- (2) **"Therapeutic medication"** is any drug, chemical, or chemical agent, that when administered to a horse is calculated to improve or protect the health and soundness of said horse. The promotion of formful racing performance is the intent of administering a therapeutic medication.
- (3) **"Totalisator"** is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payout prices to patrons at a pari-mutuel wagering facility.
- (4) **"Trainer"** is a person who holds a valid trainer's license and who has a horse eligible to race under his care, custody, or control at the time entry is made.
- (5) **"Trial race"** is part of a series of races in which horses participate for the purpose of determining eligibility for a subsequent race.
- (6) **"Tubing"** is the administration of any substance via a naso-gastric tube.

**U. Definitions beginning with the letter "u": [Reserved.]**

**V. Definitions beginning with the letter "v": [Reserved.]**

**W. Definitions beginning with the letter "w":**

- (1) **"Walkover"** is a race in which only one contestant starts or in which all the starters are owned by the same interest. To claim the purse the horse(s) must start and go the distance of the race.
- (2) **"Week"** is a period of seven consecutive 24-hour periods.
- (3) **"Weigh in"** is the presentation of a jockey to the clerk of scales for weighing after a race.
- (4) **"Weigh out"** is the presentation of a jockey to the clerk of scales for weighing prior to a race.
- (5) **"Weight for age"** is a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.
- (6) **"Winner"** is the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

**X. Definitions beginning with the letter "x": [Reserved.]**

**Y. Definitions beginning with the letter "y": "Year" shall be a calendar year.**

**Z. Definitions beginning with the letter "z": [Reserved.]**

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/01/2010; A, 01/01/2013; A, 05/01/2013; 08/15/2014; A, 07/01/2017; A, 03/14/2018]

**15.2.1.8 COMMISSION:**

**A. Purpose:**

- (1) The New Mexico racing commission created by the act, Section 60-1A-4, New Mexico Statutes, 1978, Annotated, is charged with implementing, administering and enforcing the act. It is the intent of the commission that the rules of the commission be interpreted in the best interests of the public and the jurisdiction.

(2) Through these rules, the commission intends to encourage agriculture, the horse breeding industry, the horse training industry, tourism and employment opportunities in this jurisdiction related to horse racing and to control and regulate pari-mutuel wagering in connection with that horse racing.

**B. General authority:**

(1) The commission shall regulate each race meeting and the persons who participate in each race meeting.

(2) To the extent permitted by the Act the commission may delegate to the agency director and the stewards all powers and duties necessary to fully implement the purposes of the Act.

**C. Membership and meetings:**

(1) The state racing commission shall consist of five members, no more than three of who shall be members of the same political party. They shall be appointed by the governor, and no less than three of them shall be practical breeders of racehorses within the state. Each member shall be an actual resident of New Mexico and of such character and reputation as to promote public confidence in the administration of racing affairs.

(2) The commission shall meet at the call of the chair, as requested by a majority of the members or as otherwise provided by statute. Notice of the meetings must be given and the meetings must be conducted in accordance with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA, 1978.

(3) If it is difficult or impossible for a racing commission member to attend a meeting of the racing commissioners, that member may participate in the meeting by telephone. The telephone shall be a speakerphone that allows all commission members and the public to hear all speakers at the meeting.

(4) A majority of the commission constitutes a quorum. When a quorum is present, a motion before the commission is carried by an affirmative vote of the majority of the commissioners present at the meeting.

(5) A commission member may not act in the name of the commission on any matter without a majority vote of a quorum of the commission.

**D. Annual report:** The commission shall submit an annual report as prescribed by statute.

**E. Employees:**

(1) The commission shall employ an agency director who shall employ other employees necessary to implement, administer and enforce the Act.

(2) The agency director shall maintain the records of the commission and shall perform other duties as required by the commission. Except as otherwise provided by a rule of the commission, if a rule of the commission places a duty on the agency director, the agency director may delegate that duty to another employee of the commission. The commission and the agency director may not employ or continue to employ a person:

- (a) who owns a financial interest in an association in this jurisdiction;
- (b) who accepts remuneration from an association in this jurisdiction;
- (c) who is an owner, lessor or lessee of a horse that is entered in a race in this

jurisdiction; or

(d) who accepts or is entitled to a part of the purse or purse supplement to be paid on a horse in a race held in this jurisdiction.

(3) Commission employees shall not wager in any pari-mutuel pool at any facility or through any pari-mutuel system subject to the jurisdiction of the commission.

(4) Commission employees shall not participate in any gaming activity conducted by an association during working hours on scheduled workdays.

**F. Power of entry:**

(1) A member or employee of the commission, a steward, a peace officer or a designee of such a person may enter any area on association grounds or other place of business of an association at any time to enforce or administer the Act or commission rules.

(2) No licensee may hinder a person who is conducting an investigation under, or attempting to enforce, or administer, the Act or commission rules.

**G. Subpoenas:**

(1) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the production of books, records, papers, correspondence and other documents.

(2) Any aggrieved person or any licensee or license holder against whom allegations of violations of racing statutes or rules have been made shall have the right to have subpoenas and subpoenas duces tecum issued as of right prior to the hearing to compel discovery as provided in these rules and to compel the attendance of witnesses and the production of relevant physical evidence upon making written and timely request

therefor to the commission or hearing officer; the issuance of such subpoenas after the commencement of the hearing rests in the discretion of the commission or the hearing officer.

(3) A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(4) If a person fails to comply with a subpoena issued on behalf of the commission, the commission or agency director may invoke the aid of the appropriate court in requiring compliance with the subpoena. For a person compelled to appear before the commission under this section, the commission shall pay expenses in accordance with the statutory provisions for state employees. The commission reserves the right to bill the expenses to parties requiring the appearance of the subpoenaed person.

#### **H. Records:**

(1) Inspection and copying of commission records are governed by the provisions of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) Except as otherwise authorized by statute, or regulation, all original records of the commission shall be maintained in the offices of the commission. No person may remove an original record from the offices of the commission without the approval of the agency director.

(3) To inspect commission records, a person must make a written request to the appointed records official and to receive copies must pay all costs for copying within the limits set by the Public Records Act.

#### **I. Issuance of license to conduct a race meeting and allocation of race dates:**

(1) The commission shall allocate race dates to each association in accordance with the act and these rules. An association shall apply to the commission for a license and racing dates not later than June 1st for all proposed racing meets and dates to be run in the succeeding calendar year. Applications shall not be received or amended after this date except by approval of a majority of the commission. The application must contain the information required by statute and the commission. After the request is filed, the commission may require the association to submit additional information. The commission may limit, condition or otherwise restrict any license to conduct horse racing or a horse race meeting in the state of New Mexico.

(2) The burden of proof is on the association to demonstrate that its receipt of a license to conduct a race meet and the allocation of the race dates will be in the public interest and will achieve the purposes of the act.

(3) In issuing licenses for race meetings and allocating race dates under this section, the commission may consider the following factors: public interest, health of the industry, safety and welfare of participants, and the criteria for licensure to conduct a race meet set forth in the act and in these rules.

(4) Prior to approving an application for a new license for a horse racetrack, other than the licenses in existence as of January 1, 2007, or an application by a licensed horse racetrack to move its racing and gaming facilities to a new location, the commission shall solicit and consider the views on the application by the Indian tribes, nations and pueblos in the following manner:

(a) provide written notice to all federally recognized Indian tribes, nations or pueblos that are authorized by law to enter into a gaming compact with the state of New Mexico under the Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et seq., (“Indian Tribes”) that such an application has been filed with the commission within 15 days of such filing and provide a copy of all non-confidential documents submitted by an applicant to an Indian tribe upon request, at the Indian tribe’s expense;

(b) allow Indian tribes 45 days to respond to the application by submitting written comments to the commission prior to holding any public hearing at which final action on the application may be considered; such comments shall be immediately forwarded to the applicant by the commission, but no later than 15 days prior to holding any public hearing at which final action on the application may be considered; the views of the Indian tribes may include, but are not limited to, the following:

(i) potential economic impact of approval of said license on a specific Indian tribe’s government or gaming facility, including impact on revenue sharing with the state of New Mexico; the number of miles from the nearest tribal gaming facility; the potential impact on the nearest tribal gaming facility’s market share; and the potential impact on the Indian tribe’s income from gaming facilities;

(ii) identification of other significant impacts on the Indian tribe;

(c) any public hearing at which final action on the application may be considered must be at least 15 days after the 45 day comment period for Indian tribes set forth above;

(d) the commission shall consider and evaluate the Indian tribes’ views prior to taking any final action on the application; to “consider and evaluate” means to think about carefully and seriously;



(e) the above procedures for notification to Indian tribes shall not apply to the annual renewal of a horse racetrack license.

(5) The association shall be obligated to conduct pari-mutuel racing, except in the case of emergencies, on each race date allocated. Any change in race dates must be approved by the commission. In the case of emergencies the stewards may authorize cancellation of all or a portion of any race day.

(6) All applicants for an initial license to conduct horse racing or a horse race meeting in the state of New Mexico shall submit the following information to the commission in the form of a verified application, including an original and six copies.

(a) The name of the applicant and indicate whether it is an individual, firm, association, partnership, corporation or other legal entity.

(b) The names, residences, and nationalities of individual applicants or members of a partnership, association or firm.

(c) If the applicant is a corporation, the following information must be furnished, and if the applicant is a parent or subsidiary of another corporation, the following information must be furnished for each entity.

(i) The year in which the corporation was organized, its form of organization and the name of the state under the laws of which it was organized. Articles of incorporation and bylaws must also be submitted.

(ii) The classes of capital stock authorized, the amount authorized, and the amount outstanding as of the date not less than 15 days prior to the filing of the application.

(iii) The name and address of each person who owns of record or is known by the applicant to own beneficially, ten percent or more of any class of capital stock. This can be indicated as name and address; class of stock owned; type of ownership whether of record or beneficial; amount owned; percent of the class of stock.

(iv) Outline briefly the dividend rights, voting rights, liquidation rights, preemptive rights, conversion rights, and redemption provisions. If the rights of holders of such stock may be modified other than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(v) If organized as a corporation within the past five years, furnish the names of the promoters, the nature and amount of anything of value received or to be received by each promoter directly or indirectly from the applicant and the nature and amount of any assets, services, or other consideration therefore received or to be received by the applicant.

(vi) List the names of all directors and executive officers and all persons chosen to become directors or executive officers. Indicate all other positions and offices held by each such person, and the principal occupation during the past five years of each person to become a director or executive officer. For the purposes of this subparagraph, "executive officer" means the president, vice-president, secretary and treasurer, and any other person who performs policy-making, supervisory, administrative, or financial functions for the applicant.

(vii) Describe in detail the financial arrangements, which have been made for acquisition and operation of racing facilities, including the nature and source of any funds or other property, real or personal, which may be used in this connection.

(viii) Identify in detail the source(s) and terms of any loans, loan commitments, lines of credit, pledges, stock subscriptions, and any other source of funds which may be used in the acquisition or operation of racing facilities.

(ix) State in detail the terms of any proposed purchase of stock or assets in a current licensee.

(x) State whether a substantial portion of the assets or of the capital stock is encumbered by any short-term or long-term debt. Explain fully and state the names and addresses of parties holding security interests or promissory notes from the applicant and the stockholders, where the stock is pledged as security, and outline the terms of and submit the agreements creating the security interests.

(xi) Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year.

**(xii)** Applicant must submit with application a current financial statement for each director, executive officer, manager, and stockholders owning ten percent or more of the outstanding shares in any corporate applicant.

**(xiii)** All financial information shall be accompanied by an unqualified opinion of a duly licensed certified public accountant, or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

**(xiv)** For applicants other than corporation, list the names and addresses of all executive officers and managerial officers. Indicate positions and offices held by each person named and their principal occupation(s) during the past five years.

**(xv)** State whether any director, executive officer, manager, or stockholder has ever been convicted of a crime and describe the circumstances of the convictions.

**(xvi)** Describe any pending legal proceedings to which the applicant or any of its subsidiaries or parent corporations is involved, or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted and the principal parties thereto.

**(xvii)** State in complete detail whether the applicant, or any director, executive officer, stockholder or manager has owned an interest in or has been employed by any firm, partnership, association or corporation previously licensed to conduct a race meeting in any jurisdiction.

**(xviii)** State actual legal description of a proposed site for racing facilities, names and addresses of the titleholders to the real property and names and addresses of all personal holding mortgages or other security interests in the property.

**(xix)** State the number of miles from the nearest population center, and describe briefly the transportation facilities serving that population center.

**(xx)** State the exact dimensions of the track proposed. Submit at least one copy of the architect's drawings showing detail of the proposed construction. If a grandstand is in existence, describe the size and type of construction.

**(xxi)** Describe the efforts to be made to insure the security safety and comfort of patrons and license holders.

**(xxii)** State the availability of fire protection and adequacy of law enforcement and police protection.

**(xxiii)** State the parking lot capacity and describe the construction and type of parking facilities.

**(xxiv)** State the number and type of construction of stables, other barn areas, forecourt and paddock areas, indicating capacities and fire prevention facilities for all areas.

**(xxv)** Describe the facilities for owners, trainers, jockeys, grooms and other racing personnel.

**(xxvi)** State the arrangements for food and drink concessions indicating the names and addresses of concessionaires and the terms of the concession contracts.

**(xxvii)** Describe any concessions, clubs or other special facilities, existing or proposed, for patrons.

**(xxviii)** Indicate by actual dates the racing days requested by applicant.

**(xxix)** Indicate the kind of racing to be conducted.

**(xxx)** Describe the proposed pari mutuel operation in general and indicate in particular the terms of the pari mutuel ticket sales.

**(xxxi)** Describe climatic conditions prevalent during the proposed racing season.

**(xxxii)** Indicate the population of the local area, and the growth trend. Indicate the potential market including tourists, transients and patrons from neighboring areas.

**(xxxiii)** Indicate the principal sources of local income, showing the percentage from farming and ranching, industrial, professional services, military and other governmental sources.

**(xxxiv)** Describe the effect of competition with other racetracks in and out of the state and with other sports or recreational facilities in the area.

**(xxxv)** Indicate what effect opposition from area residents may have on the economic outlook for the proposed track.

(xxxvi) Describe a strategic plan to be proactive in an effort to prevent contagious equine diseases, and biosecurity measures to be put in place in the event of an outbreak including permanent quarantine facilities.

(7) A new complete primary application as required in Paragraph (5) of Subsection I of 15.2.1.8 NMAC is also required if any of the following events occur:

- (a) if the effective controlling interest of any licensee is transferred or conveyed;
- (b) if any involuntary transfer of either tangible real or personal property or corporate stock gives the effective control of the licensee to the transferee;
- (c) in the event that a transfer under Subparagraphs (a) and (b) occurs after the granting of racing dates, the transferee shall immediately apply to the commission for a hearing to show cause why the transferee should be permitted to continue racing under the current grant of racing dates;
- (d) failure to make application within 90 days of the date of the proposed transfer shall be grounds for revocation of license.

(8) A race meet licensee that has been licensed for the previous year, must submit to the commission a renewal application, on a form provided by the commission, containing the following information:

- (a) complete listing of officers, directors of corporation, and secondary lender affiliates;
- (b) proposed race dates and simulcast race dates;
- (c) at the time of annual request for racing dates, when the commission in its discretion determines that the licensee should supply current information;
- (d) current financial statements;
- (e) changes to articles of incorporation and bylaws;
- (f) list of concessionaires and contract services;
- (g) changes from original application, or last renewal application, in mortgagee of real property;
- (h) insurance policies;
- (i) any other changes from original primary application.

(9) The commission in addition to any other legally sufficient reason, may disapprove, deny, refuse to renew, suspend, or revoke a license to conduct horse racing or a horse race meeting in the state of New Mexico if any person having any direct or indirect interest in the applicant or in the licensee, or any nature whatsoever, whether financial, administrative, policy-making or supervisory:

- (a) has been convicted of a felony under the laws of New Mexico, the laws of any other state or the laws of the United States, unless sufficient evidence of rehabilitation has been presented to the commission;
- (b) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the commission;
- (c) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the commission;
- (d) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the commission;
- (e) is consorting or associating with bookmakers, touts or persons of similar pursuits;
- (f) is financially irresponsible as found or determined by the commission; or,
- (g) is a past or present member of or participant in organized crime as such membership or participation may be found or determined by the commission.

[15.2.1.8 NMAC - Rp, 15 NMAC 2.1.8, 03/15/2001; A, 08/30/2001; A, 01/31/2008; A, 04/30/2012; A, 06/01/2016]

#### **15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:**

**A. Purpose of chapter:** This chapter contains the rules of procedure for stewards' hearings and commission proceedings.

**B. Proceedings before the stewards:**

(1) Rights of the licensee. A person who is the subject of the disciplinary hearing conducted by the stewards is entitled to: proper notice of all charges; confront the evidence presented including: the right to counsel at the person's expense; the right to examine all evidence to be presented against them; the right to present a defense; the right to call witnesses; the right to cross examine witnesses; and waive any of the above rights.

(2) Complaints.

(a) On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's actions.

(b) A complaint made by someone other than the stewards must be in writing and filed with the stewards not later than 72 hours after the action that is the subject of the complaint.

(c) In case of a notice from the state of New Mexico human services department that a licensee is in non-compliance with the Parental Responsibility Act, the licensee shall be notified by the board of stewards. Thereafter the licensee shall have 30 days to provide documentation of compliance to the board of stewards and failure to do so will result in the suspension of the licensee's license.

(3) Summary suspension.

(a) If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the 10th day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the 10-day limit.

(c) The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(d) If a positive test arises in a trial race, the horse is eligible for entry into a race for which the trial was conducted unless that positive test requires the horse to be placed on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC. The purse for both the trial and the race for which the trial was conducted will be held until the case has been adjudicated.

(4) Notice.

(a) Except as provided by these rules regarding summary suspension, jockey riding infractions and trial races, the stewards or a racing commission designee shall provide written notice, at least 10 days before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive their right to 10 days notice by executing a written waiver.

(b) Notice given under this section must include: a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes or rules involved; a short, plain description of the alleged conduct that has given rise to the disciplinary hearing; the possible penalties that may be imposed.

(c) If possible, the stewards or the racing commission designee shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the stewards or a racing commission designee shall forthwith mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the stewards or a racing commission designee shall provide notice of the hearing to the owner of the horse in the manner provided by this subsection.

(d) Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards. The stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent, in compliance with this subsection.

(5) Continuances.

(a) Upon receipt of a notice, a person may request a continuance of the hearing.

(b) The stewards may grant a continuance of any hearing for good cause shown.

(c) The stewards may at any time order a continuance on their own motion.

(6) Evidence.

(a) Each witness at a disciplinary hearing conducted by the stewards must be sworn by the presiding steward.

(b) The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The stewards may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards. Hearsay evidence alone is insufficient basis for a ruling.

(c) The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence that the licensee has violated or is responsible for a violation of the act or a commission rule.

(d) The stewards shall make a tape recording of a disciplinary hearing and make a copy of the recording available on request, at the expense of the requesting person.

**(7) Ruling.**

**(a)** The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reasons for the dissent.

**(b)** A ruling by the stewards must be on a form prescribed by the commission and include: the full name, license type, license number, and applicant ID number of the person who is the subject of the hearing; a statement of the charges against the person, including a reference to the specific section of the Racing Act or rules of the commission that the licensee is found to have violated; the date of the hearing and the date the ruling was issued; the penalty imposed; any changes in the order of finish or purse distribution; other information required by the commission.

**(c)** A ruling must be signed by a majority of the stewards.

**(d)** If possible, the stewards or their designee shall hand deliver a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the stewards shall mail the ruling to the person's last known address, as found in the commission's licensing files, by regular mail. If the ruling includes the disqualification of a horse, the stewards shall provide a copy of the ruling to the owner of the horse, the horsemen's bookkeeper, and the appropriate past performance service.

**(e)** At the time the stewards inform a person who is the subject of the proceeding of the ruling, the stewards shall inform the person of the person's right to appeal the ruling to the commission and apply for a stay.

**(f)** All fines imposed by the stewards shall be paid to the commission within 30 days after the ruling is issued, unless otherwise ordered.

**(8) Effect of rulings.**

**(a)** Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

**(b)** The transfer of a horse to avoid application of a commission rule or ruling is prohibited.

**(c)** The stewards shall honor the rulings issued by other pari-mutuel racing commissions.

**(9) Appeals.**

**(a)** A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

**(b)** An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by a fee in the amount of \$500. The fee must be in the form of cash, a cashier's check, money order or personal check.

**(c)** The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date may result in the non appearing appealing party being fined up to \$1,000.

**(d)** An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

**(e)** On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

**(f)** If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

**(10) Stay.**

**(a)** A person who has been disciplined by a ruling of the stewards may apply to the agency director for a stay of the ruling not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to the next business day. A request for a stay must be received by noon at the main commission offices.

(b) An application for a stay must be filed with the agency director not later than the deadline for filing an appeal.

(c) An application for a stay must be in writing and include the name, address and telephone number and signature of the person requesting the stay; a statement of the justification for the stay.

(d) On a finding of good cause, the agency director may grant the stay. The agency director shall notify the person in writing of the agency director's decision on the stay application. On a finding of changed circumstances or upon appellant's request for a continuance, the agency director may rescind a stay granted under this subsection. No such stay shall be rescinded with less than a 72 hours notice.

(e) The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.

**C. Proceedings by the commission:**

**(1) Party designations.**

(a) A person who is the subject of a disciplinary hearing, who filed an appeal from a stewards' ruling or who otherwise seeks relief from the commission is a party to that proceeding.

(b) A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

(c) A party summoned to appear at a hearing must appear unless the party is excused by the commission presiding officer. Parties may appear with counsel or other representatives of their choice. Counsel must be an attorney licensed to practice law in this state or with the permission of the commission is associated with an attorney licensed to practice law in this state and must submit an entry of appearance no later than 10 days prior to the hearing date.

(d) A non-party to a proceeding who wishes to appear in a contested case pending before the commission must prove that they have an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

**(2) Notice.**

(a) Not less than 20 days before the date set for a hearing, the agency director, or acting agency director, shall serve written notice on each party of record to the proceeding. The person may waive their right to said notice by executing a written waiver.

(b) The agency director shall mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail. If a party is being represented by an attorney or other representative, notice will be provided to the attorney or representative instead of on the party and is deemed properly served.

(c) A notice of the hearing must include: statement of time, place and nature of hearing; statement of the legal authority and jurisdiction under which the hearing is to be held; reference to the particular section of the statutes and rules involved; short, plain statement of the matters asserted; and any other statement required by law.

(d) If the commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued; the commission shall issue a revised notice. The party who has caused the change or error requiring revised notice shall bear the expense of giving revised notice.

(e) A party to a proceeding may move to postpone the proceeding. The motion must be in writing, set forth the specific grounds on which it is sought and be filed with the commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the commission shall cause new notice to be issued.

(f) After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

**(3) Subpoenas and depositions.**

(a) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

(b) A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(c) Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by this jurisdiction's civil procedures statute.

**(4) Pleadings.**

(a) Pleadings filed with the commission include appeals, applications, answers, complaints, exceptions, replies and motions. Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A pleading or brief filed with the commission must be typewritten or printed on 8 1/2 inch by 11-inch white paper with one-inch margins. Exhibits, unless prepared according to other commission rules pertaining to maps, plats, or similar documents, must be folded to the same size. Unless printed, the impression must be on one side of the paper only. The documentation must be double-spaced, except for footnotes and lengthy quotations, which may be single-spaced. Reproductions are acceptable, provided all copies are clear and permanently legible. The original copy of each pleading must be signed in ink by the pleader or the pleader's representative.

(d) If the commission staff prepares a form for a pleading, the commission staff shall furnish the form on request. A pleading for which an official form has been developed must conform substantially to the form. A pleading for which the commission staff has not prepared an official form must contain: the name of the pleader; the telephone number and street address of the pleader's residence or business and the telephone number and street address of the pleader's representative, if any; a concise statement of the facts relied on by the pleader; a request stating the type of commission action desired by the pleader; the name and address of each person who the pleader knows or believes will be affected if the request is granted; any other matter required by statute or commission rule; a certificate of service.

(e) A party filing a pleading shall mail or deliver a copy of the pleading to each party of record. If a party is being represented by an attorney or other representative, service must be made on the attorney or representative instead of on the party.

(f) An objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented not later than the prehearing conference if one is held and not later than 15 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file an objection under this subsection waives the objection.

(g) Except as otherwise provided by this subsection, a pleader may amend or supplement a pleading at any time before the 21st day after the date the pleading was filed, but not later than five days before the date of the hearing. A pleader may amend or supplement a pleading at any time: on written consent of each party of record; or, as permitted by the presiding officer for the proceeding, when justice requires the amendment or supplementation and when the amendment or supplementation will not unfairly surprise another party.

(h) A pleading may adopt or incorporate by specific reference any part of a document in the official files and records of the commission. This subsection does not relieve the pleader of the duty to allege in detail all facts necessary to sustain the pleader's burden of proof.

**(5) Filing pleadings.**

(a) Except as otherwise provided by this section, an original of each pleading must be filed with the commission. An original of each pleading relating to discovery must be filed with the commission. A pleading is considered filed only when actually received by the commission. Each pleading must include a certification that a copy has been mailed or delivered on each party of record, stating the name of each party served and the date and manner of service.

(b) If a pleading is sent to the commission by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one day or more before the last day for filing the pleading, the pleading is considered received and filed in time if the pleading is actually received not more than 10 days after the deadline. A legible postmark affixed by the United States postal service is prima facie evidence of the date of mailing. For purposes of responsive pleadings for which the deadline for filing is set by the filing of another pleading, the pleading to be filed first is considered filed when actually received by the commission.

(c) Unless otherwise provided by statute, the presiding officer for a proceeding may extend the time for filing a pleading on a motion made by a party before the filing deadline if the presiding officer determines that there is good cause for the extension and that the need for the extension is not caused by the neglect,

indifference, or lack of diligence of the party making the motion. A copy of a motion made under this section must be served on all parties of record contemporaneously with the filing of the motion.

(d) A pleading may be filed by facsimile, provided an original and the required number of copies are received in the commission's office not later than 5:00 p.m. of the third day after the date the document was filed by facsimile. The inability to transmit a document due to equipment malfunction or any other cause does not relieve the person attempting to file the document of the filing deadline.

(e) If the deadline for filing a pleading falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(f) The failure to file a pleading in accordance with this section may result in the pleading being struck.

(6) Place and nature of hearings.

(a) A hearing in a commission proceeding is open to the public.

(b) A hearing shall be held in Albuquerque unless: for good cause stated, the commission designates another place for the hearing; or, the act require otherwise.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes, but is not limited to, disposition by stipulation, agreed settlement, consent order, dismissal, and default.

(7) Presiding officers.

(a) One or more members of the commission, an administrative law judge, or a duly designated hearing officer may serve as the presiding officer for a commission proceeding. Objections to the presiding officer must be made in writing to the agency director at least 20 days prior to the hearing.

(b) The presiding officer may: authorize the taking of depositions; issue subpoenas to compel the attendance of witnesses and the production of papers and documents; administer oaths; receive evidence; rule on the admissibility of evidence and amendments to pleadings; examine witnesses; set reasonable times within which a party may present evidence and within which a witness may testify; permit and limit oral argument; issue interim orders; recess a hearing from day to day and place to place; request briefs before or after the presiding officer files a report or proposal for decision; propose findings of fact and conclusions of law; propose orders and decisions; perform other duties necessary to a fair and proper hearing.

(c) An administrative law judge designated as the presiding officer must be an attorney licensed to practice in this state.

(d) A person may not serve as the presiding officer of a proceeding in which the person has an economic interest. A person is considered to have an economic interest in a proceeding if the person, a member of the person's immediate family, or a dependent, business partner, or client of the person has an economic interest in the proceeding.

(8) Conferences.

(a) On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following: simplifying issues; amending the pleadings; making admissions of fact or stipulations to avoid the unnecessary introduction of proof; designating setting the order of procedure at a hearing; identifying and limiting the number of witnesses; resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute.

(b) The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate order concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

(c) During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.

(9) Discovery.

(a) On written request by a party, the presiding officer or the agency director may issue a subpoena to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding.

(b) A motion for a subpoena to compel the production of books, records, papers, or other objects shall be addressed to the appropriate person, shall be sworn to and shall specify the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.



(c) Discovery on behalf of commission shall only be provided to the licensee or to counsel who has submitted an entry of appearance.

**(10) Order of hearing.**

(a) The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.

(b) When a hearing has begun a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.

(c) Each appearance by a party, a party's representative, or a person who may testify must be entered on the record.

(d) The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.

(e) Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the commission or if several proceedings are heard on a consolidated record.

(f) After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross-examine each witness.

(g) After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross-examination.

(h) The presiding officer may allow nonparty participants to cross examine a witness if the presiding officer determines that the cross examination may lead to significantly fuller disclosure of the facts without unduly delaying the hearing or burdening the record.

(i) At the conclusion of all evidence and cross-examination, the presiding officer shall allow closing statements.

(j) Before writing a report or proposal for decision if required by law, the presiding officer may call on a party for further relevant and material evidence on an issue. The presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

**(11) Behavior.**

(a) Each party, witness, attorney, or other representative shall behave in all commission proceedings with dignity, courtesy and respect for the commission, the presiding officer and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the code of professional responsibility.

(b) An individual who violates this section may be excluded from a hearing by the presiding officer for a period and on conditions that are just, or may be subject to other just, reasonable and lawful disciplinary action prescribed by the presiding officer.

**(12) Evidence.**

(a) All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The presiding officer may, unless precluded by statute, admit evidence of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law in this jurisdiction apply in commission proceedings.

(c) A party may object to offered evidence and the objection shall be noted in the record. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary. A party, at the time a ruling is made or sought, shall make known to the presiding officer the action the party desires.

(d) When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination is preserved without making an offer of proof.

(e) The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the commission's specialized knowledge. The commission shall

notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

(f) The special skills and knowledge of the commission and the commission staff may be used in evaluating the evidence.

(g) The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.

(h) The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writings as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

(i) Documentary exhibits must be of a size, which will not unduly encumber the record. Whenever practicable, exhibits must conform to the size requirements in these rules for pleadings. The first sheet of the exhibit must briefly state what the exhibit purports to show and the pages of the exhibit must be numbered consecutively. Exhibits may include only facts material and relevant to the issues of the proceedings. Maps or drawings must be rolled or folded so as not to encumber the record. Exhibits not conforming to this subsection may be excluded.

(j) The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded, and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.

(k) The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.

**(13) Reporters and transcripts.**

(a) At the request of the respondent, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person.

(c) A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the 15th day after the date the corrections were filed with the commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

**(14) Findings of fact and conclusions of law.**

(a) The presiding officer may direct a party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision that includes proposed findings of fact and conclusions of law. The presiding officer may limit the request for proposed findings to a particular issue of fact.

**(b)** Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

**(15)** Proposal for decision.

**(a)** Where a hearing officer conducts a hearing, the hearing officer shall, within 30 days of the hearing prepare a report containing his or her findings of fact, conclusions of law and recommendations for commission action. Any commissioner who had not heard the case may not participate in a decision in which the commission rejects, modifies, adds to, or makes substitutions for the findings of fact in a hearing officer's report unless the commission has reviewed all portions of the record that pertain to such findings of fact. Where the commission itself is the hearing body, the commission shall issue findings of fact, conclusions of law and order, and, in that case, no commissioner may participate who has not either heard the case or reviewed the entire record.

**(b)** The person preparing a proposal for decision under this section shall serve a copy of the proposal on each party of record.

**(c)** A party of record may, not later than 10 working days after the date of service of a proposal for decision, file exceptions to the proposal. A reply to an exception filed under this subsection must be filed not later than five working days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.

**(d)** After the expiration of time for filing exceptions and replies, the commission shall consider the proposal for decision in open meeting. The commission may: adopt the proposal for decision, in whole or in part; decline to adopt the proposal for decision, in whole or in part; remand the proceeding for further examination by the same or a different presiding officer; or direct the presiding officer to give further consideration to the proceeding with or without reopening the hearing.

**(e)** If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared, unless a majority of the commission, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

**(16)** Dismissal. On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including: failure to timely pay all required fees to the commission; unnecessary duplication of proceedings; withdrawal; moot questions or obsolete petitions; and lack of jurisdiction.

**(17)** Orders.

**(a)** Except as otherwise provided by these rules, the commission shall issue its final order not later than 30 days after the date the commission votes on the ultimate issues in the proceeding. A final order of the commission must be in writing and be signed by at least one member of the members of the commission who voted in favor of the action taken by the commission. A final order must include findings of facts and conclusions of law, separately stated.

**(b)** The commission staff shall mail or deliver a copy of the order to each party or the party's representative.

**(c)** A final order of the commission takes effect on the date the order is issued, unless otherwise stated in the order.

**(d)** If the commission finds that an imminent peril to the public health, safety, or welfare requires an immediate final order in a proceeding, the commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

**(18)** Rehearing.

**(a)** Within 10 days following issuance of a final commission order, a party adversely affected by the order may file a petition for a rehearing stating the reasons for requesting a rehearing. The commission shall grant a rehearing only in cases of newly discovered material evidence, which the party could not reasonably have discovered at an earlier time, or other good cause.

**(b)** An order granting a motion for rehearing vacates the preceding final order. The order granting a motion for rehearing may direct that the hearing be reopened or may incorporate a new final decision. Except as otherwise provided by these rules, if the commission renders a new decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

**(19)** Ex parte communications: No party to a proceeding before the commission shall, at any time prior to the issuance of a final commission decision, discuss or otherwise communicate with a hearing officer

assigned to hear the case or with any commission member who will or may participate in the commission's decision in the case, regarding any issue in the case, without at the same time making the same communication to all other parties, including the commission's administrative prosecutor. This rule shall not apply to communications limited to such items as ascertaining the time or place of a hearing or the procedures to be followed at a hearing.

**(20) Administrative penalties.**

**(a)** If the commission determines that a person regulated under the act has violated the act or a rule or order adopted under the act in a manner that constitutes a ground for disciplinary action under the act, the commission may assess an administrative penalty against that person as provided by this section.

**(b)** The commission delegates to the agency director the authority to prepare and issue preliminary reports pursuant to the act. If, after examination of a possible violation and the facts relating to that possible violation, the agency director determines that a violation has occurred, the agency director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed and the amount to be assessed. The amount of the penalty may not exceed \$1,000 for each violation. Each day/occurrence that a violation continues may be considered a separate violation. In determining the amount of the penalty, the agency director shall consider the seriousness of the violation.

**(c)** If the commission finds based on the evidence that an appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious, the license holder may be fined in the amount up to \$2,500.

**(d)** Not later than the 10th day after the date on which the agency director issues the preliminary report, the agency director shall provide a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty. If possible, the agency director shall hand deliver the preliminary report. If hand delivery is not possible, the agency director shall mail the preliminary report to the person's last known address, as found in the commission's files, by regular mail and by certified mail, return receipt requested.

**(e)** Not later than the 20th day after the date on which the agency director delivers or sends the preliminary report, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission.

**(f)** If it is determined after the hearing that the person has committed the alleged violation, the commission shall give written notice to the person of the findings established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty.

**(g)** Not later than the 30th day after the date on which the above notice is received, the person charged shall pay the administrative penalty in full or exercise the right to appeal to the appropriate court either the amount of the penalty or the fact of the violation. If a person exercises a right of appeal either as to the amount of the penalty or the fact of the violation, the amount of the penalty is not required to be paid until the 30th day after the date on which all appeals have been exhausted and the commission's decision has been upheld.

**(21) Exclusion.**

**(a)** The steward, agency director, or commission may order an individual ejected or excluded from all or part of any premises under the regulatory jurisdiction of the commission if the stewards, agency director, or commission determine that the individual's presence on association grounds is inconsistent with maintaining the honesty and integrity of racing.

**(b)** An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the stewards or commission. If exclusion is ordered separately, the excluded individual is entitled to a hearing before the stewards or commission. A hearing on exclusion shall be conducted in the same manner as other hearings conducted by the stewards or commission.

**(c)** If an individual is excluded under this section, a race animal owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction.

**(22) Rulings in other jurisdictions.**

**(a)** Reciprocity. The stewards shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

**(b)** Appeals of reciprocal rulings. Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the commission to show cause why such ruling should not be enforced in this jurisdiction. Any request for such hearing must clearly set forth in writing the reasons for the appeal.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015; A, 05/01/2015; A, 09/16/2015; A, 03/15/2016; A/E, 06/28/2016; A, 09/16/2016; A, 12/16/2016; A, 07/01/2017; A, 03/14/2018]

**15.2.1.10 RULEMAKING PROCEDURES:**

**A.** The provisions of this section shall be applicable to proceedings of the commission to adopt, amend or repeal rules and regulations of general applicability, which implement or interpret a law administered or enforced by the commission. These procedures shall not apply to: statements, policies, procedures or regulations concerning only internal management of the commission and not affecting the rights of or procedure available to licensees, applicants or the public generally; declaratory rulings and directives issued pursuant to provisions of this section; decisions, statements or interpretations issued or actions taken in the course of disciplinary proceedings against a licensee; formal or informal opinions of the attorney general pursuant to requests of the commission or the commission staff.

**B. PROCEEDINGS BY COMMISSION:**

**(1)** No rule or regulation, or amendment or repeal thereof, shall be adopted by the commission until after a public hearing by the commission, except as provided herein for emergency regulations. The commission shall allow all interested persons reasonable opportunity to present written materials and to speak in favor of their positions as they pertain to proposed rules. The commission may designate a hearing officer to take evidence. The commission may hold more than one hearing on proposed rules and may hold hearings at any location in the state. A record, consisting of at least written minutes or a tape recording, shall be made of all proceedings at the hearing.

**(2)** Notice of rulemaking hearings shall be provided to the public not later than 30 days prior to the hearing date. The notice shall include:

- (a)** a summary of the full text of the proposed rule;
- (b)** a short explanation of the purpose of the proposed rule;
- (c)** a citation to the specific legal authority authorizing the proposed rule and the adoption of the proposed rule;
- (d)** information on how a copy of the full text of the proposed rule may be obtained;
- (e)** information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (f)** information on where and when a public rule hearing will be held and how a person may participate in the hearing; and,
- (g)** a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained. The notice shall be published in a newspaper of general circulation in the state and the commission shall send by electronic mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings. The notice must also be published in the New Mexico register.

**(3)** Rules are effective the date they are published in the New Mexico register unless a later date is otherwise provided by law or in the rule. The agency shall file the adopted rule with the state records administrator or the administrator's designee within 15 days from the date of the adoption. This provision does not apply to emergency rules.

**(4)** If the commission finds that the time required to complete the rulemaking procedure would cause an imminent peril to the public health, safety or general welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law, then the agency shall provide to the public a record of any such finding and detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

(5) Any interested person may request in writing that the commission adopt, amend or repeal a rule. The commission shall either initiate formal proceedings to consider the proposed rule or issue a written statement of its reason for denial of the request to consider it.

**C. Declaratory rulings:**

(1) Any licensee of the commission whose rights may be affected by the application of any statute administered or enforced by the commission or by any rule of the commission may request in writing a declaratory ruling from the commission concerning the applicability of the statute or rule to a particular set of facts. The facts stated must be stated with such specificity as to allow a ruling to be made and the situation stated must be sufficiently concrete to justify issuance of a declaratory ruling.

(2) The purpose of declaratory rulings is to allow a licensee to conform his future actions or behavior to the parameters of the law. Declaratory rulings shall not be used for any other purpose. The commission may refuse to consider a request if it determines that its purpose or effect would be contrary to the purposes stated herein for declaratory rulings. In no case shall the commission consider a request, which directly or indirectly affects a pending action or disciplinary proceeding, or appeal thereof, before the stewards or the commission.

(3) The commission may issue directives to its employees, stewards, licensees or racing officials. Directives may be utilized to direct the performance of an act, to provide an interpretation of a statute or rule or for other purposes.

(4) The commission may on its own motion issue declaratory rulings and directives.

(5) The effect of a declaratory ruling shall be limited to the commission and the licensee, if any, requesting it.

[15.2.1.10 NMAC - Rp, 15 NMAC 2.1.10, 03/15/2001; A, 03/14/2018]