

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

ALCOHOLIC BEVERAGE CONTROL DIVISION

RULEMAKING HEARING

MONDAY, JULY 26, 2021, 1:05 P.M.

(VIA CISCO WEBEX)

A P P E A R A N C E S

MAX SHEPARD, Hearing Officer

ANDREW VALLEJOS, Director, Alcohol Beverage Control Division

PHILLIP SANCHEZ, Division Counsel

DESIRAE GRIEGO, Administrative Law Judge

REPORTED BY: KIM KAY SHOLLENBARGER, RPR
PAUL BACA PROFESSIONAL COURT REPORTING
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102

1 HEARING OFFICER SHEPARD: This meeting will please
2 come to order at this time. My name is Max Shepard, I will
3 be acting as the Presiding Officer for this Rule Hearing.
4 The purpose of this hearing is for the Alcohol Beverage
5 Control Division to receive public comments on proposed rules
6 regarding the Liquor Control Act. The Division, as
7 Mr. Sanchez has just indicated, welcomes everyone present at
8 this hearing.

9 The hearing is being conducted pursuant to and in
10 accordance with the provisions of the New Mexico Liquor
11 Control Act, which is NMSA 1978 Section 60-3A-1 through
12 60-8A-19 and the Open Meetings Act, Sections 10-15-1 through
13 4. The New Mexico Lobbyist Regulation Act regulates
14 activities in rulemaking proceedings. You can contact the
15 Secretary of State's Office for information and registration.

16 Public notice of this hearing was advertised in the
17 New Mexico Register and the Albuquerque Journal. Copies of
18 the proposed rules have been available from the Division
19 office since the notices were published and are available to
20 the public attending this meeting. Copies of the proposed
21 rules were also posted on the Division's Internet website,
22 which is www.rld.state.nm.us/abc, as well as
23 www.rld.nm.gov/alcohol-beverage-control, and were available
24 by request to anyone who did request them.

25 Let the record show that the Alcohol Beverage

1 Control Division Director, Andrew Vallejos, is present. Also
2 for the Division is Phillip Sanchez, Division Counsel, and
3 Desirae Griego.

4 For the record, would the members of the audience, I
5 know there are a few of you out there, would the members of
6 the audience, either those who are logged in online or who
7 have participated through telephone, introduce yourself and
8 state your affiliation. Someone simply has to start this
9 process and then wait for that person to complete their
10 introduction, and then the next person picks it up.

11 (Court Reporter - Webex inaudible)

12 MR. KEEGAN: This is Colin Keegan, I'm calling from
13 Santa Fe Spirits. We're an 11 year old company that has been
14 distilling and manufacturing spirits in New Mexico for 11
15 years. I am a Member of the New Mexico Distillers Guild.

16 MS. GRIEGO: This is Desirae with the Alcohol
17 Beverage Control Division. I'm going to step in and I'm
18 going to announce your name and if you could please state and
19 introduce yourself for the record.

20 We're going to start off with Al Lucero.

21 MR. LUCERO: Al Lucero with Southern Glazer Wine and
22 Spirits, a local distributor.

23 MS. GRIEGO: Thank you, Mr. Lucero. Allison Smith,
24 you will be next.

25 MS. SMITH: Thank you very much. I'm Allison Smith,

1 I am the registered lobbyist for the New Mexico Restaurant
2 Association.

3 MS. GRIEGO: Thank you, Ms. Smith. Amanda Davis,
4 you will be next. You will need to unmute yourself as well.
5 Okay, we'll skip Amanda for right now, we'll come back to
6 her. We're going to call A. McDevitt, you will be next.

7 HEARING OFFICER SHEPARD: A. McDevitt, you will need
8 to unmute your microphone.

9 (Webex - feedback)

10 MS. GRIEGO: A. McDevitt, we will come back to you
11 as well. Next we have Bernice. Bernice, you will need to
12 unmute yourself as well. Billy, are you there? Billy, if
13 you can hear me, please state your name for the record.
14 Caitlin, can you hear me? Caitlin.

15 MS. RICHARDS: Hi. Caitlin Richards, and I'm with
16 Santa Fe Spirits with Colin Keegan.

17 MS. GRIEGO: Thank you. Next we have Carol.

18 MS. WHITE: Hi. Carol White with the New Mexico
19 Restaurant Association.

20 MS. GRIEGO: Thank you, Carol. Next we have
21 Kempski.

22 MR. KEMPSKI: Good afternoon, Chris Kempski,
23 Southern Glazer Wine and Spirits of New Mexico.

24 MS. GRIEGO: Thank you. Next we have Cynthia.

25 MS. SANCHEZ: I am Cynthia Sanchez from GCT

1 Corporation and we're a liquor license holder.

2 MS. GRIEGO: Thank you. Next we have Darren Bond.

3 MR. BOND: I'm Darren Bond, Republic National
4 Distributing Company of New Mexico.

5 MS. GRIEGO: Thank you. Next we have David
6 Kittleson.

7 MR. KITTLESON: Hello, my name is Dave Kittleson,
8 I'm with Southern Glazer Wine and Spirits of New Mexico.

9 MS. GRIEGO: Thank you. Next we have Gary
10 Archuleta.

11 MR. ARCHULETA: Hi, I'm Gary Archuleta, Republic
12 National Distributing Company of New Mexico.

13 MS. GRIEGO: Next we have John Thompson.

14 MR. THOMPSON: Good afternoon, John Thompson here on
15 behalf of New Mexico Alcohol Beverage Wholesalers
16 Association. Thank you.

17 MS. GRIEGO: Thank you. Next we have Josh Rosen.
18 Josh Rosen.

19 MR. ROSEN: Josh Rosen from Strategies 360,
20 registered lobbyist for Sazerac.

21 MS. GRIEGO: Thank you. Next we have Kevin
22 McDonald. Kevin, you will need to unmute yourself and
23 introduce yourself. Next we have Linda Aikin.

24 MS. AIKIN: This is Linda Aikin, I'm a liquor
25 lawyer.

1 MS. GRIEGO: Thank you. Next we have Marian Ortega.

2 MS. ORTEGA: Hi, everybody. My name is Marian
3 Ortega and I work with the Health Equity Council in
4 Bernalillo County and I'm also here representing the
5 Albuquerque Bernalillo County Prevent Community Coalition.

6 MS. GRIEGO: Thank you. Next we have Skye
7 Morries-Devore.

8 MS. MORRIES-DAVORE: My name is Skye Morries-Devore,
9 I'm the co-owner of Tractor Brewing Company.

10 MS. GRIEGO: Thank you. Next we have T.J. Trujillo.

11 MR. TRUJILLO: Hi, T.J. Trujillo, registered
12 lobbyist.

13 MS. GRIEGO: Thank you. Next we have Tara M.

14 MS. HEDRICK: Tara Hedrick, registered lobbyist.

15 MS. GRIEGO: Thank you. Next we have the
16 participant identified as user.

17 MR. SHOOK: I think that might be me. This is Tom
18 Shook, I'm the Director of Education for the New Mexico
19 Restaurant Association.

20 MS. GRIEGO: Thank you. Next we have Wally.

21 (Court Reporter - Zoom inaudible)

22 MS. GRIEGO: Wally, would you mind introducing
23 yourself again for the record.

24 (Court Reporter - Zoom inaudible)

25 (Audience - Zoom inaudible)

1 MR. SANCHEZ: Wally, can you please in the chat
2 section type out what it is that you were saying and we can
3 have Desirae read it into the record.

4 (pause in proceedings)

5 (Webex inaudible)

6 MS. GRIEGO: Wally Minoli, owner of Gecko's Bar and
7 Tapas in Albuquerque. And I believe that's all of them for
8 right now, Phillip.

9 MR. SANCHEZ: Did we get the call ins?

10 UNIDENTIFIER SPEAKER: No, you did not.

11 MS. GRIEGO: We have call in number user 3, if you
12 could state your name and your affiliation.

13 MR. KEEGAN: Hi, this is Colin Keegan, Santa Fe
14 Spirits.

15 MS. GRIEGO: Call in user 5, if you can, please,
16 call in user 5, state your name.

17 MR. RHODES: I'm not sure what user number I am, but
18 my name is Mark Rhodes, I'm a liquor lawyer and registered
19 lobbyist for the New Mexico Package Liquor Association.

20 MS. GRIEGO: Thank you, Mr. Rhodes. Call in number
21 7, please state your name.

22 UNIDENTIFIED SPEAKER: Is that John Nye?

23 MS. GRIEGO: Yes.

24 MR. NYE: John Nye, owner, Management Resources,
25 LLC.

1 MS. GRIEGO: Thank you.

2 HEARING OFFICER SHEPARD: Thank you, Desirae. Let's
3 go ahead.

4 (Webex feedback)

5 UNIDENTIFIED SPEAKER: Mute everybody, then whoever
6 is speaking unmute yourself, or else we're going to get this
7 feedback for the whole meeting.

8 (Court Reporter - confirming feedback)

9 SPEAKER: We can't hear anything.

10 HEARING OFFICER SHEPARD: Now can you hear me?

11 MR. SANCHEZ: Yes, sir.

12 HEARING OFFICER SHEPARD: The court reporter will be
13 recording the proceedings. The transcript prepared by the
14 court reporter will be part of the Rule Hearing record.
15 Therefore, when someone is recognized to address the
16 Division, that person is again asked to identify themselves
17 each time you address the Division and speak loudly and
18 clearly so the court reporter can pick up your comments.

19 If you are not speaking as Desirae has already
20 indicated and the court reporter has indicated, please mute
21 the microphone so we don't have a great deal of feedback.

22 The proceeding will be conducted in the following
23 manner: Mr. Sanchez, attorney for the Division, will present
24 exhibits to the Division. I, as the presiding officer, will
25 rule on the admissibility of the exhibits offered by

1 Mr. Sanchez after allowing questions from members of the
2 Division. Exhibits admitted into evidence are available for
3 review by members of the public; however, exhibits may not be
4 removed from this room.

5 After Mr. Sanchez offers exhibits and their
6 admission has been ruled upon I will open the hearing for
7 comments from the audience. We will proceed in numerical
8 sequence through each proposed rule. I do not feel it's
9 necessary to read each rule in their entirety before they are
10 commented on, since copies of the rules have been made
11 available to all participates at this point.

12 We will address only one rule at a time going
13 sequentially; however, you may refer to other rules that
14 reasonably relate to the rule being discussed or which relate
15 to your comments.

16 The Alcohol Beverage Control Division does not
17 follow the Rules of Evidence, but shall in the interests of
18 efficiency reserve the right to limit all testimony deemed
19 irrelevant, redundant or unduly repetitious. The decision as
20 to whether or not such testimony is irrelevant, redundant or
21 unduly repetitious shall be made by me as the presiding
22 officer.

23 If possible, I would like to get some idea of, and
24 this will be kind of difficult, how many people plan to
25 present testimony or comment on a proposed rule? Is there a

1 way that we can do this reasonably...

2 MR. SANCHEZ: Mr. Hearing Officer, if I may.
3 Phillip Sanchez. There is a reaction icon at the bottom of
4 the screen for people who logged in using Webex. One of
5 those reactions is to raise hand. Everyone can raise their
6 hand using that icon, and then we can determine who will
7 participate that way.

8 HEARING OFFICER SHEPARD: That icon is a smiley face
9 at the bottom of your Webex screen with a little X up in the
10 right-hand corner of that face. If you anticipate presenting
11 testimony, evidence, please indicate by selecting the raised
12 hand and the reaction icon. And you can do that at this
13 moment, if you would.

14 (gesturing)

15 HEARING OFFICER SHEPARD: At the conclusion of the
16 Rule Hearing the Division will take the following action on
17 the rules such as amending, adopting or tabling them after
18 taking into consideration the comments and testimony
19 presented here today. This public hearing is now open.

20 Mr. Sanchez, at this time do you have any exhibits
21 to introduce into evidence?

22 MR. SANCHEZ: Mr. Hearing Officer, I have the
23 following exhibits to enter into evidence. Additionally,
24 those exhibits are available to be viewed online at the ABC
25 website, www.rld.nm.gov/alcohol-beverage-control. It is the

1 same location where the Notice of Proposed Rulemaking was, as
2 well as a copy of the proposed rules.

3 Those exhibits are as follows: Exhibit 1, the legal
4 notice published in the New Mexico Register.

5 Exhibit 2, the legal notice published in the
6 Albuquerque Journal.

7 Exhibit 3, an Affidavit of Notice.

8 Exhibit 4, the proposed rule amendments for Part 2
9 of 15.10 NMAC entitled Definitions.

10 Exhibit 5, the proposed rule amendments for Part 31
11 of 15.10 NMAC entitled Premises, General Requirements.

12 Exhibit 6, the proposed rule amendments for Part 32,
13 15.10 NMAC entitled Location and Description of Licensed
14 Premises.

15 Exhibit 7, the proposed rule amendments for Part 33
16 of 15.10 NMAC entitled Minors on Licensed Premises.

17 Exhibit 8, the proposed rule amendments for Part 51
18 of 15.10 NMAC entitled Sales, Restrictions on Sales.

19 Exhibit 9, the proposed rule amendment for Part 52
20 of 15.10 NMAC entitled Segregated Alcohol Sales.

21 Exhibit 10, the proposed rule amendments for Part 53
22 of 15.10 NMAC entitled Sales, Wholesalers.

23 Exhibit 11, the proposed rule amendments for Part 54
24 of 15.10 NMAC entitled Sales, Clubs.

25 Exhibit 12, the proposed rule amendment for Part 55

1 of 15.10 NMAC entitled Internet Sales.

2 Exhibit 13, the proposed rule amendments for Part 61
3 of 15.10 NMAC entitled Citations, Fines and Penalties.

4 Exhibit 14, the proposed rule amendments for Part 70
5 of 15.10 NMAC entitled Operation and Profiting by Authorized
6 Persons and Alternating Proprietorships.

7 Exhibit 15, the proposed rule amendments for Part 2
8 of 15.11 NMAC entitled Required Documents on Licensed
9 Premises.

10 Exhibit 16, the proposed new rule, Part 20 of 15.11
11 NMAC entitled Licenses and Permits, Alcoholic Beverage
12 Delivery.

13 Exhibit 17, the proposed rule amendment for Part 21
14 of 15.11 NMAC entitled Licenses and Permit, Applications.

15 Exhibit 18, the proposed rule amendments for Part 22
16 of 15.11 NMAC entitled Licenses and Permits, Renewal and
17 Suspension.

18 Exhibit 19, the proposed rule amendment for Part 23
19 of 15.11 NMAC entitled Licenses and Permits, Change in
20 Licensee.

21 Exhibit 20, the proposed rule amendments for Part 24
22 of 15.11 NMAC entitled Licenses and Permits, Restaurant
23 License.

24 Exhibit 21, the proposed rule amendments for Part 25
25 of 15.11 NMAC entitled Licenses and Permits, Special

1 Dispenser and Public Celebration Permits.

2 Exhibit 22, the proposed rule amendments for Part 26
3 of 15.11 NMAC entitled Licenses and Permits, Fees.

4 Exhibit 23, the proposed rule amendments for Part 27
5 of 15.11 NMAC entitled Licenses and Permits, Inter-Local
6 Option District Transfers.

7 Exhibit 24, the proposed rule amendments for Part 28
8 of 15.11 NMAC entitled Licenses and Permits, Bed and
9 Breakfast License.

10 Exhibit 25, the proposed rule amendments for Part 29
11 of 15.11 NMAC entitled Licenses and Permits, Tasting Permits.

12 Exhibit 26, the proposed rule amendments for Part 30
13 of 15.11 NMAC entitled Purchasing Cooperatives.

14 And Exhibit 27, the proposed rule amendment for Part
15 31 of 15.11 NMAC entitled Alcohol Server Training
16 Certification.

17 HEARING OFFICER SHEPARD: Are there any questions
18 from the Division as to these tendered exhibits? Exhibits 1
19 through 27 are hereby admitted into the record.

20 Mr. Sanchez, are there any other exhibits to enter
21 into the record at this time?

22 MR. SANCHEZ: Mr. Hearing Officer, there are not at
23 this time.

24 HEARING OFFICER SHEPARD: Any person wishing to
25 testify and to submit evidence with their comments shall do

1 so when they are recognized by me to testify. Each document
2 shall be introduced as an exhibit into the record. The
3 Division will be permitted to ask questions before I rule on
4 the admissibility of any tendered evidence. Upon the
5 admissibility each exhibit will be marked and numbered and
6 entered into the record.

7 At this time each proposed rule will be introduced
8 in turn in the record, I will open the floor to members of
9 the audience for testimony and comments on each rule.
10 Members of the Division or the audience may question each
11 witness upon being recognized by me to speak.

12 Would anyone wish to comment on Rule 15.10, Part 2,
13 Definitions. First we will take comments from those
14 attending online, and then from those attending via
15 telephone. Is there anyone who wishes to comment on 15.10,
16 Definitions, if so, please identify yourself for the record.

17 MR. SANCHEZ: Mr. Hearing Officer, for those
18 attending online, if they want to raise their hand using the
19 icon, then we can go through those, unmute them, then go to
20 the callers using the telephone, that may help facilitate so
21 that we don't have people talking over each other.

22 HEARING OFFICER SHEPARD: Right. Anyone who wants
23 to comment on this rule, go to the reaction button at the
24 bottom of your Webex page, that will allow you to raise your
25 hand. We can see the raised hand, then we will call on you

1 for identification, then get your comments and any evidence,
2 if any. On my screen, which may not have everyone present --
3 okay, yes, Linda Aikin. Identify yourself.

4 MS. AIKIN: This is Linda Aikin. I just want to
5 reiterate what I saw in one of the comments and that is that
6 the definition of cider needs to be changed to be consistent
7 with the new definition in the change, the recent amendments
8 to the Liquor Control Act. It says, "apples and pears," and
9 it has the different percentage value in the new law. That's
10 it.

11 HEARING OFFICER SHEPARD: Thank you. Any questions
12 of this witness from the Division?

13 MR. SANCHEZ: None at this time.

14 HEARING OFFICER SHEPARD: Would anyone in the
15 audience wish to question Ms. Aikin on her comments? If so,
16 raise your hand using the reaction button and you will be
17 called on. I don't see any raised hands.

18 We will move on to the next proposed rule change,
19 Mr. Sanchez.

20 MR. SANCHEZ: Mr. Hearing Officer, we do need to
21 check with the individuals calling in via the telephone as
22 well. They can't raise their hand using the button.

23 HEARING OFFICER SHEPARD: Sorry. Any of the
24 participants who are participating in this hearing via
25 telephonically, do any of you have any comments on the

1 proposed rule changes in 15.10, Part 2, Definitions, or any
2 questions for Ms. Aikin? I don't see any indication that
3 there are any questions.

4 We will move on to the next rule. Would anyone wish
5 to comment on 15.10, Part 31, Premises, General Requirements.
6 First we will take comments from those attending online, then
7 those attending by telephone. Again, if you have a comment
8 you would like to make, please use the reaction button to
9 raise your hand and we will call on you. Again, I don't see
10 any indication that anyone participating online has a
11 comment. Anyone who is participating telephonically, do you
12 have a comment that you would like to make on 15.10.31,
13 Premises, General Requirements?

14 Would anyone wish to comment on Rule 15.10, Part 32,
15 Premises, Location and Description of Licensed Premises?
16 Again, same procedure, reaction button and we will call on
17 you. Anyone who is participating telephonically, do you have
18 any comment or evidence that you would like to tender in
19 relation to 15.10, Part 32?

20 Would anyone wish to comment on 15.10, Part 33,
21 Premises, Minors on License Premises? Same procedure, first
22 those online participating, then those participating
23 telephonically, anyone participating online who would like to
24 tender comment or evidence, please use the reaction button to
25 get our attention by raising your hand. Anyone participating

1 telephonically who has --

2 MS. SMITH: Mr. Hearing Officer.

3 HEARING OFFICER SHEPARD: Yes, go ahead.

4 MS. SMITH: My name is Allison Smith. I'm the
5 registered lobbyist for the New Mexico Restaurant
6 Association. Thank you for the opportunity to comment. I
7 have a comment on the employment of minors. The new statute
8 does change that age from 19 to 18 years old, and I believe
9 the rule should state 18 instead of 19. That's all I have.

10 HEARING OFFICER SHEPARD: Any questions of this
11 witness from the Division?

12 MR. SANCHEZ: No, Mr. Hearing Officer.

13 HEARING OFFICER SHEPARD: Anyone in the audience
14 wish to question this witness? Anyone telephonically
15 participating have a question for this witness? Thank you,
16 Ms. Smith, for those comments.

17 Would anyone like to comment on 15.10, Part 51,
18 Sales, Restrictions on Sales? Again, the same procedure,
19 anyone telephonically who would like to comment on 15.10,
20 Part 51, Sales, Restrictions on Sales? Seeing no comment, we
21 will move on.

22 Would anyone like to comment on Rule 15.10, Part 52,
23 Segregated Alcohol Sales? I'm not seeing a hand raised.
24 Anyone telephonically who would like to comment on 15.10,
25 Part 52, Segregated Alcohol Sales? There are no comments,

1 then we will move on.

2 Would anyone wish to comment on 15.10, Part 53,
3 Sales, Wholesalers? Again, I am not seeing hands raised.
4 Have I missed one? Anyone participating telephonically wish
5 to comment on 15.10, Part 53, Sales, Wholesales? There being
6 no comment, we will move on.

7 Would anyone wish to comment on Rule 15.10, Part 54,
8 Sales, Clubs? Anyone telephonically participating who would
9 like to comment on 15.10, Part 54, Sales, Clubs? No
10 comments, we will move on.

11 Would anyone wish to comment on Rule 15.10, Part 55,
12 Internet Sales? Again, the same process, use the reaction
13 button, raise your hand to be called on. Anyone
14 participating telephonically who would like to comment on
15 15.10, Part 55, Internet Sales? No comments.

16 Would anyone like to comment on Rule 15.10, Part 61,
17 Citations, Fines and Penalties? Again the same process,
18 reaction button to be called on. Anyone participating
19 telephonically who would like to comment on 15.10, Part 61,
20 Citations, Fines and Penalties? No comments.

21 We will move on. Would anyone wish to comment on
22 Rule 15.10, Part 70, Operation and Profiting by Authorized
23 Persons and Alternating Proprietorships? Again,
24 participation through the reaction button. I am not seeing
25 any hands raised. Anyone participating telephonically wish

1 to comment on 15.10, Part 70? There being no comments, we
2 will move on.

3 Would anyone wish to comment on Rule 15.11, Part 2,
4 Required Documents on Licensed Premises? Again, those
5 participating online, raise your hand. Yes, Carol. Unmute
6 and share your comments.

7 MS. WHITE: Thank you. Carol White with the New
8 Mexico Restaurant Association. My only comment is that we
9 have removed the posters warning of the dangers of penalties
10 for drunk driving or driving while intoxicated and I am just
11 wondering -- I think that was in statute. Does anybody know
12 the purpose of that?

13 HEARING OFFICER SHEPARD: This is not quite a
14 comment, but is there a question from the Division?
15 Mr. Sanchez.

16 MR. SANCHEZ: There is not, Mr. Hearing Officer.

17 HEARING OFFICER SHEPARD: I'm sorry, we don't have
18 an immediate answer for that question.

19 MS. WHITE: No problem.

20 HEARING OFFICER SHEPARD: Does anyone in the
21 audience wish to address this witness or that question?
22 Thank you for your comment.

23 Would anyone wish to comment on Rule 15.11, Part 20,
24 Licenses and -- I'm sorry.

25 MS. SMITH: Mr. Hearing Officer, Allison Smith. I

1 want to comment on 15.11, Part 2, on the documents required
2 for delivery of alcoholic beverages. Paragraph D is
3 requiring documentation to be saved for a period of six
4 months, and that is listed under what the delivery person
5 must carry on their person. So my question, or my comment
6 would be, perhaps that should be separated out of what should
7 be carried on their person, but records that should be
8 retained by the licensee, but not necessarily on the
9 deliverer person.

10 HEARING OFFICER SHEPARD: Any questions of this
11 witness from the Division?

12 MR. SANCHEZ: No, Mr. Hearing Officer.

13 HEARING OFFICER SHEPARD: Would anyone in the
14 audience wish to question this witness? Thank you,
15 Ms. Smith, for that comment. Are there any other comments on
16 15.11, Part 2, Required Documents on Licensed Premises? I'm
17 sorry I missed your hand, Ms. Smith, it's up in the corner of
18 my screen and I didn't see it.

19 MS. SMITH: I understand, sir.

20 HEARING OFFICER SHEPARD: We will move on. Any
21 comments on Rule 15.11, Part 20, Licenses and Permits,
22 Alcoholic Beverage Delivery? I don't see any hands.
23 Is there anyone participating telephonically who wants to
24 comment on Rule 15.11, Part 20, Licenses and Permits,
25 Alcoholic Beverage Delivery?

1 MR. SANCHEZ: We do have a hand from Marian Ortega
2 and it looks like a reaction from Carol as well.

3 HEARING OFFICER SHEPARD: Yes, I see Carol's. Go
4 ahead, start with Carol.

5 MS. WHITE: Carol White with New Mexico Restaurant
6 Association. In 15.11.20.11, under D it says, "a third party
7 alcohol delivery licensee shall not," and number 1 is, share
8 in the profits of the sale of alcoholic beverages with a
9 license. So that's not really how third party delivery
10 works. Usually a restaurant will take a third party delivery
11 because they pay 30 percent to that third party group and
12 they will increase their prices, and the third party group
13 does take 30 percent. So I don't know if that's considered
14 sharing in profits or not, but that does need to be addressed
15 in this, because that's not how third party delivery services
16 work.

17 HEARING OFFICER SHEPARD: Any questions of this
18 witness from the Division?

19 MR. SANCHEZ: No, Mr. Hearing Officer.

20 HEARING OFFICER SHEPARD: I know we have someone
21 else who wants to comment. Would anyone in the audience wish
22 to question this witness? We had another participant who had
23 a comment.

24 MS. ORTEGA: My name is Marian Ortega. As I
25 mentioned before, I represent the ABC Prevent Community

1 Coalition here in Bernalillo County. On behalf of the
2 Coalition we just want to express our concern for potential
3 increase in access to alcohol through home delivery as it
4 provides more community access to alcohol. Data shows that
5 alcohol home delivery increases the risk for commercial
6 availability of alcohol to underage youth and so that leads
7 to question/comments. When you're in line with a friend to
8 buy alcohol at the store they're supposed to card both
9 patrons, how will it work when there's a group of people at a
10 party at the home delivery site? And also referring back to
11 responsible training service, will there be additional
12 training of delivery drivers beyond mandated RVS training?
13 The next question is, what happens if the person buying is
14 intoxicated upon delivery and who will be monitoring
15 enforcing?

16 HEARING OFFICER SHEPARD: Thank you for that. Are
17 there any questions of this witness from the Division?

18 MR. SANCHEZ: No, Mr. Hearing Officer.

19 HEARING OFFICER SHEPARD: Would anyone in the
20 audience wish to question this witness? Ms. Ortega, thank
21 you for your comments and they will be part of the record and
22 will be considered in making the final division on these
23 rules.

24 Would anyone wish to comment on Rule 15.11.21,
25 Licenses and Permits, Applications? I don't see any hands

1 raised. Anyone participating telephonically wish to comment
2 on Rule 15.11.21, Licenses and Permits, Applications? No
3 comments.

4 Would anyone wish to comment on Rule 15.11.22,
5 Licenses and Permits, Renewal and Suspension? Anyone
6 participating telephonically wish to comment on Rule 15.11,
7 Part 22? No comments, we will move.

8 Would anyone wish to comment on Rule 15.11, Part 23,
9 Licenses and Permits, Change in Licensee? I see no hands
10 raised. Anyone participating telephonically wish to comment
11 on Rule 15.11, Part 23? There being no comments, we will
12 move on.

13 Would anyone wish to comment on Rule 15.11, Part 24,
14 Licenses and Permits, Restaurant License? I see no hands
15 raised. Anyone participating telephonically wish to comment
16 on Rule 15.11, Part 24? There being no comments, we will
17 move on.

18 Would anyone wish to comment on Rule 15.11, Part 25,
19 Licenses and Permits, Special Dispenser and Public
20 Celebration Permits? I see no hands raised. Anyone
21 participating telephonically wish to comment on Rule 15.11,
22 Part 25? I see no comments, we will move on.

23 Would anyone wish to comment on Rule 15.11, Part 26,
24 Licenses and Permits, Fees? Again, I see no hands raised.
25 Does anyone participating telephonically wish to comment on

1 Rule 15.11, Part 26? There being no comments, we will move
2 on.

3 Would anyone wish to comment on Rule 15.11, Part 27,
4 Licenses and Permits, Inter-Local Option District Transfers?
5 I see no hands raised. Anyone participating telephonically
6 wish to comment on Rule 15.11, Part 27?

7 Would anyone like to comment on Rule 15.11, Part 28,
8 Licenses and Permits, Bed and Breakfast License? I see no
9 hands raised. Does anyone participating telephonically wish
10 to comment on Rule 15.11, Part 28? There being no comment,
11 we will move on.

12 Would anyone like to comment on Rule 15.11, Part 29,
13 Licenses and Permits, Tasting Permits? I see no hands
14 raised. Does anyone participating telephonically wish to
15 comment on Rule 15.11, Part 29? With no comment, I will move
16 on.

17 Would anyone like to comment on Rule 15.11, Part 30,
18 Purchasing Cooperatives? I see no hands raised. Would
19 anyone participating telephonically wish to comment on Rule
20 15.11, Part 30? There being no comments.

21 Would anyone like to comment on Rule 15.11, Part 20,
22 Alcohol Server Training certification?

23 MR. SANCHEZ: Mr. Hearing Officer, I apologize, that
24 appears to be a typo. It is 15.11, Part 31, Alcohol Server
25 Training Certification.

1 HEARING OFFICER SHEPARD: Thank you for that
2 correction. With that correction, would anyone wish to
3 comment on Rule 15.11, Part 31, Alcohol Server Training
4 Certification? Yes, Ms. Smith.

5 MS. SMITH: Mr. Hearing Officer, my name is Allison
6 Smith, registered lobbyist, New Mexico Restaurant
7 Association. I have a similar comment in this section as I
8 did to the employment of minors, and that would be
9 15.11.31.8, paragraph G talks about 19 and 20 year olds.
10 Since the statute now allows 18 year olds to serve alcohol,
11 they need to be included in here as well.

12 HEARING OFFICER SHEPARD: Thank you for that
13 comment. Any questions of this witness from the Division?

14 MR. SANCHEZ: No, Mr. Hearing Officer.

15 HEARING OFFICER SHEPARD: Anyone in the audience
16 either participating online or telephonically wish to ask a
17 question of this witness? If there are no other further
18 questions, then we will close this hearing.

19 MR. SANCHEZ: Mr. Hearing Officer.

20 HEARING OFFICER SHEPARD: Yes.

21 MR. SANCHEZ: I apologize, Phillip Sanchez from ABC.
22 At this time I would actually move to admit one more exhibit,
23 in addition to today's comments that we received through the
24 hearing. I would like to admit the comments the Division has
25 received in writing between the Notice of Publication and

1 what is right now 2:04 p.m. on July 26, 2021, as Exhibit 28.
2 Those comments can be located on the ABC website that you
3 mentioned earlier.

4 HEARING OFFICER SHEPARD: Are there any questions
5 from the Division as to the admissibility of Exhibit 28? If
6 there are no comments, no objections, then Exhibit 28 will be
7 admitted and will be a part of this record.

8 The comments that have been submitted, the
9 discussion during the Rule Hearing will be considered by the
10 Division. Any rules adopted by the Division will be filed at
11 the State Records and Archives in accordance with the State
12 Rules Act and New Mexico Registration publication deadlines.
13 The adopted rules become effective 30 days after they are
14 filed at the Records and Archives, unless otherwise noted at
15 the end of a section.

16 I would like to thank all of the Division and
17 everyone present for their participation and attendance in
18 this today and working with me on the virtual hearing. I
19 appreciate your participation and your cooperation. Let the
20 record show that this hearing was adjourned at 2:05 p.m. on
21 the 26th of July. Thank you all very much.

22 (Meeting adjourned at 2:05 p.m.)
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REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand via Webex and that the foregoing pages are a transcript of those proceedings taken to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties in this case and that I have no interest in the final disposition of this case.

Kim Kay Shollenbarger, RPR