

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 2 HORSE RACING
PART 2 ASSOCIATIONS

15.2.2.1 ISSUING AGENCY: New Mexico Racing Commission.
[15.2.2.1 NMAC - Rp, 15 NMAC 2.2.1, 3/15/2001]

15.2.2.2 SCOPE: General Public and any person, firm, association, or corporation, desiring to hold a horse race, or to engage in horse race meetings. Additional regulations may be cross-referenced in 15.2.1 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.
[15.2.2.2 NMAC - Rp, 15 NMAC 2.2.2, 3/15/2001]

15.2.2.3 STATUTORY AUTHORITY: Section 60-1A-4 NMSA 1978 empowers the state racing commission to make rules and regulations for the holding, conducting and operating of all race meets and races. Section 60-1A-20 NMSA 1978 empowers the racing commission to establish such qualifications for licenses to conduct horse race meets as it deems to be in the public interest.
[15.2.2.3 NMAC - Rp, 15 NMAC 2.2.3, 3/15/2001; A, 9/15/2009; A, 12/1/2010]

15.2.2.4 DURATION: Permanent.
[15.2.2.4 NMAC - Rp, 15 NMAC 2.2.4, 3/15/2001]

15.2.2.5 EFFECTIVE DATE: March 15, 2001 unless a later date is cited at the end of a section.
[15.2.2.5 NMAC - Rp, 15 NMAC 2.2.5, 3/15/2001]

15.2.2.6 OBJECTIVE: The objective of Part 2 of Chapter 2 is to establish such regulations for qualifications for licensees to conduct horse race meets.
[15.2.2.6 NMAC - Rp, 15 NMAC 2.2.6, 3/15/2001]

15.2.2.7 DEFINITIONS: Refer to 15.2.1.7 NMAC.
[15.2.2.7 NMAC - Rp, 15 NMAC 2.2.7, 3/15/2001]

15.2.2.8 ASSOCIATIONS:

A. General duty:

(1) An association, its officers, directors, officials and employees shall abide by and enforce the Horse Racing Act and the rules and orders of the commission and stewards.

(2) An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The commission may grant an exemption if the commission determines that: the association's proposal substantially satisfies the purpose of the requirement; the exemption is in the best interests of the race horses, the racing industry and the citizens of this jurisdiction.

B. Financial requirements: insurer of the race meeting:

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(2) An association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An association shall provide the commission with a certificate of liability insurance as required by the commission.

(4) An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Horse Racing Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. treasury bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this rule shall apply to such instrument.

(5) An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

(6) An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

(7) An association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest proportionally to those for whom the funds are held.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Horse Racing Act and commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Horse Racing Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

(12) An association shall insure that funds for the payment of the ten percent track breeder's awards on New Mexico bred winners, that have been requested by the New Mexico horse breeders' association and whose purses have been cleared by the New Mexico racing commission, will be sent via wire transfer to the designated bank account set up for that purpose within five business days after the request.

C. Bond requirements:

(1) An association shall file with the commission a bond or other security payable to the New Mexico racing commission in an amount determined by the commission for pari mutuel racing and in either case not more than the financial liability of the association license throughout the race meeting for which the association license is requested.

(2) The bond shall be executed by the applicant and a surety company or companies authorized to do business in this jurisdiction, and conditioned upon the payment by the association licensee of all taxes and other monies due and payable pursuant to statutory provisions and all monies due from horsemen's accounts and payable, presentation of winning tickets, the licensee will distribute all sums due to the patrons of pari mutuel pools.

(3) The financial liabilities incurred by the association licensee in the form of real estate mortgages shall not be included in the determination of the bond amount.

D. Financial reports:

(1) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Horse Racing Act, commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

(2) An association shall file a copy of all tax returns, a balance sheet and a profit and loss statement.

(3) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format, which conforms to the requirements set out in the association license application.

(4) An association shall file an annual audit with the commission within 90 days after the association's fiscal year-end. The commission, upon good cause shown, may extend the time for filing.

E. Facilities and equipment: facilities for patrons and licensees:

(1) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(2) An association shall provide and maintain adequate restroom facilities for the patrons and licensees.

(3) An association shall provide an adequate supply of free drinking water.

(4) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(5) During a race performance, the association shall provide a first aid room equipped with at least two beds and other appropriate equipment; the services of at least one physician or certified emergency medical technician.

(6) An association shall provide two properly equipped ambulances, ready for immediate duty at any time the racetrack is open for racing or exercising. The ambulance shall be staffed with one certified paramedic or an intermediate emergency medical technician (as long as physician is on the grounds). The other staff will be certified EMTs. If the ambulance is being used to transport an individual, the association may not conduct a race until a properly equipped and staffed ambulance is in place, or a physician is on duty.

(7) Unless otherwise approved by the commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(8) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

(9) An association shall provide adequate office space for the use of the stewards and other commission personnel as required by the commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the commission. An association shall provide a designated steward read only access to the incompass rto system as prescribed by the racing office as well as e-mail notification for all entry clerk overrides for horses on stewards', veterinarian's and starter's lists.

(10) An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees.

(11) An association shall ensure that all concessions provide prompt and efficient service to the public at all race meets or simulcast performances. The associations shall specifically ensure that concessions have adequate staff and inventory to provide prompt and efficient service to the public.

F. Officials' Stands: An association shall provide adequate stands for officials to have a clear view of the racetrack. The location and design of the stands must be approved by the commission.

G. Audio and visual equipment:

(1) An association shall provide and maintain in good working order a communication system between the: stewards' stand; racing office; tote room; jockeys' room; paddock; test barn; starting gate; weigh in scale; video camera locations; clocker's stand; racing veterinarian; track announcer; location of the ambulances (equine and human); other locations and persons designated by the commission.

(2) An association shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

(3) An association shall provide two electronic photofinish devices with mirror image to photograph the finish of each race and record the time of each horse in at least hundredths of a second. The location and operation of the photofinish devices must be approved by the commission before its first use in a race. The association shall promptly post a photograph of each photofinish for win, place or show in an area accessible to the public. The association shall ensure that the photofinish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the association shall provide, without cost, a print from a negative of a photofinish to the commission. Photofinish negatives of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

(4) An association shall provide a videotaping system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

(5) A camera and a timer, designated by the commission, shall be at the starting gate and shall videotape and show to the public the pre-race loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the starter.

(6) One camera, designated by the commission, shall videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted and the equipment has been removed from the horse.

(7) The stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(8) Races run on an oval track must be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

(9) An association shall, upon request, provide to the commission, without cost, a copy of a videotape of a race.

(10) Videotapes recorded prior to, during and following each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

(11) An association shall provide a viewing room in which, on approval by the stewards, an owner, trainer, jockey or other interested individual may view a videotape recording of a race.

(12) Following any race in which there is an inquiry or objection, the association shall display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the stewards in making their decision.

H. Racetrack:

(1) The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the jockeys and horses.

(2) Prior to the first race meeting at an association racetrack, a licensed surveyor shall provide to the commission a certified report of the grade and measurement of the distances to be run.

(3) Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

(4) The surveyor's report must be approved by the commission prior to the first race day of the meeting.

(5) An association shall provide an adequate drainage system for the racetrack.

(6) An association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The association shall provide back-up equipment for maintaining the track surface.

(7) An association that conducts races on a turf track shall maintain an adequate stockpile of growing medium; provide a system capable of adequately watering the entire turf course evenly.

I. Rails:

(1) Racetracks, including turf tracks, shall provide inside and outside rails, including gap rails, designed constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 42 inches above the top of the cushion. The inside rail shall be no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

J. Starting gates:

(1) During racing hours, an association shall provide at least two operable padded starting gates, which have been approved by the commission.

(2) An association shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(3) If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

K. Distance markers:

(1) An association shall provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand.

(2) The starting point markers and distance poles must be marked as follows:

1/4 poles	Red and white horizontal stripes
1/8 poles	Green and white horizontal stripes
1/16 poles	Black and white horizontal stripes
220 yards	Green and white
250 yards	Blue
300 yards	Yellow
330 yards	Black and white
350 yards	Red
400 yards	Black
440 yards	Red and white

550 yards	Black and white horizontal stripes
660 yards	Green and white horizontal stripes
770 yards	Black and white horizontal stripes
870 yards	Blue and white horizontal stripes

L. Lighting:

- (1) An association shall provide lighting for the racetrack and the patron facilities that are adequate to ensure the safety and security of the patrons, licensees and horses. Lighting to ensure the proper operation of the videotape and photofinish equipment must be approved by the commission.
- (2) An association shall provide adequate additional lighting in the stable area as required by the commission.
- (3) If an association conducts racing at night, the association shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

M. Equine ambulance:

- (1) An association shall provide a minimum of two properly equipped ambulances staffed by trained personnel on association grounds on each day that the racetrack is open for racing or training.
- (2) The ambulances must be properly ventilated and kept at an entrance to the racing strip when not in use.
- (3) The ambulances must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulances must be able to navigate on the racetrack during all weather conditions; transport a horse off the association grounds.
- (4) The ambulances must be equipped with large, portable screens to shield a horse from public view; ramps to facilitate loading a horse; adequate means of loading a horse that is down; a rear door and a door on each side; a padded interior; a movable partition to initially provide more room to load a horse and to later restrict a horse's movement; a shielded area for the person who is attending to the horse; an adequate area for the storage of water and veterinary drugs and equipment.
- (5) An association may not conduct a race unless a minimum of one equine ambulance or an official veterinarian-approved substitute is readily available.
- (6) The properly equipped equine ambulances, its supplies and attendants and the operating procedures for the properly equipped ambulances must be approved by the official veterinarian.

N. Barns:

- (1) An association shall provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The association's stable area configuration and facilities must be approved by the commission.
- (2) An association shall ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.
- (3) An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 feet by 10 feet.
- (4) An association shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area daily. The association shall ensure that refuse from the stalls and other refuse is kept separate.
- (5) For new barn construction, an association shall comply with the commission's minimum barn requirements:
 - (a) Two wash racks per 24 stalls with drains a minimum of 8 feet by 10 feet.
 - (b) One cold water faucet within 48 inches of all stalls.
 - (c) Dimensions of stalls are 12 feet by 12 feet, with a slanted to minimum of 10 foot roof at all points and 8 foot walls.
 - (d) One room 10 feet by 12 feet per eight stalls.
 - (e) Twelve shed rows.
 - (f) Twelve foot ends.
 - (g) Building material must be one hundred percent fire retardant and 26 gauge metal covered composite.
 - (h) Two 110 electrical outlets per four stalls placed a minimum six foot height centered at four foot.
 - (i) Overhead lighting down shedrow so as to illuminate the stalls and shedrow.

O. Test barn:

(1) An association shall provide a test barn for taking specimens of urine, blood or other bodily substances or tissues for testing.

(2) The test barn must be equipped with a walk ring that is large enough to accommodate 10 horses; at least three enclosed stalls that permit observation of the collection process and provide for the protection of collection personnel; facilities and equipment for the collection, identification and storage of samples; a wash rack that is large enough to accommodate three horses at the same time; hot and cold running water; clean water buckets supplied by the trainer for each horse.

(3) An association shall limit access to the test barn to persons, authorized by the official veterinarian, for the conduct of commission authorized tasks such as practicing veterinarians in the performance of their obligations, employees of the official veterinarian, commissioners and their designees. In addition, no more than two persons representing the stable of a horse required to be tested may accompany that horse into the test barn. All persons entering the test barn must wear a valid license in plain view. All entrances shall be locked or guarded at all times.

P. Isolation area:

(1) By January 1, 2017, an association shall provide a minimum eight stall, perimeter fenced isolation facility for the care and treatment of a horse that is ordered isolated by the racing veterinarian or the official veterinarian.

(2) The isolation facility must be approved by the official veterinarian.

Q. Operations: security:

(1) An association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the commission.

(2) An association shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

(3) An association shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(4) Unless otherwise authorized by the commission, an association shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display valid credentials issued by the commission or a visitor's pass issued by the association (See Paragraph (1) of Subsection R of 16.47.1 NMAC). An association shall provide security fencing around the stable area in a manner that is approved by the commission.

(5) On request by the commission, an association shall provide a list of the security personnel, including the name, qualifications, training, duties, duty station and area supervised by each employee.

(6) Each day, the chief of security for an association shall deliver a written report to the stewards regarding occurrences on association grounds on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the stewards a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

R. Fire prevention:

(1) An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

(2) Not later than three days before the first day of a race meeting, an association shall deliver to the commission a copy of the state or local fire marshal's certification regarding the association's compliance with fire safety regulations or the fire marshal's plan of corrections. The certification or plan must be based on an inspection of the association grounds conducted by the fire marshal not more than 30 days before the first day of a race meeting.

(3) No person shall:

- (a) smoke in stalls, feed rooms or under shed row;
- (b) burn open fires or oil and gas lamps in the stable area;
- (c) use or leave unattended, any electrical appliance that is plugged-in to an electrical outlet, that is not in safe working order and does not meet the manufacturer's recommendations;
- (d) use extension cords that are not approved to meet OSHA standards, nor should extension cords be fastened with staples, hung from nails or suspended by wire;
- (e) use worn, cracked, frayed or otherwise damaged electric cords or cables;

- (f) permit horses to come within reach of electrical outlets or cords;
- (g) store flammable materials such as cleaning fluids or solvents in the stable area;

or

- (h) lock a stall which is occupied by a horse.

(4) An association shall post a notice in the stable area which lists the prohibitions outlined in Paragraph (3) of Subsection R of 15.2.2 NMAC above.

S. Insect and rodent control: An association and the licensees occupying the association's barn area shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

T. Performances:

(1) The hours of racing, the number of races per race day and the post time for the first race of each race day are subject to the approval of the commission.

(2) An association shall deliver to the commission for approval a copy of the proposed stakes schedule, proposed purse schedule and first condition book for a race meeting at least 60 days before the first day of the race meeting. Following commission approval, any changes to the purse or stakes schedules, or condition book must be approved by the commission. The association shall deliver to the commission, upon publication, a copy of each subsequent condition book.

U. Complaints:

(1) An association shall designate a location and provide personnel who shall be readily available to the public to provide information or receive complaints.

(2) An association shall promptly notify the commission of a complaint regarding an alleged violation of the Horse Racing Act or a rule of the commission; an alleged violation of ordinances or statutes; accidents or injuries; unsafe or unsanitary conditions for patrons, licensees or horses.

V. Ejection and exclusion:

(1) An association shall immediately eject from the association grounds a person who is subject to such an exclusion order of the commission or stewards and notify the commission of the ejection.

(2) An association may eject or exclude a person for any lawful reason. An association shall immediately notify the stewards and the commission in writing of any person ejected or excluded by the association and the reasons for the ejection or exclusion.

W. Stakes and escrow requirements:

(1) The association shall provide the commission with a copy of written race conditions for stakes races prior to distribution and a copy of the job description of the nomination secretary assigned to the stakes races program. [The job description shall be acknowledged and signed by the nomination secretary and filed with the commission.]

(2) The original race conditions nomination blank for stakes races shall be considered a binding contract between the association or sponsor and the nominator. [The approved nomination blank must be signed by the nominator and filed with the association.] The nomination blank must contain all conditions under which fees are due and payable; the race will be conducted, providing for trials or divisions, if any; supplemental purses are added; monies will be retained by the association for advertisement, administration and commissions; terms or conditions which refunds, if any, will be made; and all other conditions pertaining thereto.

(3) Unless otherwise approved by the commission, prior to the closing of nominations, the association shall file with the commission a copy of escrow provisions made by the association or sponsor with the horsemen's bookkeeper or other person(s) authorized to receive payments on behalf of the nominators utilizing a federally insured financial institution to maintain the escrow account for all payments made to the stakes race. Any added or supplemental purse monies advertised or otherwise stated in the written race conditions shall be deposited in the escrow account no later than the deadline date for the first eligibility payment for that stakes race, unless otherwise approved by the commission.

(4) If the deadline for a nomination payment 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.

(5) Within 30 days after each eligibility or payment date, and the date horses pass the entry box, the association shall provide a copy of the escrow report to the commission. The escrow report shall include the financial institution representative; the names and nominators; the total number of entries; the names of horses remaining eligible; an itemization of the amount of payments and added money received including totals; the amount of interest accrued to date; the name(s) of the person(s) currently authorized to make withdrawals; the amount and date of each withdrawal, if any; each deduction from monies received (e.g. uncollected checks, advertising, administrative and commissions costs); and the stated reason for each withdrawal or deduction. Notice of not less than two persons, whose signatures are required for a withdrawal, shall be filed with the commission.

(6) In all cases the association shall be responsible for the payment of purse monies for any stakes race conducted at its licensed facility.

X. Emergency track warning system: All tracks, including training tracks, under the jurisdiction of the commission shall install an emergency track warning system approved by the commission with the controls located in the stewards' and clockers' stands on all racing and training tracks.

[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 3/15/2001; A, 8/30/2001; A, 11/14/2002; A, 8/30/2007; A, 1/1/2013; A, 6/1/2016; A, 12/16/2016; A, 9/26/2018; A, 4/20/2021]

15.2.2.9 GAMING:

A. Associations' financial requirements:

(1) An association who is a gaming operator shall pay twenty percent of the net take to purses.

(2) An association shall provide a weekly report of the previous week's daily net take payment to purses every Monday to the commission, the New Mexico horsemen's association and the New Mexico horsebreeders' association.

(3) All monies remitted by the association to the New Mexico horsemen's association shall be reconciled and settled within 30 days of the generation of monthly reports from the gaming control board.

(4) An association will be liable for all portions of the gaming funds for purses from such time as the funds are received into the gaming machines until the funds are deposited into the designated interest bearing accounts. The commission may take whatever action is available under the existing rules regarding fines, suspension or revocation of license should the association fail to deposit the funds in accordance with Paragraph (1) of Subsection B of Section 15.2.2.9 NMAC.

(5) The twenty-percent of the net take to purses shall be distributed as follows: Nineteen and three tenths percent of the net daily take deposited by the association will be distributed weekly by the New Mexico horsemen's association to the New Mexico horsebreeders' association to the purse fund; eighty and seven tenths percent of the net daily take deposited by the association will be distributed to the existing purse structures determined and approved by that race meet's local horsemen's committee, the horsemen's state board, and approved by the commission.

B. Organizations' financial requirements:

(1) The New Mexico horsemen's association shall establish interest-bearing accounts, designated as gaming funds for purses. An association shall deposit, by 1:00 o'clock p.m. Monday of each week except for legal holidays which will be deposited on the next business day, twenty percent of the daily net take as defined in the gaming control act.

(2) The New Mexico horsemen's association and the New Mexico horsebreeders' association shall keep accurate, complete, and legible records with reports to the commission to include:

- (a) monthly reconciliation of amounts collected to account statements;
- (b) copy of account authorizing signatures;
- (c) any changes in authorizing signatures; and
- (d) detail of disbursements from the accounts.

[15.2.2.9 NMAC - Rp, 15 NMAC 2.2.9, 3/15/2001; A, 12/30/2003]

15.2.2.10 CAPITAL IMPROVEMENTS:

A. General authority:

(1) Capital improvements made on licensed racing premises with state funds offset from the amount of taxes due pursuant to Section 60-1A-20 NMSA 1978, shall be utilized only for the improvement of horse racing facilities for the benefit of the public, breeders and horse owners and shall be intended to increase the revenue to the state from the increases in pari mutuel wagering and tourism which result from the improvements.

(2) No capital improvement for which an offset from state taxes is requested shall be made unless it is a capital investment subject to depreciation under the United States Internal Revenue Code and is approved in advance by the commission.

(3) It is the responsibility of the licensee requesting the offset of state taxes to establish that the proposed capital improvement qualifies as a capital investment subject to depreciation under the United States Internal Revenue Code.

B. Commission requirements:

(1) Each commission member and the agency director shall inspect all facilities, grounds and areas of each licensed racetrack in New Mexico annually for the purpose of identifying the need for capital improvements for those areas.

(2) The commission shall annually adopt or revise a schedule of priorities of areas in need of immediate capital improvements for each licensed racetrack. Licensees and any other individuals or organizations may submit to the commission recommendations for the schedule of priorities. The commission chairman may appoint committees as are necessary to prepare the schedule of priorities. All committee meetings shall be open meetings.

(3) In adoption of the schedule of priorities, the commission shall give due consideration to the needs of the public, breeders and horse owners and shall balance those needs in the allocation of priorities.

(4) The commission shall adhere to the schedule of priorities in the approval of capital improvement projects applied for by the licensees.

C. Procedures:

(1) A licensee shall submit to the commission, on application forms provided by the commission, proposals for capital improvement projects for which an offset of state taxes will be requested. Applications shall contain, but are not limited to, the following information:

- (a) licensed racetrack at which project is proposed;
- (b) person(s) supervising the proposal and project;
- (c) total cost of project;
- (d) amount of total cost to be offset by state tax revenues;
- (e) amount of total cost to be paid by other funds and sources of those funds;
- (f) complete description of project and timetable for construction;
- (g) estimated timetable of requests for offsets by state tax revenues; and
- (h) proof of compliance with Section 60-1A-20 NMSA 1978 that the project

qualifies under the Internal Revenue Code as a capital investment subject to depreciation.

(2) For any capital improvement project in which the requested offset from state taxes equals or exceeds fifty percent of the total purchase or construction price, the licensee shall obtain and submit to the commission at least three written bids from suppliers or licensed contractors, where applicable.

(3) At the next regularly scheduled commission meeting, the commission shall review, reject, modify or condition each proposal, or return the application for additional information. Then, at the subsequent scheduled commission meeting, the commission shall approve each capital improvement proposal reviewed.

(4) The commission shall approve only the bid of the lowest bidder, unless the licensee requests in writing that a particular bid be accepted, in which case the commission may approve the licensee's recommended bidder if it finds extraordinary circumstances which call for the acceptance of that bidder and additionally finds that acceptance of that bidder would be in the best interests of racing in New Mexico. The commission shall give preference to New Mexico contractors and suppliers, as defined in Section 13-4-2 NMSA 1978, in selecting bids, provided that the bid for a project of the New Mexico contractor or supplier does not exceed ten percent over the amount of the lowest bid.

(5) When special circumstances warrant, or when unexpected cost overruns are incurred, the commission may consider a capital improvement retroactively.

(6) When the licensee's in-house maintenance work force is accepted as the low bidder in a capital improvement project, any cost overrun beyond the highest bid price may not be allowed as an offset and must be paid by the licensee. A cost overrun performed by in-house maintenance above the original bid price and below the highest bidder price must be approved by the commission before the work is accomplished.

(7) Following the completion of any capital improvement project for which an offset of state taxes was requested and approved, the commission, or designee, shall inspect the project and any recommended future projects.

D. Tax liabilities: All taxes assessed pursuant to the provisions of Section 60-1A-20 NMSA 1978, shall be paid to the racing commission at the time set by law, unless a capital expenditure project or the financing of term investment in capital improvements has been previously approved by the commission and the licensee is entitled by such previous approval to offset the amount of the taxes then due. If no previous approval for a project or financing has been made, the full amount of taxes due shall be paid. If previous approval for a project or financing has been made and the licensee is entitled to offset the amount of the taxes then due, the licensee may offset such taxes due and shall account to the commission for such offset from taxes due.

[15.2.2.10 NMAC; N, 8/30/2001; A, 12/1/2010]

History of 15.2.2 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

NMSRC 67-1, Amendment No. 1., Rule Revisions Adopted by the New Mexico State Racing Commission April 21, 1967 Rules 352 and 380, filed 4/26/1967;

NMSRC 69-1, New Mexico Laws and Rules and Regulations Governing Horse Racing, filed 6/9/1969;

NMSRC 81-1, Rules Governing Horse Racing in New Mexico, filed 12/4/1981;

History of Repealed Material: 15 NMAC 2.2, Horse Racing - Associations, filed 9/15/1995 repealed in its entirety; renumbered, reformatted and replaced with the new part 15.2.2 NMAC, Horse Racing - Associations, to conform to the new NMAC requirements effective 3/15/2001.

Other History:

NMSRC 81-1, Rules Governing Horse Racing in new Mexico, filed 12/4/1981 - that applicable portion renumbered, reformatted and amended to 15 NMAC 2.2, Horse Racing - Associations, filed 9/15/1995.