

ALCOHOLIC BEVERAGE CONTROL DIVISION

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NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

TOBACCO PRODUCTS ACT RULES AND REGULATIONS

NOTE:

All Licensees must keep a copy or have access to the Rules and Regulations, including all amendments, at all times.

Issued on 12/30/2020

Effective: 01/01/2021

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 2 DEFINITIONS

15.8.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.2.1 NMAC– N, 1/1/2021]

15.8.2.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.2.2 NMAC– N, 1/1/2021]

15.8.2.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.2.3 NMAC– N, 1/1/2021]

15.8.2.4 DURATION: Permanent.

[15.8.2.4 NMAC– N, 1/1/2021]

15.8.2.5 EFFECTIVE DATE: January 1, 2021 unless a later date is cited at the end of a section.

[15.8.2.5 NMAC– N, 1/1/2021]

15.8.2.6 OBJECTIVE: This rule is intended to locate all definitions of terms used in the act or in Title 15, Chapter 8 in one rule.

[15.8.2.6 NMAC– N, 1/1/2021]

15.8.2.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

A. “The Act” means the New Mexico Tobacco Products Act, Sections 61-37-1 through 61-37-25 NMSA 1978.

B. “Age-controlled locations” means an area of a licensed location that is restricted to persons age 21 and older.

C. “Approved operator” means the licensee approved by the division to operate a license pursuant to the act.

D. “Director” means the director of the alcoholic beverage control division.

E. “Division” means the alcoholic beverage control division of the New Mexico regulation and licensing department.

F. “Employee” means any person, whether paid or not, who works under the direction of a licensee or a licensee’s designate selling tobacco products, for whom which the licensee is responsible for.

G. “Licensed location” means the contiguous areas or areas connected by indoor passageways of a structure that are under the direct control of the licensee and from which the licensee is authorized to manufacture or sell tobacco products under the provisions of its license.

H. “Manufacture” means the process of a licensee using the licensee’s equipment and ingredients on the licensed location to make, produce, create, fabricate, assemble, combine or mix tobacco products.

I “School” means:

(1) a public or private educational institution accredited as such by the state or federal government;

(2) a discernible building or group of buildings generally recognized as a preschool, kindergarten, elementary, secondary, middle school, junior high, high school, or combination thereof; or

(3) a center for attendance where educational instruction is offered by certified school instructors; a “school” must be located in a zoning area in which the local municipality or county permits schools,

but shall not include a home school as defined in Public School Code, or adult career training classes, or facilities used exclusively for daycare services.
[15.8.2.7 NMAC – N, 1/1/2021]

History of 15.8.2 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 3 APPLICATIONS AND RENEWALS

15.8.3.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.3.1 NMAC– N, 1/1/2021]

15.8.3.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.3.2 NMAC– N, 1/1/2021]

15.8.3.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.3.3 NMAC– N, 1/1/2021]

15.8.3.4 DURATION: Permanent.

[15.8.3.4 NMAC– N, 1/1/2021]

15.8.3.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.

[15.8.3.5 NMAC– N, 1/1/2021]

15.8.3.6 OBJECTIVE: This rule is intended to establish general standards for the application, renewal, and transfer of licenses under the act.

[15.8.3.6 NMAC– N, 1/1/2021]

15.8.3.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.3.7 NMAC– N, 1/1/2021]

15.8.3.8 APPLICATIONS FOR NEW LICENSES:

A. The director is authorized to prescribe all forms necessary for or required by the act or these rules. All filings with the division shall be accompanied by such affidavits, documents, fees and other supporting data as the director shall require.

B. All documents, records, affidavits, fees, supporting data or information requested by the division with regard to any application shall be furnished within 30 days from the date requested by the division, or the application may be disapproved, unless good cause is shown by the applicant.

C. All applications for licenses issued pursuant to the act shall be made on the forms prescribed by the director whether filed electronically, by mail, or in person.

[15.8.3.8 NMAC– N, 1/1/2021]

15.8.3.9 MANUFACTURER LICENSE REQUIREMENTS: An application for a manufacturer license or manufacturer license renewal shall include:

A. The name, telephone number, mailing address and email address of the applicant and:

(1) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(2) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

B. The address of the applicant's principal place of business and every location where the applicant manufactures tobacco products;

C. Documentation as required by the division affirming that the applicant will comply with applicable and proper tobacco products manufacturing practices as required pursuant to 21 USCA Section 387d(a) and will comply with any applicable health directives issued by the department of health pursuant to the Public Health Act;

D. Documentation as required by the division affirming that the applicant will submit the applicable ingredient listing to the federal secretary of health and human services as required pursuant to 21 USCA Section 387d(a)(1);

E. Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements;

F. A list of all distributors in which the manufacturer sells tobacco products; and

G. A non-refundable application fee.

[15.8.3.9 NMAC – N, 1/1/2021]

15.8.3.10 DISTRIBUTOR LICENSE REQUIREMENTS: An application for a distributor license or distributor license renewal shall include:

A. The name, telephone number, mailing address and email address of the applicant and:

(1) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(2) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

B. The address of the applicant's principal place of business and every location from which the applicant distributes tobacco products;

C. Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements;

D. A list of all manufacturers the applicant purchases from and all retailers applicant distributes to; and

E. A non-refundable application fee.

[15.8.3.10 NMAC – N, 1/1/2021]

15.8.3.11 RETAILER LICENSE REQUIREMENTS: An application for a retailer license or retailer license renewal shall include:

A. The name, telephone number, mailing address and email address of the applicant and:

(1) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(2) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

B. The address of the applicant's principal place of business and every location from which the applicant sells tobacco products;

C. A list of all distributors from whom the applicant received tobacco products;

D. Documentation as required by the division establishing compliance with all state Taxation and Revenue Department requirements; and

E. A non-refundable application fee.

[15.8.3.11 NMAC – N, 1/1/2021]

15.8.3.12 NEED FOR MULTIPLE LICENSE TYPES:

- A.** A manufacturer license does not allow a licensee to distribute tobacco products or sell tobacco products directly to consumers.
- B.** A distributor license does not allow a licensee to manufacture tobacco products or sell tobacco products directly to consumers.
- C.** A retailer license does not allow a licensee to manufacture tobacco products or distribute tobacco products to retailers for resale.
- D.** Licensees who wish to conduct any combination of manufacturing, distributing, or retailing tobacco products at a single location must obtain each of the necessary license types.
- E.** Licensees are not prohibited from holding multiple license types at one location.

[15.8.3.12 NMAC– N, 1/1/2021]

15.8.3.13 LICENSE LOCATION TO BE AT LEAST 300 FEET FROM A SCHOOL:

- A.** A license shall not be issued, retained, transferred or renewed if the location for the license or license transfer is within three hundred feet of a school; provided that this restriction does not apply to a location at which tobacco products have been lawfully manufactured, distributed or sold prior to July 1, 2020.
- B.** For purposes of the act, the distance to be measured is the distance between the outer boundary of the licensed location, that is the premises actually used to sell tobacco products, and the school.
- C.** Applicant is responsible from providing proof of distance from a school in a form required by the division.

[15.8.3.13 NMAC– N, 1/1/2021]

15.8.3.14 DESIGNATION OF RESIDENT AGENT:

- A.** Except for sole proprietors, every licensee shall designate a “resident agent” to accept service of all orders and notices of the division. The resident agent must have:
 - (1) authority to bind the applicant to matters related to tobacco product sales and operations;
 - (2) authority and ability to accept service of all orders, subpoenas, notices and other legal documents from the division, including any notice of charge pursuant to the act on behalf of its principal; and
 - (3) residency in the state of New Mexico.
- B.** To designate a resident agent a licensee shall file an application on a division approved form. The designation of resident agent may be terminated upon written notification to the department by either the licensee or the resident agent. A licensee shall have 10 days from the date of termination of the agency relationship to file an application for a new resident agent.
- C.** A licensee may designate as many resident agents as it deems necessary for the operation of business.
- D.** The designation of a resident agent shall not relieve the licensee of any responsibilities or liabilities to the division for violations or compliance with the act.

[15.8.3.14 NMAC– N, 1/1/2021]

15.8.3.15 RENEWAL OF LICENSES:

- A.** A complete renewal application and payment of all applicable renewal fees shall be filed with the division no earlier than sixty days and no later than 30 days before the license is set to expire.
- B.** Applicant must provide proof of meeting all state taxation and revenue department requirements.
- C.** The renewal application shall be in a form prescribed by the director.
- D.** All licensees who fail to renew their licenses or who are not issued a renewed license shall suspend all tobacco product operations until such time as a renewed license is issued and displayed at the licensed location.
- E.** Licenses shall be renewed in the name of the licensee shown on division records, regardless of who pays the renewal fee.
- F.** Any licensee that fails to submit a properly completed renewal application, including all applicable fees, by the renewal deadline must pay a late renewal fee in the amount of three hundred fifty dollars (\$350) plus ten dollars (\$10) per day for each additional day the renewal application is late.

G. The division may waive late fees if the licensee shows good cause for not filing a timely renewal application, taking into consideration hardship to the licensee, and whether the licensee filed a late renewal application the preceding five years.

H. Any license not renewed shall be subject to cancellation and shall not be reinstated, unless the renewal application is filed with the division within 30 days of the expiration date of the license. All applicable fees must be paid and all citations must be resolved prior to a license being reinstated after being subject to cancellation.

I. A licensee who fails to get its license reinstated following expiration may apply for a new license by filing an application with the division.

J. A license shall not be renewed with any outstanding citations for violations of the act, or these rules, unless the applicant is currently making good faith efforts to resolve said citations with the division.

[15.8.3.15 NMAC – N, 1/1/2021]

15.8.3.16 APPLICATION FEES AND RENEWAL FEES:

- A.** Manufacturer license application fees are as follows:
 - (1) Application fee for each licensed location: \$750;
 - (2) Renewal fee for each licensed location: \$400;
- B.** Distributor license application fees are as follows:
 - (1) Application fee for each licensed location: \$750;
 - (2) Renewal fee for each licensed location: \$400;
- C.** Retailer license application fees are as follows:
 - (1) Application fee for each licensed location: \$750;
 - (2) Renewal fee for each licensed location: \$400.

[15.8.3.16 NMAC – N, 1/1/2021]

15.8.3.17 CHANGE IN OWNERSHIP

- A.** A change in ownership occurs when:
 - (1) if the licensee is a corporation: when a total of ten percent or more of its stock is transferred or when there is a merger or consolidation of the licensee with another entity;
 - (2) if the licensee is a limited liability company: when ten percent or more of the membership interests are transferred or when there is a merger or consolidation of the licensee with another entity;
 - (3) if the licensee is a general partnership: when there is any change or removal of any general partners;
 - (4) if the licensee is a limited partnership: when there is any change of general partners, or any change of limited partners contributing ten percent or more of the total value of the contributions made to the limited partnership or any change in the limited partners entitled to ten percent or more of the profits earned, or other compensation by way of income paid by the limited partnership;
 - (5) if the licensee is a trust: when there is any change in the trustees or beneficiaries; or
 - (6) if the licensee is any other legal entity that is not a corporation, limited liability company, general partnership, or limited partnership: any person or entity becomes the owner of ten percent or more interest through one or more transactions or when a total of ten percent or more interest in the licensee entity or license has been transferred.

B. Within 60 days of a change in ownership, licensee must submit an application with the division for issuance of an initial license as licenses shall not be transferred from licensee to another person pursuant to Section 61-37-10 NMSA 1978.

C. A temporary license may be issued if application process exceeds the 60 days. Issuance of a temporary license, pending the application process for a new license due to a change in ownership, does not indicate or guarantee the issuance of a new license to applicant.

[15.8.3.17 NMAC – N, 1/1/2021]

15.8.3.18 BUSINESS NAME CHANGE:

A. Any licensee that changes the doing business name under which it operates a license issued pursuant to the act must file an application for change of DBA (“doing business as”) name with the division together with the application filing fee.

B. DBA name change, or any change, shall not be knowingly attractive to minors.

C. If the division approves the application, the division shall change the name on its records and issue a license which reflects the new name. The licensee may not use the new name until a license is issued.

[15.8.3.18 NMAC– N, 1/1/2021]

15.8.3.19 TRANSFER OF LOCATION:

A. Approval from the division is required before a licensee may transfer a license from one location to another.

B. Licensee must submit an application in a form prescribed by the division along with all supporting documents to establish the license is not within 300 feet of a school and does not violate a zoning or other ordinance of the governing body of the location, as required by the act.

[15.8.3.19 NMAC– N, 1/1/2021]

History of 15.8.3 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 4 GENERAL OPERATIONS REQUIREMENTS

15.8.4.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.8.4.1 NMAC– N, 1/1/2021]

15.8.4.2 SCOPE: These rules apply to all licensees under the New Mexico Tobacco Products Act.
[15.8.4.2 NMAC– N, 1/1/2021]

15.8.4.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.8.4.3 NMAC– N, 1/1/2021]

15.8.4.4 DURATION: Permanent.
[15.8.4.4 NMAC– N, 1/1/2021]

15.8.4.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[15.8.4.5 NMAC– N, 1/1/2021]

15.8.4.6 OBJECTIVE: These regulations are intended to establish standards for the general operation and maintenance of licensed location.
[15.8.4.6 NMAC– N, 1/1/2021]

15.8.4.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.
[15.8.4.7 NMAC– N, 1/1/2021]

15.8.4.8 OPERATION AND PROFITING BY AUTHORIZED PERSONS:

A. No person other than the approved operator or employees of the approved operator shall sell tobacco products at a licensed location.

B. Only the approved operator shall directly profit from the sale of tobacco products sold pursuant to a license. A person directly profits from the sale of tobacco products in violation of this rule when any person other than the approved operator receives any portion of the profits earned, or receipts, from the sale of tobacco products, except:

- (1) payment of rent based in whole or in part on the licensee's gross sales;
- (2) payment of employees;
- (3) revenues received by an affiliate of the licensee from the sale of products other than

tobacco products;

C. It is a violation of the act for any licensee to divide, split, or in any way share the right to sell tobacco products with any person not named as a licensee on the license.

[15.8.4.8 NMAC– N, 1/1/2021]

15.8.4.9 LIGHTING OF LICENSED LOCATION: At any licensed location open for business, the interior lighting shall be sufficient to make easily discernible to persons of average vision, the appearance and age of all persons purchasing tobacco products.

[15.8.4.9 NMAC– N, 1/1/2021]

15.8.4.10 SANITATION REQUIREMENTS: All licensees shall comply with all applicable sanitation requirements prescribed by the state of New Mexico and local sanitation ordinances, including but not limited to public health orders issued by New Mexico department of health.

[15.8.4.10 NMAC– N, 1/1/2021]

15.8.4.11 DISPLAY OF LICENSE: The current tobacco products license, or licenses, shall be prominently displayed within the licensed location so that it is in full public view at all times. A copy or scanned image or facsimile of the license may be displayed only for 30 days or until the original license is received by the licensee, whichever occurs first, provided the copy or scanned image or facsimile is of the original, current, and duly issued license.

[15.8.4.11 NMAC– N, 1/1/2021]

15.8.4.12 POSTERS:

A. Licensees that sell tobacco products directly to the public shall display a printed sign or decal, in full public view within the licensed location at a point of sale and where a tobacco product vending machine is located, that reads “IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS.”

B. The sign or decal shall be of a size prescribed by the director, except that the licensee may make the sign or decal larger than what is prescribed. The division will provide access to an electronic copy to be printed and displayed by licensee.

C. Licensees may, with the director’s prior approval, develop and use printed signs or decals that contain the same information required in this section. Any such sign or decal shall be valid only if bearing the director’s stamp of approval.

[15.8.4.12 NMAC– N, 1/1/2021]

15.8.4.13 NONCOMPLIANCE WITH REQUIREMENTS: Noncompliance with the requirements of Chapter 8 Part 4 of these rules shall be deemed a violation of the Act.

[15.8.4.13 NMAC– N, 1/1/2021]

15.8.4.14 CONTINUING NONCOMPLIANCE:

A. After notification of a violation, the requirements of Chapter 8 Section 4 of these rules, a licensee’s continued noncompliance with the requirements shall be deemed a separate and additional violation of the act.

B. Continuing noncompliance shall also be considered an aggravating factor for penalty enhancement purposes.

[15.8.4.14 NMAC– N, 1/1/2021]

History of 15.8.4 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 5 PROHIBITED ACTS

15.8.5.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.5.1 NMAC– N, 1/1/2021]

15.8.5.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.5.2 NMAC– N, 1/1/2021]

15.8.5.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.5.3 NMAC– N, 1/1/2021]

15.8.5.4 DURATION: Permanent.

[15.8.5.4 NMAC– N, 1/1/2021]

15.8.5.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.

[15.8.5.5 NMAC– N, 1/1/2021]

15.8.5.6 OBJECTIVE: This rule is intended to establish conduct prohibited by the act.

[15.8.5.6 NMAC– N, 1/1/2021]

15.8.5.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.5.7 NMAC– N, 1/1/2021]

15.8.5.8 UNLICENSED SALE BY NONLICENSEES:

A. Unlicensed sale of tobacco products by person occurs when a person manufactures, distributes, or sells tobacco products without first obtaining a manufacturer, distributor, or retailer license issued by the division.

B. The unlicensed sale of tobacco products may be subject to criminal penalties, administrative penalties, or both.

[15.8.5.8 NMAC– N, 1/1/2021]

15.8.5.9 UNLICENSED SALE BY LICENSEE:

A. The unlicensed sale of tobacco products by a licensee occurs when:

(1) A person holding a license issued pursuant to the act then manufactures, distributes, or sells tobacco products at a location that is not a licensed location;

(2) A licensee who has experienced a change in ownership, without submitting an application for a new license continues to manufacture, distribute, or sell tobacco products; or

(3) A licensee who has manufactured, distributed, or sold tobacco products after letting their license expire.

B. Unlicensed sale of tobacco products includes:

(1) A manufacturer licensee distributing tobacco products without being issued a distributor license or selling tobacco products to consumers without being issued a retailer license;

(2) A distributor licensee manufacturing tobacco products without being issued a manufacturer license or selling tobacco products to consumers without being issued a retailer license; and

(3) A retailer licensee manufacturing tobacco products without being issued a manufacturer license or distributing tobacco products to retailers for resale without being issued a distributor license.

[15.8.5.9 NMAC– N, 1/1/2021]

15.8.5.10 SALES TO MINORS:

A. It is a violation of the act for a licensee or their employee to knowingly, intentionally, or negligently sell, offer to sell, barter, or give a tobacco product to a person under 21 years of age.

B. Use of third-party age verification service may be evidence of mitigating factors.

[15.8.5.10 NMAC – N, 1/1/2021]

15.8.5.11 FAILURE TO VERIFY AGE: It is a violation of the act for a retailer or an employee of a retailer to knowingly, intentionally, or negligently fail to verify the age of before selling, or providing, tobacco products to the consumer.

[15.8.5.11 NMAC – N, 1/1/2021]

15.8.5.12 MINORS IN AGE-CONTROLLED LOCATIONS: It is a violation of the act for licensee to allow persons under the age of 21 into age controlled locations where tobacco products vending machines and the sales and display of cigars are present.

[15.8.5.12 NMAC – N, 1/1/2021]

15.8.5.13 SALES OF TOBACCO PRODUCTS NOT IN ORIGINAL SEALED PACKAGE: It is a violation of the act for a licensee to sell, offer to sell, or deliver a tobacco product in a form other than original manufacturer-sealed package, except for individually sold cigars or loose leaf pipe tobacco.

[15.8.5.163NMAC – N, 1/1/2021]

15.8.5.14 SALE OF TOBACCO PRODUCT NOT IN CHILD-RESISTANT PACKAGING:

A. It is a violation of the act for a licensee to sell, offer to sell, or deliver nicotine liquid unless such liquid is in child-resistant packaging.

B. For the purpose of Section A, nicotine liquid does not include nicotine liquid in a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

[15.8.5.14 NMAC – N, 1/1/2021]

15.8.5.15 SALE OF TOBACCO PRODUCTS KNOWINGLY ATTRACTIVE TO MINORS: It is a violation of the act for a manufacturer to produce and a distributor or retailer to sell, or provide, tobacco products that are knowingly attractive to minors.

[15.8.5.15 NMAC – N, 1/1/2021]

15.8.5.16 PROVIDING FREE SAMPLES:

A. It is violation of the act to provide free samples of tobacco products without the written approval of the director.

B. Subsection A shall not apply to an individual who provides free samples of tobacco products, e-cigarettes, or nicotine liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act.

[15.8.5.16 NMAC – N, 1/1/2021]

History of 15.8.5 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 6 FINES AND PENALTIES

15.8.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.
[15.8.6.1 NMAC– N, 1/1/2021]

15.8.6.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.
[15.8.6.2 NMAC– N, 1/1/2021]

15.8.6.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.
[15.8.6.3 NMAC– N, 1/1/2021]

15.8.6.4 DURATION: Permanent.
[15.8.6.4 NMAC– N, 1/1/2021]

15.8.6.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[15.8.6.5 NMAC– N, 1/1/2021]

15.8.6.6 OBJECTIVE: This rule is intended to establish violations of the Act and the fines and penalties for such violations.
[15.8.6.6 NMAC– N, 1/1/2021]

15.8.6.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.
[15.8.6.7 NMAC– N, 1/1/2021]

15.8.6.8 PENALTIES: The division, when it finds that the licensee, an employee of the licensee, or a contractor acting on behalf of the licensee has violated a provision of the act or these rules, may:

- A.** Suspend or revoke a license of a licensee;
- B.** Require the use of identification verification software for a designated period of time;
- C.** Impose an administrative penalty against a licensee in an amount not to exceed ten thousand dollars; or
- D.** any combination thereof.

[15.8.6.8 NMAC– N, 1/1/2021]

15.8.6.9 PENALTIES FOR VIOLATION OF SALES TO MINORS:

- A.** Generally, after a first violation, at a location, imposition of an one-day suspension and \$1,000 fine;
- B.** Generally, after a second violation, at a location within three years of the first such violation, imposition of a seven-day suspension and \$4,000 fine;
- C.** Generally, after a third violation, at a location within three years of the first such violation, imposition of a thirty-day suspension and \$7,000 fine;
- D.** Generally, after a fourth violation at a location within three years of the first such violation, permanent revocation of the licensee’s license will be imposed.

[15.8.6.9 NMAC– N, 1/1/2021]

15.8.6.10 PENALTIES FOR ALL OTHER VIOLATIONS INVOLVING MINORS:

- A.** Generally, after a first violation, at a location, imposition of a \$1,000 fine;

B. Generally, after a second violation, at a location within three years of the first such violation, imposition of one-day suspension and \$2,000 fine;

C. Generally, after a third violation, at a location within three years of the first such violation, imposition of a seven-day suspension and a \$5,000 fine;

D. Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a fourteen-day suspension and a \$10,000 fine.

[15.8.6.10 NMAC– N, 1/1/2021]

15.8.6.11 PENALTIES FOR NON-AGE SPECIFIC VIOLATIONS

A. Generally, after a first violation, at a location, imposition of a \$100 fine;

B. Generally, after a second violation, at a location within three years of the first such violation, imposition of a \$200 fine;

C. Generally, after a third violation, at a location within three years of the first such violation, imposition of a \$400 fine;

D. Generally, after a fourth violation, at a location within three years of the first such violation, imposition of a \$750 fine;

[15.8.6.11 NMAC– N, 1/1/2021]

15.8.6.12 COMPROMISING LIABILITY: The division is authorized to compromise the penalty for any violations of the act or of any division regulation or order when it is deemed in the best interest of the state.

[15.8.6.12 NMAC– N, 1/1/2021]

15.8.6.13 ENHANCEMENT OF SCHEDULED PENALTIES: Any penalty set forth in these rules may be enhanced if the facts and circumstances warrant enhancement of the penalties, up to the maximum allowed by the act.

[15.8.6.13 NMAC– N, 1/1/2021]

History of 15.8.6 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 7 HEARING PROCEDURE

15.8.7.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.7.1 NMAC– N, 1/1/2021]

15.8.7.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.7.2 NMAC– N, 1/1/2021]

15.8.7.3 STATUTORY AUTHORITY: Section 61-37-22 NMSA 1978, of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.7.3 NMAC– N, 1/1/2021]

15.8.7.4 DURATION: Permanent.

[15.8.7.4 NMAC– N, 1/1/2021]

15.8.7.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.

[15.8.7.5 NMAC– N, 1/1/2021]

15.8.7.6 OBJECTIVE: This rule is intended to establish the hearing procedures for the suspension or revocation of a license and the imposition of administrative penalties.

[15.8.7.6 NMAC– N, 1/1/2021]

15.8.7.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.7.7 NMAC– N, 1/1/2021]

15.8.7.8 COMPLAINTS AND INVESTIGATION

A. The division, the department of public safety, and the appropriate law enforcement authorities in each county and municipality may investigate any allegation of a violation and inspect licensed locations for compliance with the act and the rules promulgated thereof, and licensee’s compliance during an inspection is required.

B. Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such violation and a copy of the citation shall be filed in the division.

[15.8.7.8 NMAC– N, 1/1/2021]

15.8.7.9 INFORMAL CONFERENCE

A. Whenever probable cause exists that a licensee has violated a provision of the act or these rules, a citation may be issued to the licensee for such a violation. An informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interest of the state.

B. When a citation is issued at the licensed premises, a copy of the citation may be provided to the licensee, or the resident agent, or given to an employee who indicates he is in charge, or, if no such employee is in charge, to any employee. Providing an employee with the citation shall be considered the same as giving it to the licensee. Citations may be mailed to the licensee.

C. A copy of the citation shall be filed in the division.

D. The fines and suspension imposed shall not exceed those which could be imposed after hearing.

E. Any portion of the fine or penalties imposed may be suspended.

[15.8.7.9 NMAC– N, 1/1/2021]

15.8.7.10 ADMINISTRATIVE PROCEEDINGS, ORDER TO SHOW CAUSE AND HEARING:

A. If a violation of the act is not resolved through informal conference, a formal charge document shall be filed in the division. Charges filed in the division against a licensee will state the nature of the grounds relied upon for the filing, the approximate date of the alleged violation, and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

B. Licensees will receive an order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

C. A hearing officer will be appointed no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why licensee's license should not be revoked or suspended or why the licensee should not be fined, or both.

D. At any hearing on an order to show case, a record of hearing will be made, to include:

- (1) the style of the proceedings;
- (2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;
- (3) the place, date, and time of the hearing and all continuances or recesses of the hearing;
- (4) the appearance or nonappearance of the licensee;
- (5) if the licensee appears with an attorney, the name and address of the attorney;
- (6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;
- (7) the findings of fact and law as to whether or not the licensee has violated the Act as set out in the charge; and
- (8) the decision of the director.

E. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the nonappearance of the licensee will be entered in the record of hearing and an order revoking or suspending the license or imposing a fine, or both, on all the grounds alleged in the charge. In such case, there shall be no reopening, appeal or review of the proceedings.

F. If the licensee admits guilt on all grounds set out in the charge, an order revoking or suspending the license or imposing a fine on licensee, or both. In such a case, there shall be no reopening, appeal or review of the proceedings.

G. If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

- (1) the director or the hearing officer will administer oaths to all witnesses, the division will cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the licensee, or licensee's attorney, will be allowed the opportunity to cross-examine all witnesses;
- (2) the licensee will be allowed to present testimony and evidence in denial or in mitigation of the grounds set out in the charge;
- (3) the division will have the opportunity to cross-examine the licensee or any witness testifying in licensee's favor;
- (4) the division will have the opportunity to present any evidence or testimony in rebuttal of that produced by the licensee;
- (5) the director or the hearing officer will make a finding on each ground alleged and a finding of guilt or innocence of the licensee on each ground;
- (6) if the licensee is found guilty on any ground alleged and proved, the director will make his order of revocation or suspension of the license or fine of the licensee, or both; and
- (7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

[15.8.7.10 NMAC – N, 1/1/2021]

History of 15.8.7 NMAC: [RESERVED]

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 8 TOBACCO PRODUCTS
PART 8 MISCELLANEOUS FEES

15.8.8.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division.

[15.8.8.1 NMAC–N, 1/1/2021]

15.8.8.2 SCOPE: These rules apply to all licensees and applicants for licensure under the New Mexico Tobacco Products Act.

[15.8.8.2 NMAC–N, 1/1/2021]

15.8.8.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-37-22 of the Tobacco Products Act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.8.8.3 NMAC–N, 1/1/2021]

15.8.8.4 DURATION: Permanent.

[15.8.8.4 NMAC–N, 1/1/2021]

15.8.8.5 EFFECTIVE DATE: January 1, 2021 unless a later date is cited at the end of a section.

[15.8.8.5 NMAC–N, 1/1/2021]

15.8.8.6 OBJECTIVE: This rule is intended to establish a uniform schedule of fees applicable to licenses issued under the act.

[15.8.8.6 NMAC–N, 1/1/2021]

15.8.8.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 15, Chapter 8 have the same meanings as set forth in the Tobacco Products Act.

[15.8.8.7 NMAC–N, 1/1/2021]

15.8.8.8 INITIAL APPLICATION FEES:

- A. Manufacturer License: \$750, per location;
- B. Distributor License: \$750, per location;
- C. Retailer License: \$750, per location.

[15.8.8.8 NMAC–N, 1/1/2021]

15.8.8.9 RENEWAL APPLICATION FEES:

- A. Manufacturer License: \$400, per location;
- B. Distributor License: \$400, per location;
- C. Retailer License: \$400, per location.

[15.8.8.9 NMAC–N, 1/1/2021]

15.8.8.10 DESIGNATION OF RESIDENT AGENT FEE:

- A. Designation of Resident Agent during initial application for license: \$0;
- B. Designation of Resident Agent during any time other than initial application: \$50.

[15.8.8.10 NMAC–N, 1/1/2021]

15.8.8.11 CHANGE OF OFFICERS:

- A. Change of Officers, per location, during renewal: \$10;
- B. Change of Officers, per location, at any time other than initial application or along with a renewal application: \$50.

C. When a licensee holds a license and multiple locations, the Change of Officer fee may be reduced by the division.
[15.8.8.11 NMAC– N, 1/1/2021]

15.8.8.11 CHANGE IN DBA FEE:

- A. Change in DBA application during renewal: \$10;
- B. Change in DBA at any time other than initial application or along with a renewal application: \$50.

[15.8.8.12 NMAC– N, 1/1/2021]

15.8.8.12 CHANGE IN LOCATION FEE: Any time a change of location application is filed with the division, it shall be accompanied by a \$100 change of location fee.

[15.8.8.13 NMAC– N, 1/1/2021]

15.8.8.12 LATE FEES:

A. The division may impose a late fee of up to \$350 plus ten dollars per day for each additional day an application is late.

B. Late fees may be applied to all applications with timelines or time periods, in which they should be filed.

[15.8.8.14 NMAC– N, 1/1/2021]

15.8.8.13 FEES MAY BE WAIVED OR REDUCED:

A. The division shall have the authority to reduce or waive any of the fees required by the act, upon a showing of good cause by licensee as to why the reduction or waiver is necessary.

B. Upon a showing of good cause, the following fees may be reduced or waived:

- (1) Change of Officers fee;
- (2) Change in DBA fee; and
- (3) Late fees.

[15.8.8.15 NMAC– N, 1/1/2021]

History of 15.8.8 NMAC: [RESERVED]