

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]