

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]