

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]