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Volume: XXXI **Issue:** 24 **Publication date:** 12/29/2020 **Number of pages:** 2 **(ALD Use Only) Sequence No.**

Issuing agency name and address: Regulation and Licensing Department, Alcoholic Beverage Control Division, 2550Cerrillos Road, Santa Fe, NM 87504

Agency DFA code: 420

Contact person's name: Phillip A. Sanchez

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Type of rule action:

(ALD Use Only) Most recent filing date:

New [✓] **Amendment** [ ] **Repeal** [ ] **Emergency** [ ] **Renumber** [ ]

Title number: 15 **Title name:** Gambling and Liquor Control

Chapter number: 8 **Chapter name:** Tobacco Products

Part number: 4 **Part name:** General Operations Requirements

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes [ ] **No** [X]

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? **Yes** [ ] **No** [ ] **Public domain** [ ]

Specific statutory or other authority authorizing rulemaking:

Section 61-37-22, NMSA 1978

Notice date(s): 10/27/2020

Hearing date(s): 11/30/2020

Rule adoption date: 12/17/2020

Rule effective date: 1/1/2021

Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;

- Reasons for any change between the published proposed rule and the final rule; and

- Reasons for not accepting substantive arguments made through public comment.

The rule establishes general requirements all establishments, issued a license pursuant to the Tobacco Products Act, must abide by. These requirements include who may operate the establishment, lighting conditions of the establishment, sanitations requirements, as well as what things must be displayed in view of the public.

No substantive changes between published proposed rule and the final rule.

Public comment was received the required posters pursuant to 15.8.4.12, however, the Division believes the rule sufficiently addresses any concerns about size, color, content. As the size of the posters is to be prescribed by the Director and a electronic copy of all signs will be provided by the Division, additionally, any signs designed by licensees must be approved by the Director before they may be used.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name: Andrew Vallejos

Check if authority has been delegated ☐

Title: Alcoholic Beverage Control Director

Signature: **(BLACK ink only)** Andrew Vallejos Digitally signed by Andrew Vallejos Date: 2020.12.17 15:01:35 -07'00'

Date signed: 12/17/2020

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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, form 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]

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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]

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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 provided 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]