

**TITLE 15        GAMBLING AND LIQUOR CONTROL**  
**CHAPTER 10    ALCOHOLIC BEVERAGES GENERAL PROVISIONS**  
**PART 53        SALES - WHOLESALERS**

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

[15.10.53.1 NMAC - Rp, 15 NMAC 10.5.3.1, 4/25/2017; A, 9/28/2021]

**15.10.53.2        SCOPE:** These rules apply to all licensees under the act.

[15.10.53.2 NMAC - Rp, 15 NMAC 10.5.3.2, 4/25/2017]

**15.10.53.3        STATUTORY AUTHORITY:** Section 60-3A-10 NMSA 1978 of the act authorizes the director to make and adopt such rules as necessary to carry out the duties of the division.

[15.10.53.3 NMAC - Rp, 15 NMAC 10.5.3.3, 4/25/2017]

**15.10.53.4        DURATION:** Permanent.

[15.10.53.4 NMAC - Rp, 15 NMAC 10.5.3.4, 4/25/2017]

**15.10.53.5        EFFECTIVE DATE:** April 25, 2017, unless a later date is cited at the end of a section.

[15.10.53.5 NMAC - Rp, 15 NMAC 10.5.3.5, 4/25/2017]

**15.10.53.6        OBJECTIVE:** This part is intended to establish reporting, sales, credit, and other requirements applicable to persons licensed as wholesalers under the act.

[15.10.53.6 NMAC - Rp, 15 NMAC 10.5.3.6, 4/25/2017]

**15.10.53.7        DEFINITIONS:** Unless otherwise defined in 15.10.2 NMAC, terms in this part has the same meaning as set forth in the act.

[15.10.53.7 NMAC - Rp, 15 NMAC 10.5.3.7, 4/25/2017]

**15.10.53.8        PAYMENT, REFUND AND EXCHANGE:**

**A.** If any invoice for alcoholic beverages sold to any licensee remains unpaid for more than 30 days the wholesaler may not sell alcoholic beverages to that licensee except on a cash basis.

**B.** Cash means a cash payment, a check, or electronic funds transfer, however, if a licensee tenders a check for a sale required to be cash under this regulation and that check is dishonored, the wholesaler may not accept any further checks from that licensee for sales required to be cash under this rule for a period of three months from the date the check is dishonored. Wholesalers who accept checks in payment for alcoholic beverages must present the checks for payment in the normal course of business.

**C.** A wholesaler may not use a promissory note or other similar obligation from a licensee as a device to avoid the credit prohibition set forth in the act and this rule. As long as a promissory note, or other similar obligation, remains outstanding for alcoholic beverages, the licensee must pay in cash.

**D.** Limitations on product returns:

**(1)** Wholesalers are permitted to accept a return of alcohol beverages for ordinary and usual commercial reasons.

**(2)** Ordinary and usual commercial reasons for returns include defective products, broken or short filled containers caused by error or omission of the manufacturer or the wholesaler or agent of the wholesaler, errors in products delivered, discontinued products, manufacturer's product change, manufacturer quality standards, lawful exercise of creditor claims to secured inventory, and unsold and unopened event inventory when a special event permit was obtained from the division. Ordinary and usual commercial reasons for return do not include overstock of inventory, slow inventory sales, breakage or other damage by the retailer or limited and seasonal demand inventory.

**E.** A wholesaler may share information with other wholesalers regarding any unpaid invoices described in A, above, limited to the identity of the licensee, and the amount due and duration of the unpaid invoices.

[15.10.53.8 NMAC - Rp, 15 NMAC 10.5.3.8, 4/25/2017; A, 9/28/2021]

**15.10.53.9        DONATIONS AND DISCOUNTS OF ALCOHOLIC BEVERAGES:**

**A.** A licensed New Mexico wholesaler may donate alcoholic beverages or sell alcoholic beverages at a discount to licensees if the purpose of the donation or discount is not to induce the licensee to purchase alcoholic beverages from that wholesaler to the exclusion of another wholesaler. The licensee may sell or give the donated or discounted alcoholic beverages to members of the public, or may give the donated or discounted alcoholic beverages away, in accordance with the provisions of the act and these rules. Donations or discounts allowable under this subsection shall be limited as follows:

(1) no free samples may be provided for items currently provided to the licensee by the wholesaler; and

(2) no more than one bottle not to exceed 750 milliliters of wine or spirits, or one case of beer may be provided as a free sample per item.

**B.** A licensed New Mexico wholesaler may donate alcoholic beverages to a non-licensee for an event, including charity and non-profit purposes, but the non-licensee may not sell the donated alcoholic beverages under any circumstances. Any unopened alcoholic beverages not consumed at the event may be returned to the wholesaler or kept for personal use by the non-licensee, but may not be sold under any circumstances.

**C.** Any delivery of donated or discounted alcoholic beverages by a licensed New Mexico wholesaler must be accompanied by an invoice indicating the licensee's name, d/b/a name, liquor license number, the amount and type of alcoholic beverages delivered, the market value of the delivered alcoholic beverages, the place where the alcoholic beverages were delivered, and the date. The invoice must show a sum due of zero for donated alcoholic beverages or the discounted amount of the purchase.

[15.10.53.9 NMAC - Rp, 15 NMAC 10.5.3.9, 4/25/2017]

#### **15.10.53.10 COMMERCIAL COERCION AND BRIBERY:**

**A.** The Director shall enforce the prohibitions against unfair trade practices as set forth in Section 60-8A-1 NMSA 1978, of the Act.

**B.** The Director shall enforce the prohibitions against unlawful inducements as set forth in Section 60-8A-1.1 NMSA 1978, of the Act.

**C.** Sections 60-8A-1 and 60-8A-1.1 NMSA 1978, of the Act shall incorporate the United States Code of Federal Regulations at 27 C.F.R Section 6.1 et seq., as may be amended, promulgated pursuant to Section 105 of the Federal Alcohol Administration Act at 27 U.S.C. 205, and with all relevant United States Alcohol and Tobacco Tax and Trade Bureau Industry Circulars, as may be amended.

(1) Wholesalers and manufacturers shall not provide money or any other thing of substantial value to a retailer, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand of alcoholic beverage.

(2) Retailers, restaurant, club, governmental or any other type of dispensing licensee, or their affiliates, shall not receive or ask for money or any other thing of substantial value from a wholesaler or manufacturer, or their affiliates, to persuade, influence or induce a person from purchasing or contracting to purchase a particular brand or kind of alcoholic beverage.

(3) Things are of substantial value when it has a value greater than three hundred dollars.

(4) Generally, product displays, point of sale advertising materials, temporary signage valued at three hundred dollars or less are permissible.

(5) Fixtures, capital improvements and equipment, including refrigeration units, keg coolers, and permanent signage are not permissible unless there is a written contract to buy or lease the item, at fair market value, between the retailer, restaurant, club, governmental, or any other type of dispensing licensee and the wholesaler or manufacturer.

[15.10.53.10 NMAC; N, 4/25/2017; A, 9/28/2021]

#### **HISTORY OF 15.10.53 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

AGD Regulation 7A-9, Extension of Credit by Wholesalers, filed 9/25/1990.

#### **History of Repealed Material: [RESERVED]**

15 NMAC 10.5.3, Sales - Wholesalers, filed 03/14/1997 - Repealed effective 4/25/2017.