

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 57 - CIGARETTE TAX REGULATIONS

REG-57-001. DEFINITIONS.

001.01 The definitions found in Neb. Rev. Stat. §§ 59-1502, 69-2702, 69-2705, and 77-2601 apply to these regulations.

001.02 In addition to the definitions found in Neb. Rev. Stat. §§ 59-1502, 69-2702, 69-2705, and 77-2601 the following definitions apply.

001.03 Authorized tax stamps means any devices, stamps, labels, or prints manufactured, printed, or made as prescribed by the Tax Commissioner and includes decalcomania tax stamps.

001.04 Cancellation of tax stamps means affixing the stamp so that it cannot be transferred to another package. A tax stamp that has been securely attached so that it may not be removed without tearing it is considered to have been canceled.

001.05 Cigarette has the same meaning as in Neb. Rev. Stat. § 77-2601(5).

001.05(A) A tobacco product labeled as anything other than a cigarette or not bearing a label is a cigarette if the product meets two or more of the following criteria:

001.05(A)(1) A pack contains 20 to 25 sticks;

001.05(A)(2) A carton contains eight or ten packs;

001.05(A)(3) The stick length is 2¾ inches to 5 inches and stick diameter is equal or less than 8.20 millimeters;

001.05(A)(4) The product is sold in soft packs, hard packs, flip-top boxes, or clamshell packages; or

001.05(A)(5) The product is sold with a cigarette-type filter.

001.05(B) A tobacco product labeled as anything other than a cigarette, or not bearing a label, including, but not limited to certain little cigars, certain filtered and non-filtered little cigars, and certain flavored little cigars, will not be classified as a cigarette if the tobacco product labeled as anything other than a cigarette either:

001.05(B)(1) Meets the criteria that requires the manufacturer or importer to be responsible for reporting and paying the federal excise tax on the tobacco product reports in accordance with 26 U.S.C. §§ 5701(a) and 5702(a); or

001.05(B)(2) Meets all of the following criteria-

001.05(B)(2)(a) The tobacco product is wrapped in leaf tobacco, or reconstituted sheet tobacco that is approximately two thirds or more tobacco which did not in the reconstitution process lose its tobacco character (e.g., taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for cigars.

001.05(B)(2)(b) The tobacco product filler is substantially of tobaccos unlike those in ordinary cigarettes, does not have any added flavorings which would cause the tobaccos to have the taste or aroma generally attributed to cigarettes, and does not contain flue-cured or aromatic (Oriental) tobaccos.

001.05(B)(2)(c) The package for a tobacco product to be offered as a cigar declares it to be a cigar (e.g., "small cigar," "filtered cigar," "flavored cigar," or "little cigar") in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name of the tobacco product each time the brand name appears on the package, and all marketing materials and advertising clearly present the product to the consumer as a cigar without contrary representations or implications that the product is a cigarette.

001.05(C) The exception from the definition of cigarette provided in § 001.05(B) does not apply to tobacco products produced or distributed by any manufacturer or importer the Nebraska Attorney General deems to pose an elevated risk for noncompliance under Neb. Rev. Stat. § 69-2707.01(3)(a) to (h).

001.05D The required proof that the tobacco product meets the exception from the definition of cigarette in § 001.05(B) is provided in § 022.

001.06 Complete readable authorized tax stamp means a stamp that can be identified as a Nebraska cigarette stamp bearing a legible 5 digit stamp number or two thirds of the tax stamp.

001.07 DOR means the Nebraska Department of Revenue.

001.08 TTB means the United States Department of Treasury Alcohol and Tobacco Tax and Trade Bureau.

001.09 Directory means the Nebraska Directory of Certified Tobacco Product Manufacturers and Brands.

REG-57-002. APPLICATION FOR PERMIT TO AFFIX AUTHORIZED TAX STAMPS.

002.01 Application for an annual Nebraska Stamping Agent's License will be made to DOR on forms furnished by DOR.

002.02 The person applying for a Stamping Agent's License (applicant) will include with the application, a fee of \$500 and proof that the applicant has obtained a municipal or county permit as a wholesale dealer in accordance with Neb. Rev. Stat. § 28-1420. An applicant for a Nonresident Stamping Agent's License will also provide a letter of acceptance by a registered agent for service or process.

REG-57-003. PURCHASE AND SALE OF AUTHORIZED TAX STAMPS.

003.01 Only stamping agents holding a valid Nebraska Stamping Agent's License may purchase and/or affix authorized tax stamps.

003.02 Stamping agents will purchase authorized tax stamps from DOR. Payment must be made at the time of purchase. Deferred payments are not permitted.

003.03 Authorized tax stamps may be purchased only in quantities as prescribed by DOR.

003.04 Stamping agents purchasing authorized tax stamps are permitted to purchase authorized tax stamps at a discount of 1.85% as a commission for affixing authorized tax stamps.

003.05 Stamping agents who violate any of the provisions of Neb. Rev. Stat. §§ 77-2601 through 77-2622 or any stamping agent who violates any provision of Neb. Rev. Stat. § 69-2708 or any rules and regulations adopted by DOR, including failure to timely file the required reports, may be subject to a penalty not to exceed \$1,000 and have their license or discount privileges suspended or revoked.

003.06 Stamping agents are subject to a penalty not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000 for affixing an authorized tax stamp to a package of cigarettes not included in the directory.

REG-57-005. AFFIXING AUTHORIZED TAX STAMPS.

005.01 Authorized tax stamps of the proper denomination are to be affixed to each individual package of cigarettes so that they adhere securely in accordance with the instructions of the manufacturer of the stamps.

005.02 Authorized tax stamps are to be affixed as to assure the destruction of the stamp when the package is opened.

005.03 Authorized tax stamps are not to be affixed to the carton, case, or container of cigarettes, other than the individual package.

005.04 Within 48 hours after a duly licensed stamping agent opens an original, sealed, manufacturer's shipping container or case of cigarettes in order to affix Nebraska authorized tax stamps or the tax stamps or impressions of any other state, all packages of cigarettes in the container or

case are to be stamped in one continuous operation.

005.05 Duly licensed stamping agents may not have in their possession packages of cigarettes, other than those in the original, sealed, manufacturer's shipping container or case to which authorized tax stamps or tax stamps or impressions of any other state have not been affixed.

005.06 Authorized tax stamps must be canceled prior to the time of sale by the stamping agent.

REG-57-006. INSPECTION OF AUTHORIZED TAX STAMPS.

006.01 When the Tax Commissioner's authorized agents or representatives identify packages of cigarettes on which one complete readable authorized tax stamp cannot be found on each package, the stamping agent responsible for the stamping and distribution of the cigarettes must take immediate corrective action. The applicable stamping agent or retailer may be subject to appropriate penalties.

006.02 This regulation does not limit in any way the penalties provided by statute for actions by any person with intent to defraud the state or evade the provisions of the state cigarette tax laws.

REG-57-007. INSPECTION OF RETAIL AND VENDING MACHINE DISPLAYS.

007.01 All packages of cigarettes are to be arranged in display cases, display counters, or cigarette racks so as to visibly reveal the authorized tax stamp if such arrangement is feasible. Any person who owns or uses a display case, display counter, or cigarette rack that is constructed so that it is not feasible to arrange the cigarette packages in a manner to visibly reveal the authorized tax stamp, is required to unlock or open any and all such cases, counters, or racks for a complete examination and inspection of the cigarette packages upon request of an authorized DOR agent.

007.02 All packages of cigarettes are to be packed in cigarette vending machines in a manner that, if any packages are visible while in the machine, the tax stamps are clearly visible to the public.

007.03 Any person who owns or operates a cigarette vending machine that is constructed so that any packages of cigarettes it contains are not visible to the public is required to unlock and open any and all machines owned or operated for a complete examination and inspection of the cigarette packages.

007.04 If any such vending machine is located on premises not owned or controlled by the owner or operator of the vending machine located thereon, access to the interior of the machine must be provided at all reasonable times during ordinary business hours to the Tax Commissioner or his or her authorized agent for the purpose of ascertaining if the packages bear authorized tax stamps.

REG-57-008. REPORTS.

008.01 Every person, firm, or association receiving cigarettes subject to a tax from sources within or outside Nebraska, upon which the tax has not been paid, must pay the tax and make a report of the receipt of untaxed cigarettes to DOR on or before the 15th day of each month for cigarettes received during the preceding month. These reports will state the quantity of cigarettes received, listed by brand name, date, and from whom received.

008.02 Every licensed stamping agent must file monthly reports electronically in the format authorized by DOR. The reports must be filed on or before the 15th day of each month for business conducted during the preceding month and provide information as required by DOR. The report is considered timely filed if electronically submitted to DOR by 11:59 p.m. on the 15th day of each month. If the 15th day of the month falls on a Saturday, Sunday, or approved holiday, the next day not a Saturday, Sunday, or approved holiday shall be the final timely filing date.

008.03 If the tax is not paid and the required report is not received on or before the 15th day of the month following the month in which the unstamped cigarettes were received, the report is delinquent and a penalty of 25% of the tax due will be added to the tax liability, together with interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the due date of the return to the date payment is received.

008.04 Records supporting deductions claimed on the monthly reports must be retained by the stamping agent, unless required by the Tax Commissioner to attach supporting documentation to the monthly reports. These records include:

008.04(A) Copies of tax reports made to other states by a Nebraska stamping agent for cigarettes retailed outside Nebraska;

008.04(B) Invoices to manufacturers for damaged merchandise returned to the factory for credit; and

008.04(C) Memo invoices for transfers of cigarettes from one stamping agent to another, or from one stamping agent to a factory representative for transfer of unstamped cigarettes.

008.05 When sales are made for delivery into other states where there is not a state tax report to support these sales, each stamping agent must execute a standard exemption form for each such transaction which shows (a) the date of sale, (b) the name and address of the consignee, and (c) the number of cigarettes sold.

008.06 Stamping agents located outside Nebraska will be required to submit a report of Nebraska stamped cigarettes sold to Nebraska retailers. The report will include (a) the date of the sale, (b) the name and address of the retailer, and (c) the number of cigarettes sold. They may also be required, upon request, to furnish copies of tax reports made to other states that show sales made into Nebraska.

008.07 When stamped cigarettes are returned to the manufacturer, an invoice must be prepared by the stamping agent describing the product and the number of packages returned. The manufacturer must execute an affidavit that (a) indicates the number of stamped or unstamped packages received, (b) indicates the number of packages received bearing authorized tax stamps, and (c) attests that the packages were destroyed.

008.08 Any cigarette tax shortage, evidenced by the entries and calculations on each monthly cigarette tax report, must be paid for by separate electronic payment when the applicable tax report is filed. The discount as described in § 003.04 is not allowed on shortages. Any tax shortage discovered by DOR, upon audit of each tax report, will be billed currently to the stamping agent, who must electronically remit the amount of the shortage. The stamping agent is not permitted to average-out any monthly shortage with any other month that shows more authorized tax stamps were used than the number of cigarettes which were recorded as taxable.

REG-57-009. CARTAGE COST. REPEALED.

REG-57-010. PETITION FOR APPROVAL OF A LOWER COST.

010.01 Any wholesaler making wholesale sales of cigarettes to licensed Nebraska retailers or any retailer making retail sales of cigarettes in Nebraska who desires to prove that the cost of doing business in Nebraska is less than the statutory presumptive cost of doing business computed according to the Unfair Cigarette Sales Act may submit a petition for approval of a lower cost along with actual cost data to DOR. The statutory presumptive cost of doing business is used in determining cigarette sales prices until approval has been granted by the Tax Commissioner to sell at a lower cost.

010.02 The petition for approval of a lower cost must include the following cost information:

010.02(A) Any person making sales of cigarettes in Nebraska for more than a 12 month period will submit actual cost data for the 12 month period ending no more than 90 days prior to the submission of the petition, and actual cost data for each of the petitioner's locations that intend to sell cigarettes at less than the statutory presumptive cost of doing business.

010.02(B) Any person making sales of cigarettes in Nebraska for less than a 12 month period will submit actual cost data for the period beginning with the start of business and ending no more than 90 days prior to the date the petition for approval of a lower cost was submitted for each of the petitioner's locations. In addition, the petitioner will submit an explanation of any expected differences between the petitioner's actual cost data and the costs for the remaining months of the initial 12 month period of operations.

010.03 Upon receiving the petition for approval of a lower cost and actual cost data, the Tax Commissioner will do one of the following within 45 days:

010.03(A) Approve the petition;

010.03(B) Request additional cost data or an explanation of the previously submitted information;

010.03(C) Schedule the matter for hearing at least 20 days, but not more than 60 days, after the date of mailing of the hearing notice; or

010.03(D) Return as incomplete any petition for approval and actual cost data that does not contain the necessary information.

010.04 DOR must notify the petitioner of the Tax Commissioner's determination within 45 days after the hearing. Any order of approval will include the percentage of cost of doing business as determined by DOR for the petitioner's specific location.

010.04(A) The percentage of cost of doing business must be used by the petitioner when establishing the minimum selling price for cigarettes that are to be sold at a specific location.

010.04(B) The initial order of approval will also contain an expiration date not to exceed 18 months from the date of the approval. The expiration date should coincide with the petitioner's calendar or fiscal year end. Each subsequent order of approval cannot exceed 12 additional months.

010.05 The actual cost data to be submitted shall (1) be based on cost of goods sold, (2) contain the petitioner's basic cost of cigarettes sold for the specific location, (3) set forth each specific total direct cost, overhead cost, and expense paid or incurred, and (4) set forth the basis used to allocate each overhead cost and expense item in the purchase and sale of cigarettes in Nebraska. The total dollar amount of each overhead cost and expense item to be allocated must be set forth and followed by a showing of its 100% allocation.

010.06 When submitting actual cost data, the petitioner must provide supporting documentation such as, but not limited to:

010.06(A) A written explanation of any difference between the petitioner's overall cost of doing business from his or her cigarette cost of doing business for the specific location that is engaged in the business of selling cigarettes at wholesale to licensed Nebraska retailers or making sales of cigarettes at retail in this state;

010.06(B) A copy of one cigarette purchase invoice from each cigarette manufacturer or wholesaler for every month of the period of analysis;

010.06(C) Copies of the latest filed federal income tax returns including Schedule A and all attachments;

010.06(D) Schedule K-1 (Form 1065);

010.06(E) Form 4562;

010.06(F) Latest available income statements;

010.06(G) Latest available annual reports; and

010.06(H) Any other financial statements or information necessary to substantiate the actual cost data.

REG-57-011. MEETING COMPETITION.

011.01 Prior to offering cigarettes for sale at a lower price to meet competition pursuant to Neb. Rev. Stat. § 59-1509, the wholesaler or retailer must ascertain from the Tax Commissioner whether the competitor has made a petition for approval of a lower cost in accordance with § 010.

011.02 Upon affirmation, the wholesaler or retailer may presume the validity of the competitor's lower price until a determination otherwise has been made by the Tax Commissioner.

REG-57-012. OFFERS OF CIGARETTE SALES.

012.01 Wholesalers, retailers, and other persons are prohibited from advertising, offering to sell or selling at retail or wholesale cigarettes at less than cost to such wholesaler or retailer, or offering or giving a rebate in price or concession of any kind in connection with the sale of cigarettes unless such rebate in price or concession is given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by such wholesaler or retailer in the ordinary course of his trade or business. The term "other persons" includes cigarette manufacturers. Manufacturers who, with intent to injure competition among the retailers or wholesalers of this state, offer cigarettes for sale at retail or wholesale at less than cost to such retailer or wholesaler, are in violation of the Unfair Cigarette Sales Act.

REG-57-013. INTENT TO INJURE COMPETITION.

013.01 A sale, offer of sale or advertisement by a retailer, wholesaler, or other person, of cigarettes at less than cost or an offer of a rebate or concession for the sale of cigarettes or a promotional offer made by cigarette manufacturers for any purpose which is made available to retailers or wholesalers on a localized basis, is prima facie evidence of an intent to injure competition under Neb. Rev. Stat. § 59-1503(1). Manufacturers may overcome this presumption of an intent to injure competition among retailers or wholesalers by showing to the satisfaction of the Tax Commissioner that such offer was made available to every retailer or

wholesaler, whose method of making sales would allow them to participate in the promotion. Manufacturers must submit to the Tax Commissioner a written explanation of the promotion within a reasonable time prior to the promotion and agree to furnish proof that the promotion was offered to each eligible retailer or wholesaler, if the Tax Commissioner should so request. If the offer was not made available to every retailer or wholesaler within a reasonable time for the retailer or wholesaler to accept the offer, then the presumption is that the manufacturer attempted to injure competition among retailers or wholesalers by only presenting the offer to some of the retailers or wholesalers and such offer is prohibited. All promotions must be offered on a state-wide basis and must have the Tax Commissioner's approval prior to being offered.

REG-57-014. OFFERS OF MERCHANDISE COMBINED WITH CIGARETTES.

014.01 No wholesaler, retailer, or other person may offer, with intent to injure competition among the wholesalers or retailers of this state, a combined package of cigarettes and other merchandise including cigarettes, at a price less than the combined costs of the cigarettes and merchandise. The wholesale or retail selling price of such combined package must equal or exceed the total of the invoiced cost of the cigarettes, including the cost of doing business, all applicable cigarette taxes, and the invoiced cost of the merchandise including the cost of doing business in relation to that merchandise. None of these three factors may be reduced by any payment by another person, a refund, or a credit memo.

014.02 A manufacturer may offer combined packages of cigarettes and merchandise, including cigarettes, at a reduced invoice price by overcoming the presumption of intent to injure competition between retailers or wholesalers in this state. If the manufacturer shows, under § 013, that the combination offer is made available to all the retailers or wholesalers in the state, then the presumption is overcome.

REG-57-015. OFFERS OF PREMIUM COUPONS.

015.01 A premium coupon attached by a wholesaler or retailer to cartons or packages of cigarettes is a concession given for the purchase of cigarettes and is prohibited by Section Neb. Rev. Stat. § 59-1503. A premium coupon is a coupon which is redeemable by the purchaser for merchandise, cash, trading stamps, or anything of value.

015.02 Premium coupons may be attached by manufacturers to cigarette cartons or packages if such cartons and packages are made available to all retailers and wholesalers in the state without preference. If a manufacturer does not make such premium coupons available to all wholesalers or retailers, then the manufacturer has not overcome the presumption of intent to injure competition among the retailers and wholesalers of this state.

REG-57-016. COUPONS FOR A REDUCTION IN PRICE.

016.01 Coupons may not reduce the selling price of cigarettes to below the retailer's cost as computed in Neb. Rev. Stat. § 59-1504. A retail store

coupon is a coupon offered by a retailer by which the price of any container of cigarettes is reduced by presenting the coupon to the retailer who has issued it. A retail store coupon is in effect a discount by the store and reduces the selling price to the purchaser of the cigarettes. If the price is reduced below the retailer's cost by the coupon, then the coupon offer is prohibited. If the coupon is given by a retailer upon the purchase of cigarettes and later redeemed by the retailer, such redemption is a concession or rebate and is prohibited.

016.02 A manufacturer's coupon is a coupon offered by the manufacturer to the public by which the price of any container of cigarettes is reduced by presentation of the coupon. A manufacturer's coupon is a separately negotiable document. Price reduction stickers or coupons that are not redeemable by the participating retailer are prohibited. Such coupons which reduce the selling price of cigarettes below the retailer's cost or which are a rebate or concession for the purchase of the cigarettes are prohibited if such coupon is offered with the intent to injure competition among the retailers and wholesalers of this state. The manufacturer may overcome the presumption of intent to injure competition if the manufacturer fulfills the requirements of § 013 and shows that the coupon is redeemable by all retailers choosing to participate in the offer, that the manufacturer will give the same rebate or concession regardless from which retailer the cigarettes were obtained, and that the coupon will be invalid if used by the retailer in the retailer's advertising.

016.03 Any retailer participating in a buy-down promotion may use promotional signs and displays to advertise the value of a cigarette manufacturer's buy-down amount or the selling price of the cigarettes after allowance for the buy-down amount, provided the promotional signs and displays identify the full retail selling price prior to the buy-down amount. The promotional signs and displays must also state that the sales tax is computed on the full retail selling price prior to the allowance for the buy-down amount. Advertising the selling price net of the buy-down amount is permissible even when the buy-down amount reduces the sales price below the minimum retail selling price.

016.04 Retailers accepting a manufacturer's coupon as part of the selling price of a package of cigarettes must compute the applicable sales tax on the full selling price before deduction for the coupon.

REG-57-017. CASE DISCOUNTS GIVEN TO WHOLESALERS OR RETAILERS. REPEALED.

REG-57-018. SHELF PAYMENTS TO RETAILERS BY MANUFACTURERS.

018.01 Payments made or credits given to a retailer for promotional purposes including shelf payments are not to be considered in determining the cost of cigarettes to the retailer, nor can such payments or credits be used to increase the approved buy-down promotion or to extend a designated promotion period.

REG-57-019. EXEMPTION FOR NATIVE AMERICAN INDIANS.

019.01 Any sale of cigarettes to a Native American Indian where title and possession are taken within the Indian country of the tribe of which the Native American Indian is an enrolled member is exempt from tax.

019.02 Retailers making exempt sales of cigarettes may receive a credit for the cigarette tax by filing a Nebraska Credit Computation for Cigarettes Sold to Native American Indian Tribal Members in Indian Country, Form 68. To support the credit, the retailer must distinguish on its cigarette sales records the exempt sales to Native American Indians from the nonexempt sales.

019.03 A claim for credit of cigarette tax must be made to the licensed wholesale distributor on the Form 68.

019.04 If a licensed wholesale dealer is not licensed as a stamping agent and receives a Form 68 from a retail customer, the wholesale dealer may submit the Form 68 to the licensed stamping agent from which it purchases stamped cigarettes.

019.05 Licensed stamping agents receive credit for the cigarette tax paid by submitting the completed Form 68 with a subsequent Nebraska Cigarette Purchase Order for Stamps and Impressions.

REG-57-020. MINIMUM SELLING PRICE.

020.01 A change in the list price of cigarettes by a manufacturer or a change in the Nebraska cigarette tax rate must be followed by a change in the minimum selling price charged by wholesalers and retailers.

020.02 Any change in the minimum selling price of cigarettes becomes effective the same date as the manufacturer's change or the Nebraska cigarette tax rate change.

020.03 Each step in the minimum pricing calculation must be computed to the tenth of a cent and the result rounded to the next higher cent.

REG-57-021. TOBACCO PRODUCT MANUFACTURERS; REQUIREMENT OF QUARTERLY PAYMENTS.

021.01 Nonparticipating manufacturers must make escrow payments owed under Neb. Rev. Stat. § 69-2703(2) in quarterly installments.

021.02 Nonparticipating manufacturers must submit written proof of the deposit, such as a copy of the bank deposit slip or bank account statement, to the Attorney General's office within 10 days after the quarterly deposit deadline.

021.03 Upon the request of the Tax Commissioner, nonparticipating manufacturers must submit proof of the number of units sold in Nebraska during the calendar quarter at issue and such other information as may be required to determine the adequacy of the amount of the quarterly payment.

021.04 A nonparticipating manufacturer that fails to fully and timely make the required quarterly payment will be removed from the directory.

REG-57-022. PROVING AN EXCEPTION FROM THE CIGARETTE DEFINITION.

022.01 Proof that a tobacco product meets the exception from the definition of cigarette provided in § 001.05(B)(1) is required and may be provided by submitting the following to both the Nebraska Attorney General and DOR:

022.01(A) Copies of applicable tax forms submitted to the TTB; or

022.01(B) An affidavit from an executive officer of the manufacturer or importer attesting that the manufacturer or importer reports and pays the tax in accordance with 26 U.S.C. §§ 5701(a) and 5702(a).

022.02 Proof that a tobacco product meets the exception from the definition of cigarette provided in § 001.05(B)(2) is required and may be provided by submitting the following to both the Nebraska Attorney General and DOR:

022.02(A) Advance rulings on the tax status of the tobacco product issued by TTB; or

022.02(B) Where an advance ruling from TTB has not been issued, the manufacturer or importer may submit an affidavit from one of its executive officers attesting the tobacco product meets all of the criteria of § 001.05(B)(2).

022.03 Tobacco products that meet the exception from the definition of cigarette provided in § 001.05(B) will, within five business days of submission of the documentation described in § 022.01 or § 022.02, be affirmatively placed on a publicly available list maintained by DOR designating them as little cigars. As a consequence of this designation, these tobacco products may be legally sold in Nebraska without having to be:

022.03(A) Listed on the Directory;

022.03(B) Affixed with an authorized tax stamp; or

022.03(C) Designated as fire safe compliant.

022.04 Evidence submitted regarding a tobacco product to satisfy the exception from the definition of cigarette provided in § 001.05(B) will be prima facie evidence that such product qualifies to be listed as a cigar.

022.05 Regardless of whether the tobacco product has been placed on the publicly available list maintained by DOR of products determined to be classified as cigarettes, a manufacturer or importer may submit an application to the Nebraska Attorney General and DOR for a determination that the designated tobacco product is not required to be in compliance with

either Neb. Rev. Stat. §§ 69-501 to 69-511 or 69-2701 to 69-2711.

