

LCB File No. R191-05

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

Chapter 370 of the NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 33, inclusive, of this regulation.

“MANUFACTURERS OF TOBACCO PRODUCTS”

- Section 1. *“Definitions.” Unless the context otherwise requires, the words and terms defined in NAC (Sec. 2 through Sec.33) have the meanings ascribed to them in those sections.*
- Sec. 2. *“Brand Family” has the meaning ascribed to it in AB 436, Sec. 4, 2005 Session of the Nevada Legislature (“AB 436”).*
- Sec. 3. *“Cigarette” has the meaning ascribed to it in NRS 370A.050.*
- Sec. 4. *“Directory” means the directory created pursuant to Sec. 17 of AB 436.*
- Sec. 5. *“Department” means the Nevada Department of Taxation.*
- Sec. 6. *“Distributor” has the meaning ascribed to it in Sec. 7 of AB 436.*
- Sec. 7. *“Escrow deposit” means deposits required to be made into a qualified escrow fund pursuant to subsection 2 of NRS 370A.140.*
- Sec. 8. *“Master Settlement Agreement” has the meaning ascribed to it in NRS 370A.070.*
- Sec. 9. *“Nonparticipating manufacturer” has the meaning ascribed to it in Sec. 10 of AB 436.*
- Sec. 10. *“Participating manufacturer” has the meaning ascribed to it in NRS 370A.080.*
- Sec. 11. *“Qualified Escrow Fund” has the meaning ascribed to it in NRS 370A.090.*
- Sec. 12. *“Stamp” has the meaning ascribed to it in Sec. 13 of AB 436.*
- Sec. 13. *“Tobacco Product Manufacturer” has the meaning ascribed to “manufacturer of tobacco products” in NRS 370A.060.*
- Sec. 14. *“Units sold” has the meaning ascribed to it in NRS 370A.120.*

Sec. 15. *In exercising the authority granted by Sec.17 of AB 436 to add or remove a manufacturer of tobacco products or brand family to the directory, the Department, upon consultation with the Attorney General, may consider the following:*

1. *Whether the entity tendering a certification request is a tobacco product manufacturer;*
2. *Completeness, or lack thereof, of the certification request made by the tobacco product manufacturer;*
3. *Whether the tobacco product manufacturer has provided all requested documents supporting its certification request;*
4. *Whether the certification request is based on misrepresentation, false information, nondisclosure or concealment of facts;*
5. *Whether the tobacco product manufacturer is in full compliance with all provisions of local, state and federal law;*
6. *Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand is the subject of an injunction obtained by the State of Nevada for previous failure to comply with NRS Chapter 370A;*
7. *Whether all final judgments and penalties, including interest, costs and attorney fees thereon, in favor of the State of Nevada, for violation of any Nevada statute, administrative rule or other law, have been fully satisfied for the brand family, or tobacco product manufacturer;*
8. *Whether the tobacco product manufacturer has corrected deficiencies in its certification request or criteria set forth in this section in a timely and thorough manner;*
9. *Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the Attorney General for additional information or documentation supporting its certification request or the criteria set forth in this section;*
10. *Whether the tobacco product manufacturer is owned, either all or in part, by a person or entity with a current or prior interest in any other tobacco product manufacturer that is, or has been, not in compliance with NRS Chapter 370A or is the subject of an injunction obtained by the State of Nevada for failure to comply with NRS Chapter 370A;*
11. *Whether the tobacco product manufacturer is managed or operated by a person with a current or prior interest in any other tobacco product manufacturer that is, or has been, not in compliance with NRS Chapter 370A, or is the subject of an injunction obtained by the State of Nevada for failure to comply with NRS Chapter 370A; and*

12. Any other facts or circumstances the Department, upon consultation with the Attorney General, determines are relevant.

Sec. 16. The Department, upon consultation with the Attorney General, shall notify a tobacco product manufacturer in writing at the address supplied in the certification form, or by facsimile or regular mail, if the tobacco product manufacturer has met the requirements in Sec. 15 of AB 436 and will be included in the directory. The notice shall include each brand family that the Department determines will be included.

Sec. 17. If the Department, upon consultation with the Attorney General, intends to deny a tobacco product manufacturer or brand family a place in the directory, to remove a manufacturer or brand family from the directory, or to exclude an entity because the entity is not a tobacco product manufacturer, the Department shall mail a written Notice of Intended Action to the manufacturer or entity. The Notice of Intended Action shall specify;

1. The basis upon which the Department's intended action rests and the measures that must be undertaken to prevent the Intended Action;

2. The date, which shall be no less than (7) days from service of the Notice of Intended Action, upon which the measures undertaken must be completed and clear and convincing proof of the completion of such measures submitted to the Department.

Sec. 18. If the Department determines, upon consultation with the Attorney General, that the tobacco manufacturer or entity has sufficiently undertaken measures to prevent the intended action, the Department shall notify the tobacco product manufacturer or entity in writing, by facsimile or regular mail, that the manufacturer or brand name family will be included in the directory.

Sec. 19. If the Department determines, upon consultation with the Attorney General, that the tobacco manufacturer or entity has not sufficiently undertaken measures to prevent the intended action, the Department shall take action to deny a manufacturer, brand family, or entity a place in the directory, or shall remove a manufacturer, brand family, or entity from the directory.

Sec. 20. On or after January 1, 2006, to promote compliance with AB 436, the Department and the Attorney General will require nonparticipating manufacturers to make the escrow payments required by NRS 370A in quarterly installments during the year in which the sales covered by such payments are made. This section applies to nonparticipating manufacturers that meet any of the following criteria:

1. Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Nevada;

2. Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year;

3. *Nonparticipating manufacturers that have failed to make a timely and/or complete escrow deposit for any prior calendar year;*

4. *Nonparticipating manufacturers that have failed to pay any judgment obtained in any jurisdiction, including any civil penalty stemming from any jurisdiction's escrow deposit laws;*

5. *Nonparticipating manufacturers that have more than 1,600,000 of their cigarettes sold in Nevada during a quarter; and*

6. *In addition to the reasons specified above, the Attorney General and Department may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General and the department have reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.*

Sec. 21. *Nonparticipating manufacturers who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made; e.g. the deadline for making a quarterly escrow deposit for cigarette sales occurring January 1 through March 31 is April 30 of the same year.*

Sec. 22. *Nonparticipating manufacturers who are required to make quarterly escrow deposits shall provide the Attorney General with official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. Nonparticipating manufacturers shall also provide to the Attorney General their quarterly certifications within the same deadline; e.g. the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred January 1 through March 31 is May 10 of the same year. Nothing in this section eliminates the requirement under NRS 370A for a nonparticipating manufacturer to file its annual certification due on April 30 of each year.*

Sec. 23. *For purposes of the quarterly escrow provisions, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.*

Sec. 24. *If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families shall be removed from the directory by the Department upon the expiration of five days written notice, excluding weekends and holidays, to the tobacco product manufacturer, served by facsimile or regular mail, that the manufacturer and its brand families will be removed from the directory.*

Sec. 25. *Each distributor shall submit to the Department each month a report indicating the number of cigarettes manufactured by a manufacturer of tobacco products who is not a participating manufacturer that were sold by the distributor during the previous month. The*

number of cigarettes sold during the previous month must be measured by the excise taxes collected by this state on packs of cigarettes and containers of “roll-your-own” tobacco in the manner set forth in NRS 370A.120 for determining the number of units sold. For each cigarette sold during the previous month, the report must indicate:

- 1. The month the cigarettes were sold;*
- 2. The brand family;*
- 3. The name and address of the manufacturer of tobacco products who manufactured the cigarettes, if known;*
- 4. If the name and address of the manufacturer of tobacco products who manufactured the cigarettes is not known, the name and address of the exclusive distributor or importer of the cigarettes, if known; and;*
- 5. The name and address of the person from whom the distributor purchased the cigarettes, if that person was not listed pursuant to Sec. 25 (3) or (4).*

Sec. 26. The report required pursuant to Sec. 25 must also contain:

- 1. The number of cigarettes contained in all packs of cigarettes upon which the distributor affixed a revenue stamp during the previous month;*
- 2. The weight, in ounces, of “roll-your-own” tobacco upon which the excise taxes are due from the distributor; and*
- 3. The number of revenue stamps the distributor has purchased but has not yet affixed to a pack of cigarettes.*

Sec. 27. If the distributor affixed a revenue stamp to the pack containing a cigarette, that cigarette must be included in the report required pursuant to this section whether, at the time the revenue stamp was affixed, that cigarette was owned by the distributor; or a person other than the distributor.

Sec. 28. The report required pursuant to Sections 25-27 must be submitted:

- 1. On a form prescribed by the Department; or*
- 2. Electronically, in a format prescribed by the Department.*

Sec. 29. Except as otherwise provided in Sec. 30, the report required pursuant to Sections 25-28 must be submitted:

- 1. On the same date as a report submitted by a distributor pursuant to NRS 370.240 or 370.465, if the distributor submits a report pursuant to NRS 370.240 or 370.465; or*

2. *Not later than the last date on which a report could be submitted pursuant to NRS 370.240 or NRS 370.465, if the distributor does not submit a report pursuant to NRS 370.240 or NRS 370.465.*

Sec. 30. *If the number of cigarettes to be reported pursuant to Section 25 for a month is less than 10,000, the distributor may make written application to the Department to submit the report for that month on a date later than the date specified in Sec. 29. The Department may approve a written application pursuant to this subsection if the date requested by the distributor in the application for submitting the report is not later than 12 months after the date specified in Sec. 29 for submitting the report.*

Sec. 31. *Each distributor shall maintain a copy of each report submitted pursuant to this section for not less than 4 years after the date the report was submitted.*

Sec. 32. *If a distributor is owned in whole or in part by a tobacco product manufacturer who is not in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160, the distributor may not submit a report required pursuant to this section until:*

1. *The manufacturer of tobacco products is in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or*

2. *The distributor is not owned in whole or in part by the manufacturer of tobacco products.*

3. *If a distributor submits a report in violation of subsection 1, the report will not be considered submitted for the purposes of Sec. 33.*

Sec. 33. *If a distributor fails to submit a report as required by Sections 25-32, or submits incorrect information on a report submitted pursuant to this section, the Department may:*

1. *Suspend the license of the distributor until the distributor:*

(a) *submits the report or resubmits the report with corrected information, as appropriate, and*

(b) *the Department determines that the information in the report is correct; and*

2. *Impose a penalty on the distributor consisting of:*

(a) *for the first violation within 7 years, a fine of \$1,000;*

(b) *for a second or subsequent violation within 7 years, a fine of \$5,000; or*

(c) *for a third or subsequent violation within 7 years, revocation of the license of the distributor.*

Sec. 34. *On or before January 15, 2006, every distributor shall provide to the Department and update as necessary an electronic mail address for receiving any notifications required to carry out these regulations and the provisions of sections 2 to 23 of AB 436.*

Sections 370A.010, 370A.020, 370A.030, 370A.040, 370A.050, 370A.060, 370A.070 are hereby repealed.