

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R191-05**

January 5, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 9 and 14, NRS 360.090, 370.510, 370A.130 and section 20 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 378; §§2-8 and 10-13, NRS 360.090, 370.510 and section 20 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 378.

A REGULATION relating to manufacturers of tobacco products; establishing and revising procedures to aid in the enforcement of certain statutory requirements for such manufacturers; and providing other matters properly relating thereto.

**Section 1.** Chapter 370 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 14, inclusive, of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at pages 374 and 375, and sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Calendar quarter” means a period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31 in each calendar year.*

**Sec. 4.** *“Certification” means a certification required from a manufacturer of tobacco products pursuant to section 15 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 375.*

*Sec. 5. "Escrow deposit" means a deposit required from a manufacturer of tobacco products pursuant to subsection 2 of NRS 370A.140.*

*Sec. 6. In determining whether to add or remove the name or a brand family of a manufacturer of tobacco products to or from the directory pursuant to subsection 2 of section 17 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 376, the Department may, in consultation with the Attorney General and in addition to any other facts or circumstances the Department or Attorney General determines to be relevant, consider whether:*

*1. The person who submitted the pertinent certification is a manufacturer of tobacco products;*

*2. The pertinent certification is complete or the extent to which the certification is incomplete;*

*3. The manufacturer of tobacco products has provided all requested documentation in support of the pertinent certification;*

*4. The pertinent certification is based upon any false information or any concealment, failure to disclose or misrepresentation of fact;*

*5. The manufacturer of tobacco products is in full compliance with all relevant provisions of state and federal law;*

*6. The manufacturer of tobacco products, its predecessor or a previous manufacturer of a pertinent brand is subject to a current injunction obtained by the State of Nevada for a previous failure to comply with any provision of chapter 370A of NRS;*

*7. All final judgments and penalties due to the State of Nevada with regard to any violation of a statute or regulation involving the manufacturer of tobacco products or brand family, including any applicable interest, costs and attorneys' fees, have been satisfied in full;*

*8. The manufacturer of tobacco products has timely and thoroughly corrected any deficiencies relating to the pertinent certification or any of the factors set forth in this section;*

*9. The manufacturer of tobacco products has timely and thoroughly complied with any requests by the Attorney General for additional information or documentation relating to the pertinent certification or any of the factors set forth in this section; and*

*10. The manufacturer of tobacco products is owned, managed or operated, in whole or in part, by any person who currently holds or has previously held any interest in any other manufacturer of tobacco products which has failed to comply with any provision of chapter 370A of NRS.*

**Sec. 7. 1.** *If the Department, in consultation with the Attorney General and in accordance with section 6 of this regulation:*

*(a) Determines to add the name or a brand family of a manufacturer of tobacco products to the directory, the Department shall serve the manufacturer of tobacco products with written notice of that determination. The notice must specify each brand family of the manufacturer of tobacco products that the Department will include in the directory.*

*(b) Intends to exclude or remove the name or a brand family of a manufacturer of tobacco products from the directory or to exclude from the directory the name of any person who is not a manufacturer of tobacco products, the Department shall serve the manufacturer of tobacco products or other person with written notice of that intention. The notice must specify:*

*(1) The reason for the intended action;*

*(2) Any measures which may be taken to avoid the intended action; and*

*(3) The date, which must be not less than 7 days after service of the notice, by which the Department must receive clear and convincing proof of the completion of the measures identified pursuant to subparagraph (2) to avoid the intended action.*

*2. If the Department, in consultation with the Attorney General, determines that a manufacturer of tobacco products or other person has:*

*(a) Sufficiently carried out all the applicable measures identified pursuant to paragraph (b) of subsection 1, the Department shall include the name or brand family in the directory and serve the manufacturer of tobacco products or other person with written notice of that action; or*

*(b) Not sufficiently carried out all the applicable measures identified pursuant to paragraph (b) of subsection 1, the Department shall exclude or remove the name or brand family from the directory and serve the manufacturer of tobacco products or other person with written notice of that action.*

**Sec. 8. 1.** *A nonparticipating manufacturer shall make escrow deposits in quarterly installments for the calendar year in which the sales covered by those deposits are made if:*

*(a) The nonparticipating manufacturer:*

*(1) Has not previously established a qualified escrow fund and made escrow deposits to that fund for sales in Nevada;*

*(2) Has not made any escrow deposits for more than 1 year;*

*(3) Has failed to make any escrow deposits in a complete and timely manner for any prior calendar year;*

*(4) Has failed to pay any judgments entered against the nonparticipating manufacturer in any jurisdiction, including, without limitation, any judgments for any civil penalties arising from a failure to comply with the law of any jurisdiction requiring a deposit into a qualified escrow fund; or*

*(5) Sells more than 1.6 million cigarettes in Nevada during a calendar quarter; or*

*(b) The Department, in consultation with the Attorney General:*

*(1) Has reasonable cause to believe that the nonparticipating manufacturer may not make the entire annual escrow deposit otherwise required by subsection 2 of NRS 370A.140 in a timely manner for a particular year; and*

*(2) Serves the nonparticipating manufacturer with a notice that the nonparticipating manufacturer is required to make quarterly installments for that year.*

*2. A nonparticipating manufacturer who is required to make a quarterly installment pursuant to this section shall:*

*(a) Deposit the full amount of that installment not later than 30 days after the last day of the calendar quarter in which the sales covered by the installment are made; and*

*(b) Not later than 10 days after the last date upon which that installment is required pursuant to paragraph (a), provide the Attorney General with a quarterly report that includes such information as the Attorney General determines to be necessary to ascertain whether the nonparticipating manufacturer is in compliance with chapter 370A of NRS, sections 2 to 23, inclusive, of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at pages 374 to 379, inclusive, and sections 2 to 12, inclusive, of this regulation. The report required pursuant to this paragraph must be provided:*

*(1) On a form prescribed by the Attorney General; or*

*(2) Electronically, in a format prescribed by the Attorney General.*

*3. If a nonparticipating manufacturer fails to comply with any provision of subsection 2, the Department shall:*

*(a) Serve the nonparticipating manufacturer with a notice that the Department will remove the name and brand families of the nonparticipating manufacturer from the directory in 5 days, excluding weekends and holidays, unless the nonparticipating manufacturer fully complies with the provisions of subsection 2 within that time; and*

*(b) Upon the expiration of 5 days, excluding weekends and holidays, after the service of the notice pursuant to paragraph (a), remove the name and brand families of the nonparticipating manufacturer from the directory unless the nonparticipating manufacturer has fully complied with the provisions of subsection 2 within that time.*

*Sec. 9. 1. 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:*

*(a) The month the cigarette was sold;*

*(b) The brand family of the cigarette;*

*(c) The name and address of the manufacturer of tobacco products who manufactured the cigarette, if known;*

*(d) If the name and address of the manufacturer of tobacco products who manufactured the cigarette is not known, the name and address of the exclusive distributor or importer of the cigarette, if known; and*

*(e) The name and address of the person from whom the distributor purchased the cigarette, if that person was not listed pursuant to paragraph (c) or (d).*

*2. The report required pursuant to this section must also contain:*

*(a) The number of cigarettes contained in all packs of cigarettes upon which the distributor affixed a revenue stamp during the previous month;*

*(b) The weight, in ounces, of “roll-your-own” tobacco upon which the excise taxes are due from the distributor; and*

*(c) The number of revenue stamps the distributor has purchased but has not yet affixed to a pack of cigarettes.*

*3. 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 regardless of whether, at the time the revenue stamp was affixed, that cigarette was owned by the distributor or a person other than the distributor.*

*4. The report required pursuant to this section must be submitted:*

*(a) On a form prescribed by the Department; or*

*(b) Electronically, in a format prescribed by the Department.*

*5. Except as otherwise provided in subsection 6, the report required pursuant to this section must be submitted:*

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

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

*6. If the number of cigarettes to be reported pursuant to subsection 1 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 subsection 5. 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 subsection 5 for submitting the report.*

*7. 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. 10.** *1. If a distributor is owned in whole or in part by a manufacturer of tobacco products 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 section 9 of this regulation until:*

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

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

*2. If a distributor submits a report in violation of subsection 1, the report will not be considered submitted for the purposes of section 9 of this regulation.*

**Sec. 11.** *If a distributor fails to submit a report as required by section 9 of this regulation or submits incorrect information on a report submitted pursuant to section 9 of this regulation, the Department may, any addition to taking any other action authorized pursuant*



*to chapter 370 of NRS, suspend any license issued to the distributor pursuant to that chapter until:*

*1. The distributor submits the report or resubmits the report with corrected information, as appropriate; and*

*2. The Department determines that the information in the report is correct.*

**Sec. 12.** *The service of any notice to a person by the Department pursuant to sections 2 to 12, inclusive, of this regulation shall be deemed to be complete upon the date the notice is:*

*1. Mailed to the person by regular mail;*

*2. Transmitted to the person by electronic mail or facsimile machine; or*

*3. Personally delivered to the person,*

*↳ whichever occurs first.*

**Sec. 13.** 1. A distributor shall provide its current electronic mail address to the Department of Taxation in compliance with subsection 5 of section 19 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 377, not later than 30 days after the effective date of this regulation.

2. As used in this section, “distributor” has the meaning ascribed to it in section 7 of Assembly Bill No. 436 of the 73rd Session of the Nevada Legislature, chapter 120, Statutes of Nevada 2005, at page 374.

**Sec. 14.** NAC 370A.010, 370A.020, 370A.030, 370A.040, 370A.050, 370A.060 and 370A.070 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**370A.010 Definitions. (NRS 360.090, 370A.130)** As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 370A.020 and 370A.030 have the meanings ascribed to them in those sections.

**370A.020 “Brand family” defined. (NRS 360.090, 370A.130)** “Brand family” means:

1. A brand family identified on the list maintained pursuant to NAC 370A.040; or
2. A group of cigarettes with the same name, including the same manufacturer, brand name and trademark, the only differentiating feature being additional descriptive information, including, without limitation, “menthol,” “lights,” “kings” or “100’s.”

**370A.030 “Wholesale dealer” defined. (NRS 360.090, 370A.130)** “Wholesale dealer” means a wholesale dealer as defined in:

1. NRS 370.055, who:
  - (a) Is licensed pursuant to chapter 370 of NRS; and
  - (b) Has affixed a revenue stamp to a pack of cigarettes; and
2. NRS 370.440, who is licensed pursuant to chapter 370 of NRS.

**370A.040 List of participating manufacturers and brand families. (NRS 360.090, 370A.130)**

1. The Department, in consultation with the Attorney General, will maintain a list of participating manufacturers and, for each participating manufacturer, a list of the brand families produced by that participating manufacturer.

2. The Department will make the list maintained pursuant to this section available on the Internet website of the Department and at the office of the Department.

**370A.050 Monthly reports by wholesale dealers. (NRS 360.090, 370A.130)**

1. Each wholesale dealer 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 wholesale dealer 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:

(a) The month the cigarette was sold;

(b) The brand family of the cigarette;

(c) The name and address of the manufacturer of tobacco products who manufactured the cigarette, if known;

(d) If the name and address of the manufacturer of tobacco products who manufactured the cigarette is not known, the name and address of the exclusive distributor or importer of the cigarette, if known; and

(e) The name and address of the person from whom the wholesale dealer purchased the cigarette, if that person was not listed pursuant to paragraph (c) or (d).

2. The report required pursuant to this section must also contain:

- (a) The number of cigarettes contained in all packs of cigarettes upon which the wholesale dealer affixed a revenue stamp during the previous month;
  - (b) The weight, in ounces, of “roll-your-own” tobacco upon which the excise taxes are due from the wholesale dealer;
  - (c) The number of revenue stamps the wholesale dealer has purchased but has not yet affixed to a pack of cigarettes; and
  - (d) If the wholesale dealer is a manufacturer of tobacco products, a statement that the wholesale dealer:
    - (1) Is in compliance with the requirements set forth in NRS 370A.140 and subsection 1 of NRS 370A.160; and
    - (2) Has, since May 24, 1999, for all times when NRS 370A.140 and subsection 1 of NRS 370A.160 applied to the wholesale dealer:
      - (I) Been in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or
      - (II) Pursuant to subsection 2 of NRS 370A.160, been brought into compliance with NRS 370A.140 and subsection 1 of NRS 370A.160.
3. If the wholesale dealer 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:
- (a) The wholesale dealer; or
  - (b) A person other than the wholesale dealer.
4. The report required pursuant to this section must be submitted:
- (a) On a form prescribed by the Department; or
  - (b) Electronically, in a format prescribed by the Department.

5. Except as otherwise provided in subsection 6, the report required pursuant to this section must be submitted:

(a) On the same date as a report submitted by the wholesale dealer pursuant to NRS 370.240 or 370.465, if the wholesale dealer submits a report pursuant to NRS 370.240 or 370.465; or

(b) Not later than the last date on which a report could be submitted pursuant to NRS 370.240 or 370.465, if the wholesale dealer does not submit a report pursuant to NRS 370.240 or 370.465.

6. If the number of cigarettes to be reported pursuant to subsection 1 for a month is less than 10,000, the wholesale dealer may make written application to the Department to submit the report for that month on a date later than the date specified in subsection 5. The Department may approve a written application pursuant to this subsection if the date requested by the wholesale dealer in the application for submitting the report is not later than 12 months after the date specified in subsection 5 for submitting the report.

7. Each wholesale dealer 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.

**370A.060 Reports by wholesale dealers owned by certain noncomplying manufacturers. (NRS 360.090, 370A.130)**

1. If a wholesale dealer is owned in whole or in part by a manufacturer of tobacco products who is not in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160, the wholesale dealer may not submit a report required pursuant to NAC 370A.050 until:

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

(b) The wholesale dealer is not owned in whole or in part by the manufacturer of tobacco products.

2. If a wholesale dealer submits a report in violation of subsection 1, the report will not be considered submitted for the purposes of NAC 370A.070.

**370A.070 Failure to submit report or submission of incorrect information: Suspension or revocation of license; fine. (NRS 360.090, 370A.130)** If a wholesale dealer fails to submit a report as required by NAC 370A.050 or submits incorrect information on a report submitted pursuant to NAC 370A.050, the Department may:

1. Suspend the license of the wholesale dealer until:

(a) The wholesale dealer 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 wholesale dealer 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 wholesale dealer.