

TITLE 316 - NEBRASKA DEPARTMENT OF REVENUE
Chapter 58 Tobacco Product Manufacturers

Reg-58-004 Directory of Cigarettes Approved for Sale in Nebraska

004.01 The Tax Commissioner shall develop, maintain, and make public a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of §69-2706(1) and all brand families that are listed in such certifications.

004.02 The Tax Commissioner shall not include or retain in the directory the following:

004.02A The name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the Tax Commissioner determines is not in compliance with the requirements of § 69-2706(1) unless the Tax Commissioner determines that such noncompliance has been cured to the Tax Commissioner's satisfaction.

004.02B The name or brand families of any tobacco product manufacturer if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that either (1) any escrow payment required pursuant to §69-2703(2) for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been submitted for approval or approved by the Attorney General or (2) any outstanding final judgment, including interest thereon, for violations of §69-2703, has not been fully satisfied for such brand family and such manufacturer.

004.03 The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made or on before April 30 of that year. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformance with §§69-2704 to 69-2710.

004.04 The directory shall be made available by the Tax Commissioner for public inspection or published on its internet website.

004.05 It shall be unlawful for any person to affix a Nebraska tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family intended for sale in this state not included in the directory.

004.06 Tobacco product manufacturers shall be notified in writing of a decision made by the Tax Commissioner not to include a tobacco product manufacturer in the Directory.

004.06A If the Tax Commissioner determines that a tobacco product manufacturer or a brand family shall not be included in the Directory, the tobacco product manufacturer may seek a review of such determination by requesting a contested case before the Tax Commissioner under the Administrative Procedure Act.

004.06A(1) A contested case may be initiated by filing a petition in writing in the office of the Tax Commissioner which shall:

004.06A(1)(a) Identify the petitioner;

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004.06A(1)(b) Identify and attach a copy of the Tax Commissioner's determination being contested;

004.06A(1)(c) Set forth an explanation in detail regarding petitioner's claim of compliance with §69-2706, §69-2707(1), § 69-2703 and any applicable regulations and attach copies of all documentation supporting such claim;

004.06A(1)(d) Set forth the relief to which petitioner claims to be entitled.

004.06A(2) The petition shall be filed within thirty calendar days after the date of the Tax Commissioner's written determination that the manufacturer shall not be included in the directory.

004.06A(3) The hearing shall be conducted pursuant to the procedures set forth in the Administrative Procedure Act, except as specifically modified herein. A hearing for inclusion in the directory shall be held within 60 days after the filing of the petition. However, upon written agreement of the parties, the hearing may be concluded at a date beyond the expiration of the 60-day period. Discovery shall proceed as in the rules of civil procedure, except a written response shall be required within 20 days after service of a discovery request. The hearing shall determine whether the tobacco product manufacturer is in compliance with §§69-2703 through 69-2710 and whether the manufacturer should be listed in the directory. The burden of proof shall be on the petitioner.

004.06A(4) The Tax Commissioner's final decision in a proceeding for inclusion in the Directory shall be rendered within 30 days after conclusion of the hearing and served upon the petitioner as set forth in the Administrative Procedure Act.

004.06A(5) The Tax Commissioner's final decision may be appealed as set forth in the Administrative Procedure Act.

004.07 The Tax Commissioner shall give a tobacco product manufacturer 30 days written notice of the Tax Commissioner's intention to remove the manufacturer or a brand family from the directory for noncompliance with §§69-2703 through 69-2710. This notice shall also be posted in the directory.

004.07A The tobacco product manufacturer may seek judicial review of this notice of removal and if a temporary injunction is obtained within the 30 day period, the manufacturer or brand family shall remain on the directory unless and until a judicial order is obtained dissolving the injunction. Absent an injunction being entered by a court of competent jurisdiction, the Tax Commissioner shall remove the tobacco product manufacturer or brand family from the directory 30 days after the notice is sent unless the Tax Commissioner determines that the manufacturer is no longer out of compliance with the provisions of §§69-2703 through 69-2710.

004.07B The Tax Commissioner shall provide notice, electronically or by other practicable means at the discretion of the Tax Commissioner, of the removal of a tobacco products

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manufacturer or brand family from the directory to the stamping agents. Stamping agents must provide and update as necessary an electronic mail address to the Tax Commissioner in order to receive any notification under §§69-2704 through 69-2710.

004.07C A stamping agent shall provide reasonable written or electronic notice to its customers for a brand family regarding any notice it receives from the Tax Commissioner of the removal of a tobacco product manufacturer or a brand family from the directory. The stamping agent shall give its customers a 7 day period from the date of its service of the notice for the customer's return of cigarettes that have been removed from the directory.

004.08 A tobacco product manufacturer or brand family removed from the directory may thereafter be restored to the directory upon the determination of the Tax Commissioner that it has met all of the requirements of §§69-2703 through 69-2710.

004.08A A tobacco product manufacturer or brand family removed from the directory shall not thereafter be restored unless and until it has refunded to the stamping agents all money to which the stamping agents establish that they are entitled under § 69-2706(2)(d).

004.08B The Tax Commissioner's determination not to include the tobacco product manufacturer in the directory for failure to make such payments to the stamping agents shall be given to the manufacturer in writing pursuant to the provisions of and be subject to the procedures set forth above.

(Sections 69-2706, 69-2707, 69-2708, 69-2709, and 69-2710, R.S.Supp., 2003.
December 29, 2003.)