

August 22, 2019

Immediate Attention Required – New Cigarette Definition Beginning September 1, 2019

Legislative Bill 397 ([LB 397](#)) amended the definition of “cigarette” for Nebraska cigarette tax purposes. Beginning September 1, 2019, the definition of a “cigarette” will be expanded to include any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use and contains:

- (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (b) Tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging, is likely to be offered to, or purchased by, consumers as a cigarette; or
- (c) Any roll of tobacco wrapped in any substance containing tobacco which because of its appearance, the type of tobacco used in the filler, or its packaging, is likely to be offered to, or purchased by, consumers as a cigarette.

Under the new definition, certain little cigars, certain filtered and non-filtered little cigars, and certain flavored little cigars may be reclassified as cigarettes effective September 1, 2019. The size of a product alone does not control the determination of whether it is reclassified as a cigarette. Rather, the manner in which it is marketed and/or consumed determines whether the tobacco product is considered a cigarette under the new definition. To view criteria for tobacco products labeled as anything other than a cigarette, see [Criteria for Tobacco Products Labeled as Anything Other Than a Cigarette \(Criteria\)](#).

On and after September 1, 2019, tobacco products, including little cigars/cigarettes, which meet the new cigarette definition, can only be legally sold in Nebraska if they are:

1. Listed on the Nebraska Directory of Certified Tobacco Product Manufacturers and Brands (Directory);
2. Stamped with a Nebraska cigarette tax stamp (Retailers — see Criteria for clarification of the stamping requirement); and
3. Designated as Fire Standard Compliant.

The Directory can be viewed on the Nebraska Department of Revenue’s website at revenue.nebraska.gov by clicking on “Cigarettes/ Other Tobacco Products” under Specific Tax Info and “Nebraska Directory of Certified Tobacco Product Manufacturers and Brands.” Information concerning the Fire Safe Compliant requirement is available on the Nebraska State Fire Marshal’s website at sfm.nebraska.gov.

Retailers are reminded that beginning September 1, 2019, little cigars/cigarettes and any other products meeting the new cigarette definition on your retail point of sale displays must meet the requirements noted above. If the cigarettes do not meet the requirements, the cigarettes are contraband and will be confiscated during a retail compliance inspection under [Neb. Rev. Stat. § 77-2620](#).

Manufacturers of products for sale in Nebraska that meet the new cigarette definition must have the products listed on the Directory and ensure their products are FSC compliant, if they intend to continue to utilize the Nebraska market on and after September 1, 2019.

Licensed stamping agents with products for sale in Nebraska that meet the new cigarette definition must ensure as of September 1, 2019, that the products are listed on the Directory, have a Nebraska cigarette tax stamp, and are FSC compliant.

Licensed resident stamping agents that have a Directory License can purchase and maintain an inventory of little cigars/cigarettes and any other tobacco products as defined by LB 397 that are not certified to be sold in Nebraska, but could be sold into another state. Retailers and stamping agents who do not comply with LB 397 could be subject to civil and/or criminal penalties, and their license may be suspended or revoked.

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