

Criteria for Tobacco Products Labeled as Anything Other Than a Cigarette

Legislative Bill 397

New Cigarette Definition Beginning September 1, 2019

Beginning September 1, 2019, 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 be reclassified as a cigarette if the product meets two or more of the following criteria:

1. A pack contains 20 or 25 sticks;
2. A carton contains eight or ten packs;
3. The stick length is $2\frac{3}{4}$ inches to 5 inches and stick diameter is equal to or less than 8.20 millimeters;
4. The product is sold in soft packs, hard packs, flip-top boxes, or clamshell packages; or
5. The product is sold with a cigarette-type filter.

Beginning September 1, 2019, tobacco products meeting two or more of the above criteria will be reclassified as a cigarette and must be on the Nebraska Directory of Certified Tobacco Product Manufacturers and Brands ([Directory](#)) to be legally sold in Nebraska.

Manufacturers

Manufacturers must submit a Tobacco Product Manufacturer's Certification ([Form 55B](#)) for their products to be added to the Directory. A Form 55B can be obtained from the Nebraska Department of Revenue's (DOR) website at revenue.nebraska.gov by clicking on Cigarettes/Other Tobacco Products under Specific Tax Info. General information and directions for completion of Form 55B can be found on the Form 55B. Products on the Directory are also subject to escrow requirements administered by the Nebraska Attorney General's office. Questions regarding escrow requirements or the directory application should be directed to the Nebraska Attorney General's office at the contact information provided below.

Licensed Stamping Agents, Wholesalers, and Retailers

Tobacco products reclassified as cigarettes that are not listed on the Directory are contraband and will be confiscated during retail compliance inspections conducted on or after September 1, 2019, regardless of whether or not the reclassified products have a Nebraska cigarette tax stamp affixed to the package.

Tobacco products reclassified as cigarettes, not bearing a cigarette tax stamp, that were sold from wholesale to retail prior to September 1, 2019, were subject to tobacco tax rather than cigarette tax and are not subject to seizure provided they are on the Directory. All reclassified cigarettes sold from wholesale to retail on and after September 1, 2019, must be on the Directory and bear an appropriate Nebraska cigarette tax stamp.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DOR and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. DOR recommends you do not print this document. Instead, sign up for the [subscription service](#) at revenue.nebraska.gov to get updates on your topics of interest.

Exception from Definition of Cigarette for Designated Tobacco Products

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 meets either of the below federal tax status or product criteria conditions, and will be affirmatively placed on a publicly-available list maintained by the 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:

1. Listed on the Directory;
2. Stamped with a Nebraska cigarette tax stamp; or
3. Designated as Fire Safe Compliant.

If the manufacturer or importer responsible for reporting and paying the federal excise tax on the tobacco product reports and pays the tax in accordance with 26 U.S.C. §§ 5701(a) and 5702(a), then the tobacco product will not be classified as a cigarette. Proof that the manufacturer or importer reports and pays the tax in accordance with 26 U.S.C. §§ 5701(a) and 5702(a) is required, and should be submitted to the Nebraska Attorney General's office and DOR using the contact information found at the end of this guidance document. The following is required to be submitted:

- Copies of applicable tax forms submitted to the United States Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) (e.g., TTB Form 5210.5, etc.); or
- 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).

Alternatively, tobacco products meeting the following criteria will not be classified as a cigarette:

1. **Wrapper.** 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.
2. **Filling.** 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.
3. **Packaging.** 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.

Proof that a tobacco product meets the above criteria is required and may be provided through submission of the following:

- Advance rulings on the tax status of the tobacco product issued by TTB; or
- 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 that the tobacco product meets the above criteria.

Tobacco products for which such proof has been submitted by the manufacturer or importer to the Nebraska Attorney General's office and DOR will be placed on the publicly-available list within five (5) business days of submission. Evidence submitted to satisfy either criterion will be prima facie evidence that such product qualifies to be listed as a [cigar](#).

Manufacturers

Regardless of whether a 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's office and DOR in order to receive affirmative designation that their tobacco products are not cigarettes and are little cigars. As a consequence of an affirmative designation, 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.

Any manufacturer or importer the Attorney General deems to pose an elevated risk for noncompliance in accordance with the factors delineated in Neb. Rev. Stat. § 69-2707.01(3)(a)-(h) is not eligible to receive a designation that their tobacco products are not cigarettes and are little cigars.

Licensed Stamping Agents, Wholesalers, and Retailers

Tobacco products designated as little cigars that are not listed on the Directory, are not contraband, and will not be confiscated during compliance checks because of their non-listing.

Tobacco products designated as little cigars should not bear a cigarette tax stamp, and are not subject to seizure if they do not bear one. Tobacco products designated as little cigars are subject to the Tobacco Products Tax Act rather than the cigarette tax.

For product-related questions, please contact Nebraska Department of Revenue:

Garrett Nedved, Tax Specialist Senior, 402-471-5862, garrett.nedved@nebraska.gov

For questions related to escrow requirements and the Directory application, please contact the Nebraska Attorney General's Office:

Consumer Protection Division, 402-471-2682, ago.tobacco@nebraska.gov