

EXHIBIT A

SENECA NATION OF INDIANS
IMPORT-EXPORT LAW



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Section 1.1. *Statement of Policy.*

The Seneca Nation of Indians seeks to exercise its inherent and treaty-protected rights of self-determination and the “free use and enjoyment” of its lands to promote the prosperity of the Seneca People now living and for those living seven generations to come. To achieve this goal, the Nation Council states that it shall be official Nation policy to vigorously protect and defend the economic rights of the Nation and its people within Nation territory against all foreign and domestic threats. Such protection and defense shall extend to the regulation of all goods and services sold or provided within Nation territory, including, but not limited to, the retail sale of petroleum and tobacco products.

Section 1.2. *Findings.*

The Council finds and declares that --

- a. The sale of petroleum and tobacco products by the Nation generates significant governmental revenue necessary for the delivery of essential governmental services to the Seneca people;
- b. The sale of petroleum and tobacco products by the Nation and its people generates sufficient revenue to sustain hundreds of public and private sector jobs and is a significant contributor to the Nation and regional economies;
- c. The Nation’s Canandaigua Treaty with the United States of 1794 protects the “free use and enjoyment” of the Nation’s territory and thus allows for the free trade of all goods within Nation territory;

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d. The Nation's Buffalo Creek Treaty with the United States of 1842 protects Nation lands and commerce taking place within such lands from the application of New York State taxes; and

e. By virtue of its geographic position the Nation from time to time is subject to the economic, legal, and political influences of neighboring foreign governments, including the United States, Canada, and the State of New York, and thus must engage in whatever means necessary to protect its economic and political sovereignty from actions taken by those governments.

Section 1.3. *Purpose.*

The purpose of this law is to protect Nation territorial integrity through the regulation of goods imported and exported into and from Nation territory and to generate revenue to conduct essential governmental functions.

Section 1.4. *Definitions.*

a. "*Bonded agent*" shall mean a duly licensed stamping agent who has provided a security deposit or bond.¹

b. "*Commission*" shall mean the Nation Import-Export Commission established in Article 2 of this Law;

c. "*Family*" shall mean individuals who are related to other individuals as parents, children, sisters, brothers, aunts, uncles, or first cousins.

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d. *"Determined" or "Determination"* shall mean that the legal question at issue has been finally resolved by a court of competent jurisdiction through the means of a full and complete trial that has reached a formal verdict and that all rights to appeal have either been exhausted or waived. The entering into a plea agreement or a plea of nolo contendere or equivalent shall not necessarily constitute a Determination for the purposes of this law.²

e. *"Export"* shall mean the exportation from Nation territory of any goods originally imported into Nation territory by any wholesaler.

f. *"Exporter"* shall mean a business engaged in the wholesale exportation of goods from Nation territory for purposes of resale.

g. *"Goods"* shall mean all goods and products, including petroleum products and tobacco products, that may be sold at retail sale.

h. *"Import"* shall mean the wholesale importation of any goods into Nation territory for purposes of resale.

i. *"Importer"* shall mean a business engaged in the wholesale importation of goods into Nation territory for purposes of resale.

j. *"Manufacturer"* shall mean any person who manufactures tobacco products within the exterior boundaries of the Territories.³

k. *"Member"* shall mean an enrolled member of the Nation.

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l. *"On-territory manufactured product" or "Manufactured Product"* shall mean tobacco products manufactured entirely within the exterior boundaries of the Seneca Nation Territory.⁴

m. *"Person"* shall mean any member or non-member individual, corporation, firm, organization, or association, who or which is engaged in any business, trade, occupation, or profession or renders or furnishes any service for profit or livelihood, but not individuals working for said persons as employees.

n. *"Point of sale"* shall mean the physical location at which the actual transaction or exchange takes place.⁵

o. *"Premium Brands"* shall mean that class of tobacco products generally identified and accepted as such and which includes but is not limited to brands manufactured by Phillip Morris, RJ Reynolds, Liggett, Lorillard, and others.⁶

p. *"Retailer"* shall mean a business engaged in the retail sale and distribution of goods to the general public.

q. *"Petroleum products"* shall mean gasoline of any grade used as a fuel for automobiles, diesel fuel, and any motor fuel blended with either of said products.

r. *"Tobacco products"* shall mean cigarettes, cigars, snuff, chewing tobacco, pipe tobacco, and any other related tobacco product.

s. *"Wholesaler"* shall mean a business engaged in the wholesale sale and distribution of goods for resale purposes.

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Section 1.5. *Importation Generally.*

- a. Goods may freely be imported into Nation territory without the imposition of any fee except for petroleum and tobacco products.
- b. No person shall import petroleum or tobacco products into Nation territory unless he shall have a valid Nation business license.

Section 1.6. *Import Fee on Tobacco Products.*

- a. There is imposed a fee on all tobacco products imported into Nation territory. Said fee shall be imposed in accordance with the following schedule:

| | |
|------------|---|
| cigarettes | \$0.00375 per cigarette ⁷ (\$0.75 per 10 pack carton) |
|------------|---|

| | |
|------------------------------------|------------|
| cigars, smokeless and pipe tobacco | [reserved] |
|------------------------------------|------------|

- b. The import fee on tobacco products shall be paid by any importer or wholesaler of tobacco products, including any Nation enterprise, prior to or within forty-eight (48) hours of importation into Nation territory. Said fee shall be paid to the Nation by certified check, cashier's check, money order or by wire transfer. No credit account shall be established on behalf of any importer of tobacco products.

A duly licensed stamping agent may elect to hold unstamped product in a secure location and pay the import fee prior to resale, only if said stamping agent shall have first posted a bond of \$100,000.00 issued to the Nation or shall have provided a security deposit in the amount of

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\$11,250.00, payable to the Nation. In the case of a security deposit, said deposit shall be held in an interest bearing account and shall not be co-mingled with any other Nation accounts or funds. Any unstamped product held by a stamping agent pursuant to this section shall be kept in a secure area separate and apart from stamped product held by the Agent. In the event that an agent is determined to have violated this Law, his or her license shall be revoked and said bond or security deposit shall be forfeited with said proceeds being added to the other funds generated by the collection of the fees pursuant to this Law.⁸

c. The import fee may be changed by Council upon the recommendation of the Commission in the event that (i) the financial condition of the Nation's government deteriorates significantly, as may be certified by the Treasurer; (ii) the financial condition of the licensed retail businesses within the Nation deteriorates significantly, as may be certified by the Seneca Free Trade Association or equivalent organization, (iii) the United States of America or the States of New York, Pennsylvania change their taxes, surcharges, fees or minimum prices associated with petroleum or tobacco products; or (iv) upon the joint certification of the Import Export Commission and the Seneca Free Trade Association that a change in any fee imposed by this Law is necessary.⁹

Section 1.7. *Import Stamps on Tobacco Products.*

a. Evidence that the import fee on tobacco products has been paid shall be reflected by the affixation of an import stamp upon every pack of cigarettes, every cigar, and every package of smokeless or pipe tobacco imported into Nation territory.

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- b. Import stamps shall be affixed by either the Commission or its licensed agent(s).
- c. The Commission is authorized to employ such people, establish such facilities, and purchase or lease such equipment, as may be necessary to properly affix Nation import stamps.
- d. The Commission is authorized to issue a license to any qualified importer or wholesaler, subject to Council approval, to serve as an agent for purposes of affixing Nation import stamps. The applicant for a stamping license shall demonstrate the operational capacity to affix stamps on tobacco products in an efficient and expeditious manner and otherwise be capable of asserting sufficient control over said stamps to avoid fraud and misuse. A licensed stamping agent shall obtain from the Commission the quantity of import stamps it may deem necessary upon the payment of the import fee. The Commission shall ensure that all stamps allocated to a licensed stamping agent shall be accounted for on no less than a monthly basis and that all requisite fees have been paid to the Nation. Failure to remit or otherwise account for the appropriate import fee associated with an agent's allocation of import stamps shall be grounds for revocation of the agent's stamping license. The Commission shall assign such on-site inspectors as may be necessary to ensure the compliance of any licensed stamping agent with the provisions of this Law.
- e. Tobacco products that do not carry a Nation import stamp may not be imported into Nation territory unless to be delivered to a licensed stamping agent who shall affix such import stamps within forty-eight (48) hours of importation or in the case of a stamping agent who receives and stores unstamped product pursuant to Section 1.6(b), the requisite stamps shall be affixed prior to resale. This section shall not prohibit a duly licensed stamping agent with an exclusive buy

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arrangement from selling or delivering unstamped product carried exclusively by that agent directly to another duly Nation licensed stamping agent without affixation of an import stamp. Any tobacco products found in Nation territory without a Nation import stamp shall be deemed contraband and shall be subject to confiscation.¹⁰

f. It shall be illegal for a duly licensed stamping agent to affix Nation import stamps to any package of tobacco product or products for which the stamp of another jurisdiction has already been affixed.¹¹

Section 1.8. *Import Fee on Petroleum Products.*¹²

a. There is imposed a fee on all Petroleum Products imported into Nation territory. Said fee shall be imposed in accordance with the following schedule:

| | |
|-------------|------------------------|
| Gasoline | \$0.03 per U.S. Gallon |
| Diesel Fuel | \$0.03 per U.S. Gallon |

b. The import fee on Petroleum Products shall be paid by a licensed motor fuel importer on a monthly basis. Return and payment for imported petroleum shall be due on the 15th of each month, and shall cover the proceeding calendar month. Said fee shall be paid to the Nation by certified check, cashier's check, money order or wire transfer. Failure to remit payment and file any return when due may result in the imposition of penalties, or suspension or revocation of an importer's license.¹³

c. The import fee may be changed by Council upon the recommendation of the

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Commission in the event that (i) the financial condition of the Nation's government deteriorates significantly, as may be certified by the Treasurer; (ii) the financial condition of the licensed retail businesses within the Nation deteriorates significantly, as may be certified by the Seneca Free Trade Association or equivalent organization, (iii) the United States of America or the States of New York, Pennsylvania change their taxes, surcharges, fees or minimum prices associated with petroleum or tobacco products; or (iv) upon the joint certification of the Import Export Commission and the Seneca Free Trade Association that a change in any fee imposed by this Law is necessary.¹⁴

d. Petroleum Products on which the import fee has not been paid may not be imported into Nation territory unless delivered by a Nation licensed motor fuel importer, who shall pay such import fee in accordance with the provisions of this Law. Any Petroleum Products found in or delivered to Nation territory in violation of this law shall be subject to confiscation.¹⁵

e. Payment of the import fee on Petroleum Products shall be in the form and manner proscribed by the Commission by regulation.

Section 1.9. *Exportation Generally.*¹⁶

a. Goods may be freely exported from Nation territory without the imposition of any fee except for petroleum and tobacco products.

b. No person shall export tobacco products from Nation territory unless he shall have a valid Nation business license.

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Section 1.10. *Export Fee on Tobacco Products.*¹⁷

a. There shall be imposed a fee on qualified tobacco products exported from Nation territory. Said fee shall be imposed in accordance with the following schedule:

| | |
|------------------------------------|----------------------|
| 9,800 or more cigarettes | \$0.05 per cigarette |
| (49 or more cartons) | (\$10.00 per carton) |
| cigars, smokeless and pipe tobacco | [reserved] |

b. The export fee on tobacco products shall be paid by the exporter of tobacco products prior to exportation from Nation territory. Said fee shall be paid to the Nation by certified check, cashier's check, money order or by wire transfer. No credit account shall be established on behalf of any exporter of tobacco products.

c. A duly licensed stamping agent may export Tobacco products on an exempt basis without payment of the export fee or affixation of an export stamp, where:

i. The tobacco products are destined for delivery to a person who is licensed to receive unstamped tobacco products in accordance with the laws of the jurisdiction in which they are located; or

ii. The tobacco products are destined for delivery to a federally recognized Indian nation, or a duly licensed wholesaler located within the territory of a federally recognized Indian nation, who is authorized to receive unstamped tobacco products, pursuant to the laws of the Indian nation in which they are located.

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Section 1.11. *Export Stamps on Tobacco Products.*¹⁸

a. Evidence that the export fee on tobacco products has been paid shall be reflected by the affixation of an export stamp upon every pack of cigarettes, every cigar, and every package of smokeless or pipe tobacco exported from Nation territory.

b. Export stamps shall be affixed by either the Commission or its licensed agent(s).

c. The Commission is authorized to employ such people, establish such facilities, and purchase or lease such equipment, as may be necessary to properly affix Nation export stamps.

d. The Commission is authorized to issue a license to any qualified exporter or wholesaler, subject to Council approval, to serve as an agent for purposes of affixing Nation export stamps. The applicant for a stamping license shall demonstrate the operational capacity to affix stamps on tobacco products in an efficient and expeditious manner and otherwise be capable of asserting sufficient control over said stamps to avoid fraud and misuse. A licensed stamping agent shall obtain from the Commission the quantity of export stamps it may deem necessary upon payment of the export fee. The Commission shall ensure that all stamps allocated to a licensed stamping agent shall be accounted for on no less than a monthly basis and that all requisite fees have been paid to the Nation. Failure to remit or otherwise account for the appropriate export fee associated with an agent's allocation of export stamps shall be grounds for revocation of the agent's stamping license.

e. Qualified tobacco products that do not carry a Nation export stamp may not be exported from Nation territory.

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Section 1.12. *Reserved [Export Fee on Motor Fuel].*

Section 1.13. *Minimum Retail Pricing.*¹⁹

a. The Commission may establish a minimum price for tobacco products sold within the Nation's Territories. Minimum prices established pursuant to this Section shall be within 10% of the minimum pricing schedule recommended to the Commission by the Seneca Free Trade Association or equivalent organization. The recommendations of the Free Trade Association or equivalent association shall be provided to the Commission on a quarterly basis, no less than twenty (20) days prior to the start of the quarter for which the recommended minimum pricing levels are to be effective.

b. No cigarettes shall be sold at retail in Nation territory below the prescribed minimum price. Willful retail sale below the minimum price shall constitute a violation of this ordinance and is grounds for suspension or revocation of a Business license in accordance with the provisions of this law.

c. The minimum retail price may be changed by the Commission on an emergency basis, upon the submission of revised pricing recommendations by the Seneca Free Trade Association or equivalent organization, in conjunction with a certification as to the change in market conditions necessitating such change.

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Section 1.14. *On-Territory Manufactured Tobacco Products Generally.*²⁰

a. All tobacco products manufactured on Nation territory shall be subject to a manufacturing fee as follows:

i. On-territory manufactured product \$6.00 per case.

b. No person shall manufacture tobacco products on Nation territory unless he or she shall hold a valid Nation business license.

Section 1.15. *Manufacturing Fee Imposed.*²¹

a. The manufacturing fee shall be assessed on the finished product at a rate of \$6.00 per 60-carton case. Said fee shall be paid by the stamping agent who receives product for resale, and shall be paid to the Nation by certified check, cashier's check, money order or by wire transfer.

i. Manufactured Product that is for retail sale within the Nation's Territories shall be exempt from the manufacturing fee.

b. The manufacturing fee may be changed by the Council upon written recommendation from the Commission, based on factors such as the price of raw tobacco, changes in the financial condition of the Nation, or changes in the assessments of tobacco products in other jurisdictions which may impact the Nation market, or upon any other reasonable basis.

Section 1.16. *Manufacturing Stamps.*²²

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a. Exemption from the manufacturing fee for manufactured product to be sold on Territory shall be evidenced by a stamp or other marking to be determined by the Commission. In the case of manufacturing stamps, said stamps may only be affixed by any Nation licensed stamping agent. Payment of the manufacturing fee for product which is exported shall be evidenced by the manufacturer's submission of a manufacturing report in such form as the Commission may determine. Manufactured product may only be exported without the affixation of a Nation manufacturing stamp where:

i. The tobacco products are destined for delivery to a person who is licensed to receive unstamped tobacco products in accordance with the laws of the jurisdiction in which they are located; or

ii. The tobacco products are destined for delivery to a federally recognized Indian nation, or a duly licensed wholesaler located within the territory of a federally recognized Indian nation, who is authorized to receive unstamped tobacco products, pursuant to the laws of the Indian nation in which they are located.

b. Qualified manufactured products destined for retail sale within the Nation's Territories that do not carry a Nation manufacturing stamp or other evidence that they are exempt from imposition of the manufacturing fee shall be deemed contraband and shall be subject to confiscation.

c. A duly licensed manufacturer may obtain a license to be a stamping agent provided that he or she otherwise meets all of the licensing requirements set forth herein.

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Section 1.17. *Authorized Transactions.*

The importation into and sale within Nation territory of cigarettes that are not manufactured to satisfy enhanced fire prevention standards is authorized.

Section 1.18. *Prohibited Transactions.*

a. No wholesaler or retailer of tobacco products shall sell such products to any person under the age of eighteen (18).

b. No importer shall sell or otherwise distribute any tobacco products bearing a Nation import stamp to any person other than a licensed Nation wholesaler or retailer.

c. No retailer shall sell or otherwise distribute tobacco products bearing a Nation import stamp to any person outside of Nation territory in a manner that has been Determined to violate the laws of the jurisdiction of the point of sale or applicable federal law.²³

Section 1.19. *Enforcement.*

a. The powers of the Commission to carry out the provisions of this Law shall be as set forth in Section 2.3.

b. The Commission is authorized to employ such inspectors, investigators, auditors, agents, and staff as may be necessary to ensure compliance with this Law.

c. The Marshals and Commission agents, acting at the direction of the Commission or

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the President, shall have such authority as may be necessary to carry out the provisions of this Law, including but not limited to the authority to inspect shipments of goods into Nation territory, to intercept illegal shipments of goods into Nation territory and to seize any vehicles or equipment that may be used in the course of such illegal activity.

Section 1.20. *Defense Obligation.*

Should any licensed wholesaler or retailer be subjected to the process of foreign governments as a direct result of its compliance with specific provisions of this Law, the Nation shall take any and all necessary and prudent measures to protect and defend such licensee's compliance with this Law, including but not limited to intervening in said process. Only the Nation shall have the authority to defend the provisions of this Law.

Section 1.21. *Fee Allocation.*

Fees generated in accordance with the provisions of this Law shall first be applied to the costs of administration. All fees received in excess of said costs shall be allocated by the Council in the following manner:

| | |
|-------------------------------|-----|
| Health, Education and Welfare | 50% |
| Supplemental Annuity | 50% |

ARTICLE 2. IMPORT-EXPORT COMMISSION

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Section 2.1. *Establishment.*

There is established an Import-Export Commission for purposes of ensuring compliance with the provisions of this Law.

Section 2.2. *Duties.*

The Commission shall:

- a. in conjunction with the President, Treasurer, and Marshals, ensure compliance with the provisions of this Law;
- b. establish such rules and regulations as may be necessary to carry out the provisions of this Law; and
- c. perform such other duties as may be defined by law.

Section 2.3. *Powers; Penalties; Procedures.*²⁴

- a. The Commission shall have such power to:
 - i. permanently revoke the license of any stamping agent, wholesaler or retailer who has twice been determined to be in violation of this Law;
 - ii. suspend, for a period not longer than thirty (30) days, the license of any wholesaler or retailer determined to be in violation of this Law, such period ultimately to be based upon the severity of the violation;
 - iii. suspend ex parte, for a period not longer than seventy-two hours, the license of

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any stamping agent, wholesaler or retailer believed, upon preliminary investigation, to be in gross violation of this Law; and

iv. perform its duties and ensure compliance with the provisions of this Law.

b. Prior to the effective date of this Law, the Commission shall develop and issue procedures for determining violations of this Law. No stamping agent, wholesaler or retailer shall have its license revoked without a hearing before the Commission in which the alleged violator shall have the right to appear, with counsel at his or her own expense if deemed necessary, and present arguments on his or her behalf.

Section 2.4. *Stamps, Stamping Agents and Licensed Petroleum Importers.*

a. The Commission shall prescribe, prepare and furnish stamps as may be necessary to evidence the payment of the import, export or manufacturing fees on tobacco products imposed by this Law.²⁵ The Commission shall provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The Commission shall make provision for the allocation of such stamps and may license such agent(s) for the purpose of affixing such stamps as set forth in this Law.

b. The Commission may license wholesalers of tobacco products as agents to buy and affix import, export or manufacturing stamps.²⁶ Each agent authorized to affix such stamps shall at

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all times provide complete access to an authorized Commission employee who shall provide regulatory oversight to ensure that the stamping activities of the agent are in full compliance with this Law. The fee for filing such application for a stamping agent's license shall be one thousand dollars (\$1,000.00) per year.

c. Each stamping agent licensed to affix stamps pursuant to this Law must provide the Commission, on a monthly basis, a written report which details the following information: (i) the quantity, brand and type of product stamped; (ii) the location to which the product was delivered and the date on which it was shipped; (iii) the lot numbers of the stamps affixed to the tobacco products delivered, and (iv) the brand and amount of unstamped tobacco products held by the Stamping Agent pursuant to Section 1.6(b) at the end of the month.²⁷ The Commission shall have authority to conduct on-site inspections as need be to ensure compliance with this Law.

d. The Commission may license petroleum wholesalers as licensed importers of Petroleum Products pursuant to the provisions of this Law. Each licensed importer shall at all times provide complete access to authorized Commission employees, in order to provide regulatory oversight and to ensure that the importer's activities are in full compliance with this Law. The fee for filing a petroleum importer's license shall be one thousand dollars (\$1,000.00) per year. Each licensed petroleum importer shall timely file such reports in the form and manner as may be proscribed by the Commission by regulation.²⁸

Section 2.5. *Membership.*

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- a. The Commission shall have nine (9) members who shall be appointed by Council.
- b. All Commissioners shall be Nation members. Family may not serve together on the Commission. Commission members shall be “public officials” for purposes of the Nation’s Ethics Law.²⁹
- c. One (1) Commissioner shall be the Chair who shall be a full-time employee of the Commission. The Chair may not be an owner of a retail business or have an economic or family interest associated with a retail business.
- d. Two (2) Commissioners shall be from the Allegany Territory and two (2) Commissioners shall be from the Cattaraugus Territory. Members appointed under this subsection may not be an owner of a retail business or have an economic or family interest associated with a retail business.
- e. Two (2) Commissioners shall be appointed by the licensed businesses from each of the Allegany and Cattaraugus Territories at a meeting of the licensed businesses of each territory called for that purpose. The Clerk shall conduct such meeting with at least one weeks' written notice to all licensed businesses. Each licensed business shall have one vote, *provided*, that an owner of more than one business shall have only one vote. The Clerk shall certify to Council the names of the Commissioners so selected to serve on the Commission.
- f. The Nation’s Council shall appoint two (2) Councillors to the Commission. One (1) Commissioner shall be from the Allegany Territory and one (1) shall be from the Cattaraugus Territory. Members appointed under this subsection may not be an owner of a retail business.

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Commissioners appointed pursuant to this Section shall serve at the pleasure of the Nation's Council, provided, that their terms shall automatically expire upon the expiration of their term as Councillor.

g. Commissioners shall serve for a term of three years and until his or her successor has been duly confirmed or until his or her death, resignation or removal. Notwithstanding the foregoing, the initial Commission shall be comprised of two Commissioners with one year terms, two Commissioners with two year terms and three Commissioners with three year terms (which shall include the Chair). Initial terms shall be determined by the Commissioners by lot at the first Commission meeting.

h. The Chair shall receive a salary commensurate with his or her qualifications and experience. Commissioners shall receive a stipend of \$500.00 per month.³⁰

i. Commissioners may be removed by the appointing authority at any time for cause. Any Commissioner missing three consecutive meetings, without the prior approval of the Chair, shall be deemed automatically removed.

Section 2.6. *Officers.*

The Commission shall have a Chair, a Vice-Chair, a Secretary and such other officers that it may establish from time to time. The Chair shall be appointed by the Council. The Vice-Chair and Secretary shall be selected annually by the Commission membership and shall hold office until his or her successor has been duly selected. The Chair and Vice-Chair shall not be from the same

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Territory. Commission officers may be removed by the membership of the Commission whenever in their judgment the best interests of the Commission would be served.

Section 2.7. *Meetings; Quorum; Bylaws.*

- a. The Commission shall meet at least monthly upon one week public notice.
- b. Five Commission members shall be necessary in order to constitute a quorum for the transaction of business.³¹
- c. The vote of five (5) Commissioners at a meeting at which a quorum has been met shall be necessary to constitute an official act.³²
- d. All meetings of the Commission shall be open to Nation members only, *provided*, that non-members who have business before the Commission or whose employment necessitates their attendance may attend.³³
- e. The Commission shall have authority to adopt bylaws not inconsistent with this Law.

Section 2.8. *Recourse.*

- a. Commission action that is arbitrary and capricious shall be subject to judicial review in the Nation's Courts.
- b. Nothing contained in this Law shall establish a cause of action in any United States federal or state court or constitute a waiver of the sovereign immunity of the Nation.

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AMENDMENTS

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1. This term was added pursuant to amendment enacted by Council on April 14, 2007.
 2. This term was added pursuant to amendment enacted by Council on December 9, 2006.
 3. This term was added pursuant to amendment enacted by Council on April 14, 2007.
 4. This term was added pursuant to amendment enacted by Council on April 14, 2007.
 5. This term was added pursuant to amendment enacted by Council on April 14, 2007.
 6. This term was added pursuant to amendment enacted by Council on April 14, 2007.
 7. The import fee on cigarettes was lowered from \$0.01 per cigarette pursuant to amendment enacted by Council on December 9, 2006.
 8. The second paragraph of subsection 1.6(b) was added pursuant to amendment enacted by Council on April 14, 2007.
 9. This Subsection was amended by Council on November 10, 2007 to add Part (iv).
 10. The first sentence of subsection 1.7(e) was amended by Council on April 14, 2007 by adding the text beginning "or in the case . . ."
 11. This subsection 1.7(f) was added pursuant to amendment enacted by Council on April 14, 2007.
 12. This section was added pursuant to amendment enacted by Council on April 14, 2007. It shall not take effect until June 1, 2007.
 13. This section was amended by Council on November 10, 2007, so as to change the reporting requirement to once monthly.
 14. This Subsection was amended by Council on November 10, 2007 to add Part (iv).
 15. This section was amended by Council on November 10, 2007 to change "wholesaler/distributor" to "importer".
 16. This section was suspended by Council on December 9, 2006 pending the development of export stamps and implementing regulations by the Commission.
 17. This section was suspended by Council on December 9, 2006 pending the development of export stamps and implementing regulations by the Commission. On April 14, 2007, Council lifted the suspension and directed the Commission and the Department of Justice to develop regulations.

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18. This section was suspended by Council on December 9, 2006 pending the development of export stamps and implementing regulations by the Commission.
19. This section was added pursuant to amendment enacted by Council on April 14, 2007.
20. This section was added pursuant to amendment enacted by Council on April 14, 2007.
21. This section was added pursuant to amendment enacted by Council on April 14, 2007.
22. This section was added pursuant to amendment enacted by Council on April 14, 2007.
23. This subsection was amended by Council on December 9, 2006. The previous text read as follows: "No retailer shall sell or otherwise distribute tobacco products bearing a Nation import stamp through the mail or by common carrier to any person outside of Nation territory if such transaction would constitute a violation of any United States federal or state law where the purchaser is located."
24. This section was amended by Council on April 14, 2007 to add the words "stamping agent" where indicated.
25. This sentence was amended by Council on April 14, 2007 by adding "manufacturing" to the types of fees administered by the Commission.
26. This sentence was amended by Council on April 14, 2007 by adding "manufacturing" to the types of fees administered by the Commission.
27. This sentence was amended by Council on April 14, 2007 to change reporting from weekly to monthly and to add subsection (iv).
28. This Section 2.4 was amended by Council on November 10, 2007 to add "and Licensed Petroleum Importers" to the Section title and a new Subsection 2.4.d..
29. Subsections a. and b. of this section were amended by Council on December 9, 2006 by removing the prohibition against elected officials serving on the Commission and increasing the number of Commissioners to nine (9).
30. This subsection was amended by Council on December 9, 2006 by reducing the Commissioner's stipend from \$1,000.00 per month to \$50.00 per meeting. It was further amended on April 14, 2007 by increasing the stipend to \$500 per month.
31. This subsection was amended by Council on January 13, 2007 by increasing the quorum from four to five.
32. This subsection was amended by Council on January 13, 2007 by increasing the vote required to do business from four to five.
33. This section was amended by Council on April 14, 2007 to clarify that Commission meetings are open to Nation members only.

AS AMENDED 11/10/07

As Adopted – November 10, 2007

IMPORT – EXPORT REGULATIONS



REG - 1 STATEMENT OF PURPOSE

1.1 The purpose of these regulations is to implement and ensure compliance with the provisions of the Import-Export Law of the Seneca Nation of Indians (*Import-Export Law (IEL) 6/14/06*). The expressed legislative purpose is to provide procedural enhancements to aid enforcement and to carry out the provisions of the IEL and thereby safeguard the Nation in its free use and enjoyment of its land; to protect Nation territorial integrity and to generate revenue to conduct essential government functions. (*IEL.Art. 1, §1.1, 1.3*)

REG - 2 DEFINITIONS

2.1 “Brand” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

2.2 “Cigarette” means any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any substance or material other than tobacco.

2.3 “Commission” means the Import-Export Commission of the Nation.

2.4 “Damaged Stamp” means a stamp required pursuant to the Import Export Law of which 75% or more of the stamp is incapable of being applied to a package of tobacco product.

2.5 “Person” shall mean any member or non-member individual and shall not include a corporation, firm, organization or association.

2.6 “Fiscal agent” means any person or persons designated by the Commission to receive stamps from the manufacturer, sell cigarette fee stamps to licensed stamping agents and to make other decisions regarding the fiscal administration of the IEL.

As Adopted – November 10, 2007

2.7 “Manufacturer” means an individual or company who manufactures tobacco products in a facility wholly located on Nation Territory.

2.8 “Nation Territory” means real property located within the boundaries of the Seneca Nation of Indians’ reservations or within the Nation’s jurisdiction. For purposes of these regulations, only that part of any building or structure, that may span the boundaries of the territories and into another jurisdiction, which is actually and physically located within the external boundaries of the Cattaraugus or Allegheny reservations shall be deemed on Nation territory.

2.9 “Separate warehousing facility” means a warehouse, storehouse or other commercial building or group of buildings, wherein cigarettes are received, stored and distributed and the agent’s day to day business is conducted. Such a warehousing facility must be separate and distinct from any other person’s facilities and shall not include a mere enclosure within a larger facility, nor a means of transportation (i.e. truck or van).

2.10 “Stamp or cigarette stamp” means any adhesive stamp, metered stamp, heat transfer stamp or other form of evidence of payment of the import or export fee as prescribed by the Commission.

2.11 “Stamping agent” means any person who is authorized and licensed to affix fee stamps to packages or other containers of cigarettes pursuant to the IEL.

2.12 “Units sold” means the number of individual cigarettes sold in Nation territory whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by fees collected by the Nation on packs.

2.13 “Wholesale dealer” means any Nation licensed wholesaler who sells cigarettes in Nation territory to retail dealers or to other persons for purposes of resale.

REG - 3 LICENSING OF STAMPING AGENTS, QUALIFICATIONS, DENIAL OF APPLICATION, APPEAL, RENEWAL OF LICENSE

3.1 All stamping agents of the Nation shall be licensed by the Commission subject to Council approval.

3.2 No person may purchase, possess or affix such stamps evidencing the payment of the Nation fee unless such person has been granted and publicly displays, in the person’s place of business, a license as a Seneca Nation Cigarette Stamping Agent.

3.3 No person may possess unstamped cigarettes within Nation territory, without establishing to the satisfaction of the Commission that such cigarettes are not subject to the fee.

3.4 Stamping Agent licenses shall be valid for one (1) year from the date of issue and are not assignable.

As Adopted – November 10, 2007

3.5 In order to qualify for consideration to be a licensed stamping agent, the applicant(s) must:

- a. Complete an application for a license as a cigarette stamping agent.
- b. Submit the annual non-refundable application fee of \$1,000.
- c. Have a minimum net worth of \$250,000 as evidenced by a balance sheet.
- d. Provide current financial statements for the most recent quarter.
- e. Be 21 years or older.
- f. Provide proof of availability of a secure, separate warehousing facility, through a copy of a valid deed or lease agreement and provide a detailed description of such facility which shall have a secure area separate and apart from any other business that may be conducted from said facility.
- g. Hold a valid and current Nation wholesale license.
- h. Be in good standing with any applicable Nation laws, rules or regulations.
- i. Be willing to submit to a background check which may include a criminal check, credit reports or other financial reports of the applicant or applicant's company.
 1. Applicant shall submit an authorization for release of information on forms prescribed by the Commission.
- j. Demonstrate that he or she will have a direct buy status, and provide the approximate amount of product expected to be stamped and sold.
- k. Demonstrate capability to assert control over stamps to avoid fraud and misuse.
- l. Demonstrate the operational capacity to affix stamps on tobacco products in an efficient and expeditious manner.
- m. Covenant to abide by the IEL, these regulations and any other applicable Nation law.

3.6 The Commission shall act upon a complete application within thirty (30) business days, and shall notify the applicant, in writing, within five additional (5) days of the determination being reached.

3.7 The Commission may refuse to issue a license where it is determined that:

- a. Any lawful fee imposed under the IEL or any other Nation law has not been paid in full.
- b. The applicant has been convicted of, or entered a plea of guilty or *Nolo Contendere* to any felony under federal law.
- c. The wholesale or stamping agent license of the applicant was previously revoked or suspended.
- d. The applicant held a controlling ownership in an entity which has violated any of the provisions set forth in the IEL or in these regulations.
- e. The results of the background check or credit check are below acceptable standards and cannot otherwise be overcome.
- f. There exists any other evidence which might indicate a propensity to violate the IEL or any other applicable Nation law.

As Adopted – November 10, 2007

3.8 An applicant may appeal a denial of an application to the Nation's Courts, which shall not disturb the Commission's determination unless the Nation's Court finds that the Commission acted arbitrarily and capriciously upon the presentation of sufficient evidence.

3.9 A licensed stamping agent may renew his or her license by submitting written notice to the Commission, 30 days prior to the expiration date of their current license.

- a. The Commission shall send out renewal notices to licensees at least 90 days prior to the expiration of their current license.
- b. If written notice of intent to renew is not given as required, and there has been no other response to the renewal notice sent by the Commission, the license will expire as provided.
- c. Upon the expiration of one's license, all unused stamps must be turned in to the Commission in accordance with procedures below, all Certificates of license must be turned in and the agent shall immediately cease operations as a stamping agent of the Nation.

3.10 The agent will submit a renewal application, with a \$1,000 renewal fee, and will certify that there are no material changes as represented on the original application or will explain what has changed. He or she will also certify full compliance with the IEL, that there are no violations of the IEL or any other applicable Nation law and that there are no outstanding fees.

- a. Any changes in circumstances will be further reviewed by the Commission and may serve as a basis to deny a renewal application.
- b. Upon approval of the license renewal or refusal to renew the license, the Commission shall notify the agent of its determination and require the surrender to the Commission of the agent's existing certificates or license as a stamping agent.
- c. Upon issuance of a renewed license, the Commission shall issue to the agent a new distinctively colored Certificate of License. An agent may operate upon notification of approval of a license renewal from the time existing certificates are surrendered until the time that the new certificates are issued which shall not be more than 30 business days from the determination of renewal or refusal to renew.

3.11 The Commission may limit the maximum number of or place a moratorium on the number of stamping agent licenses to be issued, subject to Council approval.

3.12 A licensed stamping agent may voluntarily relinquish his or her license and immediately upon doing so, must turn in all unused stamps to the Commission along with a final report as required by the IEL.

As Adopted – November 10, 2007

3.13 A licensed stamping agent ceases to be an importer by reason of discontinuance, sale or transfer of the agent's business; the agent shall notify the IEC in writing no less than five (5) days after the discontinuance, sale or transfer takes effect. The notice shall include the name and address of the purchaser or successor, if any. The agent shall, within ten (10) days of the discontinuance, sale or transfer, submit a final report and payment as required by the IEL. In the event that the agent does not re-commence importation of tobacco products within thirty (30) days of providing notice to the Commission, the agent shall relinquish his or her stamping agent license and cease all activities as a stamping agent.

REG - 4 ACQUISITION OF STAMPS BY THE COMMISSION

4.1 The Nation may enter into contracts necessary for the manufacture of stamps which shall be in such forms, denominations or quantities as the Commission deems necessary for the payment of the fee on the possession of cigarettes.

- a. The Commission shall ensure that a sufficient number of stamps are available for purchase and such stamps shall be readily distinguishable from each other.
- b. The Commission may, from time to time, as often as it deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

4.2 The Commission shall designate a fiscal agent who shall be responsible for purchasing stamps from the manufacturer.

- a. Cigarette stamps manufactured for use by the Nation shall be delivered only to the designated fiscal agent for the purpose of making authorized sales of such stamps to licensed cigarette agents.

4.3 Purchase of stamps shall be done in accordance with the Nation's Procurement Policy.

4.4 The Commission shall use generally acceptable practices to ensure accurate records are kept of stamps received from the manufacturer.

4.5 The Commission shall keep a log to record the number of stamps sold, the agent sold to, for distribution to which business, and the numerical series or batch number.

4.6 The Commission shall provide for a safe and secure location in which to hold stamps pending sale to licensed stamping agents.

4.7 No person, other than a duly appointed fiscal agent, may sell or offer for sale any cigarette fee stamps.

As Adopted – November 10, 2007

REG - 5 SALE OF STAMPS TO LICENSED AGENTS

5.1 Only stamps prescribed and furnished by the Commission may be used to evidence payment of fees due under the IEL.

5.2 Stamps shall be prepared in denominations as set forth in the IEL and which represent the standard number of cigarettes per pack for sale in Nation territory. Packages in excess of a standard amount shall carry the requisite number of stamps.

5.3 Licensed cigarette stamping agents must place an order for stamps directly with the Commission Office and must adhere to any applicable administrative terms and conditions, including use of the order form prescribed by the Commission.

5.4 Payment for such stamps must be made in advance to the Nation's Fiscal Department, by certified check, cashier's check, money order or by direct wire transfer and in accordance with any other administrative requirements of the Nation's Fiscal Department.

5.5 Once proper payment is received and processed by the Fiscal Department, a confirmation of payment will be forwarded to the Commission Office which shall then authorize the release of the appropriate number of stamps to the licensed stamping agent or representative.

- a. Stamps will not be released to anyone other than a licensed stamping agent or two (2) other pre-approved representatives whose approval shall be evidenced by a notarized statement from the licensed stamping agent placed on file with the Commission. Such statement shall also indemnify and hold harmless the Nation for any negligence on the part of said representatives.

REG - 6 AFFIXATION OF STAMPS

6.1 Every licensed stamping agent must affix to each package of cigarettes, approved Nation stamps as evidence that proper fees have been paid to the Nation.

6.2 Stamps must be affixed to individual packages of cigarettes, as distinguished from cartons or other larger containers.

6.3 Stamps must be affixed to the bottoms of such packages so as to be clearly visible to purchasers.

6.4 The Commission may prescribe the machinery, equipment or other means by which cigarette stamps are affixed.

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REG - 7 REPORTING REQUIREMENTS OF STAMPING AGENTS

7.1 Stamping agents are required to submit weekly reports, on or before the first business day of the week immediately following the week for which the report is submitted and shall provide the following information on a form prescribed by the Commission.

- a. the quantity, brand of products stamped, which shall coincide with the “safe list”;
- b. name of Nation licensed retailer who purchased the product;
- c. the location to which the product was delivered and the date on which it was shipped;
- d. the lot numbers of the stamps affixed to the tobacco products delivered

7.2 Stamping agents shall also submit a monthly report or reconciliation form, of product and stamp inventory on a form prescribed by the Commission.

7.3 The stamping agent shall maintain, and make available to the Commission upon request, all invoices and documentation of sales and any other information relied upon in reporting to the Commission, for a period of five years.

7.4 The Commission may require a stamping agent to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to a determination of compliance with the IEL.

REG - 8 GENERATION OF LIST OF PRODUCTS ACCEPTABLE FOR SALE IN NATION TERRITORY

8.1 In order to facilitate the implementation of the IEL, the Commission may generate a “safe list” of products or brands of cigarettes that may be sold in Nation Territory. This list shall be created from information submitted to the Commission by Nation licensed wholesalers on a form prescribed by the Commission.

8.2 An initial list shall be generated within thirty (30) days of the implementation of these regulations by the Commission. Thereafter, the list may be updated as needed by the submission of additional information by the wholesalers.

REG - 9 REFUNDS OR CREDITS FOR STAMPS

9.1 Stamping agents may submit a claim for a refund of or credit for fees paid for stamps spoiled by improper fixation, or for a refund of stamps unused at the expiration of one’s license, or under any other circumstance the Commission deems necessary and in the best interest of the Nation.

9.2 Any stamps spoiled by improper fixation must be returned to the Commission within thirty (30) days for a refund of any fees duly paid. A claim must be submitted on a form prescribed by the Commission with sufficient supporting documentation as required by the Commission.

As Adopted – November 10, 2007

9.3 The Commission shall keep an accurate and up to date accounting of all refunds and credits issued.

REG – 10 LICENSING OF PETROLEUM WHOLESALERS, QUALIFICATIONS, DENIAL OF APPLICATION, APPEAL, RENEWAL OF LICENSE

10.1 All motor fuel importers of the Nation shall be licensed by the Commission subject to Council approval.

10.2 No person may import motor fuel onto the Nation's Territories unless the person has been granted and publicly displays, in the person's place of business, a license as a Seneca Nation Motor Fuel Importer.

10.3. Motor Fuel Import licenses shall be valid for one (1) year from the date of issue and are not assignable.

10.4 In order to qualify for consideration to be a licensed motor fuel importer, the applicant(s) must:

- a. Post a surety bond or other security deposit sufficient to cover 110% of the licensee's average import fees for a two month period.
- b. Submit the annual non-refundable application fee of \$1,000.
- c. Be 21 years or older.
- d. Hold a valid and current Nation wholesale license.
- e. Be in good standing with any applicable Nation laws, rules or regulations. and
- f. Covenant to abide by the IEL, these regulations and any other applicable Nation law.

10.6 The Commission shall act upon a complete application within thirty (30) business days, and shall notify the applicant, in writing, within five additional (5) days of the determination being reached. The applicant must be present and appear before the Commission for his or her application to be considered.

10.7 The Commission may refuse to issue a motor fuel importer's license where it is determined that:

- g. Any lawful fee imposed under the IEL or any other Nation law has not been paid in full.
- h. The applicant has been convicted of, or entered a plea of guilty or *Nolo Contendere* to any felony under federal law.
- i. The any license awarded to the applicant under the IEL was previously revoked or suspended.
- j. The applicant held a controlling ownership in an entity which has violated any of the provisions set forth in the IEL or in these regulations.
- k. The results of the background check or credit check are below acceptable standards and cannot otherwise be overcome.

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- l. There exists any other evidence which might indicate a propensity to violate the IEL or any other applicable Nation law.

10.8 An applicant may appeal a denial of an application to the Nation's Courts, which shall not disturb the Commission's determination unless the Nation's Court finds that the Commission acted arbitrarily and capriciously upon the presentation of sufficient evidence.

10.9 A licensed motor fuel importer may renew his or her license by submitting written notice to the Commission, 30 days prior to the expiration date of their current license.

- a. The Commission shall send out renewal notices to licensees at least 90 days prior to the expiration of their current license.
- b. If written notice of intent to renew is not given as required, and there has been no other response to the renewal notice sent by the Commission, the license will expire as provided.
- c. Upon the expiration of one's license, all Certificates of license must be turned in and the individual shall immediately cease operations as a motor fuel importer.

10.10 The motor fuel importer will submit a renewal application, with a \$1,000 renewal fee, and will certify that there are no material changes as represented on the original application or will explain what has changed. He or she will also certify full compliance with the IEL, that there are no violations of the IEL or any other applicable Nation law and that there are no outstanding fees.

- a. Any changes in circumstances will be further reviewed by the Commission and may serve as a basis to deny a renewal application.
- b. Upon approval of the license renewal or refusal to renew the license, the Commission shall notify the importer of its determination and require the surrender to the Commission of the importer's existing certificates or license as a motor fuel importer.
- c. Upon issuance of a renewed license, the Commission shall issue to the agent a new distinctively colored Certificate of License. A motor fuel importer may operate upon notification of approval of a license renewal from the time existing certificates are surrendered until the time that the new certificates are issued which shall not be more than 30 business days from the determination of renewal or refusal to renew.

10.11 The Commission may limit the maximum number of or place a moratorium on the number of motor fuel importer licenses to be issued, subject to Council approval.

10.12 A licensed motor fuel importer may voluntarily relinquish his or her license and immediately upon doing so, submit a final report and payment as required by the IEL and cease all activities as a motor fuel importer.

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10.13 A licensed motor fuel importer ceases to be an importer by reason of discontinuance, sale or transfer of the importer's business; the importer shall notify the IEC in writing no less than five (5) days after the discontinuance, sale or transfer takes effect. The notice shall include the name and address of the purchaser or successor, if any. The importer shall, within ten (10) days of the discontinuance, sale or transfer, submit a final report and payment as required by the IEL. In the event that the importer does not re-commence motor fuel importation within thirty (30) days of providing notice to the Commission, the importer shall relinquish his or her motor fuel import and cease all activities as a motor fuel importer.

REG - 11 REPORTING REQUIREMENTS OF LICENSED PETROLEUM IMPORTERS

11.1 Licensed importers are required to submit monthly reports, on or before the 15th day of each month (or the next business day should the 15th fall on a holiday or weekend) and shall provide the following information on a form prescribed by the Commission.

- a. The number of gallons of fuels used or delivered by the importer within the Nation's Territories for the preceding month, which shall be identified in net or gross terms, as such amounts are measured in the supporting paperwork obtained upon acquisition of the fuel at the rack;
- b. Name of Nation licensed retailer who purchased the product; and
- c. Copies of the monthly exporter's report of receipts and disbursements for each state from which the distributor has pulled fuel from.

11.2 The motor fuel importer shall also pay any motor fuel import fees due by the deadline imposed pursuant to Reg. 11.1. Payment shall be made by cashier's check, money order or wire transfer. Fees shall be calculated based upon the amounts set forth on the return required by Section 11.1 of these Regulations. Import fees not paid by the due date shall be subject to a 25% penalty.

11.3 The motor fuel importer shall maintain, and make available to the Commission upon request, all invoices and documentation of sales and any other information relied upon in reporting to the Commission, for a period of two years.

11.4 The Commission may require a licensed importer to submit any additional information, as is necessary to a determination of compliance with the IEL.

11.5 Failure to comply with the reporting and payment provisions required pursuant to this Reg. 11, may result in suspension or revocation of the importer's license in accordance with the provisions of the IEL and these Regulations. In the event that enforcement action is necessary, the Commission may seek payment import fees due, as well as any administrative costs or expenses relating to the enforcement action, against the security provided pursuant to Section 10.4.a.

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REG - 12 REVOCATION, SUSPENSION, HEARING AND REINSTATEMENT

12.1 The Commission may revoke or suspend the license of a stamping agent wholesaler or retailer upon a determination that the licensee failed to comply with the provisions of the IEL or these Rules and Regulations. (*IEL Art. 2, § 2.3*)

12.2 Inspectors shall routinely examine and inspect all businesses expected to comply with the IEL and upon the suspicion of any wrongdoing, will institute a formal investigation which shall be thoroughly researched and documented using both written reports and if necessary, digital images or other photographs.

12.3 Inspectors may enter the place of business or employment of any licensee for the purpose of such investigations at any time and may require the licensee to submit such reports as he deems necessary to monitor compliance with the requirements of the IEL, these regulations, or any other applicable rule or order.

12.4 If there is a reasonable suspicion that a violation of the IEL may have occurred, the Inspector shall commence a formal investigation. Upon completion of a formal investigation, the inspector shall submit a written investigative report to the Commission detailing his or her findings, shall state whether and what violation has allegedly occurred, and shall make himself or herself available to testify at a hearing if necessary.

REG - 13 HEARING PROCEDURE

13.1 Upon receipt of an investigative report, the Commission shall give the licensee written notice of a hearing to revoke or suspend its license, which hearing shall be conducted in accordance with procedures set forth below.

13.2 Notice of the proposed suspension or revocation shall be personally served on the licensee no less than twenty (20) days prior to the hearing. The notice shall set forth facts and circumstances on which the proposed suspension or revocation is predicated, the date, time and place of the hearing, and shall inform the licensee of his or her right to appear and present evidence on his or her behalf. The licensee may elect to have counsel present at the hearing at his or her own expense.

13.3 All Hearings shall be closed to the public and shall be recorded, transcribed and certified by the Secretary of the Commission as a true and correct record of the hearing. The rules of evidence pertaining to trials or hearings in the Nation's courts shall not apply to hearings before the Commission.

13.4 The Commission shall commence each Hearing by asking the licensee to admit or deny the allegations set forth in the Notice of Violation. If the licensee admits the allegations, (s)he shall be provided with an opportunity to explain any factors alleged to be in mitigation and/or any other matters that the licensee deems relevant to the Commission's determination of the matter. If the licensee denies any such allegations, the Commission shall take testimony under oath from representatives of the Commission, the Nation, take testimony under oath from

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the licensee and/or his or her counsel, and from any other witnesses it shall deem necessary in order to formulate a full and fair presentation of the facts and circumstances upon which the alleged violation is predicated. The Secretary of the Commission shall administer the oaths.

13.5 The Chair of the Commission shall conduct all hearings; if the Chair cannot be available, he or she shall appoint one of the other Commissioners in his or her place.

13.6 The Commission shall render a decision within five (5) business days and shall forward a Notice of Decision which shall cite the violation; set forth the facts and circumstances on which the suspension or revocation is predicated; set forth the prescribed penalty of revocation or suspension; and give the licensee notice of the right to appeal to the Peacemaker's Court.

REG - 14 REVOCATION AND SUSPENSION

14.1 Any person whose license has been revoked may apply at the expiration of sixty days for a reinstatement of his or her license. The license may be reinstated if it appears to the satisfaction of the Commission that the licensee will comply with the IEL and these regulations.

14.2 In the case of a first violation only, a plea or settlement agreement with the Commission will be treated as a violation for purposes of this section and a violation must stand after all appeals have been exhausted for such violation to count toward the required two violations for permanent revocation.

14.3 Immediately upon the suspension of a license, all stamps currently in the agent's possession shall be forfeited to the Commission for holding and the agent shall be prohibited from conducting any business for the specified period of time.

- a. The Commission may reissue (sell) the forfeited stamps to other licensed agents in good standing, may retain them to return to the suspended agent once their suspension period is up, may dispose of them, or may make any other use of them deemed appropriate by the fiscal agent

REG - 15 *EX PARTE* SUSPENSION AND SPECIAL HEARING

15.1 A license may be suspended *ex parte* by the Chairperson of the Commission, upon preliminary investigation, for gross violations of the IEL, which may include but are not limited to:

- a. Failure to submit a weekly or a monthly report for more than two (2) consecutive reporting periods;
- b. The affixation of any stamps wherein the requisite fee was not paid to the Nation; the sale of any unstamped cigarettes;
- c. An agent's knowingly assisting another person in violating the provisions of the Import-Export Law or these Rules and regulations.

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- d. An agent committing fraud in his or her operations or in the procurement of his or her stamping agent license, including counterfeiting or other attempts to defraud the Nation.
- e. Conviction of a felony.
- f. The importation into Nation territory of tobacco products in excess of six hundred (600) cartons of cigarettes or petroleum products in excess of one thousand (1,000) gallons in violation of the Nation's *Import-Export Law*.
- g. Any other act or omission which the Commission determines substantially jeopardizes the financial welfare or sovereign status of the Nation.

15.2 The preliminary investigation must be conducted in good faith by a duly appointed IEC Inspector and must result in enough evidence to form a reasonable belief that a violation has occurred.

- a. Written notice of the results of a preliminary investigation must be provided to a quorum of the Commission within 48 hours of such preliminary investigation being completed.

15.3 Within 24 hours of receipt of preliminary investigation report, the Commission shall make a finding of no cause or if there is cause to believe a violation has occurred, shall issue an order directing the immediate suspension of the license for no longer than 72 hours and further directing that an additional investigation be completed with a report provided to the Commission within 48 hours.

- a. The Commission shall then have twenty-four (24) hours to both determine whether the additional report provides a sufficient basis to believe a violation has occurred and to schedule a Special Hearing if necessary.
- b. If the Commission decides there is not a sufficient basis to believe a violation has occurred then the matter will be dismissed without prejudice and the suspension shall be lifted.
- c. If the Commission decides there is a sufficient basis to believe a violation has occurred, the licensee in question will be given a Notice of Violation and a Special Hearing will be held, within the same twenty four (24) hour period noted above, and wherein the licensee will be afforded the opportunity to appear before the Commission and present arguments on his behalf.
- d. The Special Hearing will be conducted in accordance with procedures detailed above.
- e. In the event that the Commission fails to act on the determination of the Chairperson, the Chairperson's determination shall be deemed a final agency action for purposes of appeal.

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- f. Appeal from a decision rendered at a Special Hearing shall be to the Peacemaker's Court and shall be conducted in accordance with all applicable rules and regulations of said Court.

REG - 16 SEIZURES OF CONTRABAND PRODUCT

16.1 Any cigarettes that have been sold, offered for sale, or possessed for sale in Nation territory in violation of the IEL or these regulations, shall be deemed contraband.

16.2 Except as otherwise provided in these regulations, Contraband cigarettes may be subject to seizure and forfeiture as provided in these regulations and may be sold at auction within 30 days. Sale at auction shall not relieve the individual or entity from paying the fee otherwise imposed under the import-export law, provided however that the individual or entity shall receive a credit against any fees owed equal to the amount realized by the sale. Should Contraband product not be sold at auction, it must be destroyed in accordance with environmentally sound procedures.

16.3 Cigarettes that are determined not to constitute contraband product shall be returned to the owner within twenty-four hours. Return of product shall be accomplished by making the product available for pick-up at the Commission's storage facility. The Commission shall have no obligation to deliver seized product to an individual or entity's place of business.

16.4 Contraband cigarettes may be seized by Nation law enforcement officers and by duly authorized agents of the Import Export Commission who have probable cause to believe that the cigarettes are unstamped cigarettes or cigarettes described in section 16.1.

16.5 Hearing Procedures for Seized Goods

- a. In the event that contraband goods are seized, the IEC Inspector or Nation Law enforcement officer shall issue a citation to the individual alleged to have violated the Import Export Law, or these regulations, which shall set forth:
 - i. the name, address, date of birth and phone number of the violator
 - ii. the section of the Import Export Law or Regulations alleged to have been violated
 - iii. the Location of the violation; and
 - iv. an appearance date and time for a hearing before the Commission Chair for the purpose of determining whether or not a violation of the Import Export Law or Regulations has occurred, which shall not be less than 72 hours or two business days (whichever is longer) from the date and time of the citation.

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- b. In the event that goods are seized, the licensee may elect an expedited hearing process as follows, which shall be in lieu of the hearing procedure provide for pursuant to Sections 13 and 15:

- i. the Chairperson of the Commission shall hold a hearing within 48 hours of the seizure taking place. The purpose of the hearing shall be to determine whether or not a violation of the Import Export Law or Regulations has taken place. The Chairperson shall issue a written determination within 24 hours of the hearing taking place.

- c. The determination of the Chairperson may be appealed to an appeals panel comprised of three (3) Commissioners, by providing written notice of intent to appeal to any member of the appeals panel. The appeals panel shall act on the appeal within 48 hours of receipt of the notice of appeal. In the event that the appeals panel fails to act, the Chairperson's determination shall be considered a final action for purposes of appeal to the Nation's Peacemaker's Court, in accordance with Section 2.8 of the Import Export Law.

16.6 Storage of Seized Goods.

- a. The Commission shall make appropriate space available to house products that have been seized pursuant to the IEL to ensure their safekeeping and to promote their maximum shelf life.
- b. Seized product shall be inventoried and cataloged prior to being stored. All items of seized inventory shall be clearly labeled with the following: (i) the date, time and location of the seizure, (ii) the name and address of the owner (if known) and (iii) the citation number.
- c. Each individual's or entity's seized goods shall be kept segregated from other seized goods, so as to prevent co-mingling of seized product.

16.7 Exceptions. The following cigarettes shall not be subject to seizure:

- a. Unstamped cigarettes in the possession of a licensed stamping agent.
- b. Unstamped cigarettes in the course of transit from outside of the Nation's Territory and consigned to a licensed stamping agent or destined for delivery to a licensed stamping agent.
- c. Unstamped cigarettes in a quantity of 2 cartons or less in the possession of an individual who is not a licensed stamping agent.
- d. Cigarettes that are manufactured at facilities located within the boundaries of the Nation's Territories.

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REG - 17 SEVERABILITY

17.1 If for any circumstance, a provision(s) or section(s) of these regulations are held invalid by the appropriate court of jurisdiction, the remainder of these regulations and other provisions or sections will not be affected in the application and enforceability of these regulations.

REG - 18 AMENDMENTS

18.1 These regulations may be recommended for amendment at any regular meeting of the Import-Export Commission, at which quorum is present, by a 2/3 vote of those members present, provided such proposed amendment(s) shall have been presented in writing at the previous regular meeting, and a copy forwarded to all absent members at least ten (10) days prior to the meeting at which the vote will be taken. Any recommended amendments shall not take effect until such amendments are approved by the Nation's Council.