

Chapter Jus 16

ENFORCEMENT OF TOBACCO MASTER SETTLEMENT AGREEMENT

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Jus 16.01 Definitions. In this chapter:

(1) "Directory" means the directory of compliant tobacco product manufacturers and brands, as provided for by s. 895.12 (2) (b), Stats.

(2) "Quarter" means January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(3) "Tobacco product manufacturer" has the meaning given in s. 895.10 (1) (i), Stats.

History: CR 04-028: cr. Register February 2005 No. 590, eff. 3-1-05.

Jus 16.03 Quarterly escrow deposits. (1) The attorney general may require all nonparticipating manufacturers to make the escrow payments required by s. 895.10 (2), Stats., in quarterly installments. Factors that the attorney general may use in deciding whether to exempt a nonparticipating manufacturer from quarterly escrow payments include:

(a) *Established history of compliant escrow deposit.* Nonparticipating manufacturers that have an established history of fully and timely funding a qualified escrow fund in Wisconsin, including for sales in the calendar year immediately prior to the current sales year.

(b) *No outstanding judgments.* Nonparticipating manufacturers that have no outstanding unpaid judgments, including any civil penalty.

(c) *Limited sales volume.* Nonparticipating manufacturers that have fewer than 1,000,000 of their cigarettes sold in Wisconsin during a quarter.

(d) *Other considerations.* The attorney general may also consider other facts reasonably suggesting that the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarettes sales were made.

(2) Nonparticipating manufacturers that are required to make quarterly escrow deposits shall make their escrow deposits no later than 30 days after the end of the quarter in which the sales are made, and shall provide the attorney general receipt of official notification of the deposit no later than 10 days after the date that the escrow deposit is required.

Note: For example, the deadline for making a quarterly escrow deposit for cigarette sales occurring in February is April 30 of the same year. The deadline for officially notifying the attorney general of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year.

(3) If the attorney general requires a nonparticipating manufacturer to make quarterly payments, the nonparticipating manufacturer shall also certify that such payments are complete and provide information sufficient to enable the attorney general to determine the adequacy of the installment. To be timely filed, the certification must be received by the attorney general's office within 40 days of the end of the quarter in which sales were made. If the required certification is not provided to and timely received by the attorney general, the attorney general may remove the delinquent nonparticipating manufacturer and its brand families from the directory.

(4) If the required quarterly escrow deposit is not timely made in full, or the attorney general does not receive timely official notice of the quarterly escrow deposit, the attorney general shall

remove the delinquent nonparticipating manufacturer and its brand families from the directory.

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Jus 16.04 Directory. (1) (a) Except as provided in this section, the attorney general shall maintain and publish a directory that lists all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of s. 895.12 (2) (a), Stats., and all brand families that are listed in such certifications.

(b) In determining what constitutes a complying certification, the attorney general may require the tobacco product manufacturer to provide such information and supporting documentation, including samples of the product sought to be certified, as the attorney general deems necessary. The attorney general may require the certification to be signed by an owner, officer, partner or director of the tobacco product manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter and s. 895.12, Stats.

(2) The attorney general shall not include or retain in the directory the name or brand families of any tobacco product manufacturer if any of the following apply:

(a) The tobacco product manufacturer fails to provide the required certification in the form prescribed by the attorney general.

(b) The tobacco product manufacturer provides a certification that the attorney general determines is not in compliance with s. 895.12 (2) (a), Stats., unless such violation has been cured to the satisfaction of the attorney general.

(c) Any escrow payment required pursuant to s. 895.10 (2), Stats., for any period or for any brand family, whether or not the brand family is listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

(d) Any outstanding final judgment, including interest, has not been fully satisfied for such brand family and/or the manufacturer.

(e) The tobacco product manufacturer makes a misrepresentation on the certification.

(3) The directory will be available on the Internet at the attorney general's website. The homepage address for the attorney general's website is: <http://www.doj.state.wi.us/>.

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Jus 16.05 Notification of inclusion in and exclusion from directory. (1) If a tobacco product manufacturer has applied for inclusion in the directory, and the attorney general determines that it is in compliance with s. 895.12, Stats., the attorney general shall notify the tobacco product manufacturer by mail of the compliance and of the fact that the manufacturer will be added to the directory. The notice shall indicate each brand family of the tobacco product manufacturer that the attorney general has determined will be added to the directory.

(2) The attorney general shall notify by certified mail the tobacco product manufacturer's agent for service of process of

any decision not to include in or to remove from the directory the tobacco product manufacturer, a brand family of the tobacco product manufacturer, or both. Notices of a removal from the directory shall be sent electronically 10 days prior to the attorney general's removing the tobacco product manufacturer or its brand family or both.

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Jus 16.06 Burden. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

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