

Proposed Rule
LSA Document #10-106

DIGEST

Adds [10 IAC 6](#) to establish requirements for the brand family directory under [IC 24-3-5.4-14](#) and for calendar quarter escrow deposits and certifications by tobacco product manufacturers not participating in the Master Settlement Agreement entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[10 IAC 6](#)

SECTION 1. [10 IAC 6](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. TOBACCO ENFORCEMENT

Rule 1. Purpose

[10 IAC 6-1-1 Purpose of this article](#)

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 1. This article applies to tobacco enforcement by the attorney general under [IC 24-3-5.4](#) and [IC 24-3-3](#) addressing the brand family directory and installment payments of escrow deposits by nonparticipating manufacturers.

(Office of Attorney General for the State; [10 IAC 6-1-1](#))

Rule 2. Definitions

[10 IAC 6-2-1 Applicability](#)

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 1. The definitions in [IC 24-3-3](#), [IC 24-3-5.4](#), and this rule apply throughout this article.

(Office of Attorney General for the State; [10 IAC 6-2-1](#))

[10 IAC 6-2-2 "Calendar quarter" defined](#)

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 2. "Calendar quarter" shall be three (3) month periods of a calendar year, specifically the following:

- (1) January 1 through March 31.
- (2) April 1 through June 30.
- (3) July 1 through September 30.
- (4) October 1 through December 31.

(Office of Attorney General for the State; [10 IAC 6-2-2](#))

Rule 3. Brand Family Directory

[10 IAC 6-3-1](#) Purpose

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4-14](#)

Sec. 1. This rule establishes requirements concerning the brand family directory, which the attorney general shall develop, maintain, and publish under [IC 24-3-5.4-14](#).

(Office of Attorney General for the State; [10 IAC 6-3-1](#))

[10 IAC 6-3-2](#) Persons who tender certification

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4-13](#)

Sec. 2. (a) The certification under [IC 24-3-5.4-13](#)(a) must be tendered by the tobacco product manufacturer either directly or through a distributor, retailer, or similar intermediary.

(b) If the certification is tendered through a distributor, retailer, or similar intermediary, there must be a legitimate contractual arrangement between the tobacco product manufacturer and the intermediary.

(Office of Attorney General for the State; [10 IAC 6-3-2](#))

[10 IAC 6-3-3](#) Requirements to be listed

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4-13](#); [IC 24-3-5.4-14](#)

Sec. 3. In order for a brand family to be listed in the directory, the tobacco product manufacturer must comply with [IC 24-3-5.4-13](#) and [IC 24-3-5.4-14](#). In evaluating whether to list a brand family, the attorney general shall consider the following:

(1) Whether the certification information is complete under [IC 24-3-5.4-13](#).

(2) Whether the tobacco product manufacturer has provided all requested documents supporting its certification under [IC 24-3-5.4-13](#).

(3) Whether the certification is based on misrepresentation, false information, nondisclosure, or concealment of facts.

(4) Whether the tobacco product manufacturer is prohibited from selling a brand family in Indiana by any applicable federal or state law.

(5) Whether the:

(A) tobacco product manufacturer;

(B) predecessor of the tobacco product manufacturer; or

(C) previous manufacturer of the brand;

is the subject of an injunction obtained by the state of Indiana for failure to comply with [IC 24-3-3](#).

(6) Whether the tobacco product manufacturer has failed to fully fund a qualified escrow fund approved by the attorney general.

(7) Whether all final judgments and penalties, including interest, costs, and attorney's fees in favor of the state of Indiana for failure to comply with [IC 24-3-3](#), have been fully satisfied.

(8) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the attorney general for additional information of documentation supporting its certification.

(9) Whether the tobacco product manufacturer is owned, managed, or operated by a person with a

current or prior interest in any other tobacco product manufacturer that is, or has been, not in compliance with [IC 24-3-3](#).

(10) Information from any other source, such as the department of revenue, distributors, the federal Tobacco Tax Bureau and Customs, that pertains to the verification of the accuracy of the information provided by the tobacco product manufacturer.

(11) Any other facts or circumstances deemed relevant to the attorney general regarding compliance with [IC 24-3-5.4](#) and [IC 24-3-3](#).

(Office of Attorney General for the State; [10 IAC 6-3-3](#))

[10 IAC 6-3-4](#) Process for listing and delisting

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 4. (a) This section addresses the process for listing and delisting a tobacco product manufacturer's brand families.

(b) If the attorney general intends to remove from, or not list, a brand family directory of a tobacco product manufacturer, the attorney general shall send a notice of intent to the tobacco product manufacturer or its agent for service of process. The notice of intent shall include the following:

- (1) The factual and legal deficiencies upon which the attorney general's intended action rest.
- (2) The action that the tobacco product manufacturer must undertake to cure those deficiencies.
- (3) A notification that the tobacco product manufacturer shall have fifteen (15) calendar days to cure those deficiencies and submit documentation of its attempt to cure.

(c) For good cause, the attorney general may extend the time period under subsection (b) for a tobacco product manufacturer to cure its deficiency.

(d) If the deficiencies have not been cured to the satisfaction of the attorney general, the attorney general shall take action in accordance with [IC 24-3-5.4-14](#) to not list or delist a brand family.

(e) The attorney general shall promptly notify the tobacco product manufacturer in writing at the address supplied in the certification if the tobacco product manufacturer has met all requirements and its brand family or families will be included in the directory.

(Office of Attorney General for the State; [10 IAC 6-3-4](#))

Rule 4. Quarterly Payments and Certifications

[10 IAC 6-4-1](#) Purpose

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 1. As provided for in [IC 24-3-5.4-20](#), this rule establishes requirements for the attorney general to require a nonparticipating manufacturer to:

- (1) make required escrow deposits in installments during the calendar year in which the sales covered by the deposits are made; and
- (2) produce information sufficient to enable the attorney general to determine the adequacy of the amount of an installment deposit.

(Office of Attorney General for the State; [10 IAC 6-4-1](#))

[10 IAC 6-4-2](#) Requirements for calendar quarter escrow deposits and certifications

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3-12](#); [IC 24-3-3-14](#); [IC 24-3-5.4](#)

Sec. 2. (a) The attorney general may require nonparticipating manufacturers to:

- (1) make escrow deposits by calendar quarter for sales in that calendar quarter rather than annually by April 15 as otherwise provided for by [IC 24-3-3-12](#); and
- (2) certify compliance with the calendar quarter deposits with the same certification as required for annual escrow deposits under [IC 24-3-3-14](#).

(b) Nothing in this rule eliminates the requirement under [IC 24-3-3-14](#) that nonparticipating manufacturers file annual certificates of compliance due April 30 of each year.

(c) If a calendar quarter escrow deposit is required under this rule, the amount deposited shall include the amount for that calendar quarter and any amounts due from previous calendar quarters or years.

(Office of Attorney General for the State; [10 IAC 6-4-2](#))

[10 IAC 6-4-3](#) Due date for calendar quarter escrow deposits and certifications

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 3. If a nonparticipating manufacturer is required under this rule to make escrow deposits and certifications by calendar quarter, both shall be due no later than thirty (30) days after the end of the calendar quarter.

(Office of Attorney General for the State; [10 IAC 6-4-3](#))

[10 IAC 6-4-4](#) Criteria for attorney general requiring calendar quarter deposits and certifications

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3](#); [IC 24-3-5.4](#)

Sec. 4. The attorney general may require a nonparticipating manufacturer to make calendar quarter escrow deposits and certifications under this rule if the nonparticipating manufacturer meets any of the following criteria:

- (1) Has not previously established and funded a qualified escrow fund in Indiana.
- (2) Has not made any escrow deposits for more than one (1) year.
- (3) Has failed to make a timely or complete, or both, escrow deposit for any prior calendar year.
- (4) Has failed to pay any judgment obtained in any jurisdiction, including for a civil penalty, under a comparable escrow statute.
- (5) Has sold more than two million (2,000,000) cigarettes in Indiana in a calendar quarter.
- (6) The attorney general has reasonable cause to believe will not make its full escrow deposit by April 15 of the year following the sales year.

(Office of Attorney General for the State; [10 IAC 6-4-4](#))

[10 IAC 6-4-5](#) Removal of requirement to make calendar quarter escrow deposits and certifications

Authority: [IC 24-3-5.4-20](#)

Affected: [IC 24-3-3-12](#); [IC 24-3-3-14](#); [IC 24-3-5.4](#)

Sec. 5. After five (5) years of regular and full compliance by the nonparticipating manufacturer, the attorney general shall notify the nonparticipating manufacturer of the date it may cease making calendar quarter escrow payments and certifications at which time the nonparticipating manufacturer shall pay

and certify annually under [IC 24-3-3-12](#) and [IC 24-3-3-14](#).

(Office of Attorney General for the State; [10 IAC 6-4-5](#))

[Notice of Public Hearing](#)

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