WEST VIRGINIA CODE: §16-9D-3

§16-9D-3. Certifications; directory; tax stamps.

(a) Certification. -– Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the commissioner a certification to the commissioner and the Attorney General, no later than April 30 each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with article nine-b of this chapter, including payment of all quarterly installment payments required by section six of this article.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the commissioner and the Attorney General.

(2) A nonparticipating manufacturer shall include in its certification:

(A) A list of all of its brand families and the number of units sold for each brand family that were sold in this state during the preceding calendar year;

(B) A list of all of its brand families that have been sold in this state at any time during the current calendar year, indicating, by an asterisk, any brand family sold in this state during the preceding calendar year that is no longer being sold in this state as of the date of the certification; and

(C) Identification, by name and address, of any other manufacturer of the brand families in the preceding calendar year.

The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the commissioner and the Attorney General.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in this state or has appointed a resident agent for service of process and provided notice thereof as required by section four of this article;

(B) That the nonparticipating manufacturer has: (i) Established and continues to maintain a qualified escrow fund; and (ii) has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

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(C) That the nonparticipating manufacturer is in full compliance with article nine-b of this chapter and this article, and any rules promulgated pursuant to either article; and

(D) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by article nine-b of this chapter and all rules promulgated thereto, and:

(i) The account number of the qualified escrow fund and sub-account number for the State of West Virginia;

(ii) The amount the nonparticipating manufacturer placed in escrow fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the Attorney General to confirm the information certified under this paragraph; and

(iii) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to article nine-b of this chapter and all rules promulgated thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of article nine-b of this chapter. Nothing in this section shall be construed as limiting or otherwise affecting this state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of article nine-b of this chapter.

(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and any other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(b) Directory of cigarettes approved for stamping and sale. -- The commissioner shall develop and publish on the Tax Division's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in the certifications, except as provided in subdivisions (1) and (2) of this subsection.

(1) The commissioner shall not include or retain in the directory the name or brand families

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of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the commissioner or the Attorney General determines is not in compliance with subdivisions (2) and (3), subsection (a) of this section, unless the commissioner has determined that the violation has been cured to the satisfaction of the commissioner and the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer, that:

(A) Any escrow payment required pursuant to article nine-b of this chapter for any period for any brand family, whether or not listed by the 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 of this state, or

(B) Any outstanding final judgment, including interest on the judgment, for violations of article nine-b of this chapter has not been fully satisfied for the brand family and the nonparticipating manufacturer.

(3) The Tax Commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family.

(A) The commissioner may not remove any manufacturer or brand family from the directory unless the manufacturer and all distributors and other stamping agents registered under article twelve, chapter eleven of this code, have been given at least seven days' prior notice of the intended removal by electronic mail or first class mail the notices shall be e-mailed or posted to the addresses provided by the manufacturers, distributors or other stamping agents for this purpose.

(B) The commissioner shall transmit by email or other practicable means to each distributor or other stamping agent registered under article twelve, chapter eleven of this code, to affix West Virginia tax stamps to cigarettes notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family.

(C) Failure of a manufacturer, distributor or other stamping agent to receive notice under paragraph (A) or (B),subdivision (3), subsection (b) of this section, or failure of the state to provide notice of any addition to or removal from the directory shall not relieve the distributor or other stamping agent of its obligations under this article.

(4) Every tobacco product manufacturer selling cigarettes in this state and every distributor or other stamping agent affixing West Virginia tax stamps to packages of cigarettes for sale in this state shall provide and update as necessary an electronic mail address to the commissioner for the purpose of receiving any notifications required by this article.

(c) Prohibition against stamping or sale of cigarettes not on the directory. -– It is unlawful for

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any person:

(1) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) To sell, offer, or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory, except as follows:

(A) This subsection shall not prohibit a distributor or other stamping agent from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state; and

(B) A person purchasing cigarettes for resale shall not be in violation of this subsection if, at the time the cigarettes were purchased, the manufacturer and brand families of the cigarettes are included in the directory maintained by the Tax Commissioner and the cigarettes are otherwise lawfully stamped and sold within thirty days after the date of the notice provided under paragraph (A), subdivision (3), subsection (b) of this section.

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