



2014 Legislative Changes Implementing the NPM Adjustment Settlement Agreement

Purpose: This Special Notice summarizes several legislative changes made during the 2014 regular session of the Connecticut General Assembly to implement the Nonparticipating Manufacturer (NPM) Adjustment Settlement Agreement. These changes are set forth in 2014 Conn. Pub. Acts 155, §§3 through 10 (hereinafter "the Act").

Background: The Master Settlement Agreement (MSA) is an agreement that most of the states and the original participating tobacco product manufacturers entered into in 1998 to settle a variety of legal claims made by the states against the manufacturers. Legislation to implement the MSA was initially enacted in 2000, and has been periodically amended.

Sections 3 through 10 of 2014 Conn. Pub. Acts 155 make numerous changes in Connecticut's tobacco settlement law. The NPM Adjustment Settlement Agreement establishes various incentives for Connecticut to enact and diligently enforce more rigorous statutory obligations for NPMs. The Act's provisions broaden the responsibilities of all manufacturers, especially NPMs, who want to sell cigarettes in the state, and also give the state new tools to enforce those enhanced obligations.

New and Amended Definitions: For purposes of the enforcement of Connecticut's Directory statutes, Conn. Gen. Stat. §§4-28k through 4-28r, the following definitions are added or revised, effective as of January 1, 2015:

Importer means any person in the United States to whom cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a custom bonded manufacturing warehouse, or any person who unlawfully brings cigarettes into the United States.

Nonparticipating Manufacturer Adjustment Settlement Agreement means the settlement agreement between the State of Connecticut and the participating manufacturers, as preliminarily set forth in the term sheet executed by the State of Connecticut and the participating manufacturers on May 24, 2013.

Units Sold is amended to mean the number of cigarettes sold in packs required to bear a stamp under the provisions of Chapter 214 (Cigarette Taxes) or *roll-your-own* tobacco on which tax is due under Chapter 214a (Tobacco Products Tax). The definition excludes cigarettes sold on federal military installations, those sold by a Native American tribe to a member of the tribe on the tribe's land, or those that are otherwise exempt from Connecticut excise tax under federal law.

New Obligations for All Tobacco Product Manufacturers

Beginning on January 1, 2015, all tobacco product manufacturers must satisfy the following obligations:

1. Annual Certification of Compliance

Any tobacco product manufacturer whose cigarettes are sold directly or indirectly in the state must certify, under penalty of false statement, that such manufacturer is in full compliance with the MSA or the escrow requirements of this state, as applicable. This certification remains an annual obligation due by April 30.

2. Annual Certification Regarding Importers

A tobacco product manufacturer must certify that it or its importer holds a valid permit under 26 U.S.C. §5713, a copy of which must be provided to the Department of Revenue Services (DRS). Such manufacturer must also certify that they are in compliance with all reporting and registration requirements of the federal Jenkins Act, 15 U.S.C. §375 et seq., as amended by the Prevent All Cigarette Trafficking (PACT) Act, Pub. L. No. 111-154, 124 Stat. 1087. This certification is due by April 30.

3. Prohibition Against False Statements

A tobacco product manufacturer is prohibited from submitting a certification that contains any material representations known to be false or inaccurate. Any tobacco product manufacturer violating this prohibition may be subject to the penalty imposed under Conn. Gen. Stat. §53a-157b.

4. Monthly Reports

Each tobacco product manufacturer or importer must file a report (certified for completeness and accuracy) with the Connecticut Commissioner of Revenue Services (the Commissioner), no more than 15 days after the end of the month. The report must contain the total number of cigarettes sold by the manufacturer or importer in or into Connecticut during the month, identifying by name and number of cigarettes as follows:

- A. The manufacturers of the cigarettes;
- B. The brand families of the cigarettes; **and**
- C. The purchasers of the cigarettes.

This reporting requirement will be satisfied if the manufacturer or importer submits to the Commissioner in a timely manner the reports required for cigarettes for federal purposes under the Jenkins Act, as amended by the PACT Act.

5. Submitting Federal Return Information

Each tobacco product manufacturer selling cigarettes in or into Connecticut must either:

- A. Submit to DRS its federal excise tax returns and monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau (TTB) Form 5210.5 or any corresponding form (with attachments and amendments), no later than 30 days after the returns are filed; **or**
- B. Submit to the United States Treasury a valid request or consent under IRC §6103(c) authorizing the federal TTB or United States Customs and Border Protection to disclose the manufacturer's federal excise tax returns to DRS.

If Option A is selected as the filing method, the manufacturer must email the required federal excise tax return and monthly operational reports (TTB Form 5210.5) to **DRS.TobaccoReport@po.state.ct.us** as an attachment.

New Obligations for Nonparticipating Manufacturers

Beginning on January 1, 2015, NPMs must satisfy the following obligations:

1. Quarterly Escrow Payments

NPMs must make quarterly escrow deposits no later than 30 days after the end of the quarter in which sales covered by the deposits are made. The annual escrow payment for the year ending December 31, 2014 remains due on April 15, 2015.

2. Quarterly Escrow Certification

NPMs must certify on a quarterly basis with the Connecticut Office of the Attorney General (OAG) that they are in compliance with their quarterly escrow payments. In order to certify compliance, NPMs must

submit to the OAG a properly completed **Form TPM-1, Certification of Compliance and Affidavit by Nonparticipating Manufacturer**, due no later than 30 days after the end of the quarter. An NPM must complete and submit a form pertaining to each quarter, even if the NPM has no cigarettes sales in a quarter and consequently has no escrow obligation for that quarter.

3. Quarterly Bond Requirement

At least 10 days before the first day of each calendar quarter, each NPM must file **Form OR-131, Nonparticipating Manufacturer's Surety Bond** with DRS.

The surety bond must be issued by a bonding company or insurance company authorized to do business in Connecticut and must be the greater amount of:

- A. Twenty-five thousand dollars (\$25,000.00); **or**
- B. The greatest amount of total escrow payments owed in any of the five calendar years before the filing of the bond.

DRS may execute on the bond if, no later than 15 days following the due date for the quarter, an NPM that has posted a bond fails to either make or have made on its behalf, escrow deposits equal to the full amount owed for the quarter. DRS is authorized to recover the delinquent escrow payments and deposit them into a qualified escrow account or reasonable alternative account. DRS may also recover any civil penalties and costs. Amounts above the amount collected on the bond remain due from the NPM and its importers.

Submit the bond to:

Department of Revenue Services
Attn: Tax Division Chief, Audit Division
Excise/Public Services Subdivision
25 Sigourney St Ste 2
Hartford CT 06106-5032

For NPMs, bonding is a condition of certification. An NPM must provide proof of bonding as part of its annual certification application, due each year by April 30.

4. Importer Registration Required

An NPM located outside of the United States must have each of the importers of its brand families into Connecticut appoint and maintain an agent for service of process in Connecticut. The NPM is required to notify DRS and the OAG of the agent(s) in the same manner as it is required to do so under Conn. Gen. Stat. §4-28n(a) and (b), as amended by the Act. If an importer of an NPM does not designate an agent, the Connecticut Secretary of the State will be deemed to be the agent for service of process. The appointment of the Secretary of the State as agent for service of process does not satisfy this condition for the purpose of having an NPM's brand families listed in the Connecticut Tobacco Directory (the Directory).

New Obligations for NPM Importers

Beginning on January 1, 2015, NPM importers must satisfy the following obligations:

1. Joint and Several Liability

Each importer of cigarettes for an NPM located outside of the United States is jointly and severally liable with such manufacturer for all escrow fund amounts and penalties related to the quantity of units sold in Connecticut.

2. Designate an Agent for Service of Process

For an NPM to be listed or retained on the Directory, they must cause each of its importers to appoint and maintain an agent for service of process in Connecticut. If an importer of an NPM does not designate an agent, the Connecticut Secretary of the State will be deemed to be the agent for service of process. The appointment of the Secretary of the State as agent for service of process does not satisfy this condition for the purpose of having an NPM's brand families listed in the Directory.

New Obligations for All Importers

Beginning on January 1, 2015, all importers must satisfy the following obligations:

1. Monthly Reports

Each importer must file a report (certified for completeness and accuracy), no more than 15 days after the end of the month. The report must contain the total number of cigarettes sold by the importer in or into Connecticut during the month, identifying by name and number of cigarettes as follows:

- A. The manufacturers of the cigarettes;
- B. The brand families of the cigarettes; **and**
- C. The purchasers of the cigarettes.

This reporting requirement will be satisfied if the importer submits in a timely manner the reports required for cigarettes for federal purposes under the Jenkins Act, as amended by the PACT Act. As noted in **Special Notice 2010(8)**, *Federal PACT Act Expands Jenkins Act Reporting Requirements*, these monthly reports must be emailed to DRS.TobaccoReport@po.state.ct.us as an attachment.

2. Submitting Federal Return Information

Each importer selling cigarettes in or into Connecticut is required to either:

- A. Submit to DRS its federal excise tax returns and monthly operational reports on TTB Form 5210.5 or any corresponding form (with attachments and amendments), no later than 30 days after the returns are filed; **or**
- B. Submit to the United States Treasury a valid request or consent under IRC §6103(c) authorizing the TTB or United States Customs and Border Protection to disclose the importer's federal excise tax returns to DRS.

If Option A is selected as the filing method, the importer must email the required federal excise tax return and monthly operational reports (TTB Form 5210.5) to DRS.TobaccoReport@po.state.ct.us as an attachment.

DRS May Not List Brand Families in the Directory With Certain Reporting Discrepancies:

Commencing January 1, 2015, in addition to the current restrictions placed upon DRS from listing the brand families of tobacco manufacturers pursuant to Conn. Gen. Stat. §4-28m, DRS is prohibited from listing any brand families of an NPM if the total nationwide reported sales of cigarettes on which federal excise tax is paid exceeds the sum of its nationwide and intrastate sales reports under the Jenkins Act, as amended by the PACT Act, by more than 5% of its total sales or one million cigarettes, whichever is less. Each NPM must therefore provide, upon request from DRS or the OAG, copies of its monthly nationwide and intrastate sales reports made pursuant to the Jenkins Act, as amended by the PACT Act.

In the event of a discrepancy that would prohibit DRS from listing an NPM, DRS will allow the NPM to remain on the Directory if the NPM cures or satisfactorily explains the discrepancy no later than 10 days after receiving notice of the discrepancy.

Additional Information from an NPM, Importer, or Stamper

Beginning January 1, 2015, DRS may require:

1. Information Regarding Escrow

DRS may require the production of additional information from an NPM, importer or stamper sufficient to enable the OAG to determine the adequacy of the amount of its quarterly escrow payment required under Conn. Gen. Stat. §4-28i(a).

2. PACT Act Reports

Upon the request of DRS or the OAG, a manufacturer or importer must provide copies of sales reports required to be submitted under the Jenkins Act, as amended by the PACT Act, that such manufacturer or importer filed in other states.

Expanded Disclosure of Returns or Return Information Related to MSA:

DRS is authorized to disclose certain returns or return information to the OAG when such returns or return information are directly related to the state's implementation of the Master Settlement Agreement or the NPM Adjustment Settlement Agreement. The OAG is permitted to re-disclose such returns or return information pursuant to an agreement with an entity designated to serve as a data clearinghouse under the terms of the NPM Adjustment Settlement

Agreement. The OAG may also re-disclose such returns or return information of a licensed cigarette or tobacco products distributor to an NPM that is required to make quarterly escrow payments as required under Conn. Gen. Stat. §4-28i(a), provided the information is limited to the manufacturer's direct or indirect sales to consumers in Connecticut.

Effective Date: January 1, 2015.

Statutory Authority: Conn. Gen. Stat. §4-28h, as amended by 2014 Conn. Pub. Acts 155, §3; Conn. Gen. Stat. §4-28i (a), as amended by 2014 Conn. Pub. Acts 155, §4; Conn. Gen. Stat. §4-28j, as amended by 2014 Conn. Pub. Acts 155, § 5; Conn. Gen. Stat. §4-28k, as amended by 2014 Conn. Pub. Acts 155, §6; Conn. Gen. Stat. §4-28l, as amended by 2014 Conn. Pub. Acts 155, §7; Conn. Gen. Stat. §4-28m (a)(3), as amended by 2014 Conn. Pub. Acts 155, §8; Conn. Gen. Stat. §4-28n, as amended by 2014 Conn. Pub. Acts 155, §9; and Conn. Gen. Stat. §4-28o, as amended by 2014 Conn. Pub. Acts 155, §10.

Effect on Other Documents: None.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in state or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by the Department of Revenue Services (DRS).

For Further Information on this Special Notice:

For further information on this Special Notice, call the DRS Audit Division, Excise Taxes Unit at 860-541-3224 from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the Taxpayer Service Center (TSC) at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the TSC to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the TSC. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-Alerts Service: Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select *Sign up for e-alerts* under *How Do I?* on the gold navigation bar.