

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



ANNUAL TOBACCO PRODUCT MANUFACTURER CERTIFICATION
INSTRUCTIONS

I. GENERAL INFORMATION

The Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004 ("Complementary Procedures Act") imposes annual certification obligations on manufacturers whose cigarettes are sold in the District of Columbia.

Who is required to file this Certification?

Any Tobacco Product Manufacturer that sells cigarettes or roll-your-own tobacco within the District of Columbia, whether directly or through any distributor, retailer, or similar intermediary.

This annual Certification is in addition to any certification of compliance that may be required pursuant to section 3 of the Tobacco Settlement Model Act ("Model Act"). D.C. Official Code § 7-1801.02 (2011).

When and where should this Certification be filed?

The Certification must be delivered or postmarked on or before April 13th of each year. Deliver or mail the Certification to: Tobacco Certifications, Social Justice Section, Office of the Attorney General for the District of Columbia, 400 6th Street, NW, 10th Floor, Washington, DC 20001.

Who can answer questions about this Certification?

Any questions regarding this Certification should be directed to Tobacco Certifications, Social Justice Section, District of Columbia Office of the Attorney General for the District of Columbia, at (202) 724-5677 (telephone), (202) 741-8779 (FAX).

Definitions Used in the Certification:

- (a) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by additional modifiers or descriptors, including

"menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

- (b) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."
- (c) "Complementary Procedures Act" means the District of Columbia's Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004.
- (d) "Directory" means the listing of (1) all Tobacco Product Manufacturers that have provided current and accurate Certifications conforming to the requirements of the Complementary Procedures Act, and (2) all Brand Families that are listed in the Certifications.
- (e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the District of Columbia and leading United States Tobacco Product Manufacturers.
- (f) "Model Act" means the District of Columbia's Tobacco Settlement Model Act of 2000. D.C. Law 13-139; D.C. Official Code § 7-1801.01 *et seq.*
- (g) "Non-participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (h) "Participating Manufacturer" means any Tobacco Product Manufacturer that has become a Participating Manufacturer pursuant to Section II(jj) of the Master Settlement Agreement and all amendments to it.
- (i) "Qualified Escrow Fund" means an escrow arrangement with a federally, District of Columbia or State chartered financial institution having no affiliation with any Tobacco Product Manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds'

principal for the benefit of Releasing Parties (as that term is defined in the Master Settlement Agreement) and prohibits the Tobacco Product Manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with D.C. Official Code § 7-1801.02(2)(B) (2011).

- (j) "Tobacco Product Manufacturer" means an entity that after June 30, 1999 directly (and not exclusively through any affiliate):
- (1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of section II(mm) of the Master Settlement Agreement and that pays the taxes specified in section II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);
 - (2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
 - (3) Becomes a successor of an entity described in sub-sections (1) or (2) of this paragraph.

The term "Tobacco Product Manufacturer" shall not include an affiliate of a Tobacco Product Manufacturer unless such affiliate itself falls within any of subsections (1), (2) or (3) of this paragraph.

- (k) "Units Sold" means the number of individual cigarettes sold in the District of Columbia by the applicable Tobacco Product Manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the District of Columbia on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the District of Columbia.

II. SPECIFIC INSTRUCTIONS

Part 1: Manufacturer's Identification: Provide the requested information about the manufacturer, including whether the manufacturer certifies itself as a Participating Manufacturer or as a Non-participating Manufacturer that is in full compliance with the Model Act.

Part 2: Sales Year: The Sales Year is the calendar year preceding the year in which the Certification is due.

Part 3: Brand Family Identification: Identify by Brand Family all of the cigarettes that the manufacturer sells or intends to sell in the District of Columbia and seeks to have included in the Directory. Only the Brand Families identified in the Certification may be included in the Directory. The manufacturer must update the list, at least thirty (30) calendar days prior to any addition to or modification of its Brand Families, by filing a supplemental Certification.

If reporting for a Non-participating Manufacturer, also (1) list each Brand Family that has been sold in the District of Columbia at any time during the preceding or current calendar year; (2) state the number of units (“sticks”) sold for each Brand Family in the District of Columbia during the preceding calendar year; (3) indicate with an asterisk any Brand Family sold in the District of Columbia during the preceding or current calendar year that is no longer being sold in the District of Columbia as of the date of the Certification; and (4) identify by name and address any *other* manufacturer of a listed Brand Family during the preceding or current calendar year.

Part 4: Non-participating Manufacturer Certification:

- A. Verify that the Non-participating Manufacturer is registered to do business in the District of Columbia or has appointed an agent for service of process, as required by section 5(a)(1) of the Complementary Procedures Act. If the Non-participating Manufacturer is not registered to do business in the District of Columbia, attach a letter or other written documentation from the agent for service of process confirming that it will accept service of process for the manufacturer.
- B. State (1) the name, address, and telephone number of the financial institution where the Non-participating Manufacturer has established a Qualified Escrow Fund pursuant to the Model Act; and (2) the account number of the Qualified Escrow Fund and any sub-account number for the District of Columbia. *Attach to the Certification a copy of each escrow agreement governing the Qualified Escrow Fund at any time during the preceding or current calendar year (unless attached to a previous Certification). Indicate on each copy the start and end (if applicable) of the time period during which the escrow agreement was in effect.*
- C. State for the preceding calendar year *and* the current calendar year (to date): (1) the total amount the Non-participating Manufacturer placed in a Qualified Escrow Fund pursuant to the Model Act; and (2) the date and amount of each deposit by the Non-participating Manufacturer in a Qualified Escrow Fund

pursuant to the Model Act. *For each escrow deposit listed, attach to the Certification a statement from the financial institution showing that the deposit was made.*

- D. State the amount and date of any withdrawal or transfer of funds *ever made* from a Qualified Escrow Fund established by the Nonparticipating Manufacturer pursuant to the Model Act

Part 5: Execution by Authorized Representative: The person executing the Certification must be an authorized representative of the Tobacco Product Manufacturer identified in Part 1. The person's name and title must be printed or typed above the signature.

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