

# **Commonwealth of Kentucky Certification of Tobacco Product Manufacturers (Revised March, 2020)**

## **GENERAL INFORMATION:**

### **Who is required to file this certification?**

Any tobacco product manufacturer that sells or intends to sell cigarettes or RYO within the Commonwealth of Kentucky, whether directly or through any distributor, retailer, or similar intermediary. No cigarettes may be stamped for sale and no RYO may be sold in Kentucky unless the manufacturer is on the directory of certified companies and the brands have been certified as fire safe under Kentucky law.

### **When is this certification due?**

If a company is on the directory, an annual certification must be delivered to our office on or before April 30th. A revised directory of compliant manufacturers will be published by July 1 each year on the Kentucky Revenue Cabinet website:

<https://revenue.ky.gov/Business/Tobacco-Tax/Pages/default.aspx>).

## **Definitions:**

- (a) “Brand Family” means all styles of Cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to “menthol,” “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, a previously known brand of Cigarettes.
- (b) “Cigarette” has the same meaning as in KRS 131.600.
- (c) “Directory” means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Kentucky law and all Brand Families that are listed in such certifications. KRS 131.610.
- (d) “Master Settlement Agreement” has the same meaning as in KRS 131.600.
- (e) “Non-participating Manufacturer” means any Tobacco Product Manufacturer not a Participating Manufacturer.
- (f) “Participating Manufacturer” has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

- (g) “Qualified Escrow Fund” has the same meaning as that term is defined in KRS 131.600.
- (h) “Stamping Agent” means a person, including a distributor, wherever residing or located, that is authorized to affix tax stamps to packages or other containers of Cigarettes under KRS 138.146 or any person that is required to pay the excise tax imposed pursuant to KRS 138.155 on Cigarettes.
- (i) “Tobacco Product Manufacturer” has the same meaning as that term is defined in KRS 131.600.
- (j) “Units Sold” has the same meaning as that term is defined in KRS 131.600.

**SPECIFIC INSTRUCTIONS:**

**Part 1:** Manufacturer's Identification. Identify the name, street and mailing address, telephone, fax number and electronic mail address. Please provide a list of officers, directors and owners with 10% equity or more.

**Part 2:** Sales Year. Identify the sales year.

**Part 3:** Brand Family Identification: Identify by Brand Family and Brand name all of the cigarettes or RYO that the Tobacco Product Manufacturer intends to sell in Kentucky, whether directly or through any distributor, retailer, or similar intermediary, and to be included in the Directory. Also provide a full-size color sample of each brand family's pack and carton label and packaging (if not already provided), trademark documentation and current federal approval letters for all brands.

**NOTE: Any cigarette Brands must be certified as fire safe with the Kentucky Fire Marshall to be listed as approved for sale in Kentucky. PACT act registration is also required.**

A Participating Manufacturer shall include a list of its Brand Families. The Participating Manufacturer shall update such list **thirty calendar days prior to** any modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General.

A Non-Participating Manufacturer shall include in its certification (i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the State during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the State at any time during the current calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year, (v) list Kentucky stampers

sold to. Also, list the UPC code for each brand style. (The Non-Participating Manufacturer shall update such list **thirty calendar days prior to** any modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General).

**Part 4:** Non-Participating Manufacturer Information

- A. Verify that the Non-Participating Manufacturer is registered to do business in Kentucky or has appointed an agent for service of process **located in Kentucky** and provided notice thereof. Proof of appointment acceptance must be on file with the Attorney General. Timely notice is required for any change in agent. (30 days prior to termination of agent; proof of new agent required 5 days before termination).
- B. Identify (i) the name, address and telephone number of the financial institution where the Non-Participating Manufacturer has established a Qualified Escrow Fund pursuant to KRS 131.602 and (ii) the account number of such Qualified Escrow Fund and any sub-account number for Kentucky (escrow agreement must be included for approval if not previously submitted or if modified).
- C. Identify (i) the amount such Non-Participating Manufacturer placed in such fund for Cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund.
- D. Provide information for financial instrument **currently in place** as required by KRS 131. The amount must be the higher of \$50,000 or the highest quarterly escrow deposit in the last 12 months.
- E. Provide information on delisting from tobacco directories of other states in the past year.
- F. Provide information on any criminal convictions or guilty pleas within ten years of the end date of parole or sentence against the company, officers or employees.
- G. Provide list of all importers into the United States if product is imported and certify that each importer agrees to be jointly and severally liable for any escrow default due to Kentucky.

**Part 5:** Execution by Authorized Designees. The person executing the Certification must be an authorized representative of the Tobacco Product Manufacturer identified in Part 1. The Designee's name and title must be printed and the Certification must be executed in the presence of an authorized notary.

# Commonwealth of Kentucky-Annual Tobacco Product Manufacturer Certification

## Part 1: Tobacco Product Manufacturer Identification

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

Names of Officers, Directors and Owners:

\_\_\_\_\_

\_\_\_\_\_

Name/Title of Person Completing Certification:

\_\_\_\_\_

The Tobacco Product Manufacturer identified above is, as of the date of this Certification (Initial One):

\_\_\_\_\_ A Participating Manufacturer under the Tobacco Master Settlement Agreement

\_\_\_\_\_ A Non-Participating Tobacco Product Manufacturer in full compliance with KRS 131.602

## Part 2: Sales Year

Year of Sales for this Certificate of Compliance is: \_\_\_\_\_

## Part 3: Brand Family Identification (Attach additional Sheets if Necessary)

Participating Manufacturers complete A & B; Non-Participating Manufacturers complete A through G. **Samples of labels and packaging for each brand are required, as well as copies of manufacturing permits/licenses, trademark documentation, all manufacturing agreements, current federal approval letters and SE/NSE orders, fire safe certification and PACT act registration**, unless already on file. (Note: Nine-hundredths of an ounce (.09) of RYO tobacco counts as 1 cigarette).

A. Brand Family <sup>1</sup>	B. Brand Name	C. Units Sold Preceding Yr	D. Units Sold Current Yr	E. Manufacturer (include full address information for each location)	F. List of KY-licensed stampers sold to.	G. UPC Codes (please include spreadsheet or disc with case, carton and pack UPC)

## Part 4: Non-Participating Manufacturer Information

\_\_\_\_\_

<sup>1</sup> Indicate with an asterisk (\*) those brands that will not be sold in the current year.

**A. Registered Agent in Kentucky for service of process (provide proof of acceptance/ appointment)**

Agent Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**B. Qualified Escrow Fund – Financial Institution (provide copy of escrow agreement if not on file)**

Name of Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Escrow Acct No: \_\_\_\_\_ State Account No: \_\_\_\_\_

**C. Escrow Deposit/Withdrawal History for Kentucky in prior year (full bank statements required):**

Date	Deposit	Withdrawal <sup>2</sup>	Balance

**D. Financial Instrument (Must be current and in the proper amount).**

Name of Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Amount of Instrument payable to Kentucky: \_\_\_\_\_

**E. Delisting Actions in Other States**

State: \_\_\_\_\_ Date of Delisting: \_\_\_\_\_

State: \_\_\_\_\_ Date of Delisting: \_\_\_\_\_

**(Attach written decisions or documents with reason for delisting).**

**F. Criminal Convictions of Company, Officers or Employees Regarding Cigarette Sales**

Jurisdiction: \_\_\_\_\_ Named Party: \_\_\_\_\_

Charges: \_\_\_\_\_

**(Attach copy of orders and documents describing in full).**

Date of Conviction/Guilty Plea: \_\_\_\_\_ Date sentence or probation ended: \_\_\_\_\_

<sup>2</sup> Withdrawals must comply with KRS 131.602. Verification of compliance must be provided.

**G. Importers of the Manufacturer's Products into the United States (if applicable)**

Company 1: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

Company 2: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX \_\_\_\_\_

Email: \_\_\_\_\_

(Attach information for additional importers and individual signed and notarized statements of agreement of importer to be jointly and severally liable for any default of escrow required by Kentucky).

**Part 5. Notarized Execution by Authorized Designee (all manufacturers)**

*Under penalty of perjury, I, as authorized agent of the manufacturer, state that all information contained in this Certification is true and accurate.*

Designee (Print Name): \_\_\_\_\_ Title: \_\_\_\_\_

Signature of Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn to before me on this date: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_ City or County of: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**Mail the completed certificate of compliance, due April 30, to:**

Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, Kentucky 40601  
Attn: Michael Plumley, Assistant Attorney General