

CERTIFICATION OF ENROLLMENT – STATE OF WASHINGTON

Definitions and Instructions for Completion

GENERAL INFORMATION

Who is required to file this certification?

Any tobacco product manufacturer that intends to sell cigarettes within the state of Washington, whether directly or through any distributor, retailer, or similar intermediary.

This Certification is in addition to any Certificate of Compliance that may be required pursuant to RCW 70.157.

Definitions: *(See RCW 70.158.020)*

- (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, or identifiable with, a previously known brand of Cigarettes.
- (b) “Board” means the Liquor Control Board.
- (c) “Cigarette” has the same meaning as in RCW 70.157.010(d): 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.”
- (d) “Director” means the Director of the Department of Revenue except as otherwise noted.
- (e) “Directory” means the directory to be created and published on a website by the attorney general pursuant to RCW 70.158.030(2): the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of this section, and all Brand Families that are listed in these certifications; except as provided by RCW 70.158.030(2).
- (f) “Distributor” has the same meaning as in RCW 82.26.010(8): (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those

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- retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed, except that for purposes of RCW 70.158, no person is a distributor if that person does not deal with cigarettes as defined in RCW 70.158.020.
- (g) “Master Settlement Agreement” has the same meaning as in RCW 70.157.010(e): the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.
- (h) “Non-participating Manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.
- (i) “Participating Manufacturer” has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.
- (j) “Qualified Escrow Fund” has the same meaning as in RCW 70.157.010(f): an escrow arrangement with a federally 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 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 RCW 70.157.020(b).
- (k) “Stamp” means “stamp” as defined in RCW 82.24.010(11) or as referred to in RCW 43.06.455(4): the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.
- (l) “Tobacco Product Manufacturer” or “manufacturer” has the same meaning as in RCW 70.157.010(i): an entity that after the date of enactment of this Act 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 such 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 subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection 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 paragraph (1) or (2). The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.
- (m) “Units Sold” has the same meaning as in RCW 70.157.010(j): the number of individual cigarettes sold in the State 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 State on packs bearing the excise tax stamp of the State or “roll-your-own” tobacco containers. The Department

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of Revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

- (n) “Wholesaler” has the same meaning as in RCW 82.24.010(12): every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

When is this certification due?

This certificate of compliance must be filed with the Attorney General on or before April 30th of the year following the sales year.

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SPECIFIC INSTRUCTIONS

The blank spaces in the Certification of Enrollment application form may be completed by electronically entering the requested information into the fillable PDF. The form should then be printed, signed before a notary, notarized, and sent to the NPM Coordinator identified on Page 3 of the Certification application.

- Part 1: Tobacco Product Manufacturer Identification. Identify the manufacturer's business name, address, telephone, and email address. Complete information requested for company website and other contact information shown. Designate by initial whether (1) the manufacturer is a participating manufacturer under the Master Settlement Agreement or (2) is in full compliance with RCW 70.157
- Part 2: Sales Year. Identify the sales year. For sales in 2016, this form should be submitted before April 30, 2017.
- Part 3: Brand Family Identification. Identify by Brand Family and Brand Style all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory.

A-B Participating Manufacturer shall include a list of its Brand Families and Brand Styles. The Participating Manufacturer shall update such list 30 calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General. Lists of more than 10 brand styles may be submitted electronically as an attachment to an email directed to chantelg@atg.wa.gov. The signed original of this form must be transmitted by U.S. Mail or courier.

A-E Non-Participating Manufacturer shall include in its certification (i) a list of all of its Brand Families and Brand Styles 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. The Non-Participating Manufacturer shall update such list 30 calendar days prior to any addition to or modification of its Brand Families and Brand Styles by executing and delivering a supplemental certification to the Attorney General. Lists of more than 10 brand styles may be submitted electronically as an attachment to an email directed to chantelg@atg.wa.gov. The signed original of this form must be transmitted by U.S. Mail or courier.

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F. To be completed by all Tobacco Product Manufacturers. Attach a copy of the Manufacturer’s registration with the U.S. Department of Justice under the Jenkins Act as amended by PACT (Title 15 U.S. Code). Registration requires completion of ATF Form 5070.1 which can be found at <https://www.atf.gov/file/61471/download>
Send a copy of ATF Form 5070.1 to the Washington Department of Revenue, Excise Tax Examiner, P.O. Box 47477, Olympia, WA 98504.

G. To be completed by all Tobacco Product Manufacturers. Provide a copy of the **approval** of certification from the Washington State Fire Marshal showing that all brand styles to be certified for sale in Washington are “fire safe” as defined in RCW 19.305 Cigarette Ignition Propensity. More information concerning Fire Safe Certification can be found at <http://www.wsp.wa.gov/fire-safe-cigarettes>.

Part 4: **Non-Participating Manufacturer Certification.**

A. Attach a copy of the current, valid permit to manufacture tobacco products issued by the U.S. Treasury, Tobacco Tax Bureau (TTB). If the permit has been amended, attach copies of all amendments.

B. Verify every year either: (1) that the Non-Participating Manufacturer is not registered to do business in the State of Washington but has appointed an agent for service of process as designated in the Attorney General’s form “Statement of Registered Agent” and provided notice thereof; or (2) that the Non-Participating Manufacturer is registered to do business in the State of Washington and has appointed an agent for service of process and provided notice thereof as required by RCW 23B.15. Identify the Registered Agent appointed by providing the name, address, phone, fax and email of the agent appointed on the Attorney General’s form “Statement of Registered Agent.” (3) List all tobacco licenses or endorsements held by the NPM. (4) Provide the NPM’s UBI number if applicable.

C. List all other states in which the Non-Participating Manufacturer is certified to sell tobacco products.

D. Identify the Washington-licensed distributors or wholesalers to which cigarettes were or will be sold and provide company name, contact person, address, phone and email for each such entity. Attach additional pages listing the distributors or wholesalers if necessary.

E. (1) If the NPM Applicant has been enjoined or banned from selling tobacco products by any court order or government agency ruling or determination, list the courts or government agencies issuing any such orders. (2) If the NPM

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Applicant has had a judgment entered against it for failure to pay any escrow funds alleged to be due, list the courts issuing any such judgments and give the identifying case caption and assigned case number for each such action. Attach additional pages explaining the circumstances of the rulings or judgments if necessary.

F. Identify the source of the tobacco used in fabricating the cigarettes listed in Part 3. List the company name, address, phone and email for each provider of tobacco used.

G. Attach a copy of the current (unexpired) federal approval documentation obtained from (1) the Department of Health & Human Services, Centers for Disease Control for the ingredient listing showing the expiration date of the approval; and (2) the health warning label rotation plan obtained from the FTC (or its successors) showing the expiration date of the approval. Additional information is available (1) for the Centers for Disease Control at http://www.cdc.gov/tobacco/basic_information/tobacco_industry/reporting/instructions/ and (2) for the Federal Trade Commission at <http://www.ftc.gov/bcp/policystmt/cigarettememo.shtm>. The U.S. Food and Drug Administration labeling requirements and information can be found at <http://www.fda.gov/tobaccoproducts/labeling/rulesregulationsguidance/ucm523847.htm>

H. Attach a copy of ownership documentation for any trademarks registered with the U.S. Patent & Trademark Office for all brand families listed in Part 3. If any assignments or other agreements exist concerning the use of the trademark for the purpose of fabricating or marketing cigarettes in the U.S., attach copies of those documents. Additional information is available at <http://www.uspto.gov/>.

I. Identify (i) the Escrow Agent, contact person's name, address, telephone number, and email address where the Non-Participating Manufacturer has established a Qualified Escrow Fund pursuant to RCW 70.157.020(b)(1); and (ii) the account number of such Qualified Escrow Fund and any sub-account number for Washington. **RCW 70.158.030(1)(c)(ii) requires execution of a “qualified Escrow Agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.”**

J. Identify (i) the amount such Non-Participating Manufacturer placed in such Fund for cigarettes sold in the State during the preceding calendar year, and 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. **Attach a statement prepared by the Escrow Agent verifying deposits and**

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withdrawals in compliance with the requirements of the Escrow Agreement.

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

Please note that the Washington Attorney General's Office has the right to request additional information. You will receive a letter requesting additional information if the State so elects. Your application will not be complete until all requests for information are satisfied. RCW 70.158.050(4).