



STATE OF OKLAHOMA

INSTRUCTIONS AND DEFINITIONS APPLICATION FOR CERTIFICATION FOR LISTING ON OKLAHOMA DIRECTORY

GENERAL INSTRUCTIONS

Who Is Required to File this Certification?

Tobacco Product Manufacturers whose Cigarettes are sold in Oklahoma, whether directly or through any Distributor, retailer, or similar intermediary, are required to complete and file this form.

This Certification is in addition to the Nonparticipating Manufacturer (“NPM”) Certification of Compliance required by 37 O.S. § 600.23 (c).

The answers provided in this Certification, when completed must be reviewed, and signed by an officer with the authority to bind the applicant company. (“Applicant”).

When Is this Certification Due?

Tobacco Product Manufacturers that intend to sell Cigarettes in Oklahoma shall file a Certification and qualify for listing on the Directory prior to any sales in Oklahoma. Tobacco Product Manufacturers listed on the Directory must file this form on or before April 30th each year.

Supplemental Certifications: In completing a supplemental Certification, applicant must check the “Supplemental” box at the top of page one, enter only the new or changed information, then sign and date the supplemental Certification form. A Tobacco Product Manufacturer shall file a supplemental Certification (OAG-TOB1) no later than thirty days prior to any change in a fabricator for any Brand Family or any addition to or modification of its Brand Families by executing and delivering the supplemental Certification to the Attorney General. In all other circumstances in which information provided on the Certification becomes inaccurate, a supplemental Certification must be filed within thirty (30) days after the information becomes inaccurate.

This Certification and All Other Required Forms Must Be Completed in English.

- For all attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must be attached as well.
- All attachments to this Certification must indicate to which question it corresponds.

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- If any section of this Certification is not applicable to your company, be sure to check the box “not applicable” where relevant.

WARNING: ANY PERSON WHO MAKES AN ASSERTION IN THIS CERTIFICATION REGARDING A MATERIAL MATTER THAT HE OR SHE KNOWS IS FALSE IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT OR A FINE, OR BOTH (21 O.S. § 500).

Where Must this Certification Be Filed?

This Certification must be filed with the Attorney General’s Office:

**Office of the Attorney General
State of Oklahoma
Tobacco Enforcement
313 NE 21st Street
Oklahoma City, OK 73105**

DEFINITIONS

- (a) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns”, “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof of ten percent (10%) or more.
- (b) “Person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.
- (c) “Brand Family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “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.
- (d) “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;
 - 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

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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 sub-paragraph 1 of this paragraph.

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”, nine one-hundredths (0.09) of an ounce of “roll-your-own” tobacco shall constitute one individual “cigarette”.

- (e) “Directory” means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Section 306.4 of Title 68 of the Oklahoma Statutes and all Brand Families that are listed in such certifications.
- (f) “Master Settlement Agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the state of Oklahoma and leading United States tobacco product manufacturers.

- (g) “Nonparticipating manufacturer” means any tobacco product manufacturer as defined in Section 600.22 of Title 37 of the Oklahoma Statutes that is not a participating manufacturer.
- (h) “Participating manufacturer” has the meaning given that term in Section II (jj) of the Master Settlement Agreement as defined in Section 600.22 of Title 37 of the Oklahoma Statutes and all amendments to the Master Settlement Agreement.
- (I) “Qualified escrow fund” means 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 One Billion Dollars (\$1,000,000,000.00) 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 funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with Section 600.23(B)(3) of Title 37 of the Oklahoma Statutes.
- (j) “Stamping agent” means any entity that is authorized under subsection A of Section 304 of Title 68 of the Oklahoma Statutes to affix any tax stamps issued by the Oklahoma Tax Commission to packages of cigarettes, or any entity authorized pursuant to Section 415 of Title 68 of the Oklahoma Statutes to pay to the Oklahoma Tax Commission any tobacco products tax.
- (k) “Tax Commission” means the Oklahoma Tax Commission.
- (l) “Tobacco Product Manufacturer” means an entity that directly, and not exclusively through any affiliate:
 1. manufacturers 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 subsection 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 subparagraph 1 or 2.
- (m) “Units sold” means 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, or “roll-your-own” tobacco containers, bearing the excise tax stamp of the state.

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SPECIFIC INSTRUCTIONS

PART I. GENERAL BUSINESS AND OWNERSHIP INFORMATION

- QUESTION 1:** The applicant must list the physical address of its manufacturing plant as well as its mailing address. New applicants must submit date stamped interior and exterior photographs of its manufacturing facility.
- QUESTION 2:** The term “generally performed its financial obligations under the Master Settlement Agreement”, means that the amount of funds paid pursuant to the Master Settlement Agreement is equal to the amount the Independent Auditor determined was owed under the Master Settlement Agreement.
- QUESTION 3-6:** Section 600.22(9) of Title 37 of the Oklahoma Statutes sets forth circumstances under which an entity is a Tobacco Product Manufacturer. If applicant answered “no” to question 3, or “yes” to questions 4, 5 and 6, applicant must provide an explanation in the space provided.
- QUESTION 7:** If your answer to any of the questions in this section in respect to Indian Tribe affiliation is **yes**, you must provide the information requested and contact the Oklahoma Office of the Attorney General, Tobacco Enforcement Unit, 313 NE 21 Street, Oklahoma City, OK 73015, to make arrangement to execute required waivers of sovereign immunity in order to appear on the Oklahoma Tobacco Product Manufacturers Directory.
- QUESTION 8:** Attach current licenses issued to the applicant by the Oklahoma Tax Commission and the Tobacco Tax Bureau (TTB) of the United States Treasury.

PART II. BRAND FAMILY IDENTIFICATION

- QUESTION 9:** **Brand Family Identification:** Identify by Brand Family all of the Cigarettes that the Tobacco Product Manufacturer intends to sell in Oklahoma, 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 Participating Manufacturer shall list all of its Brand Families. By listing a Brand Family, the Participating Manufacturer affirms that the Brand Family is deemed to be its Cigarettes for the purpose of calculating its payments under the MSA for the relevant year. The Participating Manufacturer shall update such list at least thirty (30) days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental Certification (OAG-TOB1) to the Attorney General.

A Manufacturer shall: (I) List all of its Brand Families and the number of Units Sold of each Brand Family that were sold in Oklahoma during the preceding calendar year;(ii) Identify by an asterisk any Brand Family sold in Oklahoma during the preceding calendar year that is no longer being

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sold in Oklahoma as of the date of the Certification; and (iii) Provide the complete name and address of every Tobacco Product Manufacturer that manufactured a Brand Family described in (I) above in the preceding calendar year.

The Manufacturer shall update such list at least thirty (30) days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental Certification (OAG-TOB1) to the Attorney General. By listing a Brand Family, the Manufacturer affirms that the Brand Family is deemed to be its Cigarettes for the purpose of calculating its qualified escrow fund deposits pursuant to Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes.

QUESTION 10: Attach samples of the actual packaging and labeling for each brand of Cigarettes that applicant intends to sell in Oklahoma, if not previously submitted.

QUESTION 11: List the name address and phone numbers of the trademark holder(s) of each brand listed.

PART III. ADDITIONAL BUSINESS AND OWNERSHIP INFORMATION: (NPM Applicants Only)

QUESTION 12: Organizational Documents to Be Attached

If Applicant is a:	Attach to Certification:
Partnership or association	Current copy of articles, if any, OR the certificate required to be filed by any state, country or municipality.
Corporation	<ol style="list-style-type: none"> 1. Current copy of the corporate charter OR certificate of corporate existence or incorporation. This copy must be executed by the appropriate state officer for the jurisdiction in which incorporated. 2. Extracts of stockholders' meetings, bylaws, directors' meetings or other documents that list the officers authorized to sign documents or otherwise act on behalf of the corporation. The accuracy of the copy must be certified by an appropriate officer of the corporation.
Limited liability company or other business organization	Current copy of the business document(s) filed with a state, county or municipality when such filing is required. The copy must show that it was filed with the appropriate government agency. A limited liability company must provide an accurate copy of its operating agreement.

QUESTION 13: Applicant must certify that it has attached a copy of its current articles of incorporation and bylaws, or that they were submitted with a prior year certification and remain valid and current. If the articles of incorporation or bylaws have changed the new bylaws and/or articles of incorporation must be submitted with the application.

QUESTION 14: **Company Officers and Owners:** Identify all company officers and owners with an equity interest, or the equivalent thereof, of 10 percent or more by completing the table on the application.

PART IV. MARKETING AND DISTRIBUTION INFORMATION

QUESTION 14: Non-Participating Manufacturers located outside the United States whose cigarettes are sold in the State of Oklahoma are required to have each of its importers of its cigarettes into the United States accept joint and several liability with the Tobacco Product Manufacturer for the deposit of all escrow due, payment of penalties imposed and cost and attorneys fees imposed. A declaration from each Importer accepting joint and several liability and the Importer’s notice of appointment of registered agent for service of process must be attached to the application. (OAG-TOB6).

QUESTION 15: The Applicant must register as a tobacco product manufacturer with the Oklahoma Tax Commission and provide a copy of its current OTC Registration with its Application and additionally, the Applicant must certify that it has filed monthly shipment reports with the OTC and the Attorney General.

QUESTION 16: Oklahoma law requires that persons who purchase untaxed tobacco products from manufacturers to be licensed by the Oklahoma Tax Commission, to report all sales to the Oklahoma Tax Commission, pay required excise taxes, purchase tax stamps, and place a stamp on each pack of cigarettes prior to distribution and sale to an Oklahoma consumer. Stamping agents are required to file monthly NPM reports listing the number of cigarettes sold by manufacturer and brand. List all stamping agents that purchased or distributed any of applicant’s gross cigarette or RYO sales during the preceding calendar year.

PART V. MANUFACTURING AND COMPLIANCE INFORMATION:

QUESTION 17: **Health Warning Rotation Plan.** A copy of the complete current health warning rotation plan submitted to the Federal Trade Commission (“FTC”) pursuant to 15 U.S.C. § 1333 and a copy of the approval letter from the FTC for each brand family.
Additional information can be obtained at:

**Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580
General Information Locator - (202) 326-2222
<http://www.ftc.gov>**

QUESTION 18: A copy of the Centers for Disease Control (CDC) ingredient-listing (cigarettes only) compliance letter(s) pertaining to the brands listed in this

certification and a statement from the manufacturer as to which brand's ingredients were submitted for each approval letter. Additional information can be obtained at:

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333
Telephone: 1-800-311-3435
<http://www.cdc.gov/netinfo.htm>

QUESTION 19: All manufacturers that sell cigarettes in Oklahoma must be in compliance with the Fire Safety Standard and Firefighter Protection Act, 74 O.S. §326.1. Certifications under the Act must be made to the Oklahoma State Fire Marshall's Office. The Oklahoma Fire Safe directory of all cigarettes certified under this Act is located at: <http://www.firemar.state.ok.us>

QUESTION 20: 68 O.S. §304(E) (3) provides that no tobacco manufacturer's license may be granted, maintained or renewed to any applicant, including an applicant that has any combination of persons owning directly or indirectly more than ten percent of the ownership interest, that has been convicted of a crime relating to stolen or counterfeit cigarettes or receiving stolen or counterfeit cigarettes or has been convicted of or has entered a plea of guilty or nolo contendere to any felony.

PART VI. NPM APPLICANT CERTIFICATION (NPM Applicants Only)

QUESTION 21: Certify whether the NPM is (1) domiciled in the State of Oklahoma; (ii) a non-resident or foreign NPM that has registered to do business in Oklahoma as a foreign corporation or business entity; or (iii) an NPM that has appointed a resident agent for service of process pursuant to Section 360.5 of Title 68 of the Oklahoma Statutes on whom all process, and any action against it concerning or arising out of the enforcement of the Master Settlement Agreement Complementary Act and Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes, may be served in any manner authorized by law.

QUESTION 22-24: The NPM applicant must certify that it has established and continued to maintain a Qualified Escrow Fund, executed a Qualified Escrow Agreement that has been reviewed and approved by the Attorney General. A copy of the current escrow agreement and any amendments to that agreement must be submitted with the application. The applicant must list its Qualified Escrow Fund deposit and withdrawal history on the application and submit a written confirmation form the Escrow Agent stating the amount of funds in escrow for the State of Oklahoma.