

Instructions for Alaska Tobacco Product Manufacturer Certificate of Compliance

General Instructions

Who Must File. Every tobacco product manufacturer (TPM) whose cigarettes are sold in this state or who intends to sell its cigarettes in this state shall complete and forward a certificate of compliance certifying, under penalty of perjury, that the TPM is either a participating manufacturer (PM), as that term is defined in sec. II(jj) of the Master Settlement Agreement (MSA), or is a Non-Participating Manufacturer (NPM), as that term is defined in sec. II(cc) of the MSA. The NPM must further certify that it is in full compliance with Alaska Statute (AS) 45.53. AS 45.53 requires that an NPM must establish a qualified escrow account for the benefit of the State of Alaska and other releasing parties for each cigarette it manufactured that was sold in Alaska. The NPM is responsible to make escrow payments even if it did not directly sell its cigarettes into Alaska.

Directory. Not later than July 30 of each year, the Commissioner shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certificates of compliance and all brand families listed in those certifications. Cigarette brands not listed in the directory may not be sold in Alaska. Cigarette brands sold, offered for sale, or possessed for sale in this state that are not included in the directory are contraband and subject to seizure and forfeiture.

Tobacco Product Manufacturer Defined. A tobacco product manufacturer means an entity that, on or after June 3, 1999, directly and not exclusively through an affiliate, 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; unless such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer as defined in the MSA; 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 is a successor of any entity described above.

Cigarette Defined. A cigarette is any product that contains nicotine that is intended to be burned or heated under ordinary conditions of use. Cigarette includes any roll of tobacco wrapped in paper or in any substance not containing tobacco; 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 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. 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette." "Roll-your-own" includes any tobacco that, 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.

Qualified Escrow Fund. To be a qualified escrow fund, the fund must be an escrow fund governed by an escrow arrangement with a U.S. federally or state chartered financial institution having no affiliation with a tobacco product manufacturer and having assets of at least \$1,000,000,000 (U.S. funds). Escrow arrangements

must require that the financial institution hold the principal of the escrow fund for the benefit of the State of Alaska and releasing parties, as defined in the MSA, and prohibit the tobacco product manufacturer that places money into the escrow fund from using, accessing, or directing the use of the principal of the fund except as consistent with the provisions in AS 45.53.

Specific Instructions

Part I: Tobacco Product Manufacturer Identification. You must provide the complete name, address, and telephone number of the manufacturer and provide the name of the person completing this report. Indicate whether the TPM is a participating manufacturer or a non-participating manufacturer. If this is an initial certificate of compliance check the box. An initial certificate of compliance must be filed at least thirty days before cigarettes are first sold in the state and is a request to have the TPM's brands included in the directory. The escrow payment under Part IV, B does not need to be calculated on an initial certificate of compliance, however, all other information must be completed and an escrow account must be established at a qualified institution before an NPM and its brands will be listed in the directory.

Part II: Sales Year. Identify the **year of sales** (not the year you prepared this certificate) for which this certificate of compliance is being completed. For example, if you are preparing your certificate in 2007, you are reporting, by brand and brand family, the sales for the year 2006. You must complete a separate certificate for each sales year.

Part III: Brand Family Identification. Identify by brand family and brand name all of the cigarettes that the TPM has sold or intends to sell in Alaska 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 PM shall include only brands that are considered to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement. The PM shall update such list thirty calendar days prior to any addition to or modification of its brands or brand families by executing and delivering a supplemental certification to the Commissioner.

An NPM shall include in its certificate (i) a list of all of its brands and brand families and the number of units sold for each brand family that were sold in Alaska during the preceding calendar year, (ii) a list of all of its brand families that have been sold in Alaska at any time during the current calendar year, (iii) indicate, by an asterisk, any brand or brand family sold in Alaska during the preceding calendar year that is no longer being sold in Alaska as of the date of such certification, and (iv) identify by name and address any other manufacturer of its brand or brand families in the preceding or current calendar year. The NPM shall only include those brands and brand families that are considered to be its cigarettes for purposes as of AS 45.53.

Part IV: Non-Participating Manufacturer Certification

A. Qualified Escrow Fund. An NPM must provide the number of cigarettes sold in Alaska during the sales year and

Specific Instructions - Continued

calculate the amount of the escrow payment, after inflation, required to be made for the number of cigarettes sold in the state.

B. Financial Institution. An NPM must identify the financial institution where an escrow account for the benefit of the State of Alaska was established. The financial institution must verify the amount deposited into the escrow account for the sales year and provide the balance in the escrow account as of the date the certificate is completed.

C. Escrow Deposit/Withdrawal History for Alaskans. An NPM must provide a complete history of the escrow account at the time it files its initial certificate of compliance. Annual certifications thereafter should only show deposits and withdrawals for the applicable sales year.

Part V: PACT Act Registration. On March 31, 2010, the Prevent All Cigarette Trafficking Act (PACT Act) was signed into law.

Any person engaged in the interstate sale of cigarettes or smokeless tobacco must register with ATF. The PACT Act also requires a separate registration with the tobacco tax administrator of the state and local jurisdiction into which such shipments are made or in which such advertisement or offer is disseminated. The law requires registration with both entities.

Registered Agent. A PM and an NPM must either be registered to do business in Alaska or appoint an agent in Alaska to act as the manufacturer's agent for service of process. If the PM or NPM is registered to do business in Alaska, it must provide its Alaska Corporation File Number and Alaska Business License Number. These numbers are issued by the Alaska Department of Commerce, Community and Economic Development. If the PM or NPM is not registered to do business in Alaska, it must provide the name, address, telephone number, and email address for its registered agent located in Alaska.

Part VI: Signatures. The certificate of compliance must be signed by an authorized agent of the Tobacco Product Manufacturer identified in Part I. The authorized agent's name and title must be printed and the certificate must be signed in the presence of a notary public. For certification by NPMs, the certificate must also be signed by an authorized agent of the financial institution where the escrow account has been established. The agent of the financial institution must sign the certificate in the presence of a notary public.

When to File the Certificate of Compliance. The initial Certificate of Compliance must be filed 30 days prior to selling cigarettes in Alaska in order for the TPM and its brands and brand families to be approved for inclusion in the directory. All subsequent Certificates of Compliance must be filed by April 30 of each year following the sales year identified in Part II. If not previously provided, a copy of the escrow agreement and any amendments must be attached to this Certificate of Compliance to constitute a complete filing.

Where to Send Form 510

TAX DIVISION
ALASKA DEPARTMENT OF REVENUE
550 W 7TH AVENUE STE 500
ANCHORAGE, AK 99501

Questions. If you have any questions regarding this form or your responsibilities under AS 43.50 and 45.53, contact the Alaska Department of Revenue's Anchorage office at (907) 269-6620.