

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

§ 50162. Certificates; Directory; Tax Stamps.

(a) *Certification.* Every tobacco product manufacturer whose cigarettes are sold in this Commonwealth, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Director and Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is a participating manufacturer; or is in full compliance with the Model Escrow Statute (Public Law 13-15).

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and Director.

(2) A non-participating manufacturer shall include in its certification,

(A) A list of all of its brand families and the number of units sold for each brand family that were sold in the Commonwealth during the preceding calendar year,

(B) A list of all of its brand families that have been sold in the Commonwealth at any time during the current calendar year,

(C) Indicating, by an asterisk, any brand family sold in the Commonwealth during the preceding calendar year that is no longer being sold in the Commonwealth as of the date of such certification, and

(D) 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 thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and Director.

(3) In the case of a non-participating manufacturer, such certification shall further certify:

(A) That such non-participating manufacturer has obtained a business license to conduct business in the Commonwealth pursuant 4 CMC § 5611(a), or has appointed an agent for service of process and provided notice thereof as required by 4 CMC § 50163.

(B) That such non-participating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund, and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund.

(C) That such non-participating manufacturer is in full compliance with the Model Statute and this Act, and any regulations promulgated pursuant thereto.

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(D) (i) The name, address and telephone number of the financial institution where the non-participating manufacturer has established such qualified escrow fund required pursuant to Public Law 13-15 and all regulations promulgated thereto;

(ii) The account number of such qualified escrow fund and any sub-account number for the Commonwealth of the Northern Mariana Islands;

(iii) The amount such non-participating manufacturer placed in such fund for cigarettes sold in the Commonwealth during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General or Director to confirm the foregoing; and

(iv) 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 into which it ever made escrow payments pursuant to Public Law 13-15 and all regulations promulgated thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(B) In the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Public Law 13-15. Nothing in this section shall be construed as limiting or otherwise affecting the Commonwealth's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Public Law 13-15.

(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(b) *Directory of Cigarettes Approved for Sale*. Not later than the first day of June, the Director and the Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of 4 CMC § 50162(a) and all brand families that are listed in such certifications (the "Directory"), except as noted below.

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(1) The Director and the Attorney General shall not include or retain in such Directory the name or brand families of any non-participating manufacturer that has failed to provide the required certification or whose certification the Director or Attorney General determine is not in compliance with Paragraphs 3(a)(2) and 3(a)(3) of this Act, unless the Director and Attorney General, have determined that such violation has been cured to the satisfaction of the Director and Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the Directory if the Attorney General or Director concludes, in the case of a non-participating manufacturer, that

(A) Any escrow payment required pursuant to Public Law 13-15 for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General, or

(B) Any outstanding final judgment, including interest thereon, for a violation of Public Law 13-15 has not been fully satisfied for such brand family or such manufacturer.

(3) The Director and Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this Act.

(4) Every wholesale agent shall provide and update as necessary an electronic mail address to the Director and Attorney General for the purpose of receiving any notifications as may be required by this Act.

(c) *Prohibition Against Sale or Import of Cigarettes Not in the Directory.* It shall be unlawful for any person to sell, offer, or possess for sale, in the Commonwealth, or import for commercial or personal consumption in the Commonwealth, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Source: PL 14-10, § 3, modified.

Commission Comment: PL 13-15, referred to as the “Model Escrow Statute” by PL 14-10, is codified at 3 CMC §§ 2171 and 2172. The Commission changed the capitalization of words throughout the section above, changed number designations in subsections (a)(2), (a)(4), and (b)(2), struck figures that were repetitive of words in subsection (a)(2), and substituted the proper section numbers in place of general references in subsections (a)(3)(A), and (b) above pursuant to its authority by 1 CMC § 3806(f), (a), (e), and (d), respectively. The words “section” and “subsection” were used loosely throughout PL 14-10 and the Commission made its best effort to discern and substitute the correct sections being referenced. Finally, in subsection (b)(1) above, the Commission was unable to ascertain and substitute the correct sections referred to therein as “Paragraphs 3(a)(2) and 3(a)(3) of this Act.”