

**50-6a04. Tobacco product manufacturers; directory by attorney general; certification, contents; escrow deposits; removal from directory, reasons.** (a) No person may:

(1) Affix, or cause to be affixed, tax indicia to a package of cigarettes, or otherwise pay the tax due upon such cigarettes, of a tobacco product manufacturer brand family not included in the directory; or

(2) sell, offer, possess for sale or import into this state, cigarettes of a tobacco product manufacturer brand family not included in the directory.

(b) (1) Not later than July 1, 2009, the attorney general shall develop a directory, to be posted on the attorney general's website. Except as otherwise provided, the directory shall list all tobacco product manufacturers and brand families of such tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (c).

(2) The attorney general shall not include or retain in the directory any non-participating manufacturer, or non-participating manufacturer's brand family, that has failed to provide the required certification, or whose certification the attorney general determines is not in compliance with subsection (c), unless such failure or noncompliance has been cured to the satisfaction of the attorney general.

(3) In the case of a non-participating manufacturer, neither the tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes:

(A) That an escrow payment required pursuant to K.S.A. 50-6a03, and amendments thereto, 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 an escrow agreement that has been approved by the attorney general;

(B) that an outstanding final judgment, including interest thereon, for a violation of K.S.A. 50-6a03, and amendments thereto, has not been fully satisfied for such tobacco product manufacturer; or

(C) that, within three calendar years prior to the date of submission or approval of the most recent certification, such tobacco product manufacturer has defaulted on escrow payments in any other state or jurisdiction that is a party to the master settlement agreement and the default has not been cured within 90 calendar days of such default.

(4) The 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 so as to keep the directory in conformity with the requirements of this act.

(5) The attorney general shall promptly post in the directory and transmit by electronic mail to each stamping agent that has provided an electronic mail address, notice of removal from the directory of a tobacco product manufacturer or brand family.

(6) Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer in the possession of the stamping agent on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(7) Unless otherwise provided by agreement between a retail dealer or a vending machine operator and a tobacco product manufacturer, a retail dealer or a vending machine operator shall be entitled to a refund from a tobacco product manufacturer for any money paid by the retail dealer or vending machine operator to a stamping agent for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer or vending machine operator on the effective date of removal from the directory of that tobacco product manufacturer or brand family.

(8) The attorney general may remove from the state directory a tobacco product manufacturer or brand family if the attorney general concludes that:

(A) (i) The tobacco product manufacturer or any of the tobacco product manufacturer's affiliates, sales entity affiliates, officers or directors had pleaded guilty or nolo contendere to or been found guilty of a felony crime relating to the sale or taxation of cigarettes or tobacco products; or

(ii) the tobacco product manufacturer and the tobacco product manufacturer's brand families have been removed from the directory of another state based on acts or omissions that would, if done in this state, serve as a basis for removal from the directory maintained by the attorney general under this section, unless the manufacturer demonstrates that its removal from the other state's directory was effected without due process.

(B) (i) A tobacco product manufacturer that is removed from the state directory under this subsection (b) shall be eligible for relisting in the directory described in this subsection (b) on the earlier of the date on which the tobacco product manufacturer cures the violation or the date on which the tobacco product manufacturer is reinstated to the directory in the other state; or

(ii) in the case of a non-participating manufacturer deemed an elevated risk pursuant to K.S.A. 50-6a09, and amendments thereto, the attorney general may require such non-participating manufacturer to post a bond in accordance with that section.

(c) (1) On or before April 30 of each year, every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general a certification to the attorney general certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is:

(A) A participating manufacturer; or

(B) in full compliance with K.S.A. 50-6a03, and amendments thereto, including payment of all quarterly installment payments as may be required by subsection (d).

(2) A participating manufacturer shall include in its certification a list of its brand families. 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.

(3) A non-participating manufacturer shall include in its certification:

(A) The number of units sold for each brand family sold in the state during the preceding calendar year;

(B) a list of all of its brand families sold in the state at any time during the current calendar year, including 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;

(C) the identity, by name and address, of any other tobacco product manufacturer who manufactured such brand families in the preceding or current calendar year;

(D) a declaration that such non-participating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process, and provided notice thereof as required by K.S.A. 2016 Supp. 50-6a08, and amendments thereto;

(E) a declaration that such non-participating manufacturer:

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

(ii) has executed an escrow agreement that governs the qualified escrow fund and that such escrow agreement has been reviewed and approved by the attorney general;

(F) a declaration that such non-participating manufacturer consents to the jurisdiction of the district court of the third judicial district, Shawnee county, Kansas, for purposes of enforcing this act, or rules or regulations promulgated pursuant thereto, as required by K.S.A. 2016 Supp. 50-6a08(c), and amendments thereto;

(G) a declaration that such non-participating manufacturer is in full compliance with K.S.A. 50-6a03(b), and amendments thereto, and any rules or regulations promulgated pursuant to this act;

(H) (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 K.S.A. 50-6a03(b), and amendments thereto;

(ii) the account number of such qualified escrow fund and any sub-account number for the state of Kansas;

(iii) the amount such non-participating manufacturer placed in such qualified escrow fund for cigarettes sold in this state 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 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 qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to K.S.A. 50-6a03(b), and amendments thereto;

(I) in the case of a non-participating manufacturer located outside of the United States, a declaration from each of its importers to the United States of any of its brand families to be sold in Kansas that such importer accepts joint and several liability with the non-participating manufacturer for:

(i) All escrow deposits due under K.S.A. 50-6a03(b), and amendments thereto;

(ii) all penalties assessed under K.S.A. 50-6a03(b), and amendments thereto; and

(iii) payment of all costs and attorney fees pursuant to any successful action under this act against such manufacturer.

Such declarations by importers of a non-participating manufacturer shall appoint for the declarant a resident agent for service of process in Kansas in accordance with K.S.A. 2016 Supp. 50-6a08, and amendments thereto, and consent to jurisdiction in accordance with K.S.A. 2016 Supp. 50-6a08, and amendments thereto;

(J) the identity of all stamping agents, wholesalers and distributors, by name and address, to whom the non-participating manufacturer or its importer sold cigarettes to or that the manufacturer or importer believes or has reason to believe purchased or received any of the manufacturer's cigarettes from another source during the preceding calendar year, and those for which the manufacturer or its importer plan to sell to or believe or has reason to believe will purchase or receive any of the manufacturer's cigarettes from another source during the certifying calendar year; and

(K) a declaration that all sales or shipments made by the non-participating manufacturer or its affiliates, including, but not limited to, its importers and stamping agents provided for certification under this section, within or into this state are made to a stamping agent, wholesaler, distributor or retailer that is licensed in this state.

(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 shall 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; or

(B) in the case of a non-participating manufacturer, said non-participating manufacturer affirms that the brand family shall be deemed to be its cigarettes for purposes of K.S.A. 50-6a03(b), and amendments thereto.

Nothing in this paragraph shall be construed as limiting or otherwise affecting the state'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 K.S.A. 50-6a03(b), and amendments thereto.

(5) Invoices and documentation of sales and other such information relied upon for such certification shall be maintained by tobacco product manufacturers for a period of at least five years.

(6) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also:

(A) Certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. § 5713 and provide a copy of such permit to the attorney general;

(B) certify annually that it is in compliance with all reporting and registration requirements of 15 U.S.C. § 375 et seq. and provide monthly to the director and the attorney general, regardless of sales or shipments, a copy of all reports required pursuant to 15 U.S.C. §§ 376 and 376a, to be filed electronically in a manner prescribed by the director and attorney general; and

(C) pay annually a \$500 directory fee to the attorney general which shall be deposited in the tobacco master settlement agreement compliance fund.

(d) The attorney general may require a tobacco product manufacturer subject to the requirements of subsection (c) to make the escrow deposits required by K.S.A. 50-6a03(b), and amendments thereto, in quarterly installments during the calendar year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

**History:** L. 2002, ch. 74, § 1; L. 2009, ch. 110, § 16; L. 2015, ch. 79, § 3; June 4.