



State of Tennessee Non-Participating Manufacturer Certification of Quarterly Escrow Compliance

Instructions for Completion

FREQUENTLY ASKED QUESTIONS

Who is required to file a Certification of Quarterly Escrow Compliance? Any Tobacco Product Manufacturer that: (1) sold Cigarettes (including roll-your-own and little cigars if they meet the statutory definition of Cigarette) to consumers within the State of Tennessee (whether directly or through any distributor, retailer, or similar intermediary or intermediaries during the preceding calendar year); and (2) has not become a Participating Manufacturer to the tobacco Master Settlement Agreement executed on November 23, 1998. Please note the Certification of Quarterly Escrow Compliance form is in addition to any Certification application required pursuant to Tenn. Code Ann. §§ 47-31-101 et seq., 67-4-2601 *et seq.* and any rules and regulations promulgated thereunder.

Who is a Tobacco Product Manufacturer? A Tobacco Product Manufacturer is the entity that fabricates or assembles the Cigarettes.

What is a Qualified Escrow Fund? Tobacco Product Manufacturers are required to establish a “Qualified Escrow Fund” as defined by Tenn. Code Ann. § 47-31-102(6). This means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any Tobacco Product Manufacturer having assets of at least one billion dollars (\$1,000,000,000). The escrow arrangement must: (1) require that the financial institution hold the escrowed funds’ principal for the benefit of the State of Tennessee (and other “Releasing Parties” as defined in the Master Settlement Agreement); and (2) prohibit the Tobacco Product Manufacturer placing the funds into escrow from using, accessing or directing the funds’ principal except as consistent with Tenn. Code Ann. § 47-31-103(a)(2)(B).

Where do I find the model Tennessee Escrow Agreement? You can find the agreement at www.attorneygeneral.state.tn.us or request a copy by calling the Tobacco Enforcement Division at (615) 741-8721. You are required to use the model escrow agreement unless any changes are approved in advance in writing by the Attorney General. If you propose to alter or change the model Escrow Agreement in any way, you must submit a redline copy of the escrow agreement readily and clearly marking any changes or additions made to the State form. In the redline copy of your proposed escrow agreement, any proposed additions to the model should be double underlined in the redline copy and any deletions should be marked using the ~~strike-out~~ markings. You must also submit an executed non-redlined escrow agreement.

Where can I find the official Certification of Quarterly Escrow Compliance forms? You can find the Certificate of Escrow Compliance forms at www.attorneygeneral.state.tn.us or request a copy by calling the Tobacco Enforcement Division at (615) 741-8721.

When is the quarterly escrow deposit due? Deposits into the Qualified Escrow Fund must be made on or before the last calendar day of the month following the sales quarter (*e.g.*, the deposit for the 1st Quarter sales are due by April 30). The first quarter is January 1 through March 31; the second quarter

is April 1 through June 30; the third quarter is July 1 through September 30; the fourth quarter is October 1 through December 31.

When is the Certification of Quarterly Escrow Compliance due? Every Tobacco Manufacturer currently selling in Tennessee should execute and file on or before the fifteenth day of the month following the date of deposit (*e.g.*, the Certificate for the 1st Quarter sales is due by May 15). For 2008, because the regulations were not effective until May 31, 2008, the first Quarter for which a Quarterly Escrow Deposit is due will be the third quarter. That deposit will be due on October 31, 2008.

What happens if a Tobacco Product Manufacturer fails to properly certify on time? The Tobacco Product Manufacturer may be removed from the State's Directory without further notice. You may also be subject to legal action pursuant to state and federal law, regulation and rule.

Where must the Certification of Quarterly Escrow Compliance be filed? An original and copy must be filed with the Tennessee Attorney General's Office, Tobacco Enforcement Division at the addresses listed below in the instructions. Amended Certificates are also due no more than ten (10) calendar days after discovery of inaccurate, incomplete or misleading information in a Certificate of Escrow Compliance.

What is the applicable law relating to this Certificate of Escrow Compliance? Tennessee's Tobacco Manufacturer's Escrow Fund Act of 1999, Tenn. Code Ann. §§ 47-31-101, *et seq.* and the rules and regulations promulgated thereunder.

Where can I get a copy of the Rules and Regulations? A copy of the rules and regulations governing quarterly escrow deposits is available from the Tennessee Secretary of State's website: <http://www.tennessee.gov/sos/rules/1320/1320-09/1320-09-02.pdf>

When does a Tobacco Product Manufacturer need to file an Amended Certificate of Escrow Compliance? A Tobacco Product Manufacturer must file an Amended Certification whenever information provided on the Certificate becomes inaccurate, incomplete or misleading. Such Amended Certificate must be filed within ten (10) days after the information becomes inaccurate, incomplete or misleading.

Please carefully review these definitions and instructions prior to completing the Certification of Quarterly Escrow Compliance Form and compiling the necessary information.

You are required to follow these Definitions and Instructions when submitting the requested documents to this Office. Failure to follow the Definitions and Instructions may result in your Certification of Quarterly Escrow Compliance being returned to you unprocessed.

DEFINITIONS

The following definitions should be used when completing the Certificate of Escrow Compliance:

1. **“Applicant,” “The Company,” “Your Company,” “You” or “Company”** means the entity filing the Certification of Quarterly Escrow Compliance, its officers, directors, owners, employees and/or agents and includes each and every business entity which has merged into it, has comprised or comprises some part of its operations, or is closely related to it or otherwise affiliated to it during the period of its operations.

2. **“Brand Family”** or **“Brand Name”** 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,” “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 to or similar to, or identifiable with, a previously known brand of Cigarettes.
3. **“Cigarette”** has the same meaning as in Tenn. Code Ann. § 47-31-102(4) . The term “cigarette” includes Roll-your-own 'RYO' tobacco (0.09 ounces of which constitutes one individual “Cigarette”) and those Cigarettes that, despite being sold as 'little cigars', meet the definition of “Cigarette” in Tenn. Code Ann. § 47-31-102(4).
4. **“Directory”** means the listing of Tobacco Product Manufacturers and Brand Families created and maintained pursuant to Tenn. Code Ann. § 67-4-2602.
5. **“Master Settlement Agreement”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-102(5).
6. **“Non-Participating Manufacturer”** or **“NPM”** means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
7. **“Participating Manufacturer”** has the same meaning given that term in Section II(j) of the Master Settlement Agreement and amendments thereto.
8. **“Person”** means any natural person, public or private corporation (whether or not organized for profit), governmental entity, partnership, committee, individual, group of persons, association, cooperative, joint venture, sole proprietorship, or other legal entity wherever located. In the case of a business or legal entity, “person” includes each of its parents and each subsidiary, division, and affiliate of it or any of its parents; each predecessor or successor of any of them; each present or former officer, director, manager, employee, or agent of any of them; and each person who is acting or purports to act on behalf of any of them. In the case of a natural person, “person” includes each present or former employee, or agent of person.
9. **“Qualified Escrow Fund”** has the same meaning as the term defined at Tenn. Code Ann. § 47-31-102(6).
10. **“Tobacco Product Manufacturer”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-102(9). Tennessee law provides that the “Tobacco Product Manufacturer” is the entity that fabricates or assembles the cigarettes.
11. **“Units Sold”** has the same meaning as term defined in Tenn. Code Ann. § 47-31-102(10).

GENERAL INSTRUCTIONS

- A. **Complete all forms by typing or printing legibly in blue or black permanent ink.** You may complete the forms on-line. However, all signatures must be executed in **blue** permanent ink.

B. **You must use official State forms.** You are required to use the official form to submit your Certification of Quarterly Escrow Compliance, Model Escrow Agreement and/or Affidavits. You may not create your own Certification of Quarterly Escrow Compliance or any other form.

C. **Number of copies.** You are required to provide one signed original of your Certificate of Compliance, attachments, and responses for your Certification of Quarterly Escrow Compliance to be considered complete.

D. **Addresses for filing.** You should send your completed Certificate of Escrow Compliance, attachments and responses to the appropriate addresses for the Tennessee Attorney General:

For postal service delivery:

Tennessee Attorney General's Office
Tobacco Enforcement Division
Attn: Certification of Quarterly Escrow
Compliance
Post Office Box 20207
Nashville, TN 37202-0207

For overnight courier delivery:

Tennessee Attorney General's Office
Tobacco Enforcement Division
Attn: Certification of Quarterly Escrow
Compliance
425 Fifth Avenue North, Cordell Hull Building
Nashville, TN 37243

E. **All documents regardless of location.** To be a complete Certificate of Escrow Compliance, the Applicant must produce all documents responsive in the Applicant's possession, custody or control without regard to the physical location of the documents.

F. **Originals.** Documents to be produced shall be originals unless otherwise indicated. If the Applicant's "original" is a copy, that copy should be produced as the original.

G. **Not applicable.** If any section of the Certificate of Escrow Compliance form is not applicable to your company, please clearly state "not applicable" where relevant. You should include a separate written explanation of why the particular section does not apply to your company.

H. **Amendments.** All amendments to Certifications of Compliance must be supplemented by a separate written explanation detailing the reasons for the amendment.

SPECIFIC INSTRUCTIONS

Part 1. Escrow Certification Period. Indicate the sales quarter and year for which you are certifying. Specify if the Certification is an Original or Amended.

Part 2. Tobacco Product Manufacturer Information. Please fill in each blank, as incomplete forms will be returned unprocessed. Use additional paper as necessary to provide full and complete responses to each request for information.

Part 3. Designated Contact. Please identify any person other than the person completing the firm that is authorized to receive and submit information on behalf of your company.

Part 4. Worksheet for Tobacco Products sold in the State of Tennessee. Please complete the form to reflect the total number of cigarettes and RYO products sold in Tennessee during the applicable period. Please also include the names of wholesalers and/or foreign manufacturers, as indicated.

Part 5. Deposit Amount.

- Step 1. List total NPM Sales (as calculated in Part 4).
- Step 2. The current rate per cigarette (\$.0188482 per unit sold) has been entered.
- Step 3. Multiply Line 2 by Line 1.
- Step 4. Multiply Line 3 by the inflation amount percentage (1.3320594). This is the total amount that must be paid.

You will need to contact the financial institution to provide the information required by Part 6. Remember your Certification of Quarterly Escrow Compliance is not complete without the necessary information so you may want to confirm with your financial institution that it has provided the required information. Please be advised that at the end of the year a reconciliation form, and possibly corresponding deposit, will need to be made. The inflation adjustment rate for 2008 will not be available until March 2009, necessitating this reconciliation.

Part 6. Escrow Account Information and Certification. Use additional paper as necessary to provide full and complete responses to each request for information.

Part 7. Manufacturer Certification. The signature must be notarized by an authorized notary public. The person signing as the authorized representative of the Tobacco Product Manufacturer must have the authority to bind the Company.

Any person who makes a false statement in the Certification of Quarterly Escrow Compliance or its attachments that he or she knows is false may be guilty of perjury set forth at Tenn. Code Ann. § 39-16-702 and/or other criminal statutes.