

453D.3 Certifications, directory, tax stamps.

1. *Certification.* A tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the attorney general, a certification to the director and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer or is in full compliance with chapter 453C, including all quarterly installment payments required by rule.

a. A participating manufacturer shall include in the participating manufacturer's certification a list of the participating manufacturer's brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the participating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

b. (1) A nonparticipating manufacturer shall include in its certification all of the following:

(a) A list of all of the nonparticipating manufacturer's brand families and the number of units sold for each brand family that was sold in the state during the preceding calendar year.

(b) A list of all of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year.

(c) An indication, by an asterisk, of 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.

(d) Identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year.

(2) The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the nonparticipating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

c. A nonparticipating manufacturer shall also certify all of the following:

(1) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required in section 453D.4.

(2) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(3) That the nonparticipating manufacturer is in full compliance with chapter 453C and this chapter and any rules adopted pursuant to chapter 453C or this chapter.

(4) All of the following:

(a) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to chapter 453C and all rules adopted pursuant to chapter 453C.

(b) The account number of the qualified escrow fund and any subaccount number for Iowa.

(c) The amount the nonparticipating manufacturer deposited in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification deemed necessary by the attorney general to confirm this information.

(d) The amount and date of any withdrawal or transfer made at any time by the nonparticipating manufacturer from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments at any time pursuant to chapter 453C and any rules adopted pursuant to chapter 453C.

d. (1) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification unless one of the following applies, as applicable:

(a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement.

(b) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be the nonparticipating manufacturer's cigarettes for the purposes of chapter 453C.

(2) This section shall not 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 for purposes of chapter 453C.

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

2. *Directory of cigarettes approved for stamping and sale.* The director shall develop and publish on the department's website a directory listing all tobacco product manufacturers that have provided current and accurate certification conforming to the requirements of subsection 1 and all brand families that are listed in the certification, with the following exceptions:

a. The director shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, paragraphs "b" and "c", unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

b. A tobacco product manufacturer and a brand family shall not be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that either of the following applies:

(1) Any escrow payment required pursuant to chapter 453C for any period for any brand family, whether or not listed by the nonparticipating 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.

(2) Any outstanding final judgment, including interest on the judgment, for a violation of chapter 453C has not been fully satisfied for the brand family or the nonparticipating manufacturer.

c. The director 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 chapter.

d. Stamping agents and distributors shall provide and update as necessary an electronic mail address to the director for the purpose of receiving any notifications as may be required by this chapter.

3. *Prohibition against stamping, sale, or import of cigarettes not included in the directory.* It shall be unlawful for any person to do any of the following:

a. Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

b. Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

2003 Acts, ch 97, §3, 13; 2011 Acts, ch 25, §143

Referred to in §453D.5, 453D.6