



FORM TMC-1

SF#51483

1/04

*Indiana Department of Revenue
Tobacco Manufacturer Certificate*

Part 1: Tobacco Product Manufacturer Identification

Company Name				Federal FEIN or SSN	
Address				TID (if applicable)	
City	State	Zip Code	Country		Telephone Number
Name and Title of Person Completing Report			Fax Number		Email

The Tobacco Product Manufacturer identified above is, as of the date of this Certification:

(Initial One)

_____ A Participating Manufacturer under the Tobacco Master Settlement Agreement

_____ A Non-participating Manufacturer in full compliance with IC 24-3-3 and IC 24-3-5.4-13.

Part 2: Sales Year

Year of Sales for this Certificate of Compliance is: *(complete a separate certification for each year of sales)* _____

Part 3: Brand Family Identification *(Attach additional Sheets if Necessary)*

Participating Manufacturers complete A & B; Non Participating Manufacturers complete A through E.

A. Brand Family ¹	B. Brand Name ¹	C. Units Sold Sales Year	D. Units Sold in Current Year	E. Manufacturer Name & Address (if different from above)

Part 4: Non-Participating Manufacturer Certification

A. Registered Agent for service of process²

Agent Name		Company		
Address				
City		State		Zip Code
Telephone Number		Fax Number		Email

Have you attached proof of appointment (Certificate of Authority) of a Registered Agent? Yes No
 Have you registered with the Secretary of State? Yes No If yes, attach proof of registration.

B. Qualified Escrow Fund - Financial Institution

Name of Institution			
Address			
City		State	
		Zip Code	
Representative Name		Telephone Number	Taxpayer Identificaton Number (TID)
Escrow Account Number	Total amount placed in escrow in the sales year.	Total amount held in escrow for the State of Indiana	
Has the Qualified Escrow Agreement been approved by the Attorney General?			Approval Date

C. Escrow Deposit/Withdrawal History for Indiana

Date	Deposit	Withdrawal or Transfer ³	Balance

Part 5: Execution by Authorized Designee

Under penalties of perjury, I declare that I have examined this Certification, and to the best of my knowledge and belief, it is true, correct, and complete.

 Designee (Print Name):

 Title:

 Signature of Designee:

 Date:

Subscribed and sworn to before me on this _____ day of _____, _____
 Year

 My Commission Expires

 Notary Public

 County

Mail the completed certificate of compliance to:

Office of Indiana Attorney General
 ATTN: Tobacco Litigation Section
 IGC South 5th Floor
 302 W. Washington St.
 Indianapolis, IN 46204

Indiana Department of Revenue
 P.O. Box 901
 Indianapolis, IN 46206-0901

¹Indicate with an asterisk (*) those brand families or brands that will not be sold in the current year.

²Submit Certificate of Authority for proof of Registered Agent or proof of having registered to do business in Indiana.

³Withdrawals must comply with IC 24-3-3-13. Verification of compliance must be provided.

Tobacco Manufacturer Certificate (TMC-1)

General Information

Who is required to file this certification?

Any tobacco product manufacturer that intends to sell cigarettes within the State of Indiana, whether directly or through any distributor, retailer, or similar intermediary.

This certification is in addition to any Certificate of Compliance that may be required pursuant to IC 24-3-3-14.

Definitions:

(a) "Brand Family" means cigarettes that are:

- (1) sold under the same trademark; and
- (2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to or identifiable with a previously known brand of cigarettes.

(b) "Cigarette" has the meaning set forth in IC 24-3-3-5.

(c) "Commission" means the Alcohol and Tobacco Commission created by IC 7.1-2-1-1.

(d) "Department" means the Department of State Revenue.

(e) "Directory" means the listing of all Brand Families of Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of IC 24-3-5.4.

(f) "Distributor" means a person that:

- (1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and
- (2) stores, sells, or otherwise disposes of the cigarettes.

(g) "Foreign Non-participating Manufacturer" means a corporation for profit incorporated under a law other than the law of Indiana. IC 23-1-20-11.

(h) "Master Settlement Agreement" has the meaning set forth in IC 24-3-3-6.

(i) "Non-participating Manufacturer" means a tobacco product manufacturer that is not a Participating Manufacturer of the Master Settlement Agreement.

(j) "Participating Manufacturer" has the meaning set forth in Section II(jj) of the Master Settlement Agreement.

(k) "Qualified Escrow Fund" has the meaning set forth in IC 24-3-3-7.

(l) "Stamping Agent" means a person that may affix a stamp to a package of cigarettes under IC 6-7-1-15.

(m) "Tobacco Product Manufacturer" has the meaning set forth in IC 24-3-3-10.

(n) "Units Sold" has the meaning set forth in IC 24-3-3-11.

When is this Certification due?

This Certificate of Compliance must be filed with the Indiana Attorney General and with the Indiana Department of Revenue on or before August 15, 2003, and for years thereafter by April 30th of the year following the sales year.

A manufacturer shall file a supplemental certification with the Attorney General not less than thirty (30) days before the manufacturer adds to or otherwise modifies its list of brand families.

Specific Instructions

Part 1: Manufacturer Identification

Identify the name, FEIN or SSN, address, TID (if applicable), telephone, fax number, electronic mail address, and name and title of person completing report.

Please check if manufacturer as of the date of certification is a Participating or Non-participating Manufacturer.

Part 2: Sales Year

The calendar year before the year in which the certification is being filed.

Part 3: Brand Family Identification

Identify by Brand Family and Brand names all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State 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 Participating Manufacturer shall include a list of its Brand Families and Brand Names (columns A and B). The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families or Brand Names by executing and delivering a supplemental certification to the Attorney General and Department of Revenue.

A Non-participating Manufacturer shall include in its certification:

- a. A list of all of its Brand Families, Brand Names, and the number of units sold for each Brand Name in Indiana during the preceding calendar year (columns A, B and C);
- b. The number of units sold for each Brand Name at any time in the State during the current calendar year (column D);
- c. Indicating, by an asterisk, any Brand Family or Brand Name sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of the certification (columns A and B); and
- d. Identifying by name and address any other manufacturer of such Brand Families or Brand Names in the preceding or current calendar year. (column E).

The Non-participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families and Brand names by executing and delivering a supplemental certification to the Attorney General and Department of Revenue.

Part 4: Non-Participating Manufacturer Certification

A. The Non-participating Manufacturer must be registered to do business in the State of Indiana or appoint an agent for service of process and provide verification thereof as required by IC 24-3-5.4-13 and IC 24-3-5.4-16.

A foreign Non-participating Manufacturer must appoint an agent in Indiana to act as its agent for the service of process and provide the agent's name, company, address, telephone, fax number and electronic mail address.

B. Provide the name, address, telephone number and representative of the financial institution where the Non-participating Manufacturer has established a Qualified Escrow fund pursuant to IC 24-3-3-12.

Provide the account number and tax identification number. Indicate the amount of money placed in escrow pursuant to IC 24-3-3-12 for the sales year and the current balance held in Indiana's escrow account. State whether or not a qualified escrow agreement has been approved by the Attorney General and the date of such approval.

C. Identify the amounts such Non-participating Manufacturer has placed in such fund for cigarettes sold in the State during the preceding calendar years, and the dates of each such deposit. Indicate the amount and date of any withdrawal or transfer of funds the Non-participating Manufacturer has made at any time from such fund.

Part 5: Execution of Authorized Designee

The person executing the Certification must be an authorized representative of the Tobacco Product Manufacturer identified in Part 1. The Designee's name and title must be printed and the Certification must be executed in the presence of an authorized notary.

I.C. 24-3-5.4-13 to 16

Chapter 5.4 Master Settlement Agreement Protection Act
Sec. 13.

(a) Not later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in Indiana, whether directly or through a distributor, retailer, or similar intermediary, shall certify to the department and the attorney general that, as of the date of the certification, the tobacco product manufacturer is:

- (1) a participating manufacturer; or
- (2) in full compliance with IC 24-3-3.

The department shall prescribe the form of the certification.

(b) A participating manufacturer shall include in a certification under subsection (a) a list of the participating manufacturer's brand families. The participating manufacturer shall update the list by filing a supplemental certification with the department and the attorney general not less than thirty (30) days before the participating manufacturer adds a brand family or otherwise modifies the list of brand families.

(c) A nonparticipating manufacturer shall include in a certification under subsection (a) a list of the nonparticipating manufacturer's brand families, including the following:

- (1) A separate listing of each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.
- (2) A separate listing of the number of units sold for each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.
- (3) An indication of any brand family that was sold in Indiana during the calendar year before the year in which the certification is filed and that is not sold in Indiana as of the date of the certification.
- (4) The name and address of any other manufacturer of a brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(d) A nonparticipating manufacturer shall file a supplemental certification with the attorney general not less than thirty (30) days before the nonparticipating manufacturer adds to or otherwise modifies its list of brand families.

(e) A nonparticipating manufacturer shall certify the following in a certification under subsection (a):

- (1) The nonparticipating manufacturer:
 - (A) is registered to do business in Indiana; or
 - (B) has appointed an agent for service of process and provided notice under section 16 of this chapter.
- (2) The nonparticipating manufacturer has:
 - (A) established and continues to maintain a qualified escrow fund; and
 - (B) executed a qualified escrow agreement that:
 - (i) the attorney general has approved; and
 - (ii) governs the qualified escrow fund.
- (3) The nonparticipating manufacturer is in full compliance with:
 - (A) this section; and
 - (B) IC 24-3-3.
- (4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.
- (5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.
- (6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the attorney general.
- (7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.

(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:

- (1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or
- (2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).

(g) This section does not limit or otherwise affect 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 IC 24-3-3.

(h) A nonparticipating manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.

Sec. 14.

(a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on AccessIndiana (as defined in IC 5-21-1-1.5) a directory listing all brand families listed in certifications filed under section 13 of this chapter.

(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

- (1) that fails to comply with section 13 of this chapter; or
- (2) whose certification fails to comply with section 13(c) or 13(e) of this chapter, unless the attorney general determines that the failure has been remedied.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

- (1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or
- (2) all outstanding final judgments, including interest on the judgments, for violations of IC 24-3-3 have not been fully satisfied for the tobacco product manufacturer or brand family.

(d) The attorney general shall update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(e) The attorney general shall post in the directory and transmit by electronic mail or other means to each distributor or stamping agent notice of any removal from the directory of a tobacco product manufacturer or brand family not later than thirty (30) days before the attorney general removes the tobacco product manufacturer or brand family from the directory.

(f) Unless otherwise provided in an agreement between a tobacco product manufacturer and a distributor or stamping agent, a distributor or stamping agent is entitled to a refund from a tobacco product manufacturer for any money paid by the distributor or stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that:

- (1) are in the possession of the distributor or stamping agent on; or
- (2) the distributor or stamping agent receives from a retailer after;

the date on which the tobacco product manufacturer or brand family is removed from the directory.

(g) Unless otherwise provided in an agreement between a retailer and a distributor, stamping agent, or tobacco product manufacturer, a retailer is entitled to a refund from a distributor, stamping agent, or tobacco product manufacturer for any money paid by the retailer to the distributor, stamping agent, or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand

family that are in the possession of the retailer on the date on which the tobacco product manufacturer or brand family is removed from the directory.

(h) The attorney general shall not restore a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer pays a distributor, stamping agent, or retailer any refund due under subsection (f) or (g).

(i) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

Sec. 15.

A person may not:

- (1) affix a stamp to a package or other container of cigarettes; or
- (2) sell or offer or possess for sale in Indiana cigarettes; of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

Sec. 16

(a) A foreign nonparticipating manufacturer that has not registered to do business in Indiana shall, as a condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter, appoint and engage without interruption the services of an agent in Indiana to act as the foreign nonparticipating manufacturer's agent for the service of process. Service on an agent under this section constitutes legal and valid service of process on the foreign nonparticipating manufacturer that appointed and engaged the services of the agent. The foreign nonparticipating manufacturer shall provide the following information to the department and the attorney general:

- (1) The name, address, and telephone number of the agent.
- (2) Proof of the appointment of the agent.
- (3) The availability of the agent.
- (4) Any other information required by the department or the attorney general.

(b) A foreign nonparticipating manufacturer shall provide notice to the department and the attorney general not less than thirty (30) days before the foreign nonparticipating manufacturer terminates the authority of an agent appointed under this section. The foreign nonparticipating manufacturer shall provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five (5) days before the foreign nonparticipating manufacturer terminates an existing agency appointment.

(c) If an agent terminates an agency appointment, the foreign nonparticipating manufacturer shall:

- (1) notify the department and the attorney general of the termination not more than five (5) days after the termination; and
- (2) provide proof to the satisfaction of the attorney general of the appointment of a new agent.

(d) A foreign nonparticipating manufacturer that:

- (1) sells products in Indiana; and
- (2) has not appointed an agent under this section;

is considered to have appointed the secretary of state as the foreign nonparticipating manufacturer's agent. The appointment of the secretary of state under this subsection as the foreign nonparticipating manufacturer's agent does not satisfy the condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter.