



**STATE OF SOUTH CAROLINA
TOBACCO PRODUCT MANUFACTURER
CERTIFICATE OF COMPLIANCE**

[Pursuant to S.C. Code Ann. §§11-47-10 to -30, and §§11-48-10 to -110]

**2020 NON-PARTICIPATING MANUFACTURER
APPLICATION FOR CERTIFICATION FORM**

NOTICES

FILING DEADLINE is April 30, 2020. Certification Forms must be postmarked no later than April 30, 2020 to avoid removal from the South Carolina Tobacco Directory.

Please Type or Print. The Attorney General’s Office will not process incomplete or illegible Certification Forms.

This Certification Form must be supplemented to reflect any change in information at any time during the year. Any change of information *must* be submitted *30 days* prior to change. The failure to notify the Attorney General’s Office of any changes to this information 30 days prior to any change, including changes in address, may result in removal from the South Carolina Tobacco Directory.

The denial of a certification, removal of the Applicant or its brands from any other state’s tobacco directory, or failure to notify the South Carolina Attorney General’s Office of same, may, in the Attorney General’s sole discretion, result in denial of this certification or immediate removal from the South Carolina Tobacco Directory at any time.

Please refer any questions to the Office of the Attorney General Tobacco Unit at (803) 734-9927.

Mail this completed Certificate of Compliance and attachments to:

**SC Office of the Attorney General Tobacco Unit
P.O. Box 11549
Columbia, SC 29211**

PART 1: TOBACCO PRODUCT MANUFACTURER IDENTIFICATION

A. Type of Certification (check one):

- Initial Certification – Applicant is not currently listed on the South Carolina Tobacco Directory
- Annual Certification – Due April 30, 2020
- Supplemental Certification – Change of information provided to the Attorney General or request to add additional brands to the South Carolina Tobacco Directory

B. Company Information:

Applicant Company Name:

Mailing Address:

City:

State:

Zip:

Country:

Phone:

Fax:

Email:

Name of Person Completing Certification:

Name of Contact Person (if different from above):

C. Manufacturing Facility Information:			
Name of Manufacturing Facility (if different from above):			
Physical Address:			
City:	State:	Zip:	Country:
Phone:	Fax:	Email:	
Name of Factory Manager(s):			

D. Licenses and Permits:	
If located in U.S. – Manufacturer’s Federal Taxpayer ID Number:	
TTB Permit Number:	Expires:
Please indicate if TTB Permit was obtained as a manufacturer or importer:	
Name of Any other Foreign Manufacturer Permit or License:	Expires:
Copy of Above Applicable Permit Attached <input type="checkbox"/> YES <input type="checkbox"/> NO	

E. Attorney Information:			
Attorney Name, if applicable:			
Firm Name:			
Firm Mailing Address:			
City:	State:	Zip:	Country:
Phone:	Fax:	Email:	

F. Tobacco Product Manufacturer Additional Information:	
1. Applicant is the manufacturer (i.e. fabricator) of the brands listed in this certification, which are intended to be sold in the United States, including cigarettes intended to be sold in the United States through an importer.	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. If the answer is "YES" to above, please attach photographs of your manufacturing facility including interior and exterior views and indicate on the photographs where the equipment and facilities for manufacturing (i.e. fabricating) the cigarettes, if any, are located. Also, please provide proof of ownership, possession and control of the manufacturing facilities and equipment identified herein.	
3. Applicant is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.	<input type="checkbox"/> YES <input type="checkbox"/> NO
4. If the answer is "YES" to above, please attach documentation identifying each cigarette manufacturer (i.e. fabricator), its plant address, mailing address, contact person, phone, and fax numbers, and the relationship to Applicant. Identify the location of the transfer of ownership of cigarettes and a copy of every agreement or contract between Applicant and fabricator. Attach additional sheets as necessary to provide a complete response.	
5. Applicant is successor of an entity described in questions 1 or 3 above (i.e. manufacturer or first importer). Please identify the predecessor(s).	<input type="checkbox"/> YES <input type="checkbox"/> NO
6. If Applicant answered "NO" to questions 1, 3, and 5 above, please explain the basis for the Applicant's claim that it is a Tobacco Product Manufacturer as defined under South Carolina Code Ann. §11-47-10 to -110. Please submit all documentation to support Applicant's contention. Attach additional sheets as necessary to provide a complete response.	

G. Organizational Documents:		
Check One: Response Does Not Provided Apply		Attach the following documents or information:
<input type="checkbox"/>	<input type="checkbox"/>	1. Partnership or Association: Current copy of the Certificate of Partnership or the certificate required to be filed by any state, county, or municipality.
<input type="checkbox"/>	<input type="checkbox"/>	2. Corporation: (1) Current copy of the Certificate of Incorporation or other charter; and (2) Extracts of documents listing the officers authorized to sign for the company.
<input type="checkbox"/>	<input type="checkbox"/>	3. Limited Liability Company or other entity: Current copy of the business document(s) filed with a state, county, or municipality when such filing is required. Include a copy of any document indicating persons authorized to sign for the entity.
<input type="checkbox"/>	<input type="checkbox"/>	4. Company Officers/Owners: Provide a list of all company officers and company owners (all persons with an equity interest of 10% or more in the company). Include name, address, phone number, and email address.
<input type="checkbox"/>	<input type="checkbox"/>	5. Affiliates: Provide a list of all company affiliates pursuant to S.C. Code Ann. §11-47-20(b) that also manufactures, imports, distributes, or sells cigarettes or RYO. Include the name, address, and contact information for each affiliate.
<input type="checkbox"/>	<input type="checkbox"/>	6. Agreements with Participating Manufacturers: Identify every agreement between Applicant and any Participating Manufacturer (PM) or PM Affiliate that relates to the making, importing, distribution, transportation, or sale of each brand family.
<input type="checkbox"/>	<input type="checkbox"/>	7. Agreements Regarding Compliance with the Qualified Escrow Statute: Attach any agreement that Applicant has with another entity regarding the production of cigarettes or funding of Qualified Escrow Fund.

PART 2: REQUIRED DOCUMENTATION

A. General Documentation:

Check One: Response Provided Does Not Apply		Please attach documentation, which provides the following information:
<input type="checkbox"/>	<input type="checkbox"/>	1. Brand Names: List all brands Applicant seeks to certify for the current sales year.
<input type="checkbox"/>	<input type="checkbox"/>	2. Cigarette or RYO: Indicate whether the brand family is a rolled cigarette or roll-your-own (RYO) tobacco.
<input type="checkbox"/>	<input type="checkbox"/>	3. Identification of Wholesalers and Distributors to Whom Cigarettes were Sold for Distribution in the State of South Carolina: List wholesaler/distributor, address, telephone number, and email address.
<input type="checkbox"/>	<input type="checkbox"/>	4. Units Sold – Prior Year: Please execute the attached Affidavit of Units Sold indicating the number of units sold in 2019. Please note that 0.09 oz of RYO constitutes one unit.
<input type="checkbox"/>	<input type="checkbox"/>	5. Units Sold – Current Year: Indicate the number of units sold during the current calendar year from January 1, 2020 to date of application. _____ units sold to date in 2020.
<input type="checkbox"/>	<input type="checkbox"/>	6. Prior Manufacturer(s): Indicate the name and address of all prior tobacco product manufacturers.
<input type="checkbox"/>	<input type="checkbox"/>	7. Current Trademark Holder: Include the name and address of the current trademark holder. Please include a certified copy of the current trademark.
<input type="checkbox"/>	<input type="checkbox"/>	8. Prior Trademark Holder: Include the name and address of all prior trademark holders.
<input type="checkbox"/>	<input type="checkbox"/>	9. Prior Brand Families: List all brands made by Applicant since 1999. Please indicate whether any of the brands listed have been manufactured by a different manufacturer at any time. If yes, please list the brand family, manufacturer, address, and years manufactured.
<input type="checkbox"/>	<input type="checkbox"/>	10. Sample Packaging: Please provide sample of relevant tobacco product packaging. Packaging must be submitted in an electronic format.
<input type="checkbox"/>	<input type="checkbox"/>	11. UPC Codes: Please provide a current listing of all UPC codes of cigarettes and RYO products that are manufactured by your company.
<input type="checkbox"/>	<input type="checkbox"/>	12. Federal Excise Tax Paid: (1) Total nationwide sales on which federal excise tax was paid in the preceding calendar year _____. A copy of the Tobacco Tax Bureau Form 5210.5 or 5220.6 supporting the total sales number must be attached to this Certification. (2) Total nationwide interstate sales reported pursuant to 15 U.S.C. § 376 (PACT) in the preceding calendar year _____. Note: Copies of all reports made pursuant to 15 U.S.C. § 376, including reports to states other than South Carolina, shall be made available to the South Carolina Attorney General’s Office upon request.
<input type="checkbox"/>	<input type="checkbox"/>	13. Releases for U.S. Customs Office and Alcohol and Tobacco Tax Trade Bureau (TTB): Please provide releases allowing the U. S. Customs Office and the TTB to share any information it has about your company with the Office of the South Carolina Attorney General. (TTB release form TTB F 5000.19/Customs ICE Form 60-001)

B. Additional Documentation for Cigarette Brands:

Check One: Response Provided Does Not Apply		Attach the following documents or information, which will not apply to RYO tobacco:
<input type="checkbox"/>	<input type="checkbox"/>	1. Federal Trade Commission (“FTC”): Attach the FTC’s written approval of the Applicant’s current Cigarette Health Warning Rotation Plan. <i>Cigarettes Only.</i>

<input type="checkbox"/>	<input type="checkbox"/>	2. Centers for Disease Control: For each brand family, list the name and address of the entity that submitted the ingredient reporting information to the U.S. Secretary of Health and Human Services as required by the Federal Cigarette Labeling and Advertising Act. Attach a current copy of the Certificates of Compliance received from the U.S. Secretary of Health and Human Services for Applicant's annual ingredient report and submission cover letter listing brands for review. <i>Cigarettes Only.</i>
<input type="checkbox"/>	<input type="checkbox"/>	3. Fire Standard Compliance ("FSC"): For each brand family, please attach a letter from the South Carolina Fire Marshal's Office indicating that the brands for which the Applicant seeks certification are FSC Compliant. <i>Cigarettes Only.</i>

PART 3: PACT ACT COMPLIANCE

Check One:		
Response Provided	Does Not Apply	
<input type="checkbox"/>	<input type="checkbox"/>	1. Applicant has registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the South Carolina Department of Revenue. Attach a copy of the Applicant's PACT Act Registration filed with the ATF and the South Carolina Department of Revenue.
<input type="checkbox"/>	<input type="checkbox"/>	2. The Applicant certifies that it is in compliance with all reporting obligations to the State of South Carolina.
<input type="checkbox"/>	<input type="checkbox"/>	3. The Applicant does not ship tobacco products directly into the State of South Carolina. Attach a list of South Carolina licensed distributors to whom Applicant sells tobacco products.

PART 4: QUALIFIED ESCROW ACCOUNT

A. Escrow Account Information and Certifications:

Name of Financial Institution:		Phone:
Contact Agent Name:		Fax:
Mailing Address:	Contact Email:	
Escrow Acct No.:	South Carolina Sub Acct No.:	

The Applicant certifies that it has:

Check One:		
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	1. Established and continues to maintain a Qualified Escrow Fund as defined under South Carolina Code Ann. §11-47-30(b)(1).
<input type="checkbox"/>	<input type="checkbox"/>	2. Executed a Qualified Escrow Agreement that has been reviewed and approved by the South Carolina Office of the Attorney General and that governs the Qualified Escrow Fund for the State of South Carolina. <i>A copy of the Qualified Escrow Agreement, including any amendment(s), is attached.</i>
<input type="checkbox"/>	<input type="checkbox"/>	3. Ensured that the escrow funds held in the Qualified Escrow Fund on behalf of South Carolina are in a segregated account, separate and apart from escrow funds held on behalf of any other beneficiary.
<input type="checkbox"/>	<input type="checkbox"/>	4. Ensured that the Qualified Escrow Fund is not encumbered by a security interest granted to a third party.
<input type="checkbox"/>	<input type="checkbox"/>	5. Attached information documenting all deposits and withdrawals from the Qualified Escrow Fund during the last year and attached proof of the current escrow account balance from the Escrow Agent.
<input type="checkbox"/>	<input type="checkbox"/>	6. Attached an annual bank statement for the Qualified Escrow Fund for 2019 including all transactions related to the Qualified Escrow Fund.

B. Funds Deposited Into Qualified Escrow Account (check one):	
Pursuant to S.C. Code Ann. §11-47-30(b)(1), an approved tobacco product manufacturer shall place into a qualified escrow fund by April 15 of the year following the year in question a certain amount adjusted for inflation. For non-participating manufacturers making escrow deposits on April 15, 2020 for their 2019 sales, the proper per/stick rate, adjusted by inflation, is \$0.0357965 .	
<input type="checkbox"/>	1. The Applicant has deposited funds into a qualified escrow account for units sold in South Carolina during calendar year 2019.
<input type="checkbox"/>	2. The Applicant had zero sales in South Carolina during calendar year 2019.
C. Proof of Deposit:	
<input type="checkbox"/>	If Applicant has deposited funds, please attach proof of amount and date of deposit to South Carolina's segregated sub-account for 2019.

PART 5: REGISTERED AGENT / JOINT AND SEVERAL LIABILITY / BONDING

A. Registered Agent:		
The Applicant (check one):		
<input type="checkbox"/>	1. Is registered with the South Carolina Secretary of State's Office to do business in the State of South Carolina.	
<input type="checkbox"/>	2. Has appointed a registered agent in the State of South Carolina and continues to engage with the following:	
Name of Registered Agent:		
Name of Contact:		
Mailing Address:		
Phone:	Fax:	Email:
<input type="checkbox"/>	3. Applicant has attached an original current year letter from the Registered Agent listed above accepting Appointment as Registered Agent on the company's letterhead. <i>The Registered Agent must provide 30 Day notice prior to resignation.</i>	

B. Joint and Several Liability by Importers (if applicable):
Acceptance of Joint and Several Liability by Importers: In the case of Non-Participating Manufacturers located outside of the United States, provide an executed copy of the Acceptance of Joint and Several Liability by Importers form prepared by the Office the South Carolina Attorney General. A properly executed copy of the Acceptance of Joint and Several Liability by Importers form must be included with this Certification.

C. Importer's Registered Agent for Service of Process (if applicable):		
Name of Registered Agent:		
Mailing Address:		
Phone:	Fax:	Email:
<input type="checkbox"/>	Applicant has attached an original current year letter from the Registered Agent listed above accepting Appointment as Registered Agent on the company's letterhead. <i>The Registered Agent must provide 30 Day notice prior to resignation.</i>	

D. Bonding Requirement (if applicable):

Bonding: Does the Non-Participating Manufacturer submitting this certification have a bond in place to cover escrow liability for sales made in South Carolina during the preceding calendar year?

YES

NO

*NOTE: In accordance with S.C. Code of Regulations Ch. 13, Art. 3, the bond shall be posted by corporate surety located within the United States in an amount equal to one hundred thousand (\$100,000) dollars. The bond shall be written in favor of the State of South Carolina and shall be conditioned on the performance by the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with the Tobacco Escrow Fund Act.

PART 6: DISCLOSURES

YES	NO	N/A	Check Yes, No, or Not Applicable ("NA") as appropriate to ALL questions. Provide additional information where requested.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Within the past two years, there has been a change in manufacturer (fabricator) of one or more of the brand families listed in this certification. If yes, provide details of the change.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. Applicant sold cigarettes (including RYO) in South Carolina in the preceding calendar year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. Applicant sells cigarettes via the internet or in catalogs and uses the mail or other delivery service to deliver cigarettes to South Carolina consumers.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. Applicant advertises via an internet website, other social media, catalogs, or other print media.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5. If yes to number 4 above, applicant has provided notice to the FDA pursuant to 21 C.F.R. Part 1140.30.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6. Has any state or federal court obtained a court judgment or administrative order against the Applicant relating to the brand families listed in this certification? If yes, please attach a list of the location, case number, and date of the judgment or order.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. As of the date of this certification, has Applicant satisfied all court judgments and orders to pay penalties in any state or federal court?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8. Applicant or one of its brand families listed in the certification was previously denied listing on the South Carolina Tobacco Directory or any other state, or was removed from the South Carolina Tobacco Directory or any other state.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Applicant is enjoined or banned from selling any cigarettes by court order, state or federal agency ruling or determination.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. A state or federal court has entered a judgment finding that the Applicant engaged in an unfair business practice or unfair competition relating to the sale of tobacco products.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Has Applicant or any person or Affiliate listed in the certification been indicted or convicted of a crime under federal, state, or foreign laws in connection with the sale of cigarettes or RYO? If yes, please provide details, including case and/or docket number.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12. Has Applicant or any person or Affiliate listed in the certification been denied a permit, license or other authorization to engage in any business relating to the sale of tobacco by any government entity (federal, state, local, foreign) or had such permit revoked, suspended or otherwise terminated? If yes, please provide details.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13. Is Applicant or any of the persons or Affiliates listed in the certification entitled to claim Sovereign Immunity based on Tribal Status? If yes, provide information regarding tribal status and affiliation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Applicant is selling only Fire Standards Compliant cigarettes into South Carolina.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	15. Applicant is in compliance with the Federal Family Smoking Prevention and Tobacco Control Act (Public Law 111-31), including Section 907(a)(1)(A), which bans the sale of all flavored cigarettes.

PART 7: AFFIDAVIT OF TOBACCO PRODUCT MANUFACTURER

Under penalty of falsification, I state that the tobacco product manufacturer named in Part 1, as of the date of the certification, is a non-participating manufacturer in full compliance with all applicable sections of Title 11, Chapters 47 and 48 of the South Carolina Code, and any regulations promulgated thereto.

I understand that this certification must be signed by a qualified company officer authorized to bind the applicant company. My position with the company and my actual authority to certify on behalf of the applicant meets the foregoing requirements.

I understand that the Attorney General may require additional information and/or documentation to determine if applicant qualifies for listing on the South Carolina Tobacco Directory.

I have examined this certification, including attachments and supporting documents and, to the best of my knowledge and belief, this certification, including attachments and supporting documents, is true, correct, and complete.

I affirm that the certifying Tobacco Product Manufacturer consents to being sued in South Carolina Court of Common Pleas for the purposes of the State of South Carolina enforcing any provisions of S.C. Code §11-47-10, *et seq.* or S.C. Code §11-48-10, *et seq.*

I understand that it is the responsibility of all Tobacco Product Manufacturers to track and report sales of cigarette and RYO brands sold in South Carolina on a quarterly basis as set forth in Article 3 of Chapter 13 of the S.C. Code of Regulations, and more frequently if so directed by the Attorney General.

By signing this affidavit on behalf of the Applicant company, I understand that the company is required to comply with all state and federal laws concerning the sale of tobacco products.

THIS APPLICATION FOR CERTIFICATION MUST BE SIGNED AND DATED BEFORE A NOTARY PUBLIC

Affiant

(Print Name)

Dated: _____, 2020

Sworn to and subscribed before me on this ____ day of _____, 2020.

(SEAL)

Notary Public

(Print Name)

My commission expires: _____

)
)
) **AFFIDAVIT OF UNITS SOLD IN SOUTH CAROLINA IN**
) **2019 SUBMITTED PURSUANT TO THE SOUTH**
) **CAROLINA TOBACCO ESCROW FUND ACT**
)
)

Under penalty of falsification, I, _____ (name), hereby certify that I have knowledge of the information contained herein and in the accompanying 2020 Application for Certification of _____ (name of Tobacco Product Manufacturer).

I certify that I am the _____ (office or position or title) of the Tobacco Product Manufacturer.

I certify that I have the authority to bind the Tobacco Product Manufacturer in matters related to the information contained in the 2019 Certification of the Tobacco Product Manufacturer, including information related to the number of units sold in South Carolina in calendar year 2019.

I certify that I understand that under the Tobacco Escrow Fund Act, S.C. Code Ann. § 11-47-10 *et seq.*, each cigarette or stick is a “unit sold.” S.C. Code Ann. § 11-47-30(j).

I certify that there were _____ units sold by Tobacco Product Manufacturer in South Carolina in 2019.

By signing this affidavit on behalf of the Tobacco Product Manufacturer, I understand that the company is required to comply with South Carolina law concerning the sale of tobacco products, including the requirements of the Tobacco Escrow Fund Act, which requires a Tobacco Product Manufacturer with units sold in South Carolina to deposit \$0.0357965 into a qualified escrow fund for each unit sold in 2019.

I HEREBY CERTIFY:

Signature of Affiant
Officer for Tobacco Product Manufacturer

(Print Name)

Dated: _____, 2020

Sworn to and subscribed before me on this _____ day of _____, 2020.

Notary Public

(NOTARY SEAL)

(Print Name)
My commission expires: _____