



# OFFICE OF THE KANSAS ATTORNEY GENERAL

## FREQUENTLY ASKED QUESTIONS (“FAQS”) REGARDING TOBACCO ENFORCEMENT *REVISED JULY 12, 2011*

### GENERAL INFORMATION

#### What information is available on the Tobacco Enforcement Unit Website?

- The Tobacco Enforcement Unit website, located at [www.ksag.org/tobacco](http://www.ksag.org/tobacco), contains information for tobacco product manufacturers, stamping agents, retail dealers, vending machine operators, and other interested parties. The website contains forms, directories, news, laws, resources, contacts, and other information.

#### What laws govern the sales of cigarettes and RYO tobacco products in Kansas?

- K.S.A. 79-3301 *et seq.* “Kansas Cigarette and Tobacco Products Act”
- K.S.A. 50-6a01 *et seq.* “Requirements for Sale of Cigarettes”
- K.S.A. 31-601 *et seq.* “Fire Safety Standard and Firefighter Protection Act”

#### Who may I contact if I have questions?

- You may contact the Tobacco Enforcement Unit by phone at (785) 368-6289 or e-mail at [tobacco@ksag.org](mailto:tobacco@ksag.org).

### LEGAL FOR SALE IN KANSAS

#### Are cigarettes and roll-your-own (“RYO”) tobacco products automatically legal for sale in Kansas?

- No. Each manufacturer who wishes to sell cigarettes or RYO tobacco products in Kansas must meet certain requirements before such products are listed on a Kansas directory of approved manufacturers and brand families.

#### How do I know if a cigarette or RYO tobacco product is legal for sale in Kansas?

- The Kansas Attorney General’s Office publishes four directories containing all approved manufacturers, brand families and cigarette brand varieties on its website, [www.ksag.org/tobacco](http://www.ksag.org/tobacco). The four directories are:
  - (1) the Directory of Compliant Non-Participating Manufacturers (“NPM Directory”);
  - (2) the Directory of Compliant Participating Manufacturers (“PM Directory”);

- (3) the Directory of Fire Standards Compliant Manufacturers (“FSC Directory”); and
- (4) the Master Directory (which is a combination of the three aforementioned directories).

### **How is a manufacturer or brand family removed from a directory?**

- Manufacturers and brand families may be removed from a directory voluntarily or involuntarily and in a number of different ways.
  - A manufacturer (and its brand families) can be removed if it provides a written request for voluntary delistment.
  - A manufacturer (and its brand families) can be removed if it fails to submit a required certification.
  - A brand family can be removed if the manufacturer chooses to omit such brand family in any re-certification or supplemental certification.
  - A manufacturer can be removed if it fails to make its required payments in accordance with K.S.A. 50-6a03, and amendments thereto.
  - A manufacturer can be removed if it has not fully satisfied an outstanding judgment stemming from a violation of K.S.A. 50-6a03, and amendments thereto.
  - A manufacturer can be removed if, within three years from the date of submission or approval of the most recent certification, it has defaulted on escrow payments in any other state or jurisdiction that is a party to the MSA and the default has not been cured within 90 calendar days of such default.
  - A manufacturer can be removed if it fails to conform to the requirements of K.S.A. 50-6a01 *et seq.*

## **MANUFACTURER CERTIFICATIONS**

### **What must a manufacturer do in order for its cigarettes or RYO tobacco products to be legal for sale in Kansas?**

- A manufacturer wishing to sell cigarettes or RYO tobacco products in Kansas must submit to the Kansas Attorney General’s Office a Non-Participating Manufacturer Certification Form or a Participating Manufacturer Certification Form, depending on whether the manufacturer has joined the Master Settlement Agreement (“MSA”).
- Additionally, a manufacturer wishing to sell cigarettes in Kansas must submit to the Kansas State Fire Marshal’s Office or the Kansas Attorney General’s Office a Fire Standards Compliance (“FSC”) Certification Form.
- All required MSA certification forms and documents must be reviewed and approved by the Kansas Attorney General’s Office before the manufacturer and its brand families are legal for sale in Kansas.
- All FSC certification forms and documents must be reviewed and approved by the Kansas State Fire Marshal’s Office or the Kansas Attorney General’s Office before the manufacturer and its cigarette brand varieties are legal for sale in Kansas.
- Once approved, the manufacturer and its brand families will be listed in the appropriate directory of approved manufacturers and brand families.

### **How often must a manufacturer certify its products?**

- Manufacturers of cigarettes and RYO tobacco products must submit the appropriate MSA certification form(s) to the Kansas Attorney General’s Office:
  - Annually on or before April 30 of each calendar year; and
  - When they wish to add a brand family not previously approved on the most recent annual certification submission.

- Additionally, manufacturers of cigarettes must submit a Fire Standards Compliance Certification Form every *three* years to the Kansas Fire Marshal's Office. For more information, see the "Fire Standards Compliance" section below.

### **What is a Participating Manufacturer ("PM")?**

- A "Participating Manufacturer" is any Tobacco Product Manufacturer that is a signatory to the MSA. There are two types of PMs: "Original Participating Manufacturers," who signed onto the MSA on November 23, 1998, and "Subsequent Participating Manufacturers," who signed onto the MSA sometime after November 23, 1998.
- The "Original Participating Manufacturers" were Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company. In 2004, Brown & Williamson merged with R.J. Reynolds.
- Since 1998, approximately 41 additional tobacco companies have joined the MSA as "Subsequent Participating Manufacturers."
- Please check the Kansas Directory of Compliant Participating Manufacturers for those PMs and brand families that are legal for sale in Kansas.

### **What is a Non-Participating Manufacturer ("NPM")?**

- A "Non-Participating Manufacturer" is any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- Please check the Kansas Directory of Compliant Non-Participating Manufacturers for those NPMs and brand families that are legal for sale in Kansas.

### **Are the certification requirements the same for NPMs and PMs?**

- No. Though PMs and NPMs must both satisfy basic certification requirements, Kansas law places greater certification requirements on NPMs. PMs, however, must also abide by the terms of the MSA.
- For detailed information on the NPM and PM certification requirements, see the Non-Participating Manufacturer Certification Form, the Non-Participating Manufacturer Certification of Escrow Compliance Form, and the Participating Manufacturer Certification Form.

### **Once a PM is listed on the PM Directory, what must it do to remain compliant with the MSA?**

- At very least, PMs must recertify on an annual basis by submitting a complete Participating Manufacturer Certification Form to the Kansas Attorney General's Office by April 30 of each year. However, a PM may submit a supplemental Participating Manufacturer Certification Form at any time it wishes to add brands.

### **Once a NPM is listed on the NPM Directory, what must it do to remain compliant with the MSA?**

- At very least, NPMs must recertify on an annual basis by submitting a complete Non-Participating Manufacturer Certification Form to the Kansas Attorney General's Office by April 30 of each year. However, an NPM may submit a supplemental Non-Participating Manufacturer Certification Form at any time it wishes to add brands.
- Additionally, NPMs must submit a Non-Participating Manufacturer Certification of Escrow Compliance Form following each sales quarter (i.e. four times each year). This escrow form certifies the NPM's units sold in Kansas in the quarter and the corresponding amount the NPM deposited into a qualified escrow fund.

### **What is a qualified escrow fund?**

- A “qualified escrow fund” is an escrow arrangement with a federal or state chartered financial institution having no affiliation with any Tobacco Product Manufacturer and having assets of at least \$1,000,000,000, where such arrangement requires that the financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the Tobacco Product Manufacturer from using, accessing, or directing the use of the funds’ principal except as consistent with K.S.A. 50-6a03(b)(2).
- An NPM must establish a qualified escrow fund for the benefit of the State of Kansas to hold all escrow payments made pursuant to K.S.A. 50-6a03(b).

### **What are “units sold”?**

- “Units sold” means the number of individual cigarettes sold in Kansas by the manufacturer during the year (or quarter) in question, as measured by excise taxes collected by Kansas on packs (or RYO tobacco containers) bearing Kansas’ excise tax stamp. For these purposes, 0.09 ounces of RYO tobacco constitutes one individual cigarette.

### **When does each escrow quarter begin and end?**

- 1<sup>st</sup> Quarter: January 1 – March 31
- 2<sup>nd</sup> Quarter: April 1 – June 30
- 3<sup>rd</sup> Quarter: July 1 – September 30
- 4<sup>th</sup> Quarter: October 1 – December 31

### **As an NPM, how will I know what “units sold” to report on my Non-Participating Manufacturer Certification of Escrow Compliance Form and what amount to deposit into escrow?**

- Within a few weeks after each escrow quarter ends, the Kansas Attorney General’s Office will send you written notice advising you of your “units sold” and your escrow obligation due.
- In order to avoid errors, you are encouraged to complete and return your Non-Participating Manufacturer Certification of Escrow Compliance Form *after* receiving your official notice.

## **FIRE STANDARDS COMPLIANCE**

### **What are Fire Standards Compliant cigarettes?**

- Fire Standards Compliant cigarettes (aka “FSC” or “Fire Safe” cigarettes) refer to those cigarettes that are designed to self-extinguish when not actively smoked. Such cigarettes are less likely cause death, injury, and property loss due to cigarette-ignited fires. Nearly all states, including Kansas, have enacted laws requiring manufacturers to certify their respective cigarettes as Fire Standards Compliant.

### **When did the Fire Standards Compliance laws come into effect?**

- As of July 1, 2009, all manufacturers selling in Kansas must meet Fire Safety Standard Requirements.

### **As a manufacturer, what must I do to certify my cigarette brand varieties as Fire Standard Compliant?**

- A manufacturer wishing to sell cigarettes in Kansas must submit to the Kansas State Fire Marshal's Office or the Kansas Attorney General's Office a Fire Standards Compliance Certification Form.
- In addition to a complete certification form, a manufacturer must also provide:
  - A fee of \$250 for each cigarette brand variety
  - Identification of an agent for service of process
  - Packaging samples correctly marked "FSC"
  - Testing records indicating testing in accordance with an approved testing method and meeting prescribed performance standards

#### **What are the testing requirements for Fire Standards Compliant cigarettes?**

- Each cigarette must be tested in accordance with K.S.A. 31-603 by the American Society of Testing and Materials ("ASTM") Standard E2187-04 or an alternate method approved by the Kansas State Fire Marshal. For information on how to view this testing standard visit: <http://www.astm.org/DATABASE.CART/HISTORICAL/E2187-04.htm>.
- Pursuant to K.S.A. 31-603 (b)(5), the testing must be conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization (ISO) or other comparable accreditation standard required by the Kansas State Fire Marshal. For information on how to view this accreditation standard visit: [http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=39883](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=39883).

#### **Who may I contact if I have questions regarding Fire Standards Compliance?**

- You may contact the Kansas State Fire Marshal's Office at (785) 296-3401.

## **STAMPING AGENTS**

#### **Who is a Stamping Agent?**

- A "stamping agent" is any person who is authorized to fix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto (i.e., a "wholesale dealer"), or any person who is required to pay the tax on the privilege of selling or dealing in RYO tobacco products pursuant to K.S.A. 79-3371, and amendments thereto (i.e., a "distributor").

#### **As a Stamping Agent, how will I know if a manufacturer or brand family has been removed from a Kansas directory?**

- The Kansas Attorney General's Office strongly encourages stamping agents, retail dealers, and other interested parties to regularly check the Kansas directories for any changes.
- The Kansas Attorney General's Office offers stamping agents an email notification service to alert them of any updates to the Kansas directories. If you are a stamping agent and would like to receive email updates, please submit a complete Stamping Agent Request to Receive E-Mail Notification of Directory Updates Form.

#### **Who may I contact if I have questions about stamping agents, including cigarette wholesale dealers and tobacco products distributors?**

- You may contact the Kansas Department of Revenue at (785) 368-8222. You may also contact the Tobacco Enforcement Unit at (785) 368-6289.