



Ohio Revised Code

Section 1346.05 Annual certification of tobacco product manufacturers - directory.

Effective: September 26, 2003

Legislation: House Bill 95 - 125th General Assembly

(A)(1) Every tobacco product manufacturer whose cigarettes are sold in this state either directly or through a distributor, retailer, or other intermediary shall execute and deliver to the attorney general an annual certification, made under penalty of falsification, stating that, as of the date of the certification, the tobacco manufacturer is either a participating manufacturer or a nonparticipating manufacturer in full compliance with section 1346.02 of the Revised Code, including full compliance with all quarterly installment payment requirements, if required to make such payments by an administrative rule adopted by the attorney general. The certification shall be on a form prescribed by the attorney general and shall be filed not later than the thirtieth day of April in each year.

(2) Each participating manufacturer shall include in its certification a list of its brand families. Thirty days before making any additions to or modifications of its brand families, a participating manufacturer shall update its brand family list by executing and delivering a supplemental certification to the attorney general.

(3) Each nonparticipating manufacturer shall include all of the following in its certification:

(a) A list of all of its brand families and the number of units sold during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year. The list shall indicate, by an asterisk, any brand family that was sold in the state during the preceding calendar year and that is no longer being sold in the state as of the date of the certification. The list shall identify by name and address any other manufacturer in the preceding or current year of the brand families included on the list. Thirty days before making any additions to or modifications of its brand families, a nonparticipating manufacturer shall update its brand family list by executing and delivering a supplemental certification to the attorney general.

(b) A statement that the nonparticipating manufacturer is registered to do business in this state, or has



appointed an agent for service of process in this state and provided notice of that appointment as required by section 1346.06 of the Revised Code;

(c) A certification that the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund under section 1346.02 of the Revised Code and that the qualified escrow fund is governed by a qualified escrow agreement executed by the nonparticipating manufacturer and reviewed and approved by the attorney general;

(d) All of the following information regarding the qualified escrow fund the nonparticipating manufacturer is required to establish and maintain under section 1346.02 of the Revised Code and the rules adopted under that section:

(i) The name, address, and telephone number of the financial institution at which the nonparticipating manufacturer has established its qualified escrow fund;

(ii) The account number of the qualified escrow fund and any subaccount number for the state;

(iii) The amount that 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 the attorney general deems necessary to confirm those deposits;

(iv) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from any qualified escrow fund into which it ever made payments under section 1346.02 of the Revised Code and the rules adopted under that section.

(e) A statement that the nonparticipating manufacturer is in full compliance with this section and sections 1346.02, 1346.06, and 1346.07 of the Revised Code and any rules adopted under those sections.

(4)(a) No tobacco product manufacturer shall include a brand family in its certification unless either of the following applies:

(i) In the case of a participating manufacturer, the participating manufacturer affirms that the



cigarettes in the brand family shall be deemed to be its cigarettes for the purpose of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to that agreement.

(ii) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the cigarettes in the brand family shall be deemed to be its cigarettes for the purpose of section 1346.02 of the Revised Code.

(b) Nothing in this section limits or shall be construed to limit the state's authority to determine that the cigarettes in a brand family constitute the cigarettes of another tobacco product manufacturer for the purpose of calculating payments under the Master Settlement Agreement or for the purpose of section 1346.02 of the Revised Code.

(5) Each tobacco product manufacturer shall maintain all invoices and documentations of sales and other information relied upon for its certification for a period of at least five years.

(B)(1) Except as otherwise provided in division (B)(3) of this section, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications under division (A) of this section and all brand families listed in those certifications.

(2)(a) 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 section. At least ten days before any tobacco product manufacturer or brand family is added to or removed from the directory, the attorney general shall publish notice of the pending addition or removal online in the directory and shall notify the tax commissioner of those pending changes. At least ten days before such addition or removal, the tax commissioner shall transmit by electronic mail or other practicable means to each stamping agent notice of the pending addition or removal.

(b) Unless an agreement between a stamping agent and a tobacco product manufacturer provides otherwise, a tobacco product manufacturer that is removed from the directory or whose brand family is removed from the directory shall refund to the stamping agent any money paid by the stamping



agent to the tobacco product manufacturer for cigarettes of that tobacco product manufacturer that are in the possession of the stamping agent at the time the stamping agent receives notice of the pending removal of the tobacco product manufacturer or a brand family of that tobacco product manufacturer from the directory under division (B)(2)(a) of this section.

(c) The tax commissioner shall notify the attorney general of any tobacco product manufacturer that fails to refund money to a stamping agent under division (B)(2)(b) of this section. The attorney general shall not restore to the directory any tobacco product manufacturer or brand family of a tobacco product manufacturer until the tobacco product manufacturer has paid the stamping agent any required refund. Once a required refund has been so paid, the tax commissioner shall notify the attorney general of that payment.

(3) The attorney general shall not include or retain in the directory a nonparticipating manufacturer or a brand family of a nonparticipating manufacturer if any of the following applies:

(a) The nonparticipating manufacturer fails to provide the required certification under this section, or the attorney general determines that the certification is not in compliance with the requirements of this section, unless the attorney general determines that the violation has been cured to the attorney general's satisfaction.

(b) The attorney general determines that any escrow payment required under section 1346.02 of the Revised Code for any period for any brand family of the nonparticipating manufacturer, regardless of whether the brand family is listed by the nonparticipating manufacturer in its certification under this section, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

(c) The attorney general determines that the nonparticipating manufacturer has not fully satisfied any outstanding final judgment, including interest, for a violation of section 1346.02 of the Revised Code.

(4) Each stamping agent shall provide an electronic mail address to the tax commissioner for the purpose of receiving notifications under division (B)(2) of this section. As necessary, each stamping agent shall update the agent's electronic mail address with the tax commissioner.



(C)(1) No person shall do any of the following:

(a) Affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory;

(b) Sell, offer for sale, or possess for sale in this state cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory;

(c) Sell or distribute cigarettes that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(d) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state and that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(e) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state and that are the cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

(2) Except as otherwise provided in this division, a violation of division (C)(1) of this section is a misdemeanor of the first degree. If the offender has a previous conviction for a violation of that division, a violation of division (C)(1) of this section is a felony of the fourth degree.

(3) Any cigarettes sold, offered for sale, or possessed for sale in violation of division (C)(1) of this section shall be considered contraband under section 5743.21 of the Revised Code, and those cigarettes shall be subject to seizure and forfeiture under that section. Cigarettes so seized and forfeited shall not be resold and shall be destroyed.