

**131.608 Certification to Attorney General by participating and nonparticipating tobacco product manufacturers -- Contents -- Scope -- Records.**

- (1) Prior to selling cigarettes in Kentucky, directly or through a distributor, retailer, or similar intermediary or intermediaries, every tobacco product manufacturer shall certify as true under penalty of perjury that, as of the date of certification, the tobacco product manufacturer is a participating manufacturer or nonparticipating manufacturer in full compliance with the provisions of KRS 131.602 and 131.620. The tobacco product manufacturer shall execute and deliver the certification to the Attorney General on a form prescribed by the Attorney General no later than April 30 of each year.
- (2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.
- (3) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families and provide the following:
  - (a) A separate list of its brand families of cigarettes and the number of units sold for each brand family that were sold in Kentucky during the preceding calendar year;
  - (b) A separate list of all of its brand families that have been sold in Kentucky at any time during the current calendar year including:
    1. Indicating by an asterisk any brand family sold in Kentucky during the preceding calendar year that is no longer being sold in Kentucky as of the date of the certification; and
    2. Identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year; and
  - (c) Verification that the nonparticipating manufacturer has provided the following:
    1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required under KRS 131.602 and all regulations promulgated thereunder.
    2. The account number of the qualified escrow fund and any subaccount number for the state of Kentucky.
    3. The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in Kentucky during the preceding calendar year, the date and amount of each deposit and evidence or verification, as may be deemed necessary, by the Attorney General to confirm the foregoing.
    4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments pursuant to KRS 131.602 and all administrative regulations promulgated thereto.

- (4) In the case of a nonparticipating manufacturer, the certification shall further certify:
  - (a) That the nonparticipating manufacturer is registered to do business in Kentucky or has appointed a resident agent for service of process and provided notice as required by KRS 131.614.
  - (b) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to KRS 131.602 and has executed a qualified escrow agreement that governs the qualified escrow fund and that has been reviewed and approved by the Attorney General.
  - (c) That the nonparticipating manufacturer is in full compliance with KRS 131.602, 131.604 to 131.630, and any administrative regulations promulgated pursuant thereto.
- (5) A tobacco product manufacturer may not include a brand family in its certification unless:
  - (a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its 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 its cigarettes pursuant to KRS 131.602.
- (6) The nonparticipating manufacturer shall update all lists thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.
- (7) Nothing in this section shall 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 KRS 131.602.
- (8) The tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for a certification for a period of five (5) years.

**Effective:** April 6, 2003

**History:** Created 2003 Ky. Acts ch. 194, sec. 3, effective April 6, 2003.