State of Connecticut

(Rev. 03/10)

Form TPM-2 Instructions
Certification for Listing in the Connecticut Tobacco Directory as of July 1, 2010

General Instructions

Form TPM-2, *Certification for Listing in the Connecticut Tobacco Directory as of July, 2010,* and all other required forms must be completed in English and in blue or black ink only. All documents required to be attached to Form TPM-2 or to other required forms must include a certified translation into English if the documents are in a language other than English.

Each attachment to Form TPM-2 must indicate the question to which it relates.

Who Must File Form TPM-2

A **tobacco product manufacturer**, whether a **participating manufacturer (PM)** or **nonparticipating manufacturer (NPM)**, whose **cigarettes** are sold to consumers within Connecticut, whether directly or through any **distributor**, **dealer**, or similar intermediary or intermediaries, must complete and file Form TPM-2. Nonparticipating manufacturers are also required to complete and file **Form TPM-1**, *Certification of Compliance and Affidavit by Nonparticipating Manufacturer*, and **Form TPM-3**, *Brand Families Unit Sales Schedule*, and may be required to complete and file **Form TPM-4**, *Notice of Appointment of Registered Agent and Registered Agent's Statement*.

When Form TPM-2 Is Due

Form TPM-2 is due no later than April 30, 2010. On or after July 1, 2010, and on or after July 1 of each succeeding year, a tobacco product manufacturer and its cigarette **brand families** will not be listed on the **Connecticut tobacco directory** unless Form TPM-2 has been filed on or before the preceding April 30.

Supplemental Certifications

If there is to be any change in the identity of any fabricator of a brand family, or if there is to be any addition to or modification of applicant's brand families, the applicant must complete a supplemental Form TPM-2. The applicant must check the *Supplemental* box at the top of Page 1 of the form and should enter only new or changed information on the form, sign, and date the form. The supplemental certification must be filed no later than **30 days prior to** the change. In all other circumstances in which information provided on the certification becomes inaccurate, a supplemental Form TPM-2 must be filed no later than **30 days after** the information becomes inaccurate.

Definitions

For purposes of Form TPM-2 and these instructions:

Affiliate means a **person** who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person as defined in Conn. Gen. Stat. §4-28h(2).

Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers including but not limited to menthol, kings, and 100s, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously-known brand of cigarettes.

Cigarette has the same meaning as in Conn. Gen. Stat. §4-28h(4). Roll-your-own (RYO) tobacco is included in that definition of cigarette.

Connecticut tobacco directory means the listing of all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Conn. Gen. Stat. §4-28l and all brand families that are listed in the certifications.

Distributor has the same meaning as in Conn. Gen. Stat. §12-285.

Dealer has the same meaning as in Conn. Gen. Stat. §12-285.

MSA means the Master Settlement Agreement as defined in Conn. Gen. Stat. §4-28h(5).

Nonparticipating manufacturer (***NPM)*** means any tobacco product manufacturer that is not a participating manufacturer.

Participating manufacturer (***PM)*** has the same meaning as in section II(j) of the MSA.

Person means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.

Qualified escrow fund has the same meaning as in Conn. Gen. Stat. §4-28h(6).

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas.

Tobacco product manufacturer has the same meaning as in Conn. Gen. Stat. §4-28h(9).

Units sold has the same meaning as in Conn. Gen. Stat. §4-28h(10).

Specific Instructions

Part I: General Business and Ownership Information

Completed by PMs and NPMs

3 Through 6

Conn. Gen. Stat. §4-28h(9) states three circumstances under which an entity is a tobacco product manufacturer. Those circumstances are individually set out in Questions 3 through 5. If the applicant answered **No** to Questions 3 through 5, the applicant must provide an explanation for its assertion that it is the tobacco product manufacturer for each of the brands listed in form TPM-2 in its response to Question 6.

9. Agreements with other PMs, NPMs, or affiliates

Identify every agreement between the applicant and any PM or NPM or any affiliate of a PM or NPM that relates to the making, importing, distribution, transportation, or sale of a brand family. List the brand family and the name, address, and telephone number of the PM, NPM, or affiliate that is a party to any agreement. Attach a copy of each agreement.

Part II: Brand Family Identification

Completed by PMs and NPMs

1. Brand family identification

Identify by brand family all of the cigarettes that the applicant intends to sell to consumers within Connecticut whether directly or through any distributor, dealer, or similar intermediary or intermediaries, and seeks to have included in the Connecticut tobacco directory as of July 1, 2010. Only the brand families identified are eligible to be included in the Connecticut tobacco directory. PMs and NPMs must attach samples of the actual packaging and labeling for each brand family identified. PMs and NPMs must also submit on CD or DVD a color photograph in Adobe Acrobat (.pdf) software of the packaging and labeling.

PMs must list all of their brand families in Column A but are not required to make entries in Columns B and C. By listing a brand family, a PM affirms that the brand family is deemed to be its cigarettes for the purpose of calculating its payments under the MSA for the relevant year.

NPMs must list all of their brand families in Column A and must also provide in Column B the number of units sold to consumers within Connecticut whether directly or through any distributor, dealer, or similar intermediary or intermediaries during calendar year 2009; and in Column C the complete name and address of every tobacco product manufacturer that manufactured (fabricated) the brand family. By listing a brand family, a NPM affirms that the brand family is deemed to be its cigarettes for the purpose of calculating its required escrow deposits under Conn. Gen. Stat. §4-28i.

Each applicant must update the list at least 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental Form TPM-2 both to the Department of Revenue Services (DRS) and to the Attorney General.

Brand Families Not Sought to Be Included in the Connecticut Tobacco Directory as of July 1, 2010

Each applicant is required to identify brand families that were sold to consumers within Connecticut whether directly or through any distributor, dealer, or similar intermediary or intermediaries during calendar year 2009, but are not sought to be included in the Connecticut tobacco directory as of July 1, 2010. These brand families should be listed last and should be indicated with an asterisk in the column to the left of Column A.

Part III: Additional Business Information

Completed by NPMs only.

1. Organizational documents

If applicant is a:

- Partnership, attach a current copy of the partnership agreement, if any, **or** the certificate required to be filed by any state, county, or municipality.
- Corporation, attach a current copy of the corporate charter or certificate of corporate existence or incorporation. This copy must be executed by the appropriate state officer for the jurisdiction in which incorporated. Also, attach extracts of stockholders' meetings, bylaws, directors' meetings, or other documents that list the officers authorized to sign documents or otherwise act on behalf of the corporation. The accuracy of the copy must be certified by an appropriate officer of the corporation.
- Limited liability company or other business organization, attach a current copy of the business documents filed with the state, county, or municipality where the filing is required. The copy must show that it was filed with the appropriate government agency. A limited liability company must provide an accurate copy of its operating agreement.

These documents must include a certified translation into English if the documents are in a language other than English.

3. Affiliates

Identify any affiliate that also manufactures (fabricates), imports, distributes, or sells cigarettes or other tobacco products to consumers within Connecticut, whether directly or through a dealer, distributor, or similar intermediary or intermediaries by completing this question. For purposes of Form TPM-2, the term ***own*** means ownership of an equity interest or the equivalent of 10% or more. List the names of the brand families and the affiliate in the first two columns. List the type of business by entering in the third column (Type of Business) M for manufacturer, I for importer, D for distributor, and W for wholesaler.

Part IV: Marketing and Distribution Information

Completed by NPMs only

Part V: Manufacturing and Compliance Information

Completed by NPMs only

5. Internet, mail order, or other direct delivery sales to consumers within Connecticut

If applicant makes or intends to make Internet, mail order, or other direct delivery sales of cigarettes (including RYO tobacco) to consumers within Connecticut, list and describe any website advertising the cigarettes, the physical address from which the cigarettes will be shipped, and the total sales to consumers within Connecticut during calendar year 2009. Attach a copy of each Jenkins Act report (under 15 U.S.C. §376) previously filed by applicant with DRS relating to sales to consumers within Connecticut during calendar years 2001 through 2009.

Part VI: Disclosure of Prior and Pending Enforcement Actions and Prior and Pending Determinations Affecting Applicant or Affiliates

Completed by NPMs only

1. Enforcement actions banning or enjoining sales

If you answered **Yes**, attach a copy of each judgment, ruling, or determination, and list on a separate sheet the brand family banned or enjoined (or sought to be banned or enjoined); the governmental entity or private plaintiff bringing the action; the case number; and the name and address of the government attorney or official, or private plaintiff bringing the action.

2. Denial of listing

If you answered **Yes**, attach a copy of each determination, and list on a separate sheet the name of the applicant or other person or affiliate (or cigarette brand family of the applicant or other person or affiliate) denied listing on or removed from (or sought to be denied listing on or to be removed from) a state tobacco directory; the name of the tobacco product manufacturer or brand family, or both, denied listing on or removed from (or sought to be denied listing on or to be removed from) a state tobacco directory; and the name of the state that denied such listing or removed from such directory (or sought to deny such listing or to remove from such directory).

3. Unfair business practice or competition

If you answered **Yes**, attach a copy of each judgment, and list on a separate sheet the governmental entity or private plaintiff bringing the action; the case number; and the name and address of the government attorney or official, or private plaintiff bringing the action.

4. Convictions

If you answered **Yes**, attach a copy of each judgment, and list on a separate sheet the name of the applicant or other person or affiliate convicted; the governmental entity (federal, state, local, or foreign) that prosecuted the applicant or other person or affiliate; the case number; and the name and address of the government attorney or official that prosecuted the applicant or other person or affiliate.

5. Denials, suspensions, or revocations of permits or licenses

If you answered **Yes**, attach a copy of each letter of denial, suspension, or revocation, and list on a separate sheet the name of the applicant or other person or affiliate that was denied the permit, license, or other authorization or had such permit, license, or other authorization revoked, suspended, or otherwise terminated; the governmental entity (federal, state, local, or foreign) that denied, suspended, revoked, or otherwise terminated the permit, license, or other authorization; the case number, if any; and the name and address of the government attorney that represented the governmental entity.

Qualified escrow fund statute compliance

If you answered **Yes** to Question 6, attach a copy of each claim made by a state, and list on a separate sheet the name and address of the government attorney or official making the claim, the brand families for which there was a failure to make adequate or timely escrow deposits, and the amounts of any escrow deposits still owed.

If you answered **Yes** to Question 7, attach a copy of the claim made by a state, and list on a separate sheet the name of the applicant or other person or affiliate that failed to make adequate or timely escrow deposits, the name and address of the government attorney or official making the claim, the brand families for which there was a failure to make adequate or timely escrow deposits, and the amounts of any escrow deposits still owed.

If you answered **Yes** to Question 8, attach a copy of the agreement or settlement, and list on a separate sheet the name and address of the government attorney or official with whom the agreement or settlement was negotiated, and the amounts of any escrow deposits still owed.

Part VII: Imported Cigarettes: Documentation and Verification

Completed by NPMs only

Part VIII: NPM Applicant Certification

Completed by NPMs only

1. Agent for service of process

An NPM **must** certify whether it is organized under the laws of the State of Connecticut, it is a nonresident or foreign NPM that has registered with the Secretary of the State to do business in Connecticut under Title 33 or Title 34 of the Connecticut General Statutes as a foreign corporation or business entity, or if it is not organized under the laws of the State of Connecticut and is not registered with the Secretary of the State to do business in Connecticut under Title 33 or Title 34 of the Connecticut General Statutes as a foreign corporation or business entity, it has appointed a resident agent for service of process under Conn. Gen. Stat. §4-28n on whom all process, and any action against it concerning or arising out of the enforcement of Conn. Gen. Stat. §§4-28h through 4-28r and implementing regulations, may be served in any manner authorized by law.

Part IX: Declaration, Acknowledgment, and Signature

Completed by PMs and NPMs.

An officer of the applicant with the authority to bind the applicant **must** sign Form TPM-2 before a proper official such as a Notary Public. Proof of the officer's authority to bind the applicant, such as the text of a resolution passed by the applicant's Board of Directors, must be submitted along with a certification by another officer of the applicant, such as the Secretary of the applicant, that the copy of the resolution is accurate and was in force on the date Form TPM-2 was signed. These documents must include a certified translation into English if they are in a language other than English.

The officer who signs Form TPM-2 is guilty of a felony punishable by imprisonment not to exceed five years or a fine not to exceed $5,000, or both, if the officer makes an assertion on Form TPM-2 that he or she knows to be fraudulent or false in any material matter.

Mail the **original** Form TPM-2 and a complete copy of all required forms, documents, and attachments to:

Department of Revenue Services
Tax Division Chief, Audit Division
Excise/Public Services Subdivision
25 Sigourney St Ste 2
Hartford CT 06106

Mail a **copy** of Form TPM-2 and a complete copy of all required forms, documents, and attachments to:

Office of the Attorney General
Finance Department
PO Box 120
Hartford CT 06141-0120