Office of Alcohol Tobacco Control

Ernest P. Legier, Jr., ATC Commissioner

VAPOR PRODUCT MANUFACTURER OR ALTERNATIVE NICOTINE PRODUCT MANUFACTURER PRODUCT CERTIFACATION

VAPE & ALTERNATIVE NICOTINE DIRECTORY ("Vape Directory")

Beginning October 1, 2023, Vape and Alternative Nicotine Product Manufacturers shall be required to certify on a form prescribed by commissioner, each vape or alternative nicotine products meets the criteria set forth by La. R.S. 26:926. Products certified with ATC shall be published in ATC's Vape and Alternative Nicotine Product Directory (hereinafter "Directory"). The directory will be published on ATC's website, www.atc.louisiana.gov and emailed to all tobacco manufacturers, wholesalers, and retail dealers on or before November 1, 2023. Periodical and monthly notifications shall delivered in same manner.

WHO MUST COMPLETE CERTIFICATION FORM?

Vapor Product Manufacturer and Alternative Nicotine Product Manufacturer whose products are sold in Louisiana, whether directly or indirectly or through a wholesale dealer, retail dealer, or similar intermediary or intermediaries shall be required to complete and execute the product certification form.

FEES

Initial Certification Fee: $100 per product SKU
Annual Renewal Certification: $100 per product SKU

Any product approved for publication on ATC Vape Directory shall be required to be recertified within 60 prior to October 31st of each year.

DEFINITIONS

For a full listing of all definition related to Louisiana Tobacco Laws, please see R.S. 26:901 et. seq.

"ALTERNATIVE NICOTINE PRODUCT" means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any of the following:

(a) Tobacco product.
(b) Vapor product.
(c) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).
(d) Device pursuant to 21 U.S.C. 321(h).
(e) Combination product described in 21 U.S.C. 353(g).

"DEALER" includes every person who manufactures or purchases cigars, cigarettes, or other tobacco products for distribution or resale in this state. The term also means any person who imports cigars, cigarettes, or other tobacco products from any state or foreign country for distribution, sale, or consumption in this state.

"MANUFACTURER" means anyone engaged in the manufacture, production, or foreign importation of tobacco products, vapor products, and alternative nicotine who sells to wholesalers.

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"RETAIL DEALER" includes every dealer other than a wholesale dealer or manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products, alternative nicotine products, or vapor products, irrespective of quantity or the number of sales. If any person is engaged in the business of making sales at both retail and wholesale, "retailer" shall apply only to the retail portion of the business.

"SALE" or "SELL" means any transfer, exchange, or barter in any manner or by any means for any consideration. The term shall include distributing or shipping product in connection with a sale. References to a sale "in" or "into" a state refer to the state of the destination point of the product in the sale, without regard to where title was transferred. References to sale "from" a state refer to the sale of cigarettes that are located in that state to the destination in question without regard to where title was transferred.

"STAMP" means the impression, device, stamp, label, or print manufactured or printed as prescribed by the secretary by the use of which the tax levied hereunder is paid. By way of extension, and not limitation, the term "stamp" means any impression or character affixed to or which shall be stamped upon commodities by metered stamping machine or device by use of which the tax levied hereunder is paid.

"**STAMPING AGENT**" means a dealer that is authorized to affix tax stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S. 47:841 et seq. on cigarettes.

"VAPOR PRODUCT" means any non-combustible product containing nicotine or other substances that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or other substances. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any of the following:

(a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).
(b) Device pursuant to 21 U.S.C. 321(h).
(c) Combination product described in 21 U.S.C. 353(g).

"WHOLESALE DEALER" means a dealer whose principal business is that of a wholesaler, who sells cigarettes, cigars, other tobacco products, vapor products, or alternative nicotine products to retail dealers for the purpose of resale, who is a bona fide wholesaler, and fifty percent of whose total tobacco, vapor, and alternative nicotine sales are to retail stores other than its own or those of its subsidiaries or parent companies within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services fifty or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January 1, 1974. If any person is engaged in the business of making sales at both wholesale and retail, "wholesaler" shall apply only to the wholesale portion of the business.

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WHAT TYPE OF VAPE OR ALTERNATIVE NICOTINE PRODUCT WILL BE APPROVED?

1. Products on the U.S. Market as of August 8, 2016 that has applied for a premarket tobacco order ("PMTA") pursuant to federal law and the PMTA remains under review by the FDA; or

2. Any vapor products or alternative nicotine products on the U.S. Market that the FDA has issued a no marketing order, but the agency or federal court has issued a stay order or injunction during the pendency of the manufacturer's appeal or the order has been appealed and remains pending; or

3. The manufacturer has received a marketing order or other authorization under federal law for the vapor or alternative nicotine product from FDA; or

4. Notwithstanding R.S. 26:926A, commissioner may approve a vape or alternative nicotine product without PMTA if a manufacturer can demonstrate to commissioner that the FDA has issued a rule, guidance, or any other formal statement that temporarily exempts product from federal premarket tobacco application requirements and provide sufficient evidence that the product is compliant with federal rule, guidance, or other formal statements.

VIOLATION & PENALTIES

R.S. 26:926H – a vapor product manufacturer or alternative nicotine product manufacturer who offers for sale a vapor product or alternative nicotine product not listed on the directory is subject to a $1000 daily fine for each vapor or alternative nicotine product offered for sale in violation this law until the offending product is removed from the market or until the offending product is properly listed on the directory.

R.S. 26:926I – No wholesale dealer or retail dealer shall be permitted to remit tax with respect to a vapor product or alternative nicotine product unless such vapor product or alternative nicotine product is listed on the directory, and the sale, possession, or transportation of such vapor products or alternative nicotine products by any person shall be subject to provisions of R.S. 47:858, 859, and 860 as if such wholesale dealer did not possess a valid permit.

R.S. 26:926J – Any other violation of R.S. 26:926 shall result in a fine of five hundred dollars ($500) per offense.

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Vapor Product or Alternative Nicotine Product Manufacturer Product Certification Form

NOTICE TO APPLICANT: Misstatement or Suppression of material facts in this application is **GROUNDS FOR DENIAL** or **REVOCATION** of any permit(s) issued thereafter. Additionally, filing false public records is a violation of Louisiana Revised Statute 14:133 and may result in imprisonment for not more than five (5) years with or without hard labor and/or fines of not more than $5000.00.

BUSINESS INFORMATION

1. Type of Legal Entity
   ◯ Sole Proprietorship ◯ Corporation ◯ Limited Liability Company ◯ Partnership ◯ Other
2. Owner/Organization Legal Name: (Name of individual, Legal Entity, LLC, or Corporation)
3. Trade Name ("Doing Business As")
4. Business Physical Address
5. Mailing Address same as physical address
6. Primary Business Email Address:
7. Business Contact Number: ☐ Cell ☐ Business
8. Federal Employee Identification No. (FEIN)
9. Louisiana State Identification No.

MANUFACTURER CONTACT INFORMATION

10. Name, title, and contact number of Authorized Representative Contact for Manufacturer.

PRODUCT INFORMATION CERTIFICATION

1. Applicant certify under penalty of perjury that the product certified herein complies with R.S. 26:926A(1) or R.S. 926A(2)? ◯ YES ◯ NO
2. Product Name:
3. Product Sub Category (Type)
4. Characterizing Flavor
5. FDA Submission Tracking #:
6. Product SKU #:
7. Type of FDA Order: **Select One Only**

◯ PMTA under review by FDA (qualifying for Louisiana directory pursuant to R.S. 26:926A(1)(a)).
◯ PMTA – Appeal of No Marketing Order (qualifying for Louisiana directory pursuant to R.S. 26:926A(1)(b)).
◯ Marketing Order Issued (qualifying for Louisiana directory pursuant to R.S. 26:926A(2)).
◯ FDA Rule, guidance or other formal statement that temporarily exempts federal PMTA requirements

REQUIRMENT: Attach documents supporting above selection and any evidence, if applicable.

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PRODUCT INFORMATION CERTIFICATION	
8. Has applicant attached a copy of the cover page of the premarket tobacco application with evidence of receipt of the application by the FDA or a copy of cover page of the marketing order or other authorization issued pursuant to 21 U.S.C. 387j, whichever is applicable?	**Requirement** ◯ YES ◯ NO
9. Does applicant understand manufacturer is required to notify the commissioner within thirty (30) days of any material change to the certification including issuance by the FDA for any reasons as provided by law and/or rules or regulations (See R.S. 26:926C)	◯ YES ◯ NO
10. Is applicant submitting this certification on grounds that it can demonstrate that the FDA has issued a rule, guidance, or any other formal statement that temporarily exempts federal PMTA requirements? **If YES, attach documentation and sufficient evidence that product listed herein is compliant with federal rule, guidance or other formal statement.**	◯ YES ◯ NO

FEES:

INITIAL FEE: $100.00 per product stock keeping unit (SKU)
ANNUAL RENEWAL FEE: $100.00 per product stock keeping unit (SKU)

ALL PRODUCTS CERTIFICATION EXPIRES ANNUALLY ON OCTOBER 31st AND REQUIRES ANNUAL RENEWAL. RENEWALS ARE ONLY AVAILABLE ONLINE AND MAY BE COMPLETED UP TO SIXTY (60) DAYS PRIOR TO DATE OF EXPIRATION.

WARNING & SIGNATURE: Applications may only be signed by the Applicant as listed below. Applications signed by a person other than listed below may result in denial of application.

If Applicant is:	Must Sign Application:
Individual /Sole Proprietor	Individual Owner
Partnership	Any Partner
Limited Liability Company (LLC)	Managing member, member, officer, director
Corporation	Officer, Director

***BY SIGNING BELOW, YOU ARE CERTIFYING, UNDER THE PENALTY OF PERJURY**, that you are an authorized representative of the applicant and that you have read each of the questions in this application and that all answers are true and correct to the best of your knowledge. Applicant understands that it is the business responsibility to read, understand and comply with all applicable laws, rules and regulation. For additional information, see www.atc.la.gov.*

_____ _____
Print Name (Applicant) Signature of Applicant

_____ _____
Title Date

Notary Use Only

Sworn to and subscribed to me on this _____day of _____, 20_____, in the parish/county of _____, State of _____

_____ _____
Name of Notary Public Signature of Notary Public