Definitions

What is an "electronic cigarette that contains nicotine?"
An electronic cigarette that is: a. Labeled, advertised or marketed as containing nicotine; or b. Determined by the Department or the Attorney General to contain nicotine; or c. Sold under the same brand name as an electronic cigarette that contains nicotine. The term may include a component that does not itself contain nicotine, such as components and parts of ENDS products that are sold or distributed separately for consumer use as part of an electronic cigarette that contains nicotine. Electronic cigarettes are also commonly referred to as "vapes," "e-cigarettes" and "electronic nicotine delivery systems (ENDS)."

What is a "brand family" and a "brand style?"
A brand family is all styles of an e-cigarette sold under the same trademark and differentiated from another style by means of additional modifiers or descriptors. The term includes any brand name used 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 electronic cigarette that contain nicotine. A brand style is a variety of an e-cigarette brand family that is differentiated from other brand styles within that brand family by additional modifiers or descriptors. Brand styles may be differentiated by factors including but not limited to color, flavor, nicotine strength, size, shape, capacity, quantity, the presence or lack of a certain ingredient, stock keeping unit number, or FDA submission tracking number. For example, in the context of cigarettes a "brand family" would refer to something like "Morley," while a "brand style" of the Morley brand family would be something like "Morley Gold 100" or "Morley Menthol Soft Pack." What constitutes a separate "brand family" or "brand style" is going to depend on the circumstances surrounding your specific ENDS product.

How does OAG distinguish between brand families and brand styles in determining the applicable amount of certification fees?
The determination of certification fees is based on the definition of "Brand Family" under Pennsylvania's law and on our assessment of whether the products you are certifying are appropriately characterized as brand families or brand styles under that definition. Some of the factors that we take into consideration in making this determination include (1) whether the product has a different brand name from other products you are certifying, (2) whether the product is separately trademarked from other products you are certifying, (3) whether the product has different functional characteristics from other products you are certifying - for example, the product is tank-based, pod-based, cartridge-based, vape pen, or disposable, and (4) whether the product has a notable difference in its physical design from other products you are certifying. Please note that we do not consider differences in colors, flavors, words, or

artwork on a product to be differences warranting characterization as a separate brand family where the product is sold under the same trademark.

What is the "Department?"

The Pennsylvania Department of Revenue.

What is the Electronic Nicotine Delivery System (ENDS) Directory?

A list of the e-cigarettes that are determined to be legal for sale in PA pursuant to Act 57 of 2025. The ENDS Directory is maintained by the Office of Attorney General.

What is "contraband?"

a. Any electronic cigarette that contains nicotine for retail sale in this Commonwealth which is either not listed or is removed from the directory in violation of section 206-I; or

b. Any tobacco product for which state excise tax imposed by Article XII-A of the Tax Reform Code of 1971 has not been paid; or

c. Any tobacco product sold, offered, distributed or possessed for sale and tobacco products acquired, held, owned, possessed, transported, imported or caused to be imported that the person knows or should know are intended for retail distribution or retail sale in this Commonwealth in violation of the Tax Reform Code of 1971.

d. The term includes tobacco products which have been seized by the Commonwealth and for which property rights no longer exist under Article II-I of the Fiscal Code.

What is a "timely filed premarket tobacco product application (PMTA)?"

A timely filed PMTA is one where all of the following apply:

1. The PMTA was submitted under 21 U.S.C. § 387j (relating to application for review of certain tobacco products) for an electronic cigarette that contains nicotine derived from tobacco;
2. The electronic cigarette that contains nicotine was marketed in the United States as of August 8, 2016;
3. The PMTA was submitted to the U.S. Food and Drug Administration (FDA) on or before September 9, 2020; and
4. The PMTA was accepted for filing by the FDA.

Misc. Questions

When a facility is being inspected, how will the Department or the Office of Attorney General determine that an e-cigarette contains nicotine?
Under Act 57, an e-cigarette is presumed to contain nicotine if it is labeled, advertised or marketed as containing nicotine. The Department or the Attorney General may otherwise determine whether an e-cigarette contains nicotine, either by testing the product or by considering other circumstances surrounding the product. Any product bearing the same brand name as one labeled, advertised, marketed, or determined to contain nicotine fits within the definition as well regardless of whether such product contains nicotine itself.

What products are subject to the Electronic Nicotine Delivery System (ENDS) Directory and the requirements of Act 57?
Any electronic cigarette that contains nicotine as defined by Act 57 that is sold or offered for sale in the Commonwealth. This includes components and parts of ENDS products sold or distributed separately for consumer use, notwithstanding whether that component itself contains nicotine. Also, non-nicotine-containing electronic cigarettes that bear the same brand name as an electronic cigarette that contains nicotine must be listed on the directory. Certification of non-nicotine products based on use of a common brand name do not need to meet FDA regulatory requirements that do not apply to them. However, you must. identify such products, provide packaging images, certify that such products do not contain nicotine, and provide a test result from a domestic certified lab attesting to the absence of nicotine in the product. The certified lab results must be attested to and signed by the lab technician.

Is my business that sells e-cigarettes subject to inspection by the Department or the Office of Attorney General?
Yes. The Department has inspection authority for all licensees – manufacturers, wholesalers and retailers - and the Department and the Office of Attorney General may also inspect any business that sells or stores electronic cigarettes that contain nicotine and examine its books and records. Such books and records are required to be maintained and made available at the premises where such e-cigarettes are placed, sold, or offered for sale.

Directory – General Questions

When will the directory be available online?
By June 20, 2026.

Where can I find the directory?
The directory will be published on the Tobacco Enforcement Section of the Attorney General's website. The directory can be found at the following link: Tobacco Enforcement Section – PA Office of Attorney General (https://www.attorneygeneral.gov/tes/)

Will the directory list e-cigarettes that do not contain nicotine?
Generally, if an e-cigarette does not contain nicotine, it will not be listed on the directory. The exception to the general rule follows: An e-cigarette that does not contain nicotine will be required to be included on the certification and listed on the directory if it is sold under the same brand name as an electronic cigarette that is labeled, advertised, or marketed as containing nicotine, or otherwise determined to contain nicotine by the Attorney General or Department of Revenue. It will be treated as part of the brand that contains nicotine. As noted previously, you must. identify such products, provide packaging images, certify that such products do not contain nicotine, and provide a test result of the e-liquid or other substance that creates the vapor or aerosol from a domestic certified lab attesting to the absence of nicotine in the product. The certified lab results must be attested to and signed by the lab technician.

Certification

What date will the certification be available for access online?
A certification form is currently available

Where can I find the certification?
The certification and accompanying forms have been published on the Tobacco Enforcement Section webpage on the Attorney General's website. They can be found at the following link: Tobacco Enforcement Section – PA Office of Attorney General (https://www.attorneygeneral.gov/tes/)

Who must submit a certification?
Every manufacturer of e-cigarettes that contain nicotine that intends to sell its products in PA, whether directly or indirectly through a wholesaler, retailer or similar intermediaries, must submit an initial certification for those ENDS products to appear on the ENDS directory, along with any e-cigarettes not containing nicotine that are in the same brand family. After an initial certification is approved and a manufacturer's e-cigarettes are listed, a manufacturer must submit annual certifications to remain on the directory.

Who is considered the manufacturer?

The manufacturer is the entity that produces the e-cigarette or controls the production of the e-cigarette.
 	
When the manufacturer is an entity controlling the production, it must provide documentation of the following:
- An exclusive manufacturing agreement with at least the following terms:
  o Specified ingredients; and
  o Manufacturer's clear control over the product formula and production process.
- Trademark held by or licensed to domestic entity with no transfer of product formula to any other entity;
- Annual test from independent, domestic, certified lab of product imported from foreign manufacturer showing ingredients same as those designated in manufacturing agreement.

By what date must I submit my initial and annual certifications?
Manufacturers that seek to market e-cigarettes that contain nicotine in Pennsylvania or to continue to market their products that are currently being sold in Pennsylvania should submit initial certifications by April 21, 2026, to obtain prompt review of their certifications. However, initial certifications can be submitted at any time after the Attorney General publishes the certification form. Annual certifications, for e-cigarettes already listed, must be submitted on or before April 21 in 2027 and in subsequent years. We are asking that they be submitted no earlier than February 21 in any year. Please note that while certifications must be submitted by April 21 in each year, products may continue to be sold absent the Attorney General delisting a product.

What fees are associated with the certification?
The fees for an initial certification are $2,000 for each brand family of e-cigarette that contains nicotine, plus $200 for each brand style of that product. The fees for an annual certification, that includes all the brand families and brand styles as currently listed on the directory, are $1,000 for each brand family of e-cigarette that contain nicotine, plus $100 for each brand style of that product. Any time a certification contains a brand family or brand style not currently listed on the directory, the fees shall be $2,000 for each new brand family of e-cigarette that contains nicotine, plus $200 for each new brand style of that product. <u>Non-nicotine e-cigarettes that are required to be listed on the certification and directory as a result of being</u> sold under the same brand name as an electronic cigarette that is labeled, advertised, or marketed as containing nicotine, or otherwise determined to contain nicotine do not have any associated certification fees.

When and how do I pay the certification fees?
Payment should be made by check or money order made payable to the Commonwealth of Pennsylvania. Please send payments to: Office of Attorney General Tobacco Enforcement Section Strawberry Square, 15th Floor Harrisburg, PA 17120. The fees must be paid before or at the time the certification is submitted. A certification with deficient payment will not be considered as submitted and will not be reviewed or approved. Review will only commence upon receipt and processing of the correct amount of fees.

If I timely submit a certification, does that mean my products will automatically be listed on the directory within 60 days after submission?
No. While the Office of Attorney General will conduct a prompt review of all products for which certification is submitted, the directory list will only reflect approved products that have been determined to meet the requirements of the Act and for which review has been completed.

Can my certification still be approved even if I do not have a marketing granted order from FDA?
Yes. Act 57 requires one of the three following things to be true for a certification to be approved: 1. The manufacturer has received a marketing granted order for the e-cigarette from the FDA in accordance with 21 U.S.C. § 387j; or 2. The manufacturer has submitted a timely filed premarket tobacco product application for the e-cigarette to the FDA under 21 U.S.C. § 387j and the application either remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; or 3. The manufacturer was not required to submit an additional premarket tobacco product application for the e-cigarette because the electronic cigarette that contains nicotine reflects changes to the name, brand style, or packaging of an e-cigarette that is covered under subparagraph 1 or 2.

Will I still be listed on the Directory if I fail to submit an annual certification and fees?
No. Failure to submit the annual certification or failure to pay the required fees will result in a certification denial and removal of a manufacturer, and its brand families, from the directory.

Will I be notified when the Office of Attorney General has completed its review and whether my products will be listed?
Yes.

Do I need to certify all the brand styles I wish to sell in PA?
Yes.

Are components that do not expressly contain nicotine required to be included on the certification?
FDA requires PMTAs to be filed for "finished tobacco products, including components and parts of ENDS products sold or distributed separately for consumer use." Separately-sold components may include atomizers, batteries, cartomizers, clearomizers, and other components that affect the e-cigarette's performance, composition, constituents, or characteristics or are to be used with or for the consumption of the ENDS product. They should be considered part of the whole and are required to be certified even if they do not contain nicotine.

What is required to be submitted with the certification?
Act 57 requires certain documents and information to be submitted along with a manufacturer's certification, including but not limited to: a. A list of the products the manufacturer seeks to list on the directory; b. A list of its importers (if any) and a declaration from each importer accepting joint and several liability with the manufacturer; c. A copy of any marketing granted orders, acceptance letters, or other documentation that would establish whether an ENDS product should be listed on the directory; d. Payment of certification fees; and e. A surety bond as required by Section 206-I(k) of Act 57. The Attorney General may prescribe the form of the certification and require additional information to ensure compliance and enforce the law. The information required by Section 206-I, however, is a good starting place for assembling the information that will be required for your certification. E-cigarettes that do not contain nicotine, but are sold under the same brand name as an electronic cigarette that is labeled, advertised, or marketed as containing nicotine, or have been determined to contain nicotine by the Attorney General or Revenue, will not be required to meet FDA regulatory requirements that do not apply to them. However, you must. identify such products, provide packaging images, certify that such products do not contain nicotine, and provide a test result of the e-liquid or other substance that creates the vapor or aerosol

from a domestic certified lab attesting to the absence of nicotine in the product. The certified lab results must be attested to and signed by the lab technician.

Are there penalties if I include false information in my certification?
Yes. The inclusion of false information or material misrepresentations or omissions will result in denial of a certification. Any manufacturer that falsely represents any information required by subsection (b), (c) or (g) of Section 206-I also commits a misdemeanor of the third degree for each false representation.

I submitted a certification but some of the information on the form has changed. What should I do?
The law requires you to notify us of any material change in your certification within 30 days of the change. We recommend you notify us in writing as soon as possible advising of such changes. Failure to advise us of a material change would be a basis for rejection of the certification or removal from the directory. Depending on the change, a supplemental certification may be necessary. You can direct your question to the Office of Attorney General's Tobacco Enforcement Section at pavapedirectory@attorneygeneral.gov.

If my certification is denied, and my products are not listed on the directory, will the fees be refunded?
No. There will be no refunds of certification fees.

Who can I contact if I have any questions regarding the status of my certification or related questions?
You can direct your question to the Office of Attorney General's Tobacco Enforcement Section at pavapedirectory@attorneygeneral.gov.

Does an approved certification expire?
Yes. The certification expires annually and requires renewal. Annual certifications for listed products must be submitted each year on or before April 21. Failure to submit an annual certification on a timely basis will result in the removal of your product from the directory.

Manufacturer, Importer, Wholesaler and Retailer Information

What responsibilities apply to an ENDS manufacturer, importer, wholesaler, and retailer?
• Comply with the requirements of Act 57 and any requests for additional information from the Department or the Attorney General. • Monitor the directory to ensure compliance with Act 57. For your convenience, you may sign-up to receive automatic notifications of changes to the ENDS directory by sending an email to pavapedirectory@attorneygeneral.gov and asking to be added to our notification list. • Maintain the proper licensing from the Department for each location from which you operate. • Comply with the requirements of the federal Prevent All Cigarette Trafficking (PACT) Act (15 U.S.C. §§ 375 – 378). • Do not sell ENDS products in Pennsylvania that are not listed on the ENDS directory. • Do not sell to or purchase from a company listed on the Attorney General's Tobacco Noncompliance Database. • Do not sell tobacco products to consumers who are under the age of 21. **ENDS manufacturers and importers have additional requirements, which are discussed below.**

What are my additional responsibilities as a manufacturer?
• Submit an initial certification and required documentation for all brand families and styles you seek to certify. • Annually submit the required certification and associated documentation and fees. • Notify importers, wholesalers and retailers that sell your product in Pennsylvania when your product is removed from the directory and accept returns as required by Section 206-I(m) of Act 57. • If you are located outside of Pennsylvania, appoint an agent for service of process as required by Act 57. See 72 P.S. § 206-I(u).

What are my additional responsibilities as an importer?
• Provide the required importer declaration to each manufacturer of ENDS products you import for sale in the Commonwealth. This declaration is necessary for each manufacturer's ENDS products to be added to or remain on the ENDS directory. • Appoint an agent for service of process as required by Subsection 206-I(c) of Act 57.

If I am a wholesaler located in Pennsylvania, but I distribute e-cigarettes to entities outside of PA, may I maintain inventory of off-directory products that I intend to sell outside of Pennsylvania.
Yes, so long as the off-directory products are physically separate from any e-cigarettes held for sale in Pennsylvania. A wholesaler's ordering system shall have measures designed to prevent sale—whether intentional or accidental—within Pennsylvania of electronic cigarettes that contain nicotine not listed on the directory. Physical separation should be evident upon inspection whether through the use of a physical barrier or clear and readily identifiable demarcation of PA directory-listed products from non-listed products.

Will importers, wholesalers, and retailers receive notifications when a product has been removed from or added to the directory?
We issue notices of directory changes through an email listserve. If you would like to be added to our listserve, please send your entity name and email address to pavapedirectory@attorneygeneral.gov and we will add you to the listserve. However, you are ultimately responsible for ensuring that the products you sell are listed on the directory.

Penalties and Compliance

Will my inventory be seized by the Tobacco Enforcement Section before October 19, 2026?
No. We will not physically remove any product from the marketplace until October 19, 2026. Beginning on that date, any product not listed on the directory is subject to seizure if it is sold, offered for sale, or possessed for sale in Pennsylvania.

What penalties are associated with selling off-directory e-cigarettes for retailers, wholesalers or importers?
A retailer, wholesaler, or importer who sells or offers for sale an e-cigarette that contains nicotine for retail sale in PA that is not included in the directory shall be subject to: 1. A civil penalty of $500 for each product offered for sale until the off-directory product is removed from the market or is properly listed on the directory. 2. For a second violation within a 12-month period, a civil penalty of at least $750 but not more than $1,000 per day per product, and the license of the licensee shall be suspended for at least 14 days. 3. For a third violation within a 12-month period, a civil penalty of at least $1,000 but not more than $1,500 per day per product, and the license of the licensee shall be revoked. In addition to the civil money penalty, the violator will be responsible for the costs of destruction of seized products. These include costs associated with seizure, transportation, storage, and destruction of the seized products. Violators should be aware that the costs of destruction of seized ENDS products can be significant and may be greater than the amount of civil penalty imposed.

What penalties are associated with selling off-directory products for manufacturers?
A manufacturer whose e-cigarettes are not listed on the directory and are sold for retail sale in Pennsylvania, whether directly or through an importer, wholesaler, retailer or similar intermediary or intermediaries, shall be subject to a civil penalty of $1,000 for each off-directory product offered for sale until the offending product is removed from the market or properly listed on the directory. In addition to the civil money penalty, the violator will be responsible for the costs of destruction of seized products. These include costs associated with seizure, transportation, storage, and destruction of the seized products. Violators should be aware that the costs of destruction of seized ENDS products can be significant and may be greater than the amount of civil penalty imposed.

What is the Tobacco Noncompliance Database?
A publicly available list of every manufacturer, importer, wholesaler, and retailer that has three or more violations under the ENDS Directory Law within the preceding 12 months.

How long will I be listed on the Tobacco Noncompliance Database?
The violator will remain on the database for twelve full calendar months after the violator's most recent violation.

Is there a penalty for selling to or buying from an importer, wholesaler, or retailer on the Tobacco Noncompliance Database?
Any manufacturer, importer, wholesaler, or retailer, who sells or offers to sell an e-cigarette to an importer or dealer listed in the Tobacco Noncompliance Database shall be subject to a civil penalty of $500 for each product sold to or offered to be sold to the person. Any manufacturer, importer, wholesaler, or retailer, who purchases for retail sale in this Commonwealth an e-cigarette from a person listed in the Tobacco Noncompliance Database shall be subject to a civil penalty of $500 for each product purchased.

Is a consumer that purchased off-directory products subject to penalties?
No. The law has an exception from penalties for bona fide purchases made by a consumer from an entity on the Tobacco Noncompliance Database. A bona fide consumer purchase is simply a genuine purchase by a consumer rather than a tobacco dealer or reseller. Such products are not subject to seizure and bona fide consumers are not subject to civil penalties for such purchases. However, reselling or offering for resale ENDS products may render a consumer a "retailer" with respect to the resold products, and providing ENDS products to individuals under 21 years of age – even without payment – is a crime under Pennsylvania law. 18 Pa.C.S.A. § 6305.

I am the manufacturer of an electronic cigarette that contains nicotine that has been submitted for certification but not yet approved and I have submitted a surety bond for my product. Some of my product might still be in the market from before the ENDS Directory law became enforceable. If a retailer is still selling my pre-law product, can I be held liable for the costs of the Commonwealth destroying my old product if it can't be collected from the retailer?
Yes. The law provides a sell-through period after the Attorney General's publication of the initial directory in June 2026 but it does not distinguish between contraband that pre-existed the law and product that entered the marketed after the law went into effect.