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MEMORANDUM

Via Electronic Mail

TO: E-Vapor Symposium Attendees

FROM: Azim Chowdhury (chowdhury@khlaw.com)
                          Benjamin Wolf
                          Keller and Heckman LLP

DATE: February 2, 2017

RE: **Step-by-Step Instructions for Submitting Ingredient Listing Reports to FDA**

This memorandum provides step-by-step instructions for submitting the ingredient listing reports required by the U.S. Food and Drug Administration (FDA) using FDA's eSubmitter tool and the Center for Tobacco Product (CTP) online portal. Please be advised that on December 28, 2016, FDA finalized its Guidance for Industry, "Listing of Ingredients in Tobacco Products" which effectively extended the deadline to submit ingredient listing reports by 6 months, to August 8, 2017 for non-small scale manufacturers, and until February 8, 2018 for small-scale manufacturers (a small-scale manufacturer must earn less than $5 million in revenues annual and have fewer than 150 full-time employees). FDA believes that this additional time will allow manufacturers to prepare higher quality submissions, and encourages manufacturers to begin the process as early as possible. For more background information on the ingredient listing requirement, see: https://www.khlaw.com/FDAs-Ingredient-Listing-Deadline-Rapidly-Approaching-for-Manufacturers-of-E-Vapor-E-Liquid-and-Other-Deemed-Tobacco-Products.

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Using eSubmitter to Submit Ingredient Listing
There are 9 general steps required to submit an ingredient listing to CTP:

1) Establish a CTP Portal Account
2) Set up your CTP Portal Account
3) Download eSubmitter
4) Create a digital signature
5) Collect information to enter in eSubmitter
6) Set up eSubmitter
7) Enter product information into eSubmitter
8) Package your submission
9) Upload the submission to FDA using the CTP Portal

The CTP Portal is used to upload documents including, but not limited to, Ingredient Listings, Reporting of Harmful and Potentially Harmful Constituents (HPHCs), Health Documents, Apply to Market documents, and Product Applications. Background information on the CTP Portal can be found here:
http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Manufacturing/ucm515047.htm
Establishing and setting up a CTP Portal Account is not hard or time consuming, but you will have to wait for FDA to take action so you should begin the process at least 3 weeks prior to needing to submit information.

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1. Establish a CTP Portal Account:

1) Verify that no one else in your organization currently has an account
2) Once you confirm that no one has an account, you then designate to FDA, in writing, an Industry Account Manager (IAM) for your organization.
   a. The IAM is primarily responsible for creating and managing user accounts, however, they also are able to submit filings.
3) To request an IAM, email the CTP Portal Helpdesk at CTPeSub@fda.hhs.gov with subject line "IAM Request."
4) A signed letter that designates the IAM, provides contact information, and certifies compliance with regards to electronic signatures should be attached to your request email.
5) Once you send this letter electronically, you will need to mail a hard copy to this address:

Center for Tobacco Products
Document Control Center
Building 71, Room G335
10903 New Hampshire Avenue
Silver Spring, MD 20993-0002

Information regarding IAMs along with instructions for executing the request letter can be found here:
http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Manufacturing/ucm515185.htm.

6) Once the hard copy has been received by CTP, the IAM will be contacted via email after their portal account has been created.
7) Once the IAM has activated his/her account, he/she can send invitations to additional members of the organization to create their accounts while managing each user's account privileges.

2. Set up your CTP Portal Account

1) Below is a homepage that only has administrative access (indicating that this is the IAM):
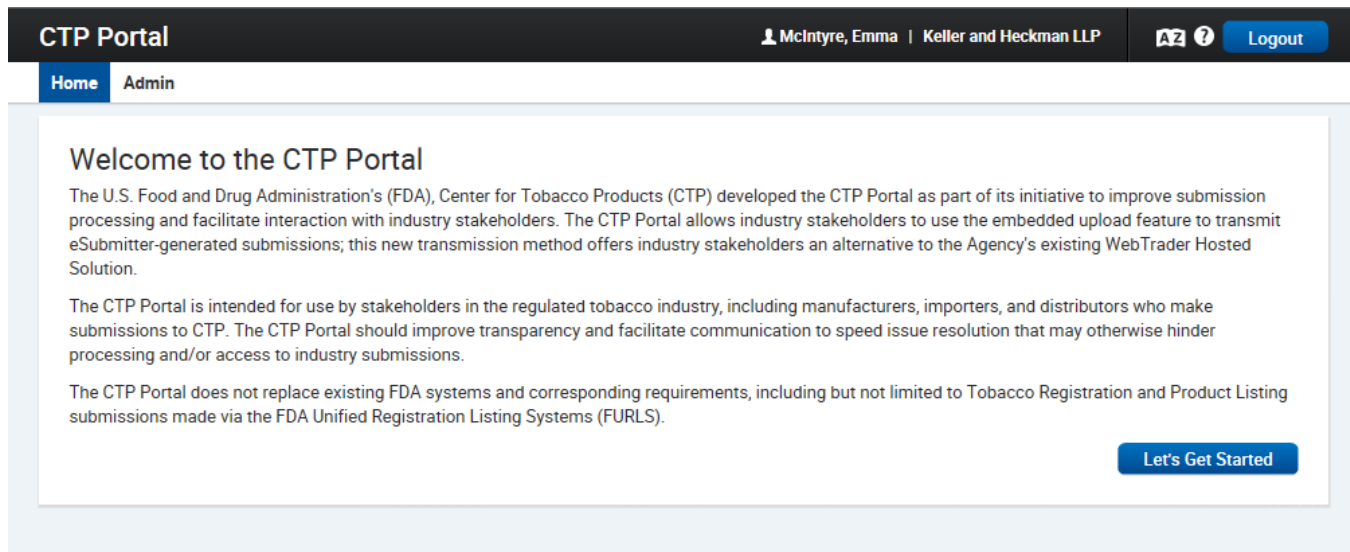
2) To edit user privileges, click the "Admin" tab
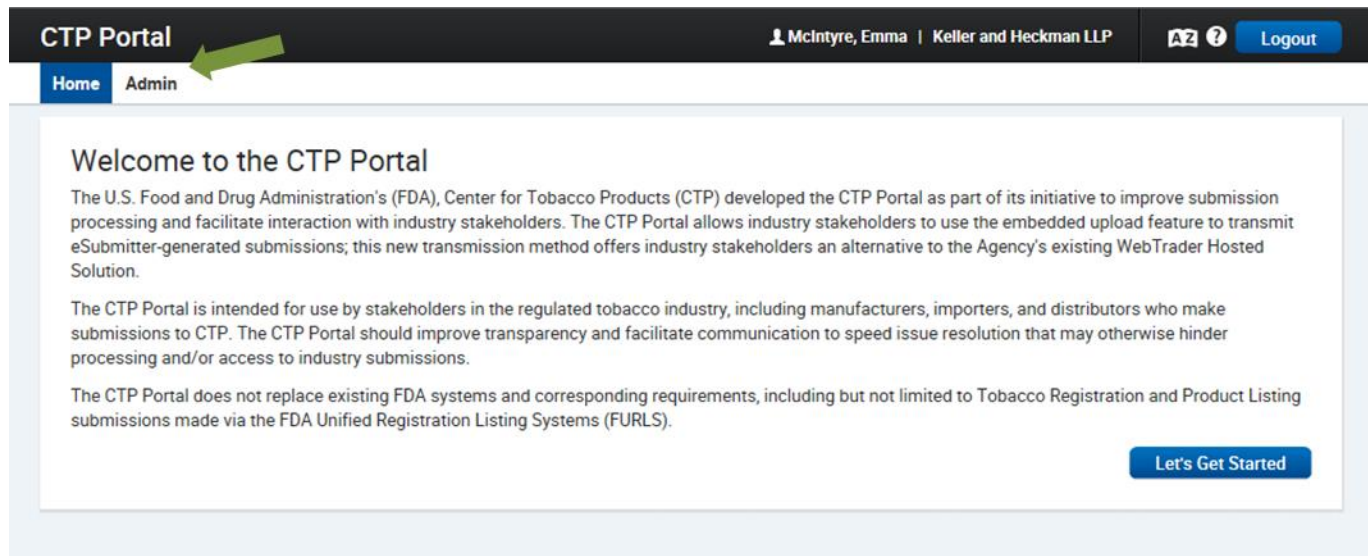
3) Either click "Add New User" to create a new user within your organization, or click "Edit" to update a current user's privileges

4) If you create a new user, fill in the pertinent information fields and make sure to select ALL privileges, except "CTP Portal User Admin." The IAM is most likely the only person who needs "CTP Portal User Admin" privileges

5) If you are editing the privileges of a current user, select ALL privileges, except "CTP Portal User Admin." (Emma McIntyre is the IAM for Keller and Heckman which is why she has "CTP Portal User Admin" selected).

6) Once you have changed a user's privileges, his/her homepage should update accordingly:

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3. Download eSubmitter:

There is no need to wait until the CTP Portal Access is established or the Portal is properly formatted to continue working on ingredient listings. The portal is used for submission of information that is packaged using FDA's free eSubmitter tool. The eSubmitter tool is accessed via your desktop and has submission templates that include:

- Listing of Ingredients in Tobacco Products (Sections 904(a)(1) and 904(c) of the Federal Food, Drug, and Cosmetic Act (FD&CA));
- Tobacco Health Documents (Sections 904(a)(4) and 904(c) of the Federal Food, Drug, and Cosmetic Act (FD&CA));
- Reporting Harmful and Potentially Harmful Constituents (Sections 904(a)(3) and 904(c) of the Federal Food, Drug, and Cosmetic Act (FD&CA));
- Product Applications (e.g. PMTA, Exemption from SE, SE);
- These submission templates are updated by FDA regularly. Available for your reference are three (3) user manuals that expound upon different aspects of eSubmitter as it relates to CTP submissions (See **Exhibits 1 – 3**). **Please contact Keller and Heckman for electronic copies of Exhibits 1 – 3.**

1) eSubmitter can be downloaded here: http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm108165.htm.
2) Play close attention to the file location
3) Put a shortcut on your desktop or pin to the start bar for ease of access
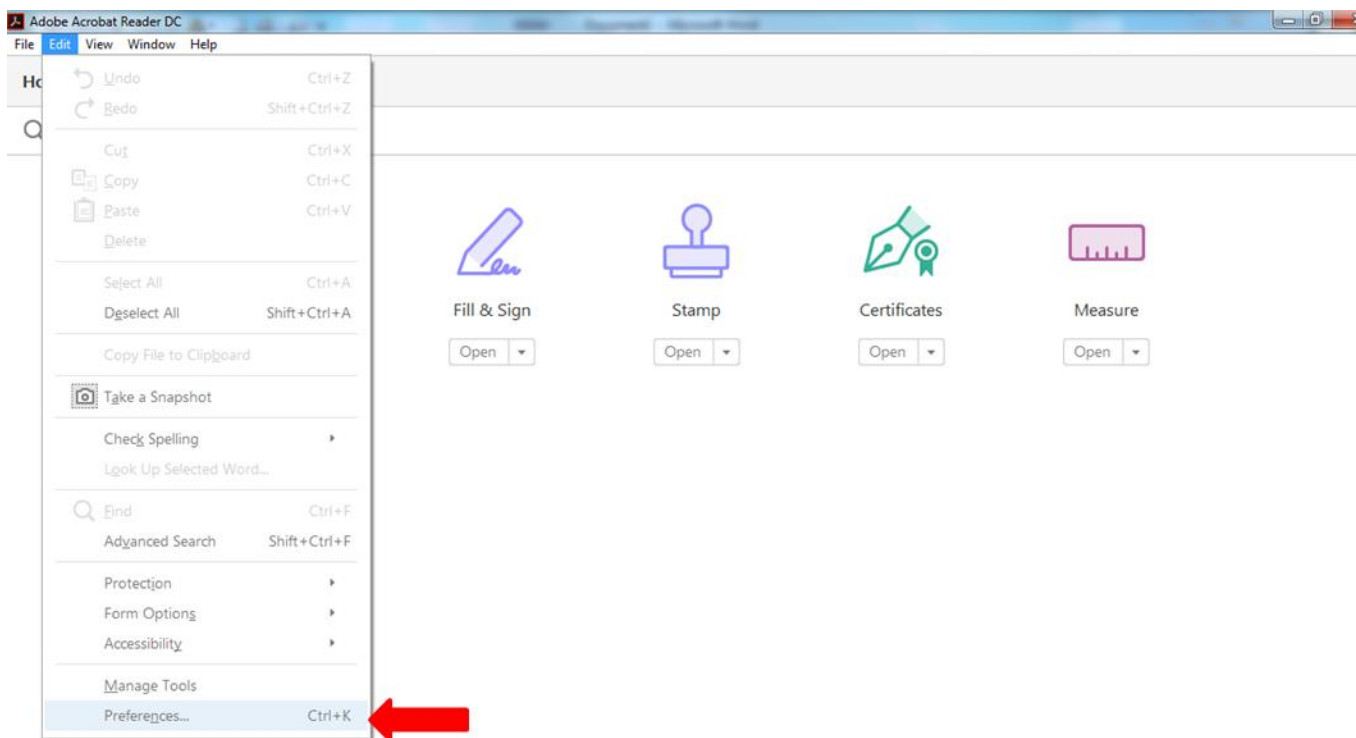
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4. Create a Digital Signature:

1) In Adobe (you can use Adobe Acrobat Reader, downloadable from https://get.adobe.com/reader/) go to "Edit" and select "Preferences" from the pulldown (indicated by the red arrow in the image below)

2) Select "Signatures" from the Categories list and then click "More" next to "Identities & Trusted Certificates" as indicated in the image below
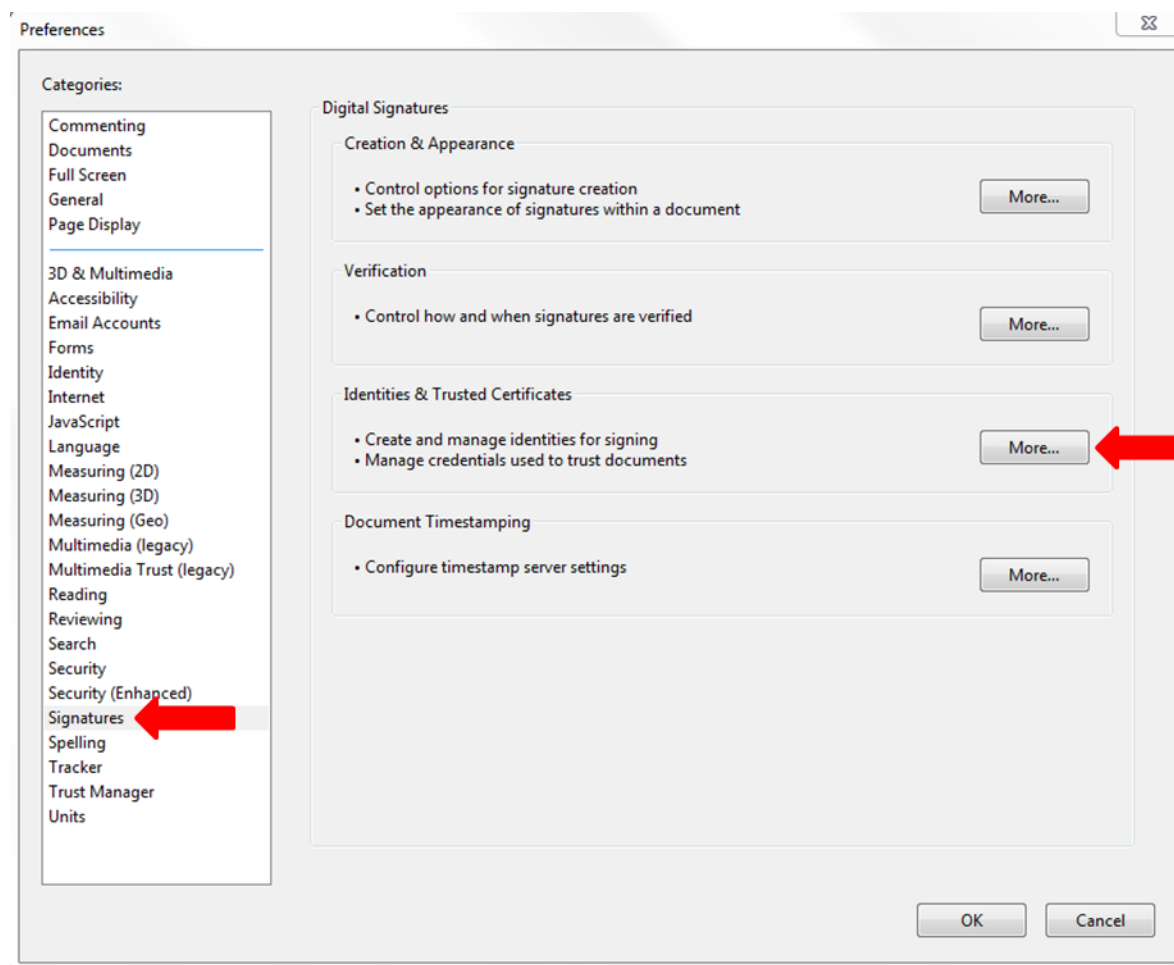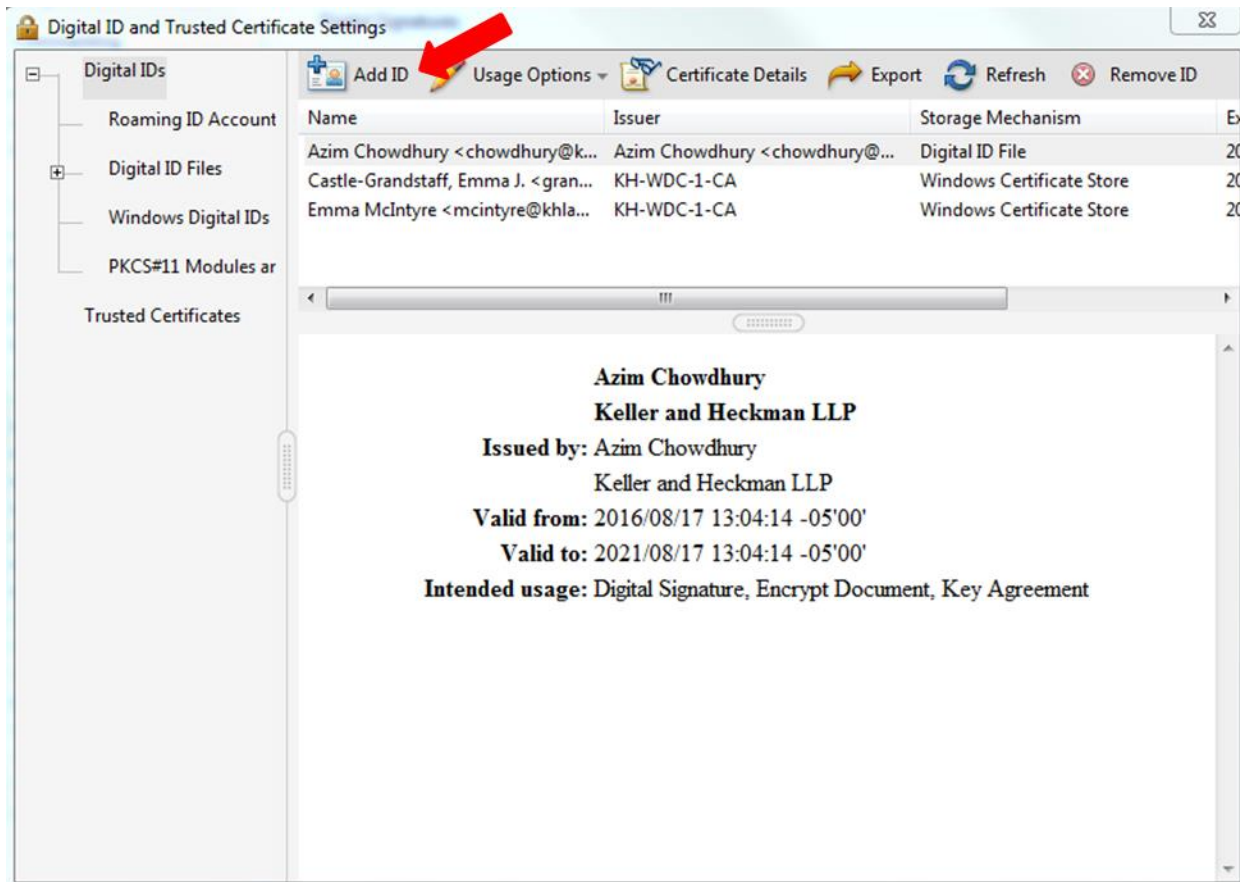
3) Next select "Add ID" as indicated by the red arrow in the following image

4) Choose "A new digital ID I want to create now" and then "Next"
5) Choose "New PKCS#12 digital ID file" and then "Next"

6) Fill in the information requested (Key Algorithm should be "1024-bit RSA" and Use digital ID for should be "Digital Signatures and Data Encryption") and click Next
7) Select location to save the signature and assign a password. Click "Finish"

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5. **Collect Information to Enter in eSubmitter:**

See our separate memorandum ("User Guide – Ingredient Listing of E-Liquids and E-Vapor Devices") on what information should be collected.[1]

1) There are FDA provided spreadsheets that can be used to enter the product and ingredient (but not component) information.
   a. You can utilize these to help with uploading
   b. Do not change the formatting
   c. Save your completed work as a ".xls" and not as a ".xlsx" as eSubmitter will not look for a ".xlsx" file to upload

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[1] **1)FDA has not, to date, provided any guidance on how to submit "ingredients" for e-vapor device hardware. None of the current guidance document, the eSubmitter template nor the Form 3742 provide any insight in this regard. In the absence of any such information from FDA, this memorandum provides our best assumptions for how to prepare ingredient listing reports for e-vapor devices. Please note that FDA could provide additional guidance on ingredient listing for either e-liquids or e-vapor devices in the future that could differ from the information presented herein. Where FDA is silent on a request or requirement we cannot guarantee that FDA's expectation for reporting ingredients is consistent with these guidelines. We will, of course, update these guidelines as necessary if FDA provides more information.**

6. Setting up eSubmitter and
7. Entering Ingredient Listings in eSubmitter

1) When you open up eSubmitter and click on "Create New Submission" (indicated by the green arrow in the picture) you will see the following:
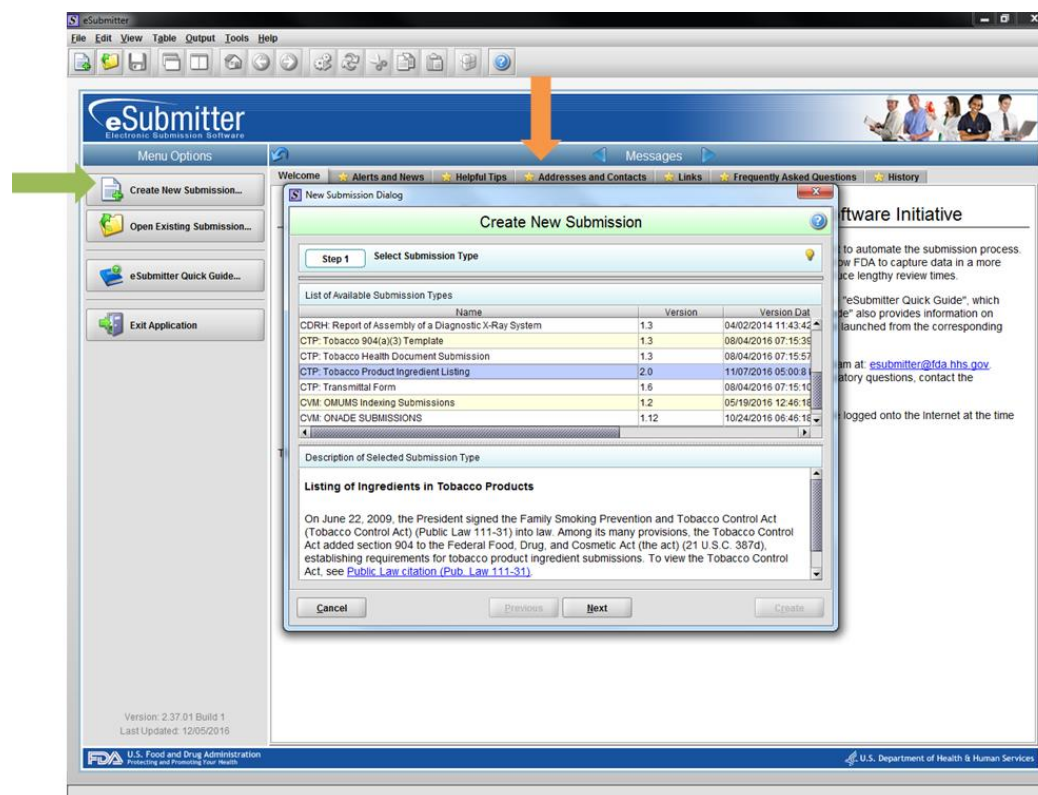
Note that the orange arrow points to a series of starred tabs with helpful background information (available before you click on "Create New Submission")

2) Select "CTP: Tobacco Product Ingredient Listing" (highlighted in the picture above) and then click "Next"
3) On the next screen you will be prompted to provide a descriptive name and filename.

Note that both the descriptive name and file name spaces have a blue dot next to them. The blue dot indicates a required field. If you click on the light bulbs throughout eSubmitter, you will get some additional information about the information requested.

4) After you click "Create" you will be taken to a page labeled "Screen View: Listing of Ingredients: Overview"
5) The first time you use eSubmitter, you should take the time to manage your address list and contact list

6) To access the address and contact lists, go to "Tools" (indicated by the green arrow in the picture below) and choose the appropriate list from the pull down. In the image below, the address list has been accessed
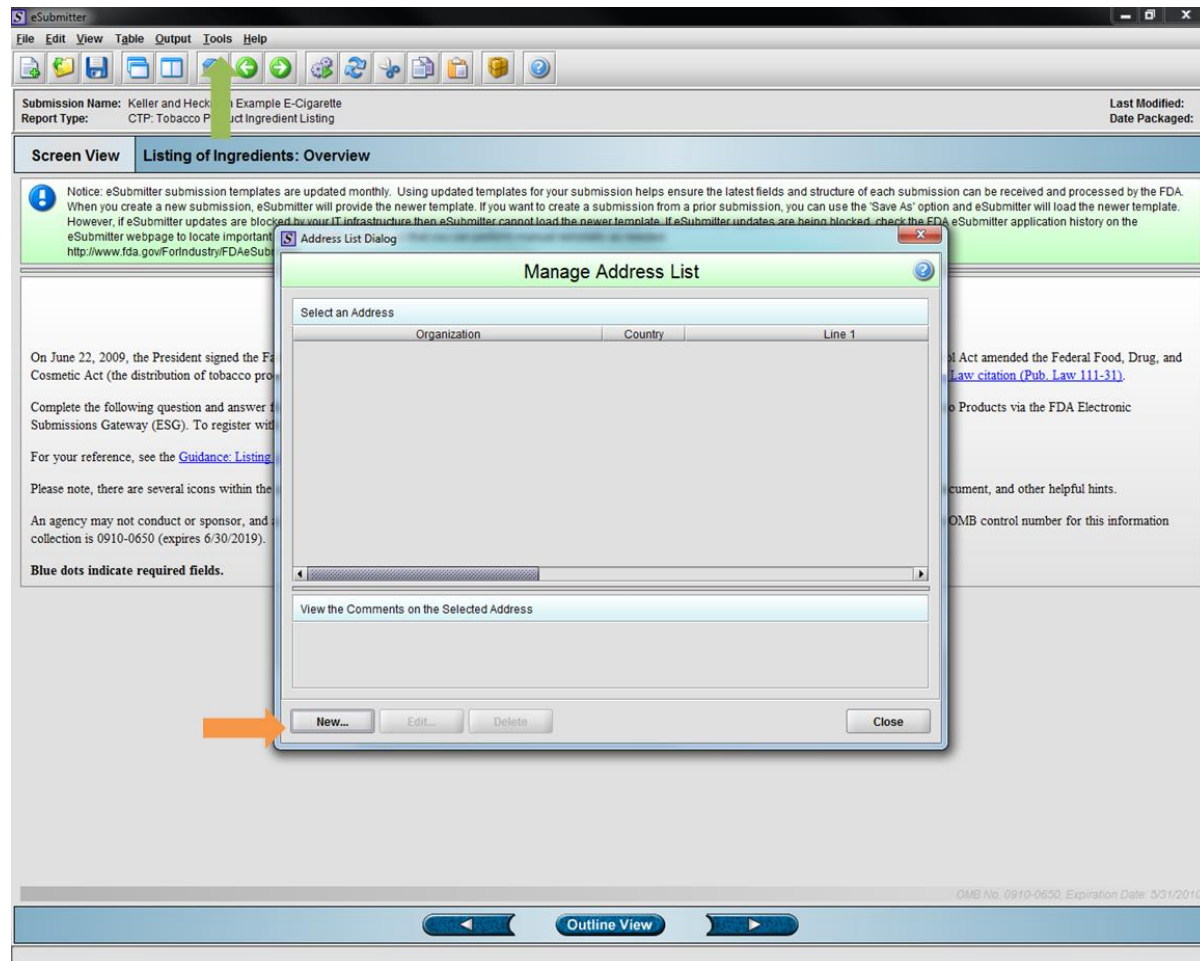
7) To add a new address, click "New" (indicated by the orange arrow in the picture above) and you will be brought to the following screen:

Note that the Organization Name is "Keller Corp" (indicated by the orange arrow in the picture above) but that none of the reference numbers (indicated by the green arrow in the picture above) have been filled in. If Keller Corp had any of these numbers they would also have been filled in, but they are not necessary at this time.

8) Click on the middle tab ("Physical Location"; indicated by the leftmost of the two blue arrows in the picture above) to fill in the location information, as displayed below:

9) Click on the "Mailing Location" tab. If the Physical and Mailing Locations are the same, you can check the "Copy Address" button (indicated by the green arrow in the picture below) to import the information from the Physical Address into the Mailing Address fields. Otherwise, fill in the Mailing Location

Note: the more information you can provide, the better. Phone number may be especially helpful

10) At a minimum, you should enter Organization information for the manufacturer, the authorized representative, and the US Agent

11) Once you have completed entering organizations, you can move on to contacts. You will be able to import addresses for contacts using the information in the organizations, so it is important that you enter your organizations first

Note that there are four tabs (indicated by the orange arrow in the picture above). You will be able to import information from an already entered organization in much the same way as you were able to copy the physical and mailing address of an organization. Otherwise you will have to populate the fields within these tabs as described above.

12) At a minimum, you should enter contact information for the manufacturer, the authorized representative, and the US Agent
13) Once you have completed entering your contacts, click on the right blue arrow (near the bottom of the page, indicated by the green arrow in the image above)

14) You will be taken to a screen asking for submission type. If you have not previously provided an ingredient list to FDA, you should select the first choice (indicated by the orange arrow in the picture below)

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15) Advance to the next screen using the right blue arrow and then check the box indicating that you are a "Manufacturer" (or agent for a manufacturer; unless the form is being completed by an importer or agent of an importer, in which case you should select "Importer")
16) Advance to the next screen using the right blue arrow. There is no information you need to enter on this screen
17) Advance to the next screen using the right blue arrow
18) You will be prompted to enter company and contact information at this point
19) If you did not create a contact before, you can still create one now, by going to the "Tools" menu and following the instructions above

20) You can click on the import button (indicated by the orange arrow in the picture below) and then follow the prompts to select which contact to import

Note that we checked that the Mailing Address for the Authorized Representative is the same as above. Otherwise you can enter additional information.

21) Importing the contact will autofill the information on the page (already completed in the images above)

22) If you choose not to import, you can hand enter all required information
23) After you click the right blue arrow to go to the next page, you will be asked to fill in the information for the U.S. Agent. Completing this information is the same as completing the information for the submitter identification and is required by the system regardless of where your company is located
24) After you click the right blue arrow to go to the next page, you will be brought to a page where no information needs to be added. Click the right blue arrow again to move to the next page

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25) You will now be prompted to list your products by clicking on the green plus (indicated by the orange arrow in the image below) or clicking on the file import icon (indicated by the blue arrow in the image below)
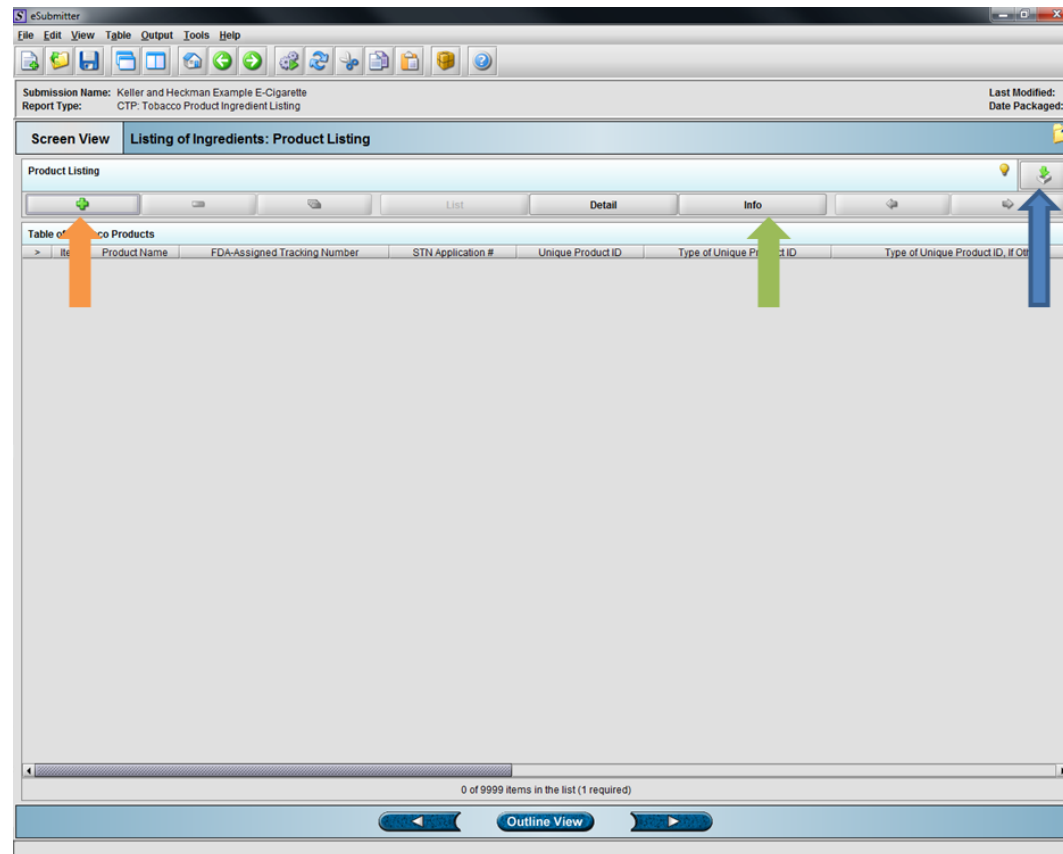
Note that we are uploading an example vaping device, but the mechanics of entry will remain the same regardless of product type.

26) The link to download the spreadsheet can be found by clicking on the "Info" button (indicated with the green arrow in the image above) and then clicking on the hyperlinked text (indicated with the orange arrow in the image below).

27) After selecting the import icon, a pop-up window will come up in which you can select the file to import (see image below; the blue arrow indicates the icon to select the file; the checkbox should be checked next to "First Row is a Header" (indicated by the orange arrow) and you should determine whether to add the imported data to the existing or to overwrite what you have already inserted (see the green arrow)
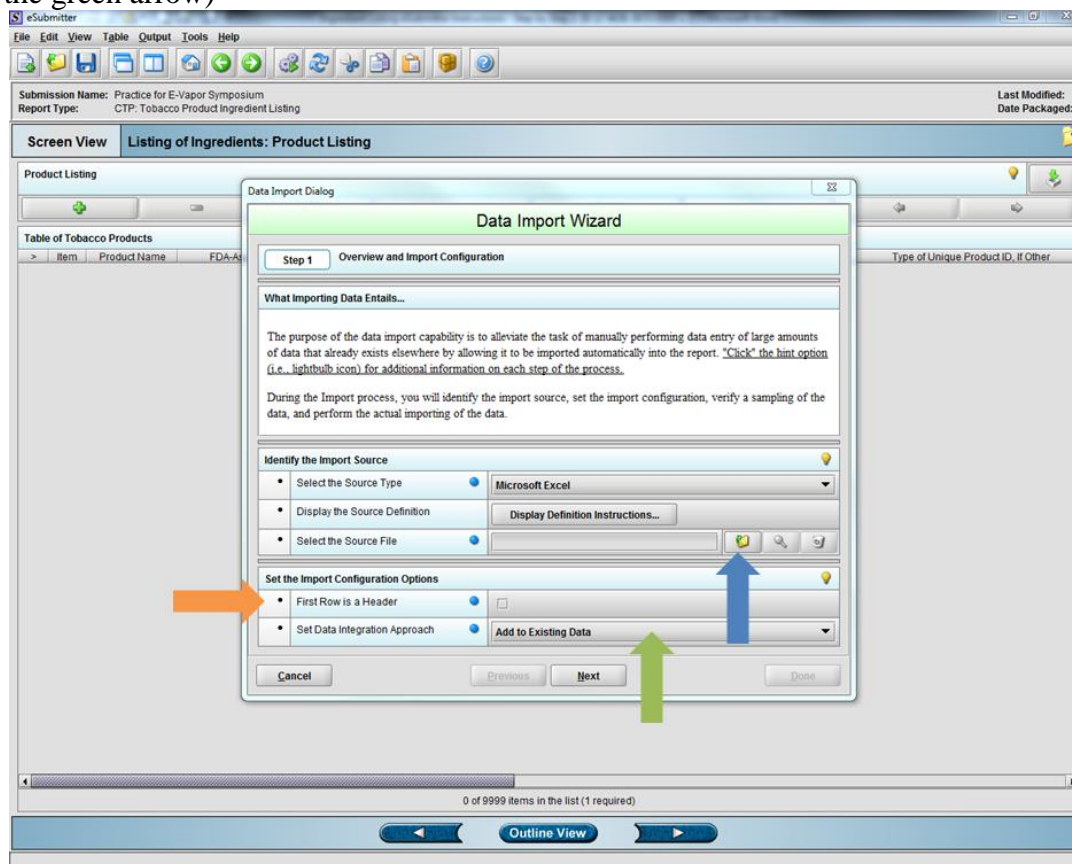
Note that you might wish to add the imported data rather than overwrite if you reach the limit on rows per spreadsheet.

28) After you hit "Next" on the pop-up, you will be given an opportunity to review the data. Hit "Next" a second time and you will get the screen in the image below. You should click "Start Data Import" (indicated by the orange arrow) and then click "Done" indicated by the green arrow

29) After importing the product list (ours only had one product), your screen will look like this:

30) When you click the right blue arrow to move to the next screen, you will get a popup box asking you to make a selection before moving on (see image below). This warning comes up any time you can enter product, component, or ingredient information as a reminder that you may wish to enter more information. You can just click "OK" and move on. If you want to come back later, you may
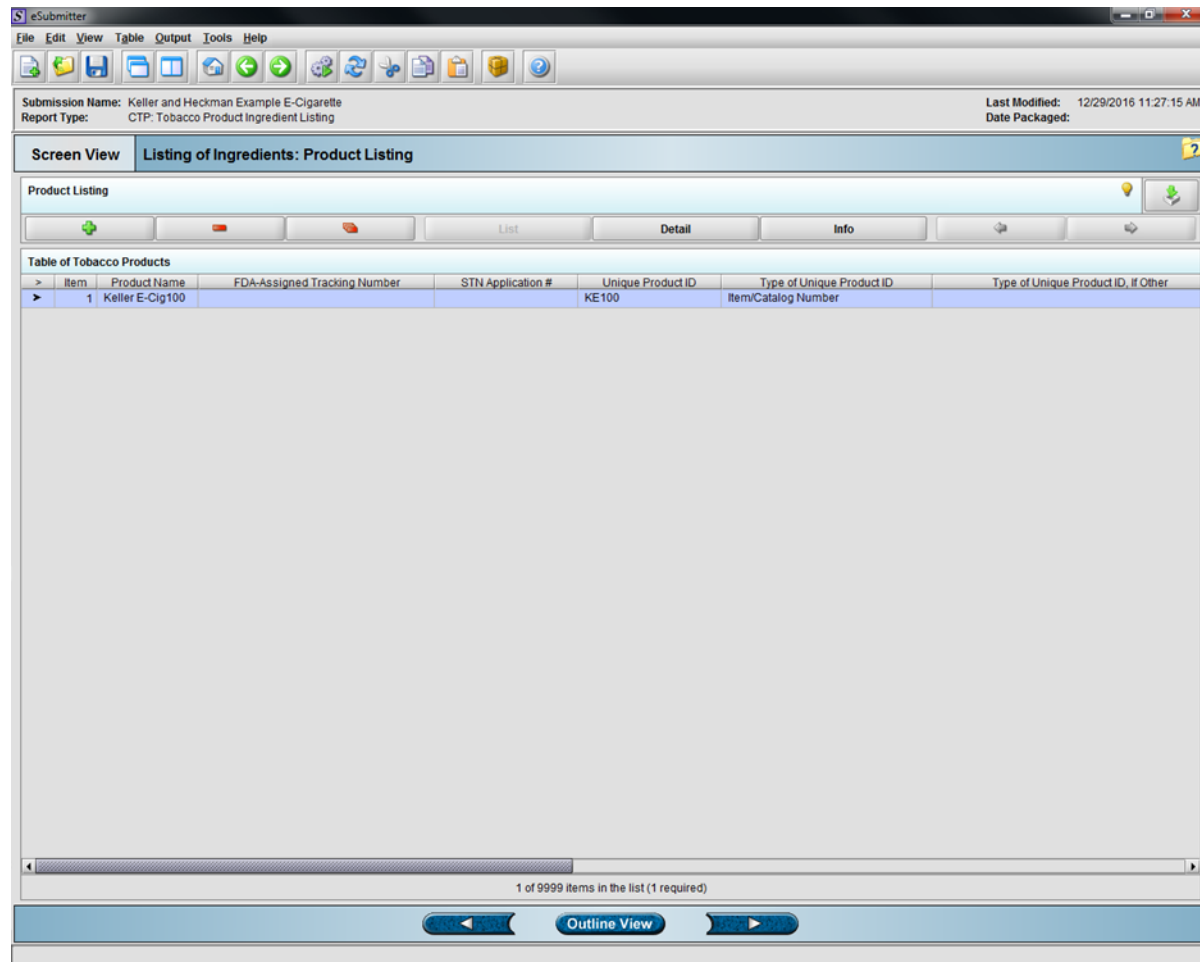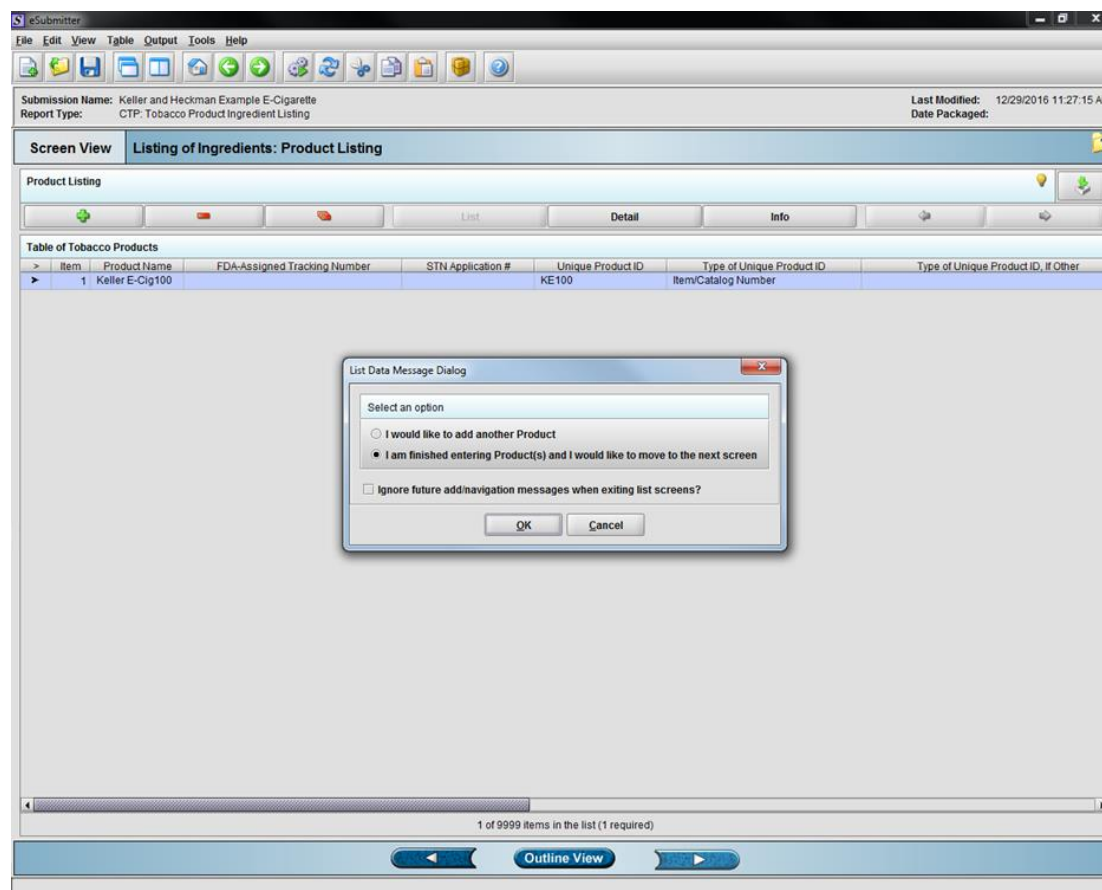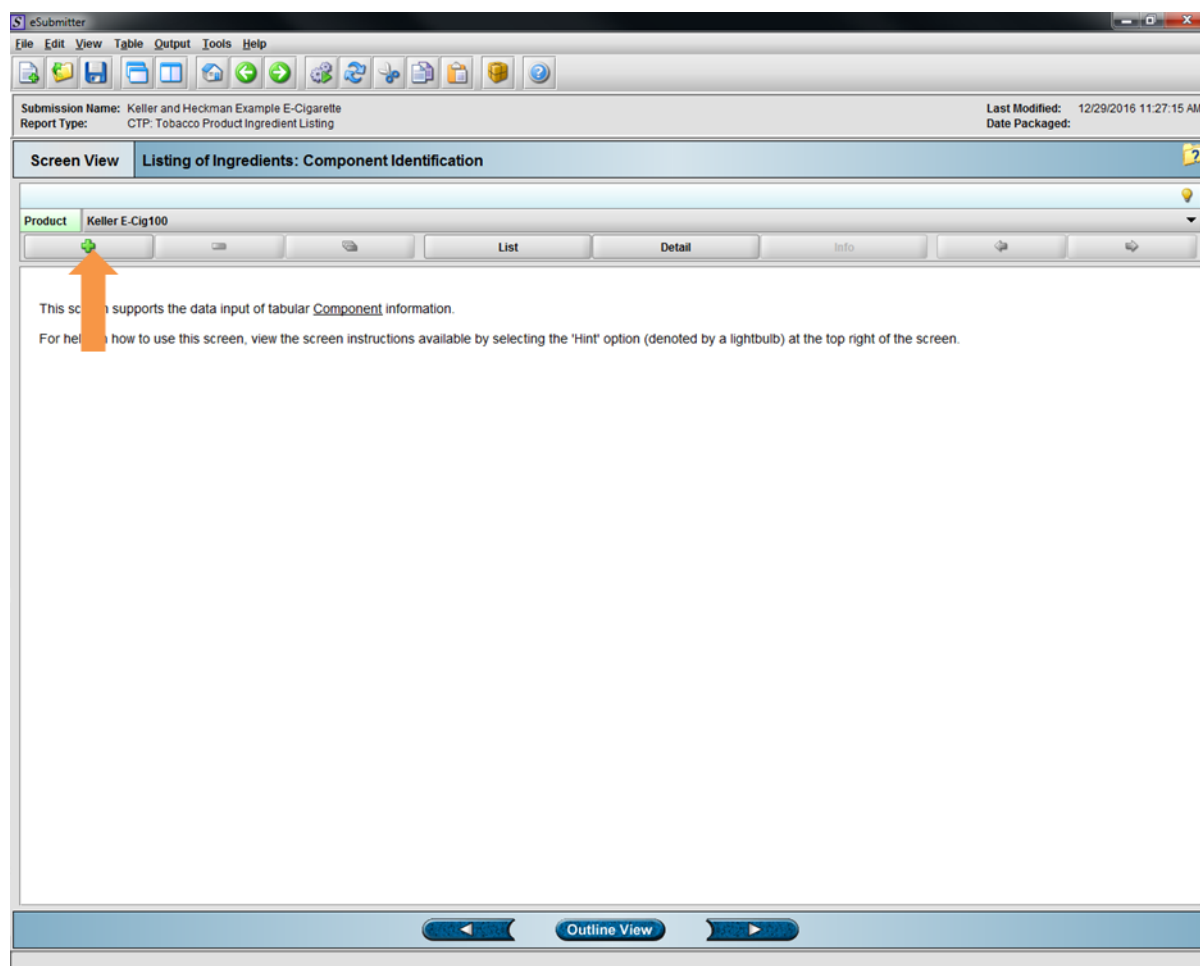
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31) Next you will need to enter component information by clicking on the green plus (indicated by the orange arrow in the image below). Note that there is no option for importing a list of components

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32) The next image shows the page for listing a component. You need to indicate component type (indicated with the orange arrow; here "Coil/Coil Head"), name the component (indicated with the green arrow; here "3.0 Ohm Coil Head") and you need to provide manufacturer information and item number by checking the green plus near the bottom of the page (indicated by the blue arrow) and filling in the information in the box that comes up

33) After listing all components (we also listed a component for the mouthpiece) you will advance until you reach the ingredient listing tab. Select the component for which you wish to import ingredients (or enter ingredients) by clicking on the grey box next to the word component (indicated with an orange arrow in the picture below) and selecting the component

34) You can now enter (by clicking the green plus) or import (by clicking the file import icon) in the same way you did for entering or importing product information.

35) Note that in the image above, the list view is selected (this is obscured by the pull down box for "Component"). In this view you can click on each ingredient to view it and enter/edit information

36) If you have a complex purchased ingredient that is custom made to your specifications, FDA requires that you identify which ingredients are made to your specifications.

   a. You can submit your ingredient listing to FDA at this time without providing other specifications (aside from ingredients)

   b. You should also gather any technical drawings and other documents used for specifications like release specifications, acceptance criteria, a sample certificate of analysis, but this is not required to be submitted

   c. You will not be able to package your submission without listing the ingredients, however we believe that you can list an ingredient as its own specified ingredient (in our hypothetical case, the mouthpiece is a complex purchased ingredient made to specification out of wood and resin epoxy but we list KE100 Mouthpiece as the specified sub-ingredient for the complex purchased ingredient KE100 Mouthpiece; see screenshot below)

   d. After you have uploaded the ingredient list for the component that contains the ingredient, you will need to confirm that the box for "Yes" in response to the question "Is this ingredient custom made to your specifications?" is checked (see orange arrow in the image below) and you will need to list the ingredients used in your custom made ingredient

37) To list the ingredients in a custom ingredient, click the green plus after "If Yes, enter each specified ingredient by clicking on the plus (+) sign" (indicated by a green arrow in the picture above) and then select the specified sub- ingredients that are

included in the custom ingredient by clicking on each ingredient that is included while holding down the ctrl key and then clicking select

   a. We believe that you can enter the ingredient itself as its own specified sub-ingredient (i.e. in our example we did not include the ingredients walnut wood and resin epoxy and we selected the complex purchased ingredient (KE100 Mouthpiece) as the specified sub-ingredient for itself).
   b. FDA may request additional information in the future if you do not list all specified ingredients as part of a custom complex purchased ingredient
   c. To provide FDA with all specified ingredients, enter the specified ingredients at the same time and in the same way you would enter ingredients for a particular component. You will have to provide all of the same information as you would for an "off-the-shelf" complex purchased ingredient or single chemical entity. When you select the specified ingredients by clicking on the green plus indicated by the green arrow in the picture above), all ingredients listed for the component (including the specified ingredients you listed) will be available to select and you can choose the appropriate specified ingredients in the same way described above

38) Note that in the image above, the "Detail" view has been selected. In this view each ingredient will be on the same page and can be accessed by scrolling up and down

39) After moving forward using the right blue arrow twice, you will come to a page for entering other products that are identical on a unit-by-unit basis but for the packaging and packaging configuration (including labeling). This would apply if you were selling items as a single or multi-unit option or if you overlabel for multiple companies as a contract manufacturer. Remember, if the change in packaging results in a change to the product inside, this is a new product that must have its ingredients listed separately

   a. Also note, the change in labeling or packaging likely means each product must be listed separately as part of the registration and listing process (currently US only) even if the product inside the packaging is identical

40) To list identical products, click the green plus sign and enter the information requested (see the image below, green plus sign indicated by an orange arrow)
   a. Note that each product must be listed manually, there is no import option

41) After you advance forward, you will get to a page that allows you to upload a cover letter (indicated by the green arrow) or other information (including specifications for custom ingredients, etc.). These are not required, but we would recommend providing a cover letter (not included in our example)

42) Advance until you get to the confirmation screen.
43) Select the identity of the submitter (if the Authorized Representative, no other information will need to be entered)
44) Advance until a pop up comes up that says "You have reached the end of the Submission form". At that point, select the "Output" menu and choose "Package Submission files" (as indicated by the orange arrow in the image below)
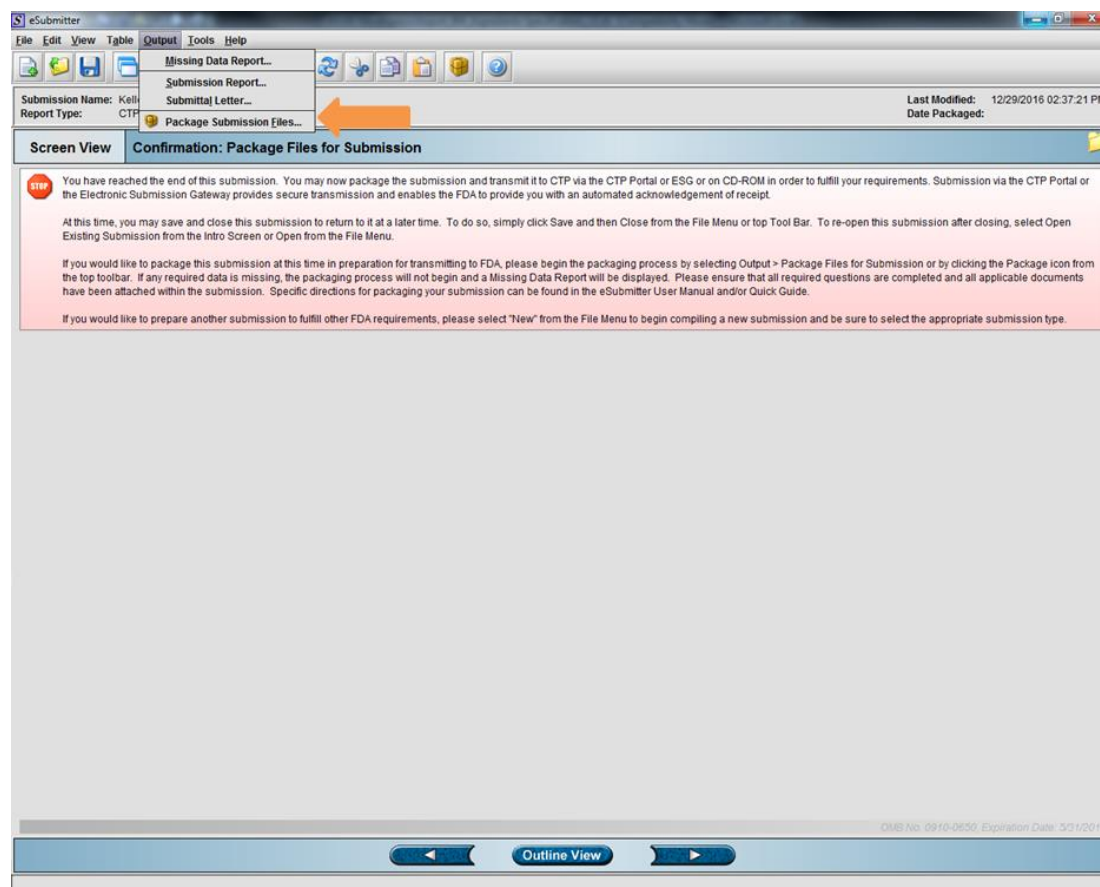
45) Once the pop-up for packaging submission files comes up enter the file name and select a location and, if relevant, confirm that the appropriate files have been attached. Finally attach your digital signature (indicated by the orange arrow in the image below), click the "Package and Sign Submission Files" (indicated by the green arrow in the image below) and then click Next (indicated by the blue arrow in the image below)
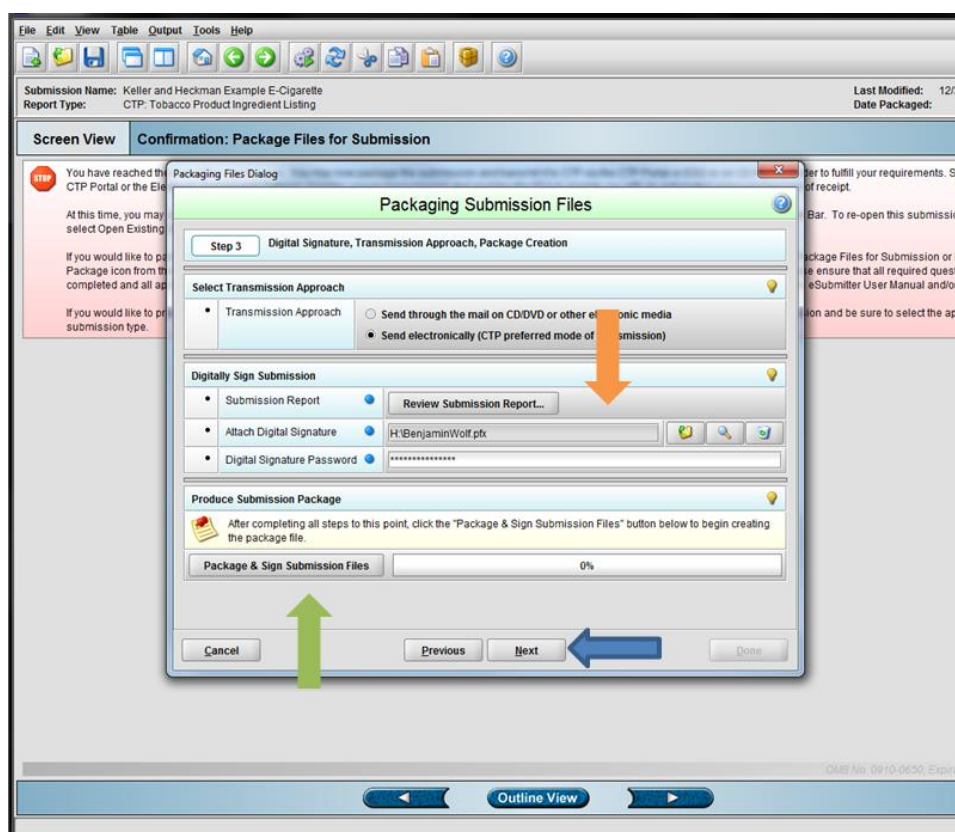
46) You now have a file ready for submission

8. Submitting using the CTP Portal

1) From within the CTP Portal, click the "Launch Upload Tool" button (see orange button in the upper right corner of image below)
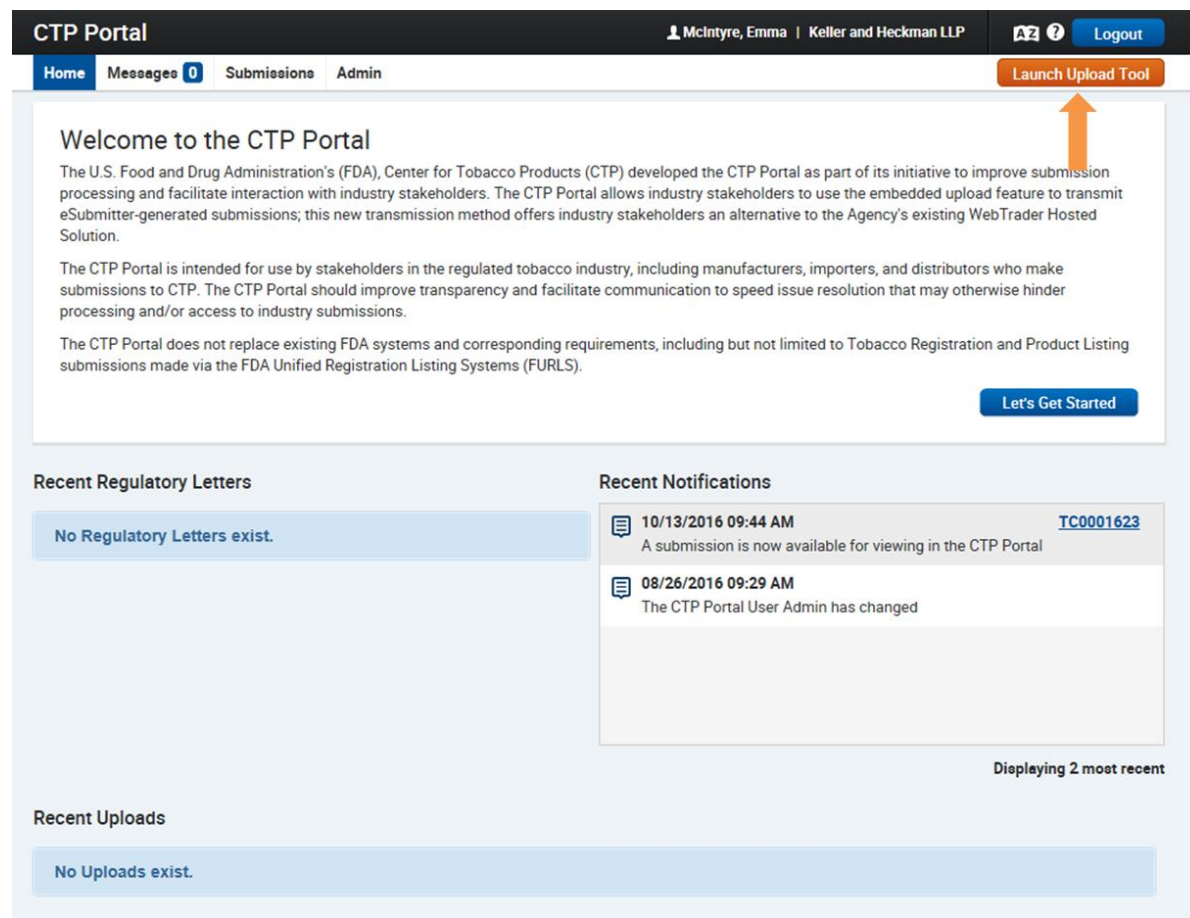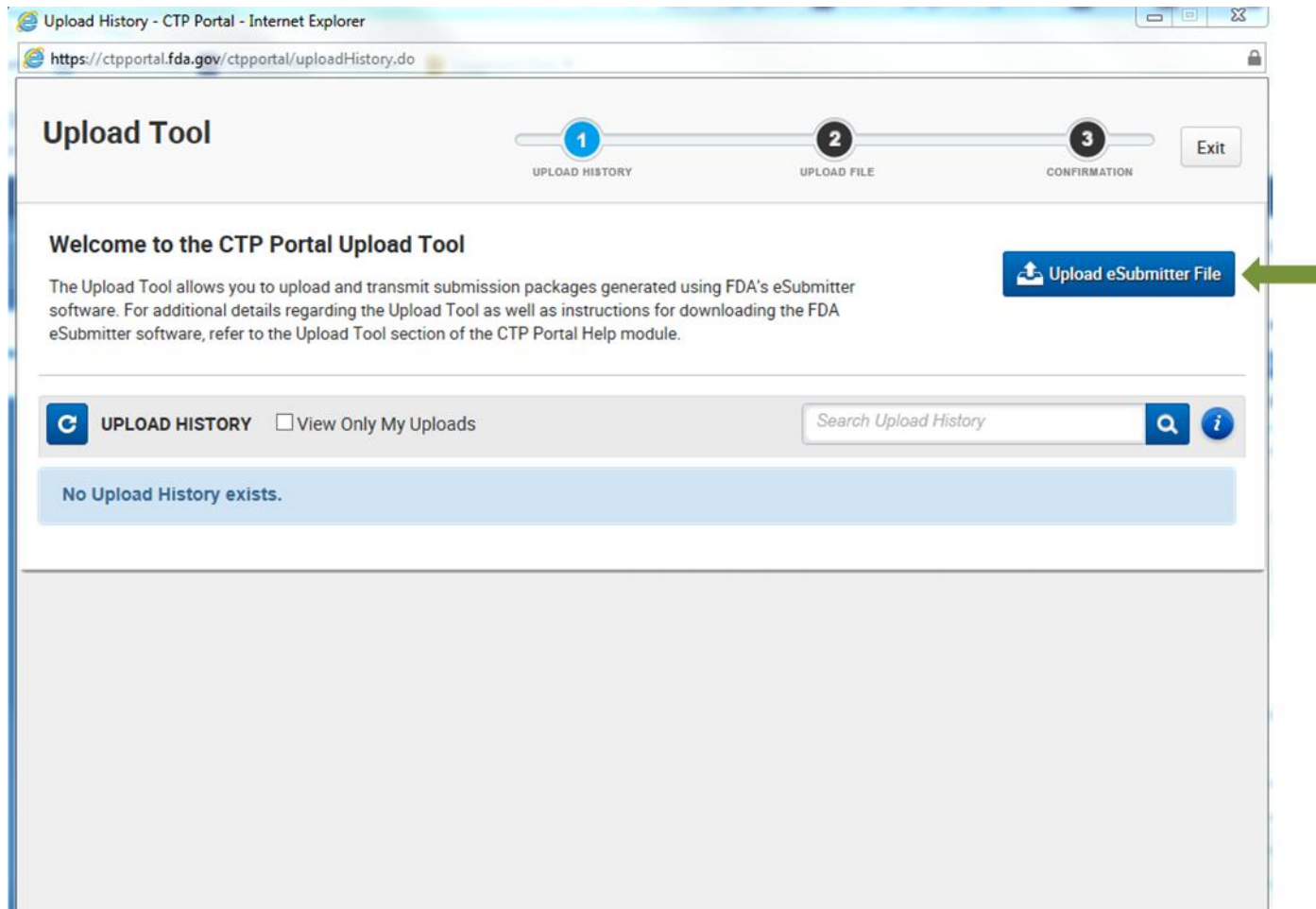
2) Click the blue "Upload eSubmitter File" button (right side of screen, indicated by a green arrow in the image below)

3) After you press the blue "Upload eSubmitter File" button, you will be prompted to browse your computer for the eSubmitter file. Then, you will need to enter a "Package Description" for the submission. The text entered into this field will be displayed in the CTP Portal. Lastly, check the certification box and press the "Upload" button. Follow any additional prompts and you should be sent to a submission confirmation screen

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Exhibits List

Exhibit 1   eSubmitter Quick Guide

Exhibit 2   eSubmitter Submissions for CTP

Exhibit 3   eSubmission User Manual

4836-3073-0305, v. 2