



**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL**

Tobacco Enforcement Section  
15th Floor Strawberry Square  
Harrisburg, PA 17120  
Phone: (717) 783-1794  
<http://www.attorneygeneral.gov>

**NON - PARTICIPATING MANUFACTURER CERTIFICATION FORM**

Complete all fields or indicate N/A – Do not leave blanks.

Please review all instructions for further information.

*Failure to provide all necessary information will result in the rejection of your certification.*

**PART I: Tobacco Product Manufacturer Identification**

Company Name			
Address			
City	State	Zip Code	Country
Telephone Number		Fax Number	
Email Address Designated to Accept All Official Communication		Web Address	
Factory Addresses & Names of Plant Managers (use additional sheets if necessary)			Phone Numbers of Plant Managers

Manufacturer's Federal Taxpayer ID# \_\_\_\_\_

Name of Importer \_\_\_\_\_

Importer's Address \_\_\_\_\_

Importer's Federal Taxpayer ID# \_\_\_\_\_ US Customs ID# \_\_\_\_\_

**This Form is (check one):**

- Annual Certification (due April 30 for Pennsylvania sales in the previous year)
- Supplemental Certification (changes to information on previously submitted forms)
- Quarterly Certification (Manufacturers required to file each quarter)
- Initial Certification (Manufacturer not currently listed on Pennsylvania's directory)

*Initial Certifications will require additional documentation.*

**PART II: General Questions for the Manufacturer** (attach additional sheets if necessary)

1. Are you the actual manufacturer (i.e. fabricator) of the brands listed in this certification?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If "No," please explain your reason for certifying.

\_\_\_\_\_

2. Are you the Trademark Owner of the brands listed in this certification?  
Yes \_\_\_\_\_ If "Yes," attach a copy of your active trademark registration\*  
No \_\_\_\_\_ If "No," provide the name and contact information of the owner and attach an executed copy of the exclusive manufacturing agreement showing the right to use\*

\*If you have already submitted a trademark registration or agreement and it has not expired, you do not need to resubmit. Please indicate if this is the case → \_\_\_\_\_

Trademark Registration Attached \_\_\_\_\_ or, Executed Agreement Attached \_\_\_\_\_

3. Have you included a copy of the Federal Trade Commission (FTC) approval letter for the current year for all brands listed in this certification?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "No," please explain why it is not available.

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4. Have you included a copy of the U.S. Centers for Disease Control (CDC) ingredient listing compliance letter for the current year for all of the brands listed in this certification?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "No," please explain why it is not available.

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5. Have you ever had an enforcement action taken against you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If "Yes," list the state(s) involved and a detailed explanation. (Attach additional sheets if necessary.)

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6. Have you ever been denied Directory Listing in any other state or commonwealth?

Yes \_\_\_\_\_ No \_\_\_\_\_

If "Yes," list the state(s) involved and a detailed explanation. (Attach additional sheets if necessary.)

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7. Have you included a copy of the PA Department of Revenue's Cigarette Manufacturer Certificate for fire safe cigarettes unless a previously supplied form has not expired or has not changed?

Yes \_\_\_\_\_ No \_\_\_\_\_

8. Are you registered with the PA Department of Revenue for compliance with the federal Prevent All Cigarette Trafficking Act/Jenkins Act 15 U.S.C § 375 – 378?

Yes \_\_\_\_\_ No \_\_\_\_\_ Verification will be made with the PA Department of Revenue.

**INITIAL CERTIFICATIONS ONLY (Annual Certifications check N/A)**

1. Have you attached a photograph and diagram of the manufacturing facility?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_ If "No," please explain why it is not available.

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2. Have you attached a copy of the company's organizational chart?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_ If "No," please explain why it is not available.

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3. Have you attached a copy of a qualified escrow agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_ If "No," please explain why it is not available.

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**PART III: Brand Family Identification (attach additional sheets if necessary)**  
**Provide a color CD/DVD of every brand style or promotional packaging. Include views of each side of the packaging.**

**Section A. Brands Currently Certified and on the Directory**

List brands and styles that will remain on the Directory

<b>Brand</b>	<b>Style</b>	<b>Flavor</b>	<b>Filter/Non</b>	<b>Package</b>

*Indicate with an asterisk(\*) any brands previously sold that are not being sold in the current year.*

**Section B. Brands to be Removed from the Directory**

List brands and styles currently on the Directory that will no longer be certified.

<b>Brand</b>	<b>Style</b>	<b>Flavor</b>	<b>Filter/Non</b>	<b>Package</b>

**Section C. Additional Brands to be Certified**

List additional brands and styles to be added to the Directory. List the Brand and Stamping Agent. If a brand family has been manufactured by more than one manufacturer, on a separate sheet of paper provide the name and address of every other tobacco product manufacturer and the dates the brand was produced by each manufacturer.

Brand	Style	Flavor	Filter/Non	Package

Brand Families	PA Licensed Cigarette Stamping Agent (if established)

**Section D. Yearly Sales History**

Manufacturers who file annually should complete the following table with information using the previous year’s sales. Manufacturers who file quarterly should complete the table using the previous quarter sales.

List your brand families, distributors/CSAs and the number of sticks that were sold into Pennsylvania last year. If you were not the sole manufacturer of a brand family, on a separate sheet provide the name and address of every other manufacturer and the dates of manufacture by each manufacturer. Escrow amount due is calculated based on reports submitted by CSAs to the PA Department of Revenue. You will receive written notification of escrow amount due.

Brand Family•	PA Licensed Cigarette Stamping Agent	Number of Sticks Sold to each CSA
<b>Total Units Sold</b>		

•Indicate with an asterisk(\*) any brands previously sold that are not being sold in the current year.

**PART IV: Residency Status**

The undersigned certifies that the above-named Tobacco Product Manufacturer (check one):

\_\_\_\_\_ is a resident of the Commonwealth of Pennsylvania

\_\_\_\_\_ has appointed the registered agent identified below for service of process in the Commonwealth of Pennsylvania

Resident Agent/Company Name		Date of Appointment		
Address		City	State	Zip Code
Telephone Number		Fax Number		



I understand that any violation of the requirements of the Tobacco Product Manufacturer Directory Act of the Tobacco Settlement Agreement Act of 2000 is a basis for removal of the manufacturer's brand families from the Commonwealth's Directory of Approved Brands.

I hereby certify under penalty of perjury that the Tobacco Product Manufacturer identified in Part 1 is a Non-Participating Manufacturer in full compliance with the Tobacco Settlement Agreement Act, that is a resident in the Commonwealth or has appointed a registered agent for service of process, that has established and continuously maintains a qualified escrow fund, and that has executed a qualified escrow agreement approved by the Attorney General.

Signature of Officer or Director: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Required Checklist:

- Attached a copy of the current Federal Trade Commission (FTC) approval letter(s) for health-warning rotation plan for all brand families.
- Attached a copy of the current Centers for Disease Control (CDC) ingredient listing compliance letter(s) for all brand families.
- Attached a copy of my TTB Manufacturer's/Importer's Permit or, a previously submitted copy has not expired.
- If a previously submitted registration or agreement has expired, I have attached a copy of my new trademark certification for all brand families or, if I am not the trademark owner, I have attached a new executed exclusive manufacturing agreement entered into with the trademark owner(s).
- Included color CD/DVD of all packaging to be used in Pennsylvania during the certification year.
- For Initial Certifications - I have attached a photograph and diagram of the facility, an organizational chart of the company and a qualified escrow agreement.
- Attached a copy of PA Department of Revenue's Cigarette Manufacturer Certificate for fire safe cigarettes unless a previously supplied form is not expired or has not changed.
- Completed this certification in its entirety or indicated N/A and I have signed it.
- I have reviewed and complied with the attached instructions.

Upon request, you may be required to submit additional documentation to verify your information such as articles of incorporation, corporate charters, corporate bylaws, operating agreements, contracts, leases, importer's certificates, licenses, BATF Form 7501s, bills of lading, customer invoices, etc.

Mail the completed original Tobacco Manufacturer's Certification and a complete set of all supporting documents to:

**Commonwealth of Pennsylvania  
Office of Attorney General  
Tobacco Enforcement Section  
15<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120**

**Facsimiles will not be accepted.**

Acceptance of this certification by the Commonwealth does not waive any rights to enforce the provisions of the Tobacco Settlement Agreement Act (TSAA), 35 P.S. §5671 et seq.

## **INSTRUCTIONS**

**This certification must be completed in English. All attachments must include a certified English translation if the original document is in a different language.**

**Fill out the certification form completely. Do not leave any fields blank. Indicate N/A when applicable.**

**Attachments must clearly indicate the section to which it corresponds.**

### **Part I: Tobacco Product Manufacturer's Identification**

Provide the company name and complete addresses. Provide the telephone number and fax number for the company official signing this certification. Provide an email address that is designated to receive all official office communication from our Office. Also provide the company web address. Identify the name and title of the person completing the certification form. Identify factory addresses, telephone numbers and names of plant managers where the cigarettes are made. If using an outside agency to complete this certification, please identify the name of that agency.

In the blocks provided, supply the Manufacturer and / or Importer's information where applicable. Be sure to indicate N/A where not applicable. Do not leave any fields blank, as this will cause the certification to be rejected and returned.

You must indicate whether this is an annual, supplemental, quarterly, or initial certification by checking one of the blocks.

Initial Certification questions should be completed by companies not currently included on the Pennsylvania Directory.

### **Part II: General Questions**

Answer the questions by checking yes or no or N/A. Supply detailed explanations when indicated. Attach required documentation and check applicable boxes.

### **Part III: Brand Family Identification**

**Provide a color CD/DVD of every brand style or promotional packaging. Include views of each side of the packaging. Each time you change your packaging; add new brand styles; or, create a special, limited edition package you must submit a color CD/DVD. When in doubt about packaging submission, please contact our Office for clarification.**

**Section A** - Identify by brand and style all of the cigarettes that you intend to sell in Pennsylvania whether directly or through any distributor, retailer, or similar intermediary.

**Section B** - Identify the brands and styles that you have discontinued selling in Pennsylvania and wish to remove from your Directory listing.

We recommend waiting a sufficient amount of time before delisting a brand to allow retailers time to clear their inventories.

**Section C** - Identify by brand and style the brands, not currently on the directory, that you wish to add to your Directory listing. Only brands in compliance with FDA regulations are eligible for listing.

If a brand family has been manufactured by more than one manufacturer, on a separate sheet of paper provide the name and address of every other tobacco product manufacturer and the dates the brand was produced by each manufacturer.

**Section D** - On the table provided, identify by Brand Family all of the following:

- a) the name of each brand family (identify with an asterisk any brands that are no longer being sold);
- b) the name of every Pennsylvania licensed Cigarette Stamping Agent for that brand family; and,
- c) the number of sticks sold to that Cigarette Stamping Agent.

The completion of this table requires you to obtain the information from your Cigarette Stamping Agents.

If a brand family has ever been manufactured by more than one manufacturer, on a separate sheet of paper provide the name and address of every other tobacco product manufacturer and the dates the brand was manufactured by each manufacturer.

### **Part IV: Residency Status**

Unless your company is based in Pennsylvania, you must appoint an agent for service of process and provide the Attorney General with proof of that appointment. You must provide the agent's name, address, telephone number and fax number. In addition, you must attach proof of the appointment and availability of the agent for the current year.

### **Part V: Escrow Account Information**

Initial Certification - Non-participating manufacturers must submit for approval an escrow agreement with a qualified financial institution. See the definition of "qualified escrow fund" in

these instructions. A copy of Pennsylvania's Model Escrow Agreement form can be obtained by calling our Office. Any variation from the model escrow agreement may delay approval of your certification.

If you plan on changing any aspect of a previously approved escrow agreement, e.g. a change in financial institutions, you must first contact this Office. Once an escrow agreement has been approved you cannot change it without prior approval of this Office. This Office reserves the right to reject any revisions which have not been approved in advance.

### **Section A – Financial Institution**

Identify the name, address, telephone and fax number of the financial institution and the name, title and e-mail address of a contact person authorized to conduct business on behalf of the financial institution; and,

the account number of your Qualified Escrow Fund and the sub-account number for Pennsylvania.

### **Section B – Escrow History**

Identify the dates for every deposit or withdrawal from your escrow account.

Provide a dollar amount of each transaction and a running balance of the amount in the account.

Attach a bank statement and proof of deposit showing the most recent deposit and the current balance.

### **Part VI: Execution by Corporate Officer or Director**

The Tobacco Product Manufacturer must certify that it is a Non-Participating Manufacturer in full compliance with the Tobacco Settlement Agreement Act that is a resident in the Commonwealth (or has appointed a registered agent for service of process), that has established and continuously maintains a qualified escrow fund, and that has executed a qualified escrow agreement approved by the Attorney General.

The person executing the Tobacco Manufacturer Certification Form must be an authorized Officer or Director of the Tobacco Product Manufacturer. A power of attorney will not be accepted. The designee's name and title must be printed and signed.

### **Definitions:**

- a) "Brand Family" - all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "kings," and "100s." The term includes any use of a 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 any product identification identical or similar to or identifiable with a previously known brand of cigarettes.
- b) "Cigarette" - any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains any of the following:

- (1) Any roll of tobacco wrapped in paper, or in any substance not containing tobacco.
  - (2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.
  - (3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in paragraph (1).
- c) "Enforcement Action"- Any lawsuit filed by any state against a Tobacco Product Manufacturer for failure to make MSA payments, escrow deposits and/or file a certification.
- d) "Non-Participating Manufacturer"- any tobacco product manufacturer that is not a party to the Master Settlement Agreement (MSA).
- e) "Participating Manufacturer" - a tobacco product manufacturer that is a party to the Master Settlement Agreement (MSA).
- f) "Qualified Escrow Fund" - an escrow arrangement with a federally chartered or State chartered financial institution that has no affiliation with any tobacco product manufacturer and has assets of at least \$1,000,000,000 in which the escrow arrangement:
- (1) requires that the financial institution hold the principal of the escrowed funds for the benefit of the releasing parties as that term is defined in the Master Settlement Agreement; and
  - (2) prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the principal of the funds except as consistent with section 4 of the act of June 22, 2000, 35 P.S. § 5674, known as the Tobacco Settlement Agreement Act.
- g) "Units Sold" - The number of individual cigarettes sold in this Commonwealth by the applicable tobacco product manufacturer during the year in question, as measured by taxes collected by the Commonwealth on packs bearing the tax stamp of the Commonwealth required under section 1215 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

## **Frequently Asked Questions**

### **Who is required to file this Certification?**

Every Non-Participating Manufacturer that intends to sell cigarettes in the Commonwealth, whether directly or through any distributor, retailer, or similar intermediary. (Participating manufacturers must file a different form - TES-005.)

*Due to current Pennsylvania tax statutes, Roll-Your-Own (RYO) Tobacco Manufacturers are not required to file a certification at this time.*

### **How is this certification used?**

The Office of Attorney General uses the information provided in the certification to determine whether a tobacco product manufacturer's brand(s) should be included in the directory published

pursuant to section 301 of the Tobacco Product Manufacturer Directory Act (TPMDA), 35 P.S. § 5702.301. If a cigarette brand is not listed on the directory, it cannot be sold in Pennsylvania.

### **Who should sign the certification?**

The certification must be reviewed and signed by a director or officer of the Tobacco Product Manufacturer (TPM) with the authority to bind the company. A Power of Attorney will not be accepted.

### **When must an initial certification be filed?**

A manufacturer that wants to start selling its cigarettes in Pennsylvania must file an initial certification prior to any sales in the Commonwealth. An initial certification may be submitted any time during the calendar year. Sales cannot commence until the initial certification is approved.

### **When must an annual certification be filed?**

With one exception (see below), every manufacturer appearing on the Directory must file an annual certification. The certification must be filed between April 15 and April 30. It cannot be executed (signed) before April 15.

The only exception is for companies that are actively filing quarterly reports. Companies with quarterly requirements that have NOT yet had sales in Pennsylvania ARE required to file annual certifications.

### **When must a quarterly certification be filed?**

After the Initial Certification has been approved, a Non-Participating Manufacturer must file quarterly certifications for the first twelve months of sales in Pennsylvania. Also, you must secure a Pennsylvania licensed distributor and initiate sales within six months of approval. Failure to do so may result in removal from the Directory.

A Non-Participating manufacturer may also be required to file quarterly certifications under the terms of an Assurance of Voluntary Compliance (AVC).

The certification for sales in the first calendar quarter is due May 15, the certification for sales in the second calendar quarter is due August 15, the certification for sales in the third calendar quarter is due November 15, and the certification for sales in the fourth calendar quarter is due February 15 of the following year.

### **When must a supplemental certification be filed?**

A manufacturer must file a supplemental certification when there is a change in any of the information that it has provided in its most recent certification. Changes include, but are not limited to, additions or deletions of a brand family, changes in contact information, addresses, company organization/ownership, escrow information, registered agent, and/or packaging.

### **When must I make my escrow payment?**

Non-Participating Manufacturers whose products have previously been sold in the Commonwealth must deposit all required escrow payments into a qualified escrow account annually on or before April 15 of each year, unless subject to an AVC, in which case the requirements of that agreement should be followed.

New Non-Participating Manufacturers must make quarterly deposits as set forth below:

The deposit for sales in the first calendar quarter is due May 15th  
The deposit for sales in the second calendar quarter is due August 15th  
The deposit for sales in the third calendar quarter is due November 15th, and  
The deposit for sales in the fourth calendar quarter is due February 15th of the following year.

New Non-Participating Manufacturers must secure a CSA/Distributor and initiate sales within six (6) months of Directory Listing. Failure to do so will result in removal from the PA Directory.

**When must packaging be submitted?**

A manufacturer is required to provide a color CD/DVD for each brand style showing all sides of the packs when submitting a certification.

New Fire Safe Cigarette Manufacturer Certificate must be submitted with all package changes.