



# Non-Participating Manufacturer Certification Form

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

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	
Factory Address (use additional sheets if necessary)			
Name of Designated Contact		Name of Legal Counsel for cc (optional)	
Email Address Designated to Accept All Official Communication		Legal Counsel Email Address	
Company Website Address			

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)
- 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.

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2. Are you the Trademark Owner of the brands listed in this certification?  
Yes \_\_\_\_\_ If "Yes" attach a copy of your **live** trademark **from the USPTO website**.  
No \_\_\_\_\_ If "No" provide the name and contact information of the owner, attach **a copy of the live trademark from the USPTO website and a copy of any agreement that defines trademark rights and/or control over the manufacturing of the cigarettes (such as an exclusive manufacturing agreement) and attach an executed copy of such agreement.**

**Live** Trademark Attached \_\_\_\_\_ Executed Agreement Attached \_\_\_\_\_

3. Attached 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. Attached 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 \_\_\_\_\_ N/A \_\_\_\_\_ If "No," please explain why it is not available.

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5. Have you ever had an enforcement action taken against you that you have not previously disclosed to this Office?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If "Yes," list the state(s) involved, **date** 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, **date** and a detailed explanation. (Attach additional sheets if necessary.)

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7. Attached a copy of the PA Department of Revenue's Cigarette Manufacturer Certificate for fire safe cigarettes and corresponding laboratory test results?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_ If "No," please explain why it is not available.

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8. Attached a copy of the Pennsylvania Tobacco Products License (RYO).

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

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9. Are you registered with the PA Department of Revenue in accordance 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.  
If "No" list registered company name and explain why they are registered.

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10. Is the responsible party current with their monthly report filings to the PA Department of Revenue in accordance 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.  
If "No" please explain.

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11. Is a copy of your current qualified escrow agreement on file with our office?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "No," please attach a copy of a new qualified agreement which has been approved by this office.

12. CSA/Distributor - 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.

Name of Distributor \_\_\_\_\_

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13. Are any of your brands or brand styles currently under review or have been subjected to a recall by the FDA within the past two (2) years?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "Yes" provide the FDA documentation regarding the review/recall of the brand or brand style and a detailed explanation.

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14. Have your manufacturing facilities changed locations within the last certification year?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "Yes" provide an address of this facility as well as photos and diagram of the manufacturing facility.

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

1. 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. Attached a copy of the company's organizational chart?

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

List all officers/owners of the applicant. Attach additional sheets if necessary.

Name & Title	Address	Telephone Number	Email Address

3. Do you have any parent, subsidiary sister or other affiliated entities?

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

If "Yes" list all such entities, their relationship and whether they manufacture, sell or distribute tobacco products for sale in PA. Attach additional sheets if necessary.

Company Name and Address	Contact Person and Telephone Number	Does this Company Sell or Distribute Tobacco Products for Sale in PA

**PART III: Brand Family Identification (attach additional sheets if necessary)**

Provide an electronic color copy of every brand style or promotional packaging. Include views of each side of the packaging with UPC clearly visible.

**Section A. Brands Currently Certified and on the Directory (required on Annual Certifications only)**

List brands and styles that will remain on the Directory

Brand	Style/Flavor	Filter/Non	Package	Cigarette/RYO


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.

Brand	Style/Flavor	Filter/Non	Package	Cigarette/RYO

**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	Cigarette/RYO

Brand	Cigarette/RYO	PA Licensed Cigarette Stamping Agent/Distributor

**Section D. Yearly Sales History**

Manufacturers who file annually should complete the following table with information using the previous year's 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.

Brand Family•	PA Licensed Cigarette Stamping Agent/Distributor	Number of Sticks/Ounces 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			

***A current (dated this year) letter from the registered agent accepting this appointment must be attached.***

#### PART V: Escrow Account Information

Initial Certification – Attach a fully executed copy of the current Qualified Escrow Agreement including any amendments or attachments. A copy of the Pennsylvania Model Escrow Agreement is available on our website.

Once an escrow agreement has been approved you cannot change it without prior approval of this Office. This Office reserves the right to require a new escrow agreement. We also, reserve the right to reject any revisions which have not been approved in advance. Please verify that your financial institution is submitting copies of your escrow statements to our office.

##### Section A. Qualified Escrow Fund – Financial Institution

Name of Institution				
Address		City	State	Zip Code
Authorized Representative Name/Title				
Telephone Number		Fax Number		
Email Address				
Escrow Account Number		Pennsylvania Sub-Account Number (if applicable)		
Date of Executed Escrow Agreement				

##### Section B. Escrow Fund Deposit/Withdrawal History for Pennsylvania

Provide the escrow deposit/withdrawal history. Attach proof of the current balance and updated account ledger of the escrow account as provided by the escrow agent and proof of the date of the most recent deposit. Failure to comply may result in denial of your certification.

Date	Deposit	Withdrawal•	Balance
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- Included electronic color copy of all packaging to be used in Pennsylvania during the certification year. Include views of each side of the packaging with UPC clearly visible.
- If required, attached a copy of your Model Escrow Agreement.
- For Initial Certifications – attached photographs and diagram of the facility, an organizational chart of the company **and list of related parent, subsidiary sister and/or affiliated entities list** and a qualified escrow agreement.
- Attached a copy of PA Department of Revenue’s Cigarette Manufacturer Certificate for fire safe cigarettes and corresponding laboratory test results.
- Attached a copy of the Pennsylvania Tobacco Products License (RYO).
- Completed this Certification in its entirety or indicated N/A **with signature of Officer or Director**.
- 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 (we recommend that you send all attachments via CD/DVD/USB Drive) 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. In place of paper copies, we recommend that you send all attachments via electronic media (CD/DVD/USB Drive).**

## **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/RYO 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 an electronic color copy of every brand style or promotional packaging. Include views of each side of the packaging with the UPC code clearly visible. Each time you change your packaging; add new brand styles; or, create a special, limited edition package you must submit an electronic color copy. When in doubt about packaging submission, please contact our Office for clarification.**

**Section A** - Identify by brand and style all of the cigarettes/RYO 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/Distributor for that brand family; and,
- c) the number of sticks/ounce 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 - Initial Certification - Non-participating manufacturers must supply an escrow agreement with a qualified financial institution. Prior to certification, this agreement must be approved by TES. A copy of Pennsylvania's Model Escrow Agreement form may be found on our website. Any variation from Pennsylvania's model escrow agreement may delay approval of your certification. See the definition of "qualified escrow fund" in these instructions.

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. Also include the date of your executed agreement.

## **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/RYO 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/RYO.
- 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).
  - (4) Any "roll-your-own," which means any tobacco which, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. For purposes of this definition, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual cigarette.
- 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, or 'roll-your-own" tobacco containers, 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/RYO in the Commonwealth, whether directly or through any distributor, retailer, or similar intermediary. (Participating manufacturers must file a different form - TES-005.)

### 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/RYO 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.

### What type of Certification should I file?

**Initial** - A manufacturer that wants to start selling its cigarettes/RYO 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.

**Quarterly** – After the Initial Certification has been approved, an NPM whose products have not been previously sold in Pennsylvania, must file quarterly certifications for the first twelve

months of sales. 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).

Quarterly certification for sales are due as follows:

First quarter (January, February, March) due May 15,

Second quarter (April, May, June) due August 15,

Third quarter (July, August, September) due November 15

Fourth quarter (October, November, December) due February 15 of the following year.

**Annual** – All other manufacturers 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.

**Supplemental** - 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, packaging changes, additions or deletions of a brand family, changes in contact information, addresses, company organization/ownership, escrow information, and/or registered agent.

#### **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:

First quarter (January, February, March) due May 15,

Second quarter (April, May, June) due August 15,

Third quarter (July, August, September) due November 15

Fourth quarter (October, November, December) due February 15 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 an electronic color copy of each brand style showing all sides of the packs when submitting a certification. Include views of each side of the packaging with UPC clearly visible. **If you add or entirely remove a typed color description from packaging, it will alter the brand style name and the change will not be considered a packaging change. In the event that you add a color or entirely remove a color from packaging, you will be required to submit a supplemental certification to add and/or remove a brand style on the directory.**

New Fire Safe Cigarette Manufacturer Certificates and corresponding laboratory results must be submitted with all package changes.