

INSTRUCTIONS

Part I: Tobacco Product Manufacturer's Identification

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

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 required 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 electronically.

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 for the Manufacturer

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.

Please be sure the packaging provided is clear of any proprietary information as it will be displayed to the public on the Pennsylvania Tobacco Product Directory of Approved Brands.

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 any brands and styles that currently are not on the Directory that you wish to add to your Directory listing. Only brands in compliance with FDA regulations are eligible for listing. For RYO, please include package type and size of all brands and styles that you intend to sell in Pennsylvania.

If, through a purchase or transfer of a brand, brand style or formula, a brand style has ever been owned, marketed or manufactured by another manufacturer, on a separate sheet of paper provide: the name and address of every such manufacturer; the dates that the brand family was produced by such manufacturers; the brand names used by such manufacturers; and the manufacturer from whom the brand or formula was most recently purchased. Further documentation may be requested to verify sales and purchase details.

Section D - On the table provided or a separate sheet of paper or in an excel file, identify all shipments of unstamped cigarettes or non-SET-paid RYO tobacco manufactured by your company during the prior year, including the following information:

- a) The name of the entity shipping such unstamped cigarettes or non-SET-paid RYO.
- b) The name of each brand family shipped (identify with an asterisk [*] any brands that are no longer being shipped).
- c) The shipping destination, including state, business name, and address.
- d) The number of sticks/ounces shipped to that entity.

Please note, this section may require you to obtain information from importers and other entities.

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, fax number and email address. 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 - 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 (including a buyout or merger of an existing institution), 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 (designee) executing the Tobacco Manufacturer Certification Form must be an authorized Officer or Director of the Tobacco Product Manufacturer and is responsible for all information contained within. Questions regarding this certification may be directed to the designee. 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.