

Tobacco Product Manufacturer Certification

Pursuant to § 39-28-303, Colorado Revised Statutes

General Information

Who must file?

- Any tobacco product manufacturer that intends to sell cigarettes within the state of Colorado, whether directly or through any distributor, retailer, or similar intermediary.
- This Certification is in addition to any Certificate of Compliance that may be required pursuant to § 39-28-203(2)(c)(I), C.R.S. and any fire-safe certification that may be required pursuant to § 24-33.5-1214, C.R.S.

What must be filed?

- Tobacco Product Manufacturer Certification must be filed by all tobacco product manufacturers that intend to sell cigarettes within the state of Colorado.
- Certificate of Compliance by Non-Participating Manufacturer Regarding Escrow Payment must be filed by all non-participating manufacturers, even if the NPM had no sales in Colorado during the sales year.

When is the annual Certification due?

- For manufacturers whose cigarettes are sold in Colorado, Certification is due annually between April 16th and April 30th. Note that escrow deposits are due no later than April 15th each year.
- For manufacturers whose cigarettes are not yet sold in Colorado, an Initial Certification must be submitted and cigarettes must qualify for listing before beginning sales in Colorado.
- For manufacturers making any change(s) to their annual Certification, a Supplemental Certification noting the change(s) must be submitted at least 30 days before the change(s) becomes effective.

Where should the Certification be sent?

- All completed Certification forms should be emailed to both the Colorado Department of Revenue and the Colorado Office of the Attorney General at the addresses listed below:

Colorado Department of Revenue dor_excisetax@state.co.us	Colorado Department of Law Tobacco.Enforcement@coag.gov
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How must the Certification be completed?

- This Certification and all other required forms must be completed in English. For all attachments required by the Certification, if the original documents are in a language other than English, a true and correct translation into English must be attached as well.
- Any attachment to this Certification must indicate to which Part and Question it corresponds.
- If any section of this Certification is not applicable to your company, be sure to check the box “not applicable” where relevant or write “not applicable” if there is no box to check.

Records Retention Information

Tobacco Product Manufacturers are required to maintain all invoices and documentation of sales and other such information relied upon for this certification for a period of 5 years, unless otherwise required by law to maintain them for a greater period of time (C.R.S. § 39-28-303(1)(g)).

Definitions:

- (a) **“Affiliate”** means a person who directly or indirectly owns or controls, is owned by, or is under common ownership or control with, another person. Solely for the purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.
- (b) **“Brand Family”** means all brand 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,” “lights,” “kings,” and “100s,” and includes any 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 product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (c) **“Cigarette”** has the same meaning as in § 39-28-202(4), C.R.S.
- (d) **“Directory”** means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of § 39-28-303, C.R.S., and all brand families that are listed in such certifications; except as provided by § 39-28-303, C.R.S.
- (e) **“Escrow Deposit”** means deposits required to be made into a qualified escrow fund pursuant to § 39-28-203(2), C.R.S.
- (f) **“Master Settlement Agreement”** has the same meaning as in § 39-28-202(5), C.R.S.
- (g) **“Non-participating Manufacturer”** means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (h) **“Participating Manufacturer”** has the same meaning as in Section II(jj) of the Master Settlement Agreement and all amendments thereto.
- (i) **“Qualified Escrow Fund”** has the same meaning as defined in § 39-28-202(6), C.R.S.
- (j) **“Stamping Agent”** or **“Wholesaler”** or **“Distributor”** means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under § 39-28-102, C.R.S., and/or any person that is required to pay the tobacco tax imposed pursuant to § 39-28.5-102 on roll-your-own tobacco for cigarettes.
- (k) **“Tobacco Product Manufacturer”** has the same meaning as defined in § 39-28-202(9), C.R.S.
- (l) **“Units Sold”** has the same meaning as defined in § 39-28-202(10), C.R.S.

Specific Instructions

Part 1: Manufacturer's Identification

Section 39-28-202(9), C.R.S., sets forth three circumstances under which an entity is a Tobacco Product Manufacturer. Those circumstances are set out in Questions 1-3. If an applicant answered "no" to Questions 1, 2, and 3, Applicant must provide an explanation for its assertion that it is a Tobacco Product Manufacturer in its response to Question 4.

Part 2: Certification Year

Identify the year for which certification is being requested.

Part 3: Brand Family Identification

Identify by brand family and brand style, all cigarettes that the Tobacco Product Manufacturer intends to sell in Colorado, whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the directory. Only the brands identified will be included in the directory.

A Tobacco Products Manufacturer (TPM) shall include in its certification (1) a list of all of its brand families that were sold in Colorado during the preceding calendar year, (2) indicating, by an asterisk, any brand family sold in Colorado during the preceding calendar year that is no longer being sold in Colorado as of the date of such certification, (3) a list of all of its brand families that have been sold in Colorado at any time during the current calendar year and (4) the name and address of any other manufacturer of such brand families in the preceding or current calendar year. The TPM shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a Supplemental Certification to the Attorney General and the Department of Revenue.

All Manufacturers, who have provided written certification pursuant to § 24-33.5-1214, C.R.S., must indicate for each brand family when it was certified as fire-safe and submit the fire-safe certificates with this certification. All Non-Participating Manufacturers must also file a Certificate of Compliance by Non-Participating Manufacturer Regarding Escrow Payment.

F.1. Submit samples of the actual packaging and labeling, in digital format, for each brand style of Cigarettes that Applicant intends to sell in Colorado. If packaging has not changed from prior certifications, it need not be resubmitted.

F.2. Cigarette Health Warning Rotation Plan—A copy of the current Federal Trade Commission ("FTC") letter authorizing your health warning rotation plan must be provided for the brand families you currently sell in the State of Colorado. Additional information can be obtained from:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
General Information Locator: (202) 326-2222
<https://www.ftc.gov/>

F.3. Cigarette Ingredient Reporting Requirement—A copy of the current Centers for Disease Control (CDC) letter approving your ingredient listing for cigarettes must be provided for the brand families you currently sell in the State of Colorado. Additional information can be obtained from:

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, Georgia 30333
1-800-CDC-INFO (232-4636), TTY 888-232-6348
www.cdc.gov/tobacco/stateandcommunity/reporting/instructions.htm

F.4. PACT Act and Jenkins Act Reporting—The Prevent All Cigarette Trafficking ("PACT") Act, 15 U.S.C. § 375, et seq. requires all persons who sell, transfer, or ship cigarettes or smokeless tobacco in interstate commerce for profit to: (1) register with the Attorney General of the United States and the Colorado Department of Revenue (enclose a copy of the registration with this application); and (2) file monthly reports with the Colorado Department of Revenue, no later than the 10th of each month, identifying the brands, quantities, and recipients of cigarette and smokeless tobacco shipments into Colorado. These provisions apply to all tobacco product manufacturers.

➡ **Note: All packaging samples, FTC health warning rotations, fire-safe certificates for each brand family style, and CDC compliance letter should be emailed to the Office of the Attorney General only.**

- G. Trademark Holders**—Identify who holds trademarks on a brand family and provide the address and telephone number of the holder and the trademark registration number.
- H. Affiliates**—Identify any Affiliate that also manufactures, imports, distributes, or sells cigarettes or other tobacco products in Colorado by completing the table on the application. For purposes of this Certification & Application for Listing, the term “own” means ownership of an equity interest, or the equivalent thereof, of 10 percent (10%) or more. List the names of the brands and the affiliate in the first two columns. List the type of business by writing in the third column.
- I. Brand**—Identify (1) the brand families and styles sold in Colorado, (2) the distributor/stamping agent used to distribute the brand family styles in Colorado, (3) the distributor/stamping agent’s address, and (4) phone number and contacts.

Part 4: Non-Participating Manufacturer Certification

- A. Verify that the Non-Participating Manufacturer is registered to do business in Colorado or has appointed an agent for service of process and provided notice thereof as required by § 39-28-304, C.R.S.

Non-participating Manufacturers must either register with the Colorado Secretary of State to do business in Colorado or retain the services of a registered agent located in the State of Colorado to act as agent for service of process.

If the non-participating manufacturer terminates the agent’s appointment, the manufacturer shall provide notice of the termination to the Office of the Attorney General and the Colorado Department of Revenue thirty (30) days prior to the termination and shall provide proof of appointment of a new agent not less than five (5) days prior to the termination.

If the registered agent terminates the appointment, the manufacturer shall provide notice to the Office of the Attorney General and the Colorado Department of Revenue along with proof of the appointment of a new agent within five (5) calendar days of the termination.

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

- B. Identify (1) the name, address and telephone number of the financial institution where the Non-Participating Manufacturer has established a Qualified Escrow Fund pursuant to § 39-28-202(6), C.R.S., and (2) the account number of such Qualified Escrow Fund and any sub-account number for Colorado. Indicate whether the Attorney General has approved the escrow agreement, when and by whom.

Part 5: Disclosure of Enforcement Actions (NPM Applicants Only)

Part 6: Applicant Certification (All Applicants)

Note: Any person who makes an assertion in this certification that he or she knows is false regarding a material matter is guilty of a misdemeanor punishable by imprisonment or a fine, or both.

Signature: The person executing the Certification must do so before an authorized notary.

Checklist For Completing Certificate Of Compliance Form

Pursuant to C.R.S. § 39-28-305(4), the Attorney General may require a tobacco product manufacturer to submit any additional information necessary to enable the attorney general to determine whether a manufacturer is in compliance with §§ 39-28-201 to 39-28-307, C.R.S. **All packaging samples, FTC health warning rotations, CDC compliance letters, and PACT Act registration documents should be emailed to the Office of the Attorney General.**

A. Check List for Participating Tobacco Product Manufacturers

- ☐ Parts 1,2,3 and 6 must be completed in their entirety;
- ☐ Brand families have been listed **and** “Cigarettes” or “RYO” is indicated;
- ☐ Brands that are **not** being sold in the current year have been marked with an asterisk (*);
- ☐ FTC Cigarette Health-Warning Rotation Plans, CDC Ingredient Approval letters, packaging samples on CD, fire-safe certificates, and PACT Act registration information are attached
- ☐ Certificate of Compliance is signed by an authorized officer of the tobacco product manufacturer; and
- ☐ Certificate of Compliance is notarized.

B. Check List for Non-Participating Manufacturers

- ☐ **All** parts of Certificate of Compliance are completed;
- ☐ Brand families have been listed **and** “Cigarettes” or “RYO” is indicated;
- ☐ Brands that are **not** being sold in the current year have been marked with an asterisk (*);
- ☐ FTC Cigarette Health-Warning Rotation Plans, CDC Ingredient Approval letter, packaging samples on CD, fire-safe certificates, and PACT Act registration information are attached;
- ☐ If registered agent has been appointed, letter from agent accepting appointment is attached;
- ☐ Current escrow agreement and any attachments and amendments are attached;
- ☐ Certificate of Compliance is signed by an authorized officer of the non-participating manufacturer; and
- ☐ Certificate of Compliance is notarized.

**Note: The state of Colorado will not process incomplete or illegible certifications.
Attach additional sheets as necessary to provide a complete response.**

Tobacco Product Manufacturer Certification

☐ Initial

☐ Supplemental

☐ Renewal

Part 1—Tobacco Product Manufacturer Identification And Business Information

Company	
Street Address	
Mailing Address (if different from above)	
Telephone	Fax
E-mail	Web site Address
Name/Title of Person Completing Report	
Manufacturing Plant(s) Address	
Mailing Address (if different from above)	
Factory Telephone	Factory Fax
Factory Manager(s)	
If Located in the U.S.: Manufacturer's Federal Taxpayer ID Number	
If Located in the U.S.: Manufacturer's TTB Tobacco Manufacturing/Importing Permit Number	
➡ If Manufacturer is located in a country other than the U.S., provide copies of any Tobacco Manufacturer's License/Certificate/Permit or similar documentation issued by the country where the manufacturing takes place.	
The Tobacco Product Manufacturer identified above is, as of the date of this Certification: (Initial one) _____ A Participating Manufacturer under the Tobacco Master Settlement Agreement and has generally performed its financial obligations under the Master Settlement Agreement. _____ A Tobacco Product Manufacturer in full compliance with § 39-28-201, et seq., C.R.S.	
1. Is Applicant the manufacturer (i.e., fabricator) of the brands listed in this Certification that are intended to be sold in the United States, including cigarettes intended to be sold in the United States through an importer? ☐ Yes ☐ No If your answer is "No," identify the name and address of the fabricator and state fully the applicant's basis for seeking to have the brand(s) included in the Directory. _____	
2. Is Applicant the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States? ☐ Yes ☐ No If your answer is "Yes," identify each cigarette manufacturer (i.e., fabricator), its plant street address, mailing address, contact person, telephone and facsimile phone numbers, and the relationship to applicant. Identify the location of the transfer of ownership of cigarettes and a copy of every agreement or contract between applicant and fabricator. Attach additional sheet(s), as necessary, to provide a complete response. _____ _____ _____ _____	

Note: The state of Colorado will not process incomplete or illegible certifications. Attach additional sheets as necessary to provide a complete response.

3. Is Applicant a successor of an entity described in the last two questions (i.e., manufacturer or first importer)?

☐ Yes ☐ No

4. If Applicant checked "no" on the last three questions above, explain the basis for applicant's claim that it is a Tobacco Product Manufacturer as defined under section 39-28-202(9), C.R.S., and submit all documentation to support applicant's contention. Attach additional sheet(s), as necessary, to provide a complete response.

Part 2—Certification Year

The year for which certification of these brands is being requested is _____ (A separate certification is required each year)

Part 3—Brand Family Identification

(To be completed by all TPMs. Attach Additional Sheets, if necessary)

Indicate with an asterisk (*) those brands that will not be sold during the current calendar year. The brands indicated with an asterisk (*) will be removed from the Colorado Certified Brands Directory the month following the acceptance of the Certification of Compliance

A. Brand Family	B. Brand Style	C. Cigarette or RYO	D. Units Sold	E. Date Certified Fire-Safe	F. Manufacturer

G. Manufacturing Information:

1. Provide a Sample of the packaging for each brand family style in digital format.

- ☐ **Initial Application:** Samples of the actual packaging and labeling for each brand are attached.
- ☐ **Supplemental Application:** Samples of the actual packaging and labeling for each supplemental brand are attached.
- ☐ **Renewal Application:** Samples of packaging for all brands and products sought to be certified in the current year have been previously provided and there have been no changes in the packaging.
- ☐ **Renewal Application:** Changes in packaging of previously submitted samples have occurred and new packaging samples are attached.

2. For each of the above brand families (cigarettes only) provide a copy of the current Federal Trade Commission (FTC) approval letter for health-warning rotation plan. Additional information can be obtained at:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
General Information Telephone: (202) 326-2222
www.ftc.gov

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Attach additional sheets as necessary to provide a complete response.**

3. Provide a copy of the current Center For Disease Control (CDC) ingredient-listing (cigarettes only) compliance letter(s) pertaining to the above brands of cigarettes and a statement from the manufacturer as to which brand's ingredients were submitted for each approval letter. Additional information can be obtained at:

Center For Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333
Phone: 1-800-CDC-INFO (232-4636), TTY 888-232-6348
cdc.gov/tobacco/stateandcommunity/reporting/instructions.htm

4. The Prevent All Cigarette Trafficking ("PACT") Act, 15 U.S.C. . § § 375, et seq. requires all persons who sell, transfer, or ship cigarettes or smokeless tobacco in interstate commerce for profit to: (1) register with the Attorney General of the United States and the Colorado Department of Revenue (enclose a copy of the registration with this application); and (2) file monthly reports with the Colorado Department of Revenue, no later than the 10th of each month, identifying the brands, quantities, and recipients of cigarette and smokeless tobacco shipments into Colorado. These provisions apply to all tobacco product manufacturers.

➡ Note: All packaging samples, FTC health warning rotations, fire-safe certificates for each brand family style, and CDC compliance letters should be emailed to the Office of the Attorney General only.

H. Trademark Holder(s)

Brand	Trademark Holder/Contact Person	Trademark Registration Number	Physical Address	Phone

I. Affiliates

Brand Family	Affiliate Name	Type of Business (manufacturer, importer, distributor, wholesaler)	Affiliate Address

J. Distributors/Stamping Agents

Brand Family	Distributor Name	Type of Business (manufacturer, importer, distributor, wholesaler)	Distributor Address

Note: The state of Colorado will not process incomplete or illegible certifications. Attach additional sheets as necessary to provide a complete response.

Part 4—Non-Participating Manufacturer Certification

A. Registered Agent/Approved Agent for Service of Process

Company

Address

Address

Telephone

Fax

Email

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

B. Qualified Escrow Fund – Financial Institution

Name of Institution

Representative Name

Telephone

Escrow Account Number

State Account Number

Has the Escrow Agreement been approved by the Attorney General? ☐ Yes ☐ No

By whom

Approval date

Part 5—Non-Participating Manufacturer Disclosure of Enforcement Actions

1. Enforcement Actions Banning or Enjoining Sales

Has Applicant or any Person or Affiliate of the Applicant had any of its cigarettes banned or enjoined from sale by any state or federal court or administrative agency within the U.S.? For every such action banning or enjoining sales, list:

- a. the Brand Family(ies) banned and/or enjoined
- b. the governmental entity (federal, state, local, or foreign) or private plaintiff bringing the action;
- c. the case number;
- d. the name and address of the government entity or private plaintiff bringing the action.

☐ Yes, the details of each occurrence are attached to this Certification. ☐ Not applicable

2. Denials, Suspensions, Revocations of Permits or Licenses

Has Applicant or any Person or Affiliate of Applicant been denied a permit, license, or been denied any other authorization to engage in any business relating to the sale of cigarettes by any government entity (federal, state, local, or foreign) or had such permit, license or other authorization revoked, suspended, or otherwise terminated?

For every such denial, suspension or revocation of a permit, license or other authorization, list:

- a. the name of the Applicant or the other Person or Affiliate that had such permit, license, or other authorization revoked, suspended, or otherwise terminated;
- b. the governmental entity (federal, state, local, or foreign) which revoked, suspended, or otherwise terminated the permit, license, or other authorization;
- c. the case number, if any;
- d. the name and address of the government entity or private plaintiff bringing the action.

☐ Yes, the details of each occurrence are attached to this Certification. ☐ Not applicable

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Attach additional sheets as necessary to provide a complete response.**

3. Convictions

Has Applicant or any other Person or Affiliate of Applicant been convicted of a crime under federal, state, or foreign laws in connection with the sale of cigarettes? For every such conviction, list:

- a. the name of the Applicant, Person, or Affiliate convicted;
- b. the governmental entity (federal, state, local, or foreign) that prosecuted Applicant, Person, or Affiliate;
- c. the case number;
- d. the name and address of the government entity that prosecuted Applicant, Person, or Affiliate.

☐ Yes, the details of each occurrence are attached to this Certification. ☐ Not applicable

4. Denial of Listing

Has the Applicant or any other Person or Affiliate of Applicant been denied listing on any state directory, which is similar to the subject of this Certification? For every such denial, list:

- a. the name of the Applicant, Person, or Affiliate denied listing on a state directory;
- b. the Tobacco Product Manufacturer and/or Brand Family(ies) denied listing; and
- c. the State which denied listing

☐ Yes, the details of each occurrence are attached to this Certification. ☐ Not applicable

5. Compliance with the provision of C.R.S. § § 39-28-201 through 39-28-307

Has any Person involved with Applicant (owner, officer, director, employee) been involved as an officer, director, or owner of any other tobacco company or Affiliate which has not made its escrow deposits as Non-Participating Manufacturer under any state escrow statute? For every such occurrence, list:

- a. the name of the Applicant, Person, or Affiliate which has not satisfied its NPM escrow obligations;
- b. the Brand Family(ies) for which there was a failure to comply; and
- c. the amounts of any escrow deposits that are still owed.

☐ Yes, the details of each occurrence are attached to this Certification. ☐ Not applicable

Part 6—Signature

Under penalty of perjury, I declare that to the best of my knowledge, the information contained in this Certification is true and accurate.

Authorized Designee		Title
Signature of Authority		Date
Subscribed and sworn to before me on this date	Signature of Notary Public	
City of	County of	My Commission expires

Email a completed Certificate of Compliance to each office listed below:

Colorado Department of Revenue
dor_excisetax@state.co.us

Colorado Department of Law
Tobacco.Enforcement@coag.gov

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