

Non-Participating Manufacturer Brands Reporting Form

Submit this form by web message through your Revenue Online account or by email to DOR_ExciseTax@state.co.us

Due Date: 20th day of each month following the close of the reporting month.

Instructions for how to complete this form are on page 3.

Reporting Month and Year	Business Name		
Business Address			
Colorado Account Number	Contact Person	Telephone Number	Email Address (required)

Check box if no NPM activity during period Check box if this is an Amended Report

A Brand Name	B Number of Cigarettes (Sticks)	C Ounces (oz.) of roll-your-own (RYO)	D Name of Non-participating manufacturer	E Enter the name and address where each brand was purchased, transferred, and/or exported	F Check the Box that Applies (Required)
					<input type="checkbox"/> Sold in Colorado <input type="checkbox"/> Transfer <input type="checkbox"/> Exported _____(State) <input type="checkbox"/> Exempt
					<input type="checkbox"/> Sold in Colorado <input type="checkbox"/> Transfer <input type="checkbox"/> Exported _____(State) <input type="checkbox"/> Exempt
					<input type="checkbox"/> Sold in Colorado <input type="checkbox"/> Transfer <input type="checkbox"/> Exported _____(State) <input type="checkbox"/> Exempt

I certify that the above-stated information is true and correct

Signature	Date	Print Name and Title	Page ____ of ____
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Failure to file this report as required may result in the revocation of your cigarette and/or tobacco products license(s) for a period of two years. Distributor is responsible to notify the Department of any changes to address, telephone number, or E-mail address. Under Rule 39-28-303(2)(c), an email address must be provided to the department for the purposes of the distributor receiving notice of any addition or removal from the Colorado Certified Brands Directory (CBD). Any subsequent change of the email address shall be submitted to the Department at DOR_ExciseTax@state.co.us within five (5) business days after the change of the email address.

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BACKGROUND AND REQUIREMENTS OF THE MSA

In 1998, forty-six states, the District of Columbia and five U.S. territories (the states) entered into a settlement agreement with the four largest tobacco companies in the United States. Under this agreement, called the Master Settlement Agreement (MSA), tobacco companies agreed to put restrictions on their marketing practices and to pay a projected \$206 billion over twenty-five years to the states to compensate the states for costs arising from the health problems caused by the use of cigarettes and other tobacco products.

More tobacco manufacturers have subsequently signed the MSA. All manufacturers who have signed the MSA are referred to as participating manufacturers (PMs). There are a number of cigarette and roll-your-own tobacco (RYO) manufacturers who have not signed the MSA. They are referred to as non participating manufacturers (NPMs). Under the Colorado Tobacco Escrow Funds Act, C.R.S. section 39-28-201 et seq., NPMs must put money into a qualified escrow fund “to guarantee a source of compensation and to prevent [NPMs] from deriving large, short-term profits and then becoming judgment-proof before liability may arise.” The qualified escrow fund is an escrow arrangement between the NPM and a federally or state chartered financial institution, which, among other things, prohibits the manufacturer from using, accessing or directing the use of the fund’s principal.

The amount of money an NPM must contribute to the qualified escrow fund each year is based on the number of units of cigarettes and RYO the NPM sold in the state during the year (units sold). The number of units sold is measured by the number of individual cigarettes sold in the state by an NPM as measured by excise taxes collected on RYO and on packs of cigarettes. No escrow funds are required for other tobacco products.

Under Colorado statute, it is the stamping agent, usually a licensed distributor, who is required to file a monthly report of NPM cigarettes and RYO sold and an excise tax return with the Colorado Department of Revenue (DOR). The information required by DOR on the report includes, but is not limited to, a list by brand family of

the total number of cigarettes and the number of ounces for RYO sold in Colorado, transferred or exported from Colorado during the period for which taxes were paid. DOR uses the report to confirm the amount of excise tax due on cigarette and RYO sales.

In April each year, NPMs must file with the Colorado Office of the Attorney General (OAG) a Certificate of Compliance by Non-Participating Manufacturer Regarding Escrow Payments (NPM certificate). The NPM certificate is designed to capture the total number of units sold by brand name, the total amount of escrow to be paid based on those sales, the financial institution which holds the escrow funds and the signature of an authorized agent.

DOR summarizes the information provided by licensed distributors and provides the summary to the OAG. The OAG compares the DOR information to NPM certificate filings to confirm that each NPM has made a correct deposit into its qualified escrow fund. The OAG notifies NPMs of payment deficiencies based on the comparison of manufacturer-provided information and distributor-provided information.

In conjunction with the Colorado Tobacco Escrow Fund Act, the State of Colorado maintains the Colorado Certified Brands Directory (Directory). Pursuant to C.R.S. sections 39-28-301 et seq., all tobacco product manufacturers that wish to sell cigarettes and RYO in Colorado must file an annual certification with DOR and the OAG. Tobacco Product Manufacturers include both PMs and NPMs. The Directory is found online at Tax.Colorado.gov/certified-brands-manufacturers and lists tobacco product manufacturers that have provided complete and accurate certifications. The brands listed on the Certified Brands Directory are the only brands that are legal for sale in Colorado. All other brands are contraband. All licensed distributors and stamping agents are required to provide an email address to DOR to be notified of monthly updates to the Directory.

If you have any questions, you may contact the Colorado Department of Law Tobacco Settlement Enforcement at

720-508-6218 or TobaccoEnforcement@coag.gov. You can also contact the Colorado Department of Revenue Excise Tax Unit at DOR_ExciseTax@state.co.us or 303-205-8287.

As part of the Master Settlement Agreement and the Colorado Tobacco Escrow Funds Act, the Department of Revenue is required and authorized to compile information about cigarettes and roll-your-own tobacco sold in Colorado. C.R.S. §§ 39-28-201 – 203, and 305. If you anticipate that you will only sell product manufactured by PMs, purchase only stamped and/or tax paid product from Colorado licensed distributors, or sell only tobacco products not subject to the MSA, you should complete Form DR 1286.

**FAILURE TO FILE THIS REPORT AS
REQUIRED MAY RESULT IN THE
REVOCATION OF YOUR CIGARETTE
AND/OR TOBACCO PRODUCTS LICENSE(S)
FOR A PERIOD OF TWO YEARS**

DEFINITIONS

“**Cigarette**” means any product that meets the definition found in C.R.S. § 39-28-202(4). The term “cigarette” includes “roll-your-own” tobacco (RYO). For purposes of this definition of “cigarette,” 0.09 ounces of roll-your-own tobacco constitutes one individual “cigarette.”

“**Tobacco Product Manufacturer**” means any person who meets the definitions found in C.R.S. § 39-28-202(9).

“**Licensed Distributor**” means any person who is licensed pursuant to C.R.S. § 39-28-102 (cigarette) and/or § 39-28.5-104 (tobacco products). This term covers, but is not limited to, distributors, distributing subcontractors, wholesalers, wholesale subcontractors, and stamping agents.

“**Non-participating Manufacturer**” (NPM) as defined in C.R.S. § 39-28-302(5) means any tobacco product manufacturer who is not a signatory to the MSA.

“**Certified Brands Directory**” is the Department of Revenue’s listing of cigarette manufacturers and brands that have been approved for sale in Colorado. If a brand is not listed, it is contraband and may not be sold or possessed for sale in Colorado.

“**Tax Exempt**” means sales to the United States government or any of its agencies; sales in interstate commerce or transactions the taxation of which is prohibited by the constitution of the United States. C.R.S. § 39-28-111.

RECORDS RETENTION INFORMATION

Tobacco Product Distributors are required to maintain all invoices and documentation of sales and other such information relied upon for certification for a period of 5 years. C.R.S. § 39-28-305(1)(g).

INSTRUCTIONS

Form DR 1285 is designed to track all NPM cigarettes and RYO that enter Colorado, are transferred to another distributor/wholesaler within Colorado, and are exported to another distributor/wholesaler out of Colorado. This report must be completed by a licensed distributor:

- Selling NPM manufactured cigarettes in Colorado and affixing the Colorado cigarette tax stamp; or
- Selling tax paid NPM manufactured RYO in Colorado; or
- Selling tax exempt NPM cigarettes and RYO in Colorado; or
- Transferring any NPM cigarettes or RYO to another distributor/wholesaler within Colorado; or
- Exporting any NPM cigarettes and RYO to another distributor/wholesaler outside of Colorado.

A separate form for each non-participating manufacturer is preferable, but not required. A computer-generated form is allowed ONLY if pre-approved by the Department.

Identifying Information

Enter the report month and year, your business name and address as they appear on your license and your Colorado Account Number. Enter the name, telephone number, and email of the individual responsible for the report. An e-mail address is required.

Check Boxes for No/Amended Activity:

- Check the first box if you had no NPM activity during reporting period.
- Check the second box if this report is amending a previously filed report.

Column A: Enter the full brand name of the product sold, transferred, or exported (do not abbreviate). Do not break down into subcategories, such as regular, menthol, light, etc. For example, for a cigarette named “Alpha Bravo Gold Menthol Lights” report as “Alpha Bravo Gold”. Do not report as “A B Gold” or “A B Gold Menthol Light.”

Column B: Enter the number of individual NPM cigarettes as a separate row for each of the following reporting categories:

- Sold in Colorado during the reporting month in packages stamped with the excise tax stamp of Colorado. List only cigarettes contained in packages to which you have affixed the excise tax stamp of Colorado. Do not list cigarettes that were purchased with the tax stamp already affixed. For cigarettes returned to the NPM, complete all columns and enter the number of cigarettes in parentheses. List brands returned on a separate line from brands sold during the reporting month.
- Transferred to another licensed distributor within Colorado during the reporting month.
- Exported during the reporting month.

Column C: List the number of ounces of NPM RYO sold, transferred, exported, or exempt during the reporting month.

Column D: Enter the name of the NPM of the brand listed in Column A.

Column E: Enter the name and address from which the brand was purchased for all transactions reported. The name and address of the receiver for transfers and exports reported is also required, if applicable. Be sure to include the addresses for all.

Column F: Indicate whether the transaction was a sale in Colorado, a transfer to another licensed distributor within Colorado, an export, or if the product was tax exempt. If an export, write in the name of the state to which product was exported. You may use the two letter designation for the state; e.g. CO for Colorado. See the definitions for the meaning of “tax exempt”.

Signature: Each report must be signed by an authorized individual.

Page Numbers: Enter the page number and total number of pages included in the submission.

Due Date: 20th day of each month following the close of the reporting month.

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