



## NON-PARTICIPATING MANUFACTURER CERTIFICATION FOR LISTING ON OREGON DIRECTORY

### GENERAL INFORMATION AND INSTRUCTIONS

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

Any tobacco product manufacturer who is a “non-participating manufacturer” (i.e., any manufacturer who is **not** a “participating manufacturer” as that term is defined in Section II(jj) of the Master Settlement Agreement) that intends to sell cigarettes or RYO within the State of Oregon, whether directly or through any distributor, retailer, or similar intermediary.

#### When is this Certification due?

**Initial:** A non-participating manufacturer not currently listed on the Directory that intends to sell cigarettes or RYO within the State of Oregon must file this Certification and qualify for listing on the Directory **prior** to any sales in Oregon.

**Annual:** All non-participating manufacturers currently listed on the Directory must file this Certification and deliver it to the Attorney General on or before **April 30<sup>th</sup> each year**.

**Supplemental:** A non-participating manufacturer must file this form as a “supplemental” Certification to add or change information in the current sales year. In completing a supplemental Certification, check the “Supplemental” box at the top of page one, enter **only** the new or changed information, then sign and date the supplemental Certification form. A Tobacco Product Manufacturer shall file a supplemental Certification no later than **thirty (30) days prior** to any change in fabricator for any Brand or any addition to or modification of its Brands.

#### Where must this Certification be filed?

The Department of Justice required electronic submission for all certification applications and supporting documents. Please contact our office at [tobaccoenforcementCERT@doj.state.or.us](mailto:tobaccoenforcementCERT@doj.state.or.us) or call 503.934.4400 if you need assistance.

#### Definitions:

- (a) “Applicant” means the Non-Participating Manufacturer requesting listing on Oregon’s Directory.
- (b) “Brand” means the trade name of a specific Cigarette or RYO sold under its related trademark (regardless of style). (Example: Go to Heaven)
- (c) “Brand Styles” means all cigarettes or RYO sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, Cigarettes or RYO labeled “menthol,” “kings,” and “100s.” (Example: Go to Heaven King Soft, Go to Heaven Menthol 100 Box, etc.)
- (d) “Cigarette” has the same meaning given that term in ORS 323.800.
- (e) “Directory” means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of ORS 180.410 and 180.415 and all Brands and Brand Styles that are listed in such certifications.
- (f) “Master Settlement Agreement” has the meaning given that term in ORS 323.800.
- (g) “Non-participating Manufacturer” means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

- (h) "Participating Manufacturer" has the meaning given that term in Section II (jj) of the Master Settlement Agreement.
- (i) "Qualified Escrow Fund" has the meaning given that term in ORS 323.800.
- (j) "Stamping Agent" ("Distributor") means a person who is licensed under ORS 323.105 and any other person who is a distributor for the purposes of ORS 323.005 to 323.482.
- (k) "Tobacco Product Manufacturer" has the meaning given that term in ORS 323.800.
- (l) "Units Sold" has the meaning given that term in ORS 323.800.

### **SPECIFIC INSTRUCTIONS**

#### **UNLESS OTHERWISE INDICATED, PLEASE COMPLETE THIS FORM BY TYPING OR PRINTING CLEARLY**

##### **Part 1: Liability Year and Type of Certification**

Include the liability year. Indicate whether this is an initial, annual, or supplemental certification.

##### **Part 2 and 3: Manufacturer's Identification**

Identify the name, FEIN number, physical and mailing addresses, telephone and fax number and electronic mail address. Include the name of a contact person for the manufacturer.

Identify plant name, physical address, telephone, and fax number if different than above.

##### **Part 4: Status as a Non-Participating Manufacturer**

Check the box indicating the basis on which the Applicant qualifies as a Tobacco Product Manufacturer as defined in ORS 323.800(11)(a).

##### **Part 5: Licenses and Permits**

Complete the requested information on Permit and/or Licenses and attach the requested documents.

##### **Part 6: Brand and Brand Style Identification**

Identify by Brand and Brand Style for Cigarettes and RYO tobacco:

- 1) All Cigarettes or RYO that the Applicant intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory; and
- 2) All Cigarettes or RYO that the Applicant sold in Oregon during both the preceding and current calendar year (indicate with an asterisk (\*\*)) those brands that will not be sold during the current calendar year).

Include the following information for each Brand and Brand Style:

- 1) In addition, include the number of units sold during the preceding calendar year and current year (January 1 to date of application);
- 2) The current manufacturer (including address) and any prior manufacturers (including address) during the preceding calendar year; and
- 3) The current trademark holder and prior trademark holder (including address).

You must include with the Brand, the style of cigarettes or RYO (Example: Menthol King 100 Box) and the type of packaging (Example: Box or Soft Pack, 6 oz. pouch, 16 oz tin, etc.) - Please list Brand and Brand Styles in order by Size and Container Type (see example on form.)

**PACKAGING:** The Applicant must either provide an electronic color copy of the packaging or artwork for the corresponding cigarettes or RYO packaging, that includes views of each side of the packaging and ensure that the UPC is clearly visible. If packaging was supplied in a prior year, an affidavit indicating that there have been no changes to the brands listed or the associated packaging for the current certification. **Only those listed Brands and their Brand Styles with corresponding electronic copy or artwork for Cigarette or RYO packaging submitted with your Certification or appropriate affidavit will be listed on the Directory. A sample affidavit can be found at [www.doj.state.or.us](http://www.doj.state.or.us), under Forms, Manuals & Reports / Tobacco Enforcement.**

**FDA COMPLIANCE:** Check the appropriate box and provide the requested documentation for each brand style that is new to the Oregon Tobacco Directory.

**HEALTH WARNING ROTATION PLAN:** For each Brand, list the name and address of the entity that filed a Cigarette health warning rotation plan with the Federal Trade Commission before the Cigarettes were distributed into the United States. Attach the Federal Trade Commission's written approval of Applicant's annual Cigarette Health Warning rotation plan. Attach additional pages if necessary.

**INGREDIENT REPORT:** For each Brand, list the name and address of the entity that submitted the ingredient reporting information to the U.S. Secretary of Health and Human Services as required by the Federal Cigarette Labeling and Advertising Act. Attach copies of all certificates of compliance received from the U.S. Health and Human Services for Applicant's annual ingredient reporting required by the Federal Cigarette Labeling and Advertising Act. (15 U.S.C. § 1335a). Attach additional pages if necessary.

**IMPORTED CIGARETTES – DOCUMENTATION AND VERIFICATION:** If the Applicant sells or intends to sell Cigarettes or RYO brands that are not manufactured in the United States, Applicant must provide all of the documents requested.

**FIRE STANDARD COMPLIANCE:** Pursuant to Oregon law, all cigarette brand styles for which applicant seeks certification must be FSC compliant; include a letter from the Office of the Oregon Department of Justice indicating that all brand styles for which Applicant seeks certification are FSC compliant; and testing verification documentation for each corresponding brand style. See ORS 476.755 to 476.790 and 476.995; OAR 137-105-0010(1)(f).

**BRAND RESPONSIBILITY:** Pursuant to ORS 180.410(7), a Non-Participating Manufacturer may not include a Brand in its certification unless the Non-Participating Manufacturer affirms that the Cigarette or RYO Brands are to be considered the Non-Participating Manufacturer's Cigarettes or RYO for purposes of ORS 323.800 to 323.807. Pursuant to ORS 180.410(7), this subsection does not limit or otherwise affect the right of the State to maintain that Cigarette or RYO Brands are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.807.

#### **Part 7: Additional Business Information**

- A. **Organizational Documents:** Attach the requested business information documents and check the appropriate box.
- B. **Company Owners/Officers:** Complete the table listing all owners (all Person with an equity interest of 10% or more in Applicant Company), officers, directors of Applicant. Attach additional pages if necessary.
- C. **Affiliates:** Complete the table identifying any Affiliate that also manufactures, imports, distributes, or sells Cigarettes or other tobacco products in Oregon. For the purposes of this question, "Affiliate" means a Person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership with, another Person. "Own" means ownership of an equity interest (or the equivalent thereof) of 10 percent or more. Attach additional pages if necessary.
- D. **Marketing Information:** For each brand that Applicant intends to sell in Oregon, list the name and address of every Oregon distributor and wholesaler that purchased or handled ten percent or more of Applicant's gross sales of that brand in Oregon during the last calendar year. Attach additional pages if necessary.

- E. Agreements with Participating Manufacturers: Identify every agreement between Applicant and any Participating Manufacturer (PM) or Affiliate of a PM that relates to the making, importing, distribution, transportation, or sale of a Brand. List the Brand and the name, address and phone number of the PM involved in any agreement. For each Brand, describe the agreement or arrangement with any PM or Affiliate of a PM in the making, importing, distribution, transportation, or sale of the Brand, and provide the name and address of the PM(s), subsidiary(ies), Affiliate(s) or partner(s). A list of the Participating Manufacturers is available on the NAAG website at [www.naag.org](http://www.naag.org). Attach a copy of written contract(s) and/or agreement(s). Attach additional pages if necessary.
- F. Agreements regarding compliance with Qualified Escrow Statute: List every Brand that is the subject of any agreement regarding compliance with the NPM Qualified Escrow Statute and the name, address and phone number of the person or entity with whom applicant has a contractual arrangement and/or agreement concerning compliance with ORS 323.800 to ORS 323.806. Attach a copy of any written contract(s) and/or agreement(s). Attach additional pages if necessary.

#### **Part 8: PACT Act Compliance**

The federal Prevent All Cigarette Trafficking (“PACT”) Act, 15 U.S.C. §§ 375, *et seq.*, became effective on June 30, 2010. Pursuant to the PACT Act, all persons who sell, transfer, or ship cigarettes in interstate commerce for profit must: (1) register with the tobacco tax administrator of the state into which shipment is made and (2) file monthly reports with the tobacco tax administrator, no later than the 10th of each month, identifying the brands, quantities, and recipients of cigarette and smokeless tobacco shipments into such state. These provisions apply to tobacco product manufacturers. Copies of all PACT Act reports that are submitted to Oregon Department of Revenue should also be submitted to the Oregon Department of Justice.

Applicants must attach a current copy of the PACT Act registration that it submitted to the U.S. Department of Justice and the Oregon Department of Revenue.

Applicants must certify either that (1) Applicant is in compliance with all PACT Act reporting obligations to the State of Oregon; or (2) Applicant does not ship tobacco products directly into the State of Oregon. If Applicant certifies that it does not ship tobacco products into Oregon, Applicant must attach a list of Oregon-licensed distributors that Applicant sells tobacco products to.

More information on the PACT Act is available at: <https://www.doj.state.or.us/oregon-department-of-justice/publications-forms/tobacco-legislation/> and <https://www.atf.gov/alcohol-tobacco>.

#### **Part 9: Bond Information**

Non-Participating Tobacco Product Manufacturers must post a bond in the amount \$25,000 or the highest amount of escrow owed for Oregon in the last twelve quarters, whichever is greater. More information on the Bond is available on our website at <https://www.doj.state.or.us/oregon-department-of-justice/publications-forms/tobacco-legislation/>.

#### **Part 10: Distributors and Importer**

Foreign Non-Participating Tobacco Product Manufacturers selling cigarettes and roll-your-own tobacco into Oregon through an importer are required to have their importers accept joint and several liability for the deposit of escrow payments. Each importer must complete and submit a United States Importer Declaration. More information on the Importer Declaration is available on our website at <https://www.doj.state.or.us/oregon-department-of-justice/publications-forms/tobacco-legislation/>.

#### **Part 11: Qualified Escrow Fund – Financial Institution**

**The Non-Participating Tobacco Product Manufacturer must complete the “Annual Escrow Compliance Certificate and Affidavit” and provide the original notarized document along with the required financial institution proof of deposit of the proper escrow payment with this certification.**

The Non-Participating Tobacco Product Manufacturer must certify that it has established a Qualified Escrow Fund and executed a Qualified Escrow Agreement that has been reviewed and approved by the Attorney General’s Office of the State of Oregon to be eligible for the Directory. The Non-Participating Tobacco Product Manufacturer must identify (i) the name, address and telephone number of the financial institution and a contact person where the Non-Participating Manufacturer has established a Qualified Escrow Fund as defined in ORS 323.800(8) and in accordance with the provisions in ORS 323.806; (ii) the account number of such Qualified Escrow Fund and the sub-account number for Oregon; and (iii) additional information regarding the Qualified Escrow Agreement. A copy of Oregon’s Model Escrow Agreement can be found at [https://www.doj.state.or.us/wp-content/uploads/2017/06/oregon\\_model\\_escrow\\_agreement.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/06/oregon_model_escrow_agreement.pdf).

The Non-Participating Tobacco Product Manufacturer must identify (i) the amount such Non-Participating Manufacturer deposited in such Qualified Escrow Fund for all Cigarettes and RYO sold in the State of Oregon during the preceding calendar year, the date and amount of each deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund. Proof of all deposits and all withdrawals, and verification from the Escrow Agent to confirm the amounts and date must be submitted with this Certification.

**Part 12: Registered Agent/Approved Agent for Service of Process**

Check appropriate box. The Non-Participating Tobacco Product Manufacturer must certify that the Non-Participating Manufacturer is either: 1) registered to do business in Oregon or 2) has appointed and continuously engaged the services of a resident agent for service of process and provided notice thereof. ORS 180.415 and ORS 180.430. If an agent has been appointed, the Non-Participating Tobacco Product Manufacturer must submit a completed **Non-Participating Manufacturer’s Appointment of Registered Agent For State of Oregon and Registered Agent’s Statement**, which can be found at [https://www.doj.state.or.us/wp-content/uploads/2017/06/tobacco\\_product\\_manufacturer\\_certification\\_%E2%80%93\\_statement\\_of\\_registered\\_agent.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/06/tobacco_product_manufacturer_certification_%E2%80%93_statement_of_registered_agent.pdf).

**Part 13: Disclosures**

Circle Yes or No as appropriate. Provide additional information where required.

**Part 14: Execution by Authorized Agent**

The person executing the Certification must be an authorized representative of the Tobacco Product Manufacturer. The Designee’s name and title must be printed, and the Certification must be executed in the presence of an authorized notary.

**OTHER RELEVANT INFORMATION:**

This Certification must be completed in English. For all attachments required by the Certification if the original document is in a language other than English, attach a true and correct translation into English.

All attachments to this Certification must indicate to which 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. **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 FINE, OR BOTH.**