



**GENERAL INFORMATION AND SPECIFIC INSTRUCTIONS FOR TOBACCO
PRODUCT MANUFACTURER CERTIFICATION
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL**

General Information

Who must file?

- Any Tobacco Product Manufacturer that intends to sell cigarettes within the State of North Dakota, 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 N.D.C.C. § 51-25-02(2)(c) and N.D.C.C. § 51-25.1-04(5)(a); and any fire-safe certification that may be required pursuant to N.D.C.C. ch. 18-13.

What must be filed?

- Tobacco Product Manufacturer Certification form must be filed by all Tobacco Product Manufacturers that intend to sell cigarettes within the State of North Dakota.
- Certificate of Compliance forms regarding escrow payments must be filed by each Nonparticipating Manufacturer, even if it had no sales in North Dakota during the sales year.

When is Certification due?

- For manufacturers whose cigarettes are not yet certified in North Dakota and who seek Certification effective December 1, 2021, an Initial Certification must be submitted by September 15, 2021, under N.D.C.C. § 51-25.1-06(4)(a).
- For manufacturers who do not submit an Initial Certification by September 15, 2021, an Initial Certification must be submitted, and the cigarettes must qualify for listing, before beginning sales in North Dakota.
- For manufacturers whose cigarettes are certified in North Dakota, Annual Certification is due by April 30th to qualify for listing under N.D.C.C. § 51-25.1-02(1).
- For manufacturers making any change to their Certification, a Supplemental Certification noting any change must be submitted at least thirty (30) days before the change becomes effective.

Where must Certification be sent?

- All completed Certification forms must be submitted to the ND Office of Attorney General.
- Submit by email (preferred) to agotobacco@nd.gov or mail to:

North Dakota Attorney General
Civil Litigation Division
ATTN: Tobacco Paralegal
500 N 9th Street
Bismarck, ND 58501

How must Certification be completed?

- A Certification and all other required forms must be completed in English and typed or printed. For all attachments required by the Certification, if the original documents are in a language other than English, a true and correct English translation also must be attached.
- Any attachment must reference the Part and question to which it corresponds.
- If any section of this Certification is inapplicable, indicate "Not Applicable."

Records Retention Information

- Under N.D.C.C. § 51-25.1-02(1)(g), each Tobacco Product Manufacturer is required to retain all invoices and documentation of sales and other related information relied upon for this Certification for a period of five (5) years, unless otherwise required by law to maintain them for a greater period of time.

Definitions:

- a) **"Affiliate"** means a person who directly or indirectly owns or controls, is owned or controlled 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 any style of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including "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 N.D.C.C. § 51-25-01(4).
- d) **"Commissioner"** means the tax commissioner.
- e) **"Directory"** means the listing of all Tobacco Product Manufacturers that have provided current and accurate Certifications conforming to the requirements of N.D.C.C. § 51-25.1, and all brand families that are listed in such certifications; except as provided by N.D.C.C. § 51-25.1.
- f) **"Distributor"** has the same meaning as in N.D.C.C. § 57-36-01(7).
- g) **"Master settlement agreement"** has the same meaning as in N.D.C.C. § 51-25-01(5).
- h) **"Nonparticipating manufacturer"** means a tobacco product manufacturer that is not a participating manufacturer.
- i) **"Participating manufacturer"** has the same meaning as in section II(jj) of the master settlement agreement of 1998.
- j) **"Qualified escrow fund"** has the same meaning as in N.D.C.C. § 51-25-01(6).
- k) **"Tobacco product manufacturer"** has the same meaning as in N.D.C.C. § 51-25-01(9).
- l) **"Units sold"** has the same meaning as in N.D.C.C. § 51-25-01(10).

Specific Instructions

Part 1: Tobacco Product Manufacturer Identification

Each participating and nonparticipating manufacturer must complete A or B. A Nonparticipating Manufacturer must be in full compliance with N.D.C.C. §§ 51-25-02(2) and 51-25.1-04(5).

Part 2: Certification Year

Each participating and Nonparticipating Manufacturer must complete this part. Identify the Certification year.

Part 3: Brand Family Identification

Each Participating and Nonparticipating Manufacturer must complete A or B, and both must complete Parts C - E. Identify by brand family all cigarettes the Tobacco Product Manufacturer intends to sell in North Dakota, 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 on the directory.

A. Participating Manufacturers

A Participating Manufacturer shall include in its Certification: (1) a list of its brand families sold in North Dakota during the preceding calendar year, and (2) an indication, by using an asterisk (*), of any brand family sold in North Dakota during the preceding calendar year that no longer is being sold in North Dakota as of the date of the Certification. The Participating Manufacturer shall update its list thirty (30) calendar days before any addition to or modification of its list by executing and delivering a Supplemental Certification to the Attorney General.

B. Nonparticipating Manufacturers

A Nonparticipating Manufacturer shall include in its Certification: (1) a list of its brand families sold in North Dakota during the preceding calendar year, (2) an indication, by using an asterisk (*), of any brand family sold in North Dakota during the preceding calendar year that is no longer being sold in North Dakota as of the date of the Certification, (3) a list of its brand families sold in North Dakota at any time during the current calendar year, and (4) the name and address of any other manufacturer of a brand family in the preceding or current calendar year. The Nonparticipating Manufacturer shall update such list thirty (30) calendar days before any addition to or modification of its list by executing and delivering a Supplemental Certification to the Attorney General.

Part 6: Nonparticipating Manufacturer Liability; Joint and Several Liability

A. Agent for Service of Process

Certify that the Nonparticipating Manufacturer is registered to do business in North Dakota and has appointed an agent for service of process who is located in North Dakota and otherwise comply fully with N.D.C.C. § 51-25.1-03. Prior notice must be provided to the Attorney General of any change in the registered agent, as set forth in N.D.C.C. § 51-25.1-03(2).

B. Consent to Suit

Provide a properly executed copy of the Consent to Suit form prepared by the Attorney General.

C. Importer Acceptance of Joint and Several Liability

Each Nonparticipating Manufacturer located outside the United States must provide a fully and correctly executed copy of the Importer Acceptance of Joint and Several Liability form prepared by the Attorney General and all required attachments.

Part 7: Nonparticipating Manufacturer Qualified Escrow Account

A. Qualified Escrow Fund Information

Pursuant to N.D.C.C. § 51-25.1-02(1)(d)(2), all Escrow Agreements must be approved by the Attorney General.

B. Escrow Deposit/Withdrawal History for North Dakota

Identify: (1) the amount the Nonparticipating Manufacturer has placed in the Qualified Escrow Fund for cigarettes sold in the state during each preceding calendar year, and (2) the amount of and date of any withdrawal or transfer of funds the Nonparticipating Manufacturer made at any time from the fund or from any other Qualified Escrow Fund into which the manufacturer ever made escrow payments pursuant to N.D.C.C. § 51-25-02(2) and all regulations promulgated pursuant thereto. You must attach copies of records of the financial institution confirming the foregoing. All withdrawals must comply with N.D.C.C. § 51-25-02(2)(b).

Part 8: Execution by Authorized Designee

The person executing the Certification must be officer or other authorized designee of the Tobacco Product Manufacturer.