



**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 in 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 under 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 under N.D.C.C. ch. 18-13.

What must be filed?

- Tobacco Product Manufacturer Certification must be filed by any Tobacco Product Manufacturer that intends to sell cigarettes in North Dakota.
- Statement of Registered Agent and Consent to Suit must also be filed with each application for Tobacco Product Manufacturer Certification by each Nonparticipating Manufacturer that intends to sell cigarettes in North Dakota.
- If a Nonparticipating Manufacturer is located outside United States and intends to sell cigarettes in North Dakota, Importer Acceptance of Joint and Several Liability also must be filed with each application for Tobacco Product Manufacturer Certification.
- Quarterly and Annual Certificates of Compliance regarding escrow payments must be filed by each Nonparticipating Manufacturer, even if it had no sales in North Dakota during the quarter or sales year.
- All forms are available at www.attorneygeneral.nd.gov.

When is Certification due?

- Manufacturers not certified must submit an Initial Certification and their cigarettes must qualify for listing before the cigarettes may be sold in North Dakota.
- For manufacturers whose cigarettes are certified in North Dakota, Annual Certification is due by April 30th of each year to apply for continued listing under N.D.C.C. § 51-25.1-02(1).
- A manufacturer seeking to make a change to an approved Certification must note the proposed change in a Supplemental Certification submitted at least thirty (30) days before the proposed change is to become effective.

Where must Certification be sent?

- All completed Certification forms must be emailed to agotobacco@nd.gov (preferred method) or sent by regular mail or courier service to Attorney General at this address:

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 attached exhibit must be clearly labeled with a reference to the Part and number or letter designation to which the exhibit applies.
- If any section of the Certification is inapplicable, indicate “Not Applicable” or “Does Not Apply”.

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 relied upon for this Certification for a period of five (5) years, unless required by other law to maintain it for a longer 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

(Attach additional sheets for all parts if necessary.)

Part 1: Tobacco Product Manufacturer Identification

Each Participating and Nonparticipating Manufacturer must complete Part A and 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 Manufacturer must complete this part. Remember to identify the Certification year.

Part 3: Brand Identification

Each Manufacturer must complete Part A or B and Parts C-G. Identify by brand all cigarettes the Tobacco Product Manufacturer seeks to sell in North Dakota, whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included on the directory. Only brands identified and approved will be included on the directory.

A. Participating Manufacturers

A Participating Manufacturer shall include in its Certification: (1) a list of its brand(s) sold in North Dakota during the preceding calendar year, and (2) an indication, by using an asterisk (*) or checking the box, of any brand 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.

B. Nonparticipating Manufacturers

A Nonparticipating Manufacturer shall include in its Certification: (1) a list of its brand(s) sold in North Dakota during the preceding calendar year, (2) an indication, by using an asterisk (*) or checking the box, of any brand 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(s) sold in North Dakota at any time during the current calendar year, and (4) the name and address of any other entity that manufactured a brand sold by the NPM in the preceding or current calendar year.

Part 6: Nonparticipating Manufacturer Liability; Joint and Several Liability

A. Agent for Service of Process

Certify Nonparticipating Manufacturer is registered to do business in North Dakota or has appointed an agent located in North Dakota for service of process. Manufacturer must provide notice of any change of registered agent to Attorney General as set forth in N.D.C.C. § 51-25.1-03(2). It is the TPM, and not the registered agent, that completes the Statement of Registered Agent form, including the Declaration section. It also is the TPM that is required to attach proof of appointment and availability of agent signed by the registered agent.

B. Consent to Suit

Provide a completed copy of the Consent to Suit. This form is to be completed by TPM. Additionally, TPM is required to attach: 1) proof that person executing consent to suit for TPM has authority from TPM to consent to suit, and 2) proof of authority given to individual signing on behalf of TPM.

C. Importer Acceptance of Joint and Several Liability

Each Nonparticipating Manufacturer located outside United States must provide a completed copy of Importer Acceptance of Joint and Several Liability. Additionally, attach: 1) statement by the Importer's

registered agent accepting appointment, 2) proof of authority to accept joint and several liability for NPM, 3) proof of authority to consent to suit on behalf of Importer, and 4) proof of authority given by TPM to signing party to execute this agreement.

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 and Amendments must be approved by Attorney General.

B. Escrow Deposit/Withdrawal History for North Dakota

Identify: (1) amount Nonparticipating Manufacturer has placed in Qualified Escrow Fund for cigarettes sold in North Dakota during the preceding calendar year, and (2) amount of and date of any withdrawal or transfer of funds Nonparticipating Manufacturer made at any time from QEF or from any other QEF into which manufacturer has ever made escrow payments under N.D.C.C. § 51-25-02(2), § 51-25.1(04), and any applicable regulation. You must attach copies of records of the financial institution confirming the foregoing. Any withdrawal must comply with N.D.C.C. § 51-25-02(2)(b).

Part 8: Execution by Authorized Designee

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