

SOUTH DAKOTA TOBACCO PRODUCT MANUFACTURER COMPLEMENTARY LEGISLATION CERTIFICATION

Mail this completed Complementary Legislation Certification and attachments to:

South Dakota Department of Revenue
ATTN: Sally Staufer
Special Tax
1302 E HWY 14 Suite 1
Pierre, SD 57501

Form is due:
April, 30, 2019

Please Type or Print

Part 1: TOBACCO PRODUCT MANUFACTURER IDENTIFICATION

A. Complete company information below:

Company Name	
Address	
City/State/Zip	
Telephone Number	Fax Number
E-Mail Address	Website
Name/Title of Person Completing Form	
Address of Manufacturing Plant(s)	
Name of Factory Manager(s)	
Phone Number of Factory Manager(s)	Fax Number of Factory Manager(s)
If located in the US: Manufacturer's Federal Taxpayer ID Number:	
If located in the US: TTB Tobacco Manufacturer Permit Number:	

B. The tobacco product manufacturer identified above, as of the date of this Certification, is (check one below):

- A Participating Manufacturer [Complete parts 1, 2A and 9]
- A Non-participating Manufacturer [Complete **entire form except** 2A]

This form is (check one below):

- Initial Certification – Manufacturer is not currently listed on the South Dakota Tobacco Brand
- Listing Annual Certification – Due April 30, 2019
- Supplemental Certification – Change of information provided to the SD Department of Revenue

All manufacturers must update this Certification thirty calendar days prior to any addition to or modification of the Brand Families sold in South Dakota.

PART 2: BRAND FAMILY IDENTIFICATION (attach additional sheets if necessary)

A. Participating Manufacturer:

The Participating Manufacturer identified in Part 1 has the following brand families, each of which the manufacturer hereby affirms are to be deemed its cigarettes for the purposes of calculating its payments under the Master Settlement Agreement, in the volume and shares determined pursuant to the Master Settlement Agreement:

Indicate with an asterisk (*) those brands that will not be sold in South Dakota as of the date of this certification. (Attach additional sheet if necessary).

NOTE: The South Dakota Department of Revenue retains the discretion to determine that the cigarettes in a brand family constitute cigarettes of another tobacco product manufacturer pursuant to SDCL 10-50-75.

Brand Family Name	Cigarettes or Roll-Your-Own			Brand Family Name	Cigarettes or Roll-Your-Own		
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO
	Cigarettes		RYO		Cigarettes		RYO

- I. Are you requesting that all brand families above be listed on South Dakota’s directory?
 Yes ____ No ____

NOTE: If the answer is “No,” then identify the brand families that you are not requesting to be listed:

- II. 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 Locator: (202) 326-2222
<http://www.ftc.gov>

- III. For each of the above brand families (cigarettes only) provide a copy of the **current** Center for Disease Control (CDC) ingredient listing compliance letter(s) and a statement as to which brand’s ingredients were submitted for each approval letter. Additional information can be obtained at:

Centers for Disease Control and Prevention
 1600 Clifton Road
 Atlanta, GA 30333
 Telephone: 1-800-311-3435
<http://www.cdc.gov/netinfo.htm>

B. Non-participating Manufacturer:

The Non-participating Manufacturer identified in Part 1 has the following brand families, each of which the tobacco product manufacturer affirms are to be deemed its cigarettes for purposes of SDCL ch. 10-50B:

List all brand families sold in the preceding calendar year and at any time in the current calendar year. Indicate by an asterisk (*) any brand no longer being sold in South Dakota as of the date of this certification.

.09 oz. of RYO constitutes one unit. Attach additional sheets if necessary.

NOTE: The South Dakota Department of Revenue retains the discretion to determine that the cigarettes in a brand family constitute cigarettes of another tobacco product manufacturer pursuant to SDCL 10-50-75.

Brand Family Name	Cigarettes or Roll-Your-Own				Units sold in South Dakota in 2017 and to date in 2018, identified separately	Previous Manufacturer (Name & Address)
		Cigarettes		RYO		
		Cigarettes		RYO		
		Cigarettes		RYO		
		Cigarettes		RYO		
		Cigarettes		RYO		
		Cigarettes		RYO		

I. Are you requesting that all brand families above be listed on South Dakota’s directory?
Yes ____ No ____

NOTE: If the answer is “No,” then identify the brand families that you are not requesting to be listed:

II. Provide a sample of the current packaging of each brand within each brand family.

➔ Check here if previously supplied packaging samples have not changed.

NOTE: If the manufacturer has previously supplied such packaging to the SD Department of Revenue and if such packaging has not changed, samples need not be supplied this year.

III. If located in the United States, provide a copy of the latest TTB Tobacco Manufacturer Permit.

IV. 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 Locator: (202) 326-2222
<http://www.ftc.gov>

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

Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333
Telephone: 1-800-311-3435
<http://www.cdc.gov/netinfo.htm>

- VI. Are any cigarette brand families listed above or brands within a brand family listed above manufactured (fabricated) by an entity other than the applicant listed in Part 1A? Yes _____ No _____

NOTE: If the answer is "Yes," then identify the brand(s) and the manufacturer by plant street address, contact person, telephone and facsimile numbers, and e-mail. In addition, explain the relationship between the manufacturer (fabricator) and applicant. Attach copies of all agreements or contracts between the manufacturer (fabricator) and the applicant. Attach additional sheets if necessary.

- VII. Are any RYO brand families listed above or brands within a brand family listed above packaged or labeled by an entity other than the applicant listed in Part 1A or packaged or labeled by applicant on behalf of another entity? Yes _____ No _____

NOTE: If the answer is "Yes," then identify the brand(s) and the other entity by street address, contact person, telephone and facsimile numbers, and e-mail. In addition, explain the relationship between the other entity and applicant. Attach copies of all agreements or contracts between the manufacturer and the applicant. Attach additional sheets if necessary.

PART 3: NON-PARTICIPATING MANUFACTURER MARKETING AND DISTRIBUTION INFORMATION

Complete for all distributors, wholesalers, and retailers* selling manufacturer’s product(s) into South Dakota to which the Non-participating Manufacturer identified in Part 1 has sold cigarettes and/or RYO tobacco. Attach additional sheets if necessary.

*UNDER SOUTH DAKOTA LAW, ONLY LICENSED DISTRIBUTORS OR LICENSED WHOLESALERS MAY SELL CIGARETTES OR RYO TOBACCO TO RETAILERS.

Name	Address and Phone Number	Identify whether a Distributor, Wholesaler, or Retailer	Brand

PART 4: NON-PARTICIPATING MANUFACTURER TRADEMARK INFORMATION

Provide documentation of the trademark holder of each brand family. If trademark holder is different than applicant, then provide an explanation of the relationship between the two entities. Attach additional sheets if necessary.

PART 5: NON-PARTICIPATING MANUFACTURER ORGANIZATION INFORMATION

If applicant is a:	Attach to certification
Partnership or association	Current copy of articles, if any, OR the certificate required to be filed by any state, county, municipality, or tribal entity.
Corporation	1. Current copy of corporate charter OR certificate of corporate existence or incorporation. 2. Extracts of stockholders’ meetings, bylaws, directors’ meetings or other documents that show that person signing this certification has authority to act on behalf of the corporation.
Limited liability company or other business organization	Current copy of the business documents filed with the state, county, municipality, or tribal entity when such filing is required. A limited liability company must provide an accurate copy of its operating agreement.

PART: 6 NON-PARTICIPATING MANUFACTURER REGISTERED AGENT

A. Check one below:

- The Non-participating Manufacturer identified in Part 1 is registered to do business in South Dakota
- The Non-participating Manufacturer identified in Part 1 has appointed and continues to engage the following agent located in South Dakota



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

Name of Registered Agent	
Address	
City/State/Zip	
Telephone Number	Fax Number

PART 7: NON-PARTICIPATING MANUFACTURER QUALIFIED ESCROW ACCOUNT

A. Escrow Account Information

The Non-participating Manufacturer identified in Part 1 has established and continues to maintain the following qualified escrow fund under SDCL 10-50B.

Name of Financial Institution	
Address	City/State/Zip
Contact Name/Title	
Telephone Number	Fax Number
Escrow Account Number	South Dakota Sub-Account Number



If a Non-participating Manufacturer has NOT filed a current Escrow Agreement, including any amendments or attachments, with the Attorney General for approval, the Escrow Agreement and amendments or attachments must be filed with the Department of Revenue with this Complementary Legislation Certification.

A Non-participating Manufacturer must file quarterly Certificates of Compliance with the Attorney General's Office pursuant to SDCL ch. 10-50B, setting forth the escrow calculation and the deposit for each quarter of the year. Even if no sales are reported in a quarter, the Certificates of Compliance is still required.

B. Escrow Deposit/Withdrawal History for the State of South Dakota (attach additional sheets if necessary):

Withdrawals must comply with SDCL ch. 10-50B and verification of compliance must be provided.

Date	Deposit	Withdrawal	Balance
	Total:	Total:	Total:

- C. **The Financial Institution identified in Part 5(A) must provide the following directly to the SD Department of Revenue Office:**
- I. Proof of amount and date of deposit for the previous year's sales into the Non-participating Manufacturer's segregated South Dakota sub-account in the Escrow Account.
 - II. Current account ledger for the Non-participating Manufacturer's segregated South Dakota sub-account in the Escrow Account.

NOTE: These items are part of the Certification and are due by April 30.

PART 8: NONPARTICIPATING MANUFACTURER'S CONSENT TO SUIT

The undersigned _____ (name of Non-participating Manufacturer), for the purpose of complying with the laws of the State of South Dakota relating to tobacco manufacturer certification (SDCL ch. 10-50-72 et. seq.) and to the escrow funds for tobacco litigation (SDCL ch. 10-50B), does hereby consent that any action or proceeding against it arising from enforcement of the provisions of SDCL chs. 10-50 or 10-50B, and any rules promulgated pursuant to these statutes, may be commenced in any state court of competent jurisdiction within South Dakota.

Date: _____

Signature of authorized representative of
Non-participating Manufacturer

The following must be attached:

- I. Proof of authority to consent to suit on behalf of the Non-participating Manufacturer, such as a resolution by the Non-participating Manufacturer specifically agreeing to the consent to suit provision and any required approval by an applicable governmental agency.
- II. Proof of authority given to the signing party to execute the consent to suit provision.

Mail this completed Complementary Legislation Certification and attachments to the address listed at the top of page 1.

PART 9: AFFIDAVIT OF TOBACCO PRODUCT MANUFACTURER

*An authorized officer of the tobacco manufacturer **MUST** sign this form and check one box below. This form **MUST** be notarized.*

PARTICIPATING MANUFACTURER: Under penalty of criminal prosecution under the laws of South Dakota, I state that the tobacco product manufacturer named in Part 1A, as of the date of this certification, is a Participating Manufacturer in full compliance with SDCL ch. 10-50B, 10-50-72 et seq. and any rules promulgated pursuant thereto.

I am the authorized designee for the Participating Manufacturer, as established in the MSA or MSA Amendment by which the Participating Manufacturer joined the MSA, and I am signing as such.

I understand that the SD Department of Revenue may require additional information and/or documentation to determine if applicant qualifies for listing on the South Dakota Directory.

I have examined this certification, including attachments and supporting documents and, to the best of my knowledge and belief, this certification, including attachments and supporting documents, is true, correct, and complete.

NON-PARTICIPATING MANUFACTURER: Under penalty of criminal prosecution under the laws of South Dakota, I state that the tobacco product manufacturer named in Part 1A, as of the date of this certification, is a Non-participating Manufacturer in full compliance with SDCL ch. 10-50B, 10-50-72 et seq. and any rules promulgated pursuant thereto.

This certification must be signed by a qualified company officer authorized to bind the applicant company. My position with the company and my actual authority to certify on behalf of the applicant meets the foregoing requirements.

I understand that the SD Department of Revenue may require additional information and/or documentation to determine if applicant qualifies for listing on South Dakota Directory.

I have examined this certification, including attachments and supporting documents and, to the best of my knowledge and belief, this certification, including attachments and supporting documents, is true, correct, and complete.

By signing this affidavit on behalf of the applicant company I understand that the company is required to comply with state and federal laws concerning the sale of tobacco products.

Name of Officer of Tobacco Product Manufacturer (Print Name) _____ Title _____

Signature of Officer _____ Date _____

Subscribed and sworn to this date: _____

County of: _____

Signature of Notary Public: _____

Notary Commission expires: _____

DEFINITIONS, GENERAL INFORMATION AND CHECKLIST FOR TOBACCO PRODUCT MANUFACTURER COMPLEMENTARY LEGISLATION CERTIFICATION

DEFINITIONS

Brand family

All styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including menthol, lights, kings, and 100s and 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, similar to, or identifiable with a previously known brand of cigarettes.

Cigarette

The same meaning given that term in SDCL 10-50B-4.

Directory

The listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of SDCL 10-50-72 et seq., inclusive, and all brand families approved for listing.

Escrow Deposit

Deposits required to be made into a qualified escrow fund pursuant to SDCL ch. 10-50B.

Master Settlement Agreement

The same meaning given that term in SDCL 10-50B-3(4).

Non-participating Manufacturer

Any Tobacco Product Manufacturer that is not a Participating Manufacturer.

Participating Manufacturer

The same meaning given that term in section II (jj) of the Master Settlement Agreement and all amendments to that agreement.

Qualified Escrow Fund

The same meaning given that term in SDCL 10-50B-3(5).

Tobacco Product Manufacturer

The same meaning given that term in SDCL 10-50B-5.

Units Sold

The same meaning given that term in SDCL 10-50B-6.

GENERAL INFORMATION FOR ANNUAL AND SUPPLEMENTAL FILERS

Who is required to file this Certification?

- Any Tobacco Product Manufacturer, as defined in SDCL 10-50B-5, whose cigarettes are sold within the State of South Dakota, whether directly or through any distributor, retailer, or similar intermediary.
- **Participating Manufacturers complete Parts 1, 2A, and 9.**
- **Non-participating Manufacturers complete the entire form except section 2A.**

When is Annual Certification due?

- For manufacturers whose cigarettes are sold in South Dakota, this Certification is due on an annual basis no later than **April 30** of each year. Note, however, that escrow deposits are due quarterly, and the Non-participating Manufacturer must complete and submit a Certificate of Compliance for each quarter with the Attorney General in compliance with SDCL ch. 10-50B. The Certificate of Compliance Form may be obtained from the Attorney General's Office or the Department of Revenue's website.
- For manufacturers whose cigarettes are not yet sold in South Dakota, submit this Certification before beginning sales in South Dakota.
- For manufacturers making any change(s) to their annual certification or initial certification, submit this Certification noting the change(s) at least 30 days prior to that change becoming effective.

Where should the Certification be sent?

See Page 1

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 6 years, unless otherwise required by law to maintain them for a greater period of time. SDCL 10-50-76.

Registered Agent Information (for Non-participating Manufacturers)

Non-participating Manufacturers must either register with the South Dakota Secretary of State to do business in South Dakota, or retain the services of a registered agent located in the state of South Dakota 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 SD Department of Revenue thirty days prior to the termination, and shall provide proof of the appointment of a new agent not less than five days prior to the termination.

If the registered agent terminates the appointment, the manufacturer shall provide notice to the SD Department of Revenue along with proof of the appointment of a new agent within five calendar days of the termination.

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 cigarette brand families you currently sell in the State of South Dakota. Additional information can be obtained at:

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

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 cigarette brand families you currently sell in the state of South Dakota. Additional information can be obtained at:

Center for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333
Telephone: 1-800-311-3435
<http://www.cdc.gov/netinfo.htm>

Other Information May Be Required

In addition to the information required in this application, the Department of Revenue or the Office of Attorney General on the Department's behalf may require the submission of additional information as provided in SDCL 10-50-81.

Contact

See Page 1

CHECKLIST FOR COMPLETING CERTIFICATION FORM

Pursuant to SDCL 10-50B, the South Dakota Department of Revenue may require a tobacco product manufacturer to submit any additional information necessary to enable the South Dakota Department of Revenue to determine whether a manufacturer is in compliance.

A. Checklist for Participating Tobacco Product Manufacturers

- Parts 1, 2A and 9 are completed in their entirety;
- FTC Approval Letter (cigarettes) & CDC Compliance Letter (cigarettes) are attached (Part 2A)
- Affidavit is signed by the authorized designee of the tobacco product manufacturer as established by the MSA or MSA Amendment by which the manufacturer joined the MSA, and affidavit is notarized (Part 9);

B. Checklist for Non-participating Manufacturers

- All** parts are completed **except** Part 2A;
- Packaging is attached (Part 2B);
- TTB Permit, FTC Approval Letter (cigarettes) & CDC Compliance Letter (cigarettes) are attached (Part 2B);
- Trademark information is attached (Part 4);
- Organization information is attached (Part 5);
- If registered agent has been appointed, letter from agent accepting appointment is attached (Part 6);
- Current escrow agreement and any attachments and amendments are attached (Part 7);
- Proof of escrow deposit for previous year's sales are attached (Part 7);
- Current escrow account statement from financial institution for SD sub-account is attached (Part 7);
- Consent to suit provision and affidavit are signed by an authorized officer of the Non-participating Manufacturer and notarized (Parts 8 & 9);
- Copies of all other requested documents are attached if applicable (Part 2B).