

## BOND INSTRUCTIONS

### GENERAL:

Pursuant to Neb. Rev. Stat. § 69-2707.01, in order to be included or retained on the *Nebraska Directory of Certified Tobacco Products and Brands*, a Non-Participating Manufacturer (NPM) must post a bond (or cash equivalent deposited in an account approved by the State of Nebraska) by corporate surety located in the United States for the benefit of the State of Nebraska, conditioned upon the performance by the NPM (or, if applicable, an entity sharing joint and several liability with the NPM) of all the NPM's duties and obligations under Neb. Rev. Stat. § 69-2703.

When a NPM posts or renews a **Bond**, fill out the Non-Participating Manufacturer Bond form, the Certification of Non-Participating Manufacturer Bond or Cash Equivalent form (this form must also be submitted with the annual Form 55B), and return both with a copy of the Surety Bond.

When a NPM posts a **cash equivalent**, fill out the Certification of Non-Participating Manufacturer Bond or Cash Equivalent form (this form must also be submitted with the annual Form 55B) along with documented proof of the cash equivalent from a financial institution.

### DEADLINES:

Each Quarter, individual NPMs must submit a Quarterly Affirmance of NPM bond or Cash Equivalent. 2022 Deadlines for submitting this form are:

1<sup>st</sup> Quarter – December 22, 2023

2<sup>nd</sup> Quarter – March 22, 2024

3<sup>rd</sup> Quarter – June 21, 2024

4<sup>th</sup> Quarter – September 21, 2024

### AMOUNTS:

If the NPM is not deemed to pose an elevated risk for noncompliance, the bond, or cash equivalent, amount must be the greater of the following:

- \$100,000.000
- The largest required escrow amount due from the NPM for any annual quarter within the last 5 years.

If the NPM is deemed to pose an elevated risk for noncompliance, the bond, or cash equivalent, amount must be the greater of the following:

- \$100,000.00
- The largest required combined annual escrow total amount due from the NPM from any calendar year within the last 5 years.

## **ELEVATED RISK FACTORS:**

Pursuant to Neb. Rev. Stat. § 69-2707.01(3)(a)-(h), the Nebraska Attorney General shall consider the following factors for deeming a NPM to pose an elevated risk for noncompliance. Fulfillment of any singular following factor qualifies the NPM to be deemed an elevated risk. The NPM may pose an elevated risk if:

1. The nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, has failed to deposit fully the amount due on an escrow obligation with respect to any state at any time during the calendar year or within the preceding five calendar years unless either:
  - a. The NPM did not underdeposit knowingly or recklessly and promptly cured the underdeposit within one hundred eighty days of notice of the underdeposit; or,
  - b. The underdeposit or lack of deposit is the subject of a good faith dispute in the form of ongoing litigation that has not reached a final order as reasonably documented to the Attorney General and the underdeposit is cured within one hundred eighty days of entry of a final order establishing the amount of the required escrow deposit;
2. Any state has removed the nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, from the state's tobacco directory for noncompliance with the state's escrow deposit or tobacco tax laws at any time during the calendar year or within the preceding five calendar years, unless such removal is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General;
3. Any state has an unsatisfied final judgment against the nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, for escrow or for penalties, fees, costs, refunds, or attorney's fees related to noncompliance with state escrow laws;
4. The nonparticipating manufacturer, or any predecessor, successor, or affiliate, sells its cigarettes or tobacco products directly to consumers via remote or other non-face-to-face means;
5. A state or federal court determines that the nonparticipating manufacturer, or any predecessor, successor, or affiliate, has violated any tobacco tax or tobacco control law or engaged in unfair business practices or unfair competition;
6. Any state has suspended or revoked a license granted to the nonparticipating manufacturer, or any predecessor, successor, or affiliate, to engage in any aspect of tobacco business, unless the suspension or revocation is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General;
7. Any state or federal court has determined that the nonparticipating manufacturer, or any predecessor, successor, or affiliate, failed to comply with state or federal law imposing marking, labeling, and stamping requirements or requiring information to be affixed to, or contained in, the labels, markings, or packaging; or,

8. The nonparticipating manufacturer fails to submit or complete any required forms, documents, certification, or notices, in a timely manner or to the satisfaction of the Attorney General or Tax Commissioner, unless such failure is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General.

**COMMUNICATION OF REQUIRED BOND AMOUNTS & ELEVATED RISK DEEMING:**

Each NPM is free to initiate inquiry with the Attorney General by email to [ago.tobacco@nebraska.gov](mailto:ago.tobacco@nebraska.gov) regarding applicable required bond (or cash equivalent) amounts. The Attorney General will reply regarding the amounts related to the largest required quarterly deposit, or the largest required annual sum, within the last 5 years. The legal burden of determining sufficient bond (or cash equivalent) amounts for the applicable certification period remains on the NPM. Pre-certification communications by the Attorney General to the NPM of bond (or cash equivalent) amounts are made out of courtesy for the convenience of the parties involved, and are not to be relied upon as a precondition for compliance.

The Attorney General will also communicate by electronic correspondence to the NPM, any relevant international importers, and any known retained counsel for escrow and directory matters, regarding whether or not the Attorney General has deemed the NPM to pose an elevated risk for noncompliance based upon the statutory factors listed in Neb. Rev. Stat. § 69-2707.01(3)(a)-(h). Such communication will be made on an annual basis prior to the annual submission deadline of the Form 55B. Such deeming communication shall not bind the Attorney General to the determination for all applicable time periods and is subject to change pending discovery of relevant information that may alter analysis of the applicable factors. However, until the Attorney General deems and notifies the NPM of its status as an elevated risk for noncompliance, the NPM can proceed as if it has not been so deemed.