



**STATE OF NEW MEXICO
Tobacco Product Manufacturer
Certification for Listing on
New Mexico Tobacco Directory
Pursuant to NMSA §§ 6-4-14 to 6-4-24**

Mail this completed certification and all attachments to:

New Mexico Office of the Attorney General
Litigation Division - Tobacco Project

Street Address:
408 Galisteo Street
Santa Fe, NM 87504

Mailing Address:
P. O. Drawer 1508
Santa Fe, NM 87504-1508

MARK ONE: Initial _____
 Supplemental _____
 Renewal _____

Are you requesting any new brands to be added this year? Yes No

SALES YEAR 2019

PART I: TOBACCO` PRODUCT MANUFACTURER IDENTIFICATION
(Attach additional sheets if necessary to provide complete responses)

1. Applicant Tobacco Product Manufacturer Identification

Applicant: _____

Street Address: _____

City, State, Zip code _____

Mailing Address (if different from above) _____

Phone Number: _____ **Facsimile (Fax) Number:** _____

E-Mail Address: _____

Website Address: _____

Name/Title of Person Completing Certification: _____

Manufacturing Plant(s) Name and Street Address (if different from above) _____

Manufacturing Plant Phone Number: _____

Manufacturing Plant Facsimile (Fax) Number _____

Name/Title/Phone Number of Person at Plant if different from above: _____

Please attach a photograph(s) and a diagram(s) of your manufacturing facility and indicate on the diagram(s) where the equipment and facilities for manufacturing (i.e., fabricating) the tobacco product(s) are located.

2. The undersigned certifies that as of the date of this Certification, the above-named applicant is (initial one):

_____ **A Participating Manufacturer ("PM")** under the Tobacco Master Settlement Agreement; or
_____ **a Non-Participating Manufacturer ("NPM")** in full compliance with New Mexico Statutes having made all required deposits into a Qualified Escrow Fund for all years beginning with year 1999 sales, including any quarter deposits the applicant was notified it was required to make.

If the applicant was notified by the New Mexico Attorney General that it is required to place funds into escrow and the applicant did not timely do so, provide a full explanation for each failure to timely deposit.

3. Applicant is located outside of the United States Yes _____ No _____

If the answer above is "yes", each and every importer of your brands into the United States must provide a declaration acceptable to the New Mexico Attorney General, accepting joint and several liability with applicant for all escrow deposits due, for all penalties assessed and for all payment of costs and attorney fees imposed in accordance with NMSA 1978, §§ 6-4-12 – 6-4-24. Importers likewise must appoint a resident agent for service in New Mexico and provide evidence of such appointment with the declaration.

4. Applicant is the manufacturer (i.e. fabricator) of the brands listed on this Certification which are intended to be sold in the United States, including cigarettes intended to be sold in the United States through an importer.

_____ **Yes** _____ **No**

If your answer is "no", identify the name and address of the fabricator and state fully the applicant's basis for seeking to have the brand(s) included in the directory.

5. **Applicant is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.**

_____ Yes _____ No

If the answer is "Yes", identify each cigarette manufacturer (i.e. fabricator), its plant street address, mailing address, contact person, telephone and facsimile phone numbers, and the relationship to applicant. Identify the location of the transfer of ownership of cigarettes and a copy of every agreement or contract between applicant and fabricator.

6. **Applicant is a successor of an entity described in questions 4 or 5 above (i.e., manufacturer or first importer).**

_____ Yes _____ No

7. **If applicant answered "no" to questions 3, 4, and 5 above, explain the basis for applicant's claim that it is a Tobacco Product Manufacturer as defined in NMSA 1978, § 6-4-12 I.**
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8. **Indian Tribe Affiliation:
Please answer the following questions by marking yes or no after each question.**

Is applicant an Indian Tribe? _____ Yes _____ No

Is applicant a federally recognized Indian Tribe? _____ Yes _____ No

Is applicant a corporation formed under Tribal Law? _____ Yes _____ No

Is applicant affiliated with an Indian Tribe? _____ Yes _____ No

Is applicant owned by members of an Indian Tribe? _____ Yes _____ No

Does applicant have a facility or business premises
Located on Tribal land? _____ Yes _____ No

Does applicant have or make a claim of Tribal
Sovereign Immunity? _____ Yes _____ No

If your answer to any of these questions is "yes", you must provide the information requested below and contact the New Mexico Attorney Office of the Attorney General to make arrangements to execute required waivers of sovereign immunity in order to appear on the New Mexico Attorney General's Tobacco Directory.

Full Name of Tribe

Mailing Address of Tribal Headquarters

Telephone Number for Tribal Headquarters

9. Licenses/Permits:

- a. **New Mexico Department of Taxation and Revenue License Number** (as a manufacturer or importer)_____

Please list any additional licenses obtained from the New Mexico Department of Taxation and Revenue and their numbers _____
 Attach copies of all current and valid licenses from the New Mexico Department of Taxation and Revenue.

- b. U.S. Treasury Tobacco Tax Bureau (TTB) Permit Number **as a manufacturer:** _____ and/or as an **importer:** _____.

Attach a copy of applicant's current permit as a manufacturer or importer pursuant to 26 USC Chapter 52, and regulations issued there under.

- c. **If applicant is a manufacturer located in a country other than the U.S.A., provide copies of any Tobacco Manufacturer's License/Certificate/Permit or similar document(s), or an Importer's License/Certificate/Permit or similar document(s) issued by the country where the manufacturing occurs.**
- d. **Applicant is compliant with the requirements of the New Mexico Fire Marshal's Office and has completed the Cigarette Fire Safety Form for each brand listed. Further, Applicant has received permission from the New Mexico Fire Marshal that the brands are compliant. Evidence of compliance is attached.**
- e. **Applicant has registered with Bureau of Alcohol, Tobacco, Firearms and Explosives under the "Prevent All Cigarette Trafficking (PACT) Act, and a completed copy of ATF Form 5070.1 is attached hereto.**
- f. **Applicant has registered with the New Mexico Taxation and Revenue Department under the "Prevent All Cigarette Trafficking (PACT) Act and has filed monthly reports as required for all months since July 1, 2010 with the Taxation and Revenue Department and the New Mexico Attorney General.**
- g. **If the Taxation and Revenue Department has no forms available, applicant has filed ATF Form 5071.1 and all monthly reports for shipments into the State of New Mexico to the New Mexico Attorney General.**

PART II: BRAND FAMILY IDENTIFICATION (Attach additional sheets if necessary)

- 10. **Participating Manufacturers complete A & B;
 Non-Participating Manufacturers complete A through D.**

A. Brand Family	B. Brand Name	C. Units Sold in Preceding Calendar Year	D. Manufacturer of Brands Listed (including complete address)

Attach samples of the actual packaging and labeling for each brand of cigarettes that applicant intends to sell in New Mexico. Also submit on CD, DVD or flash drive a color photograph in Adobe Acrobat (.pdf) format, of the packing and labeling.

10. a. Packaging Samples (check one):

- Initial Application: Samples of the actual packaging and labeling for each brand (without tobacco) are attached.
- Supplemental Application: Samples of the actual packaging and labeling for each supplemental brand (without tobacco) are attached.
- Renewal Application: Samples of packaging for all brands and products sought to be certified in the current year have been previously provided and there have been no changes in the packaging.
- Renewal Application: Changes in the packaging of previously submitted samples have occurred and new packaging samples are attached.

11. Trademark Holder(s):

Provide the name, address, and phone number of the trademark holder(s) of each brand listed above.

Brand	Trademark Holder and Contact Person	Physical Address	Phone Number

Attach additional sheets as necessary to complete response.

If the Trademark Holder of a listed brand is not the applicant, provide a complete explanation for the inclusion of the brand(s) in this application, and provide a copy of any agreement for the use of the Trademark by the applicant.

PART III: ADDITIONAL BUSINESS INFORMATION

Organizational Documents Attached (See Instructions for list of documents required by this section).

12. Articles of Incorporation & Bylaws (if this is a renewal application check one):

- A copy of current articles of incorporation and bylaws have been submitted with the prior year certification. Those documents remain valid and current.
- Articles of incorporation or bylaws have changed. Enclosed as Exhibit _____
Is a copy of the new articles and/or bylaws.

13. Company Officers & Owners:

Complete the table by listing all company officers and company owners with an equity interest of 10% or more in Applicant Company.

1. Check title	<input type="checkbox"/> President <input type="checkbox"/> Partner <input type="checkbox"/> Other	<input type="checkbox"/> V.P. <input type="checkbox"/> Partner <input type="checkbox"/> Other	<input type="checkbox"/> Secretary <input type="checkbox"/> Partner <input type="checkbox"/> Other	<input type="checkbox"/> Treasurer <input type="checkbox"/> Partner <input type="checkbox"/> Other
2. Full Name (first, middle, last)				
3. Street Address				
4. Telephone # Facsimile #				
5. Date and Place of Birth				
6. E-mail address				

Attach additional sheets, as needed, to provide a complete response.

14. Affiliates:

Brand Family	Affiliate: Name	Type of Business	Affiliate Street Address and Phone Number

Attach additional sheets as needed to provide a complete response.

IF APPLICANT IS A PM, SKIP THE REMAINDER OF PART III AND GO TO PART IV.

15. Applicant Information:

Please indicate whether the following statements describe applicant by marking either yes or no after each statement.

- a. Applicant sold Cigarettes in New Mexico in the preceding calendar year: Yes No
- b. Applicant made escrow deposits pursuant to NMSA 1978, § 6-4-13, et seq Yes No
- c. Applicant sold in the preceding calendar year one or more of the brand families listed in this certification. Yes No
- d. Applicant made escrow deposits in the preceding calendar year pursuant to NMSA 1978, § 6-4-13, et seq. for one or more of the brand families listed in this certification. Yes No
- e. There has been a change in manufacturer (i.e. fabricator) of one or more of the brand families listed in this certification within the past two calendar years. Yes No
- f. Applicant advertises or sells cigarettes via the internet or in catalogs and uses the mail or other delivery service to deliver cigarettes to New Mexico consumers. Yes No
- g. Applicant failed to timely comply with any of the provisions of NMSA 1978, § 6-4-13, et seq., prior to the establishment of the Directory, or at any time thereafter. Yes No
- h. Applicant or one of its brand families listed on this certification was previously denied listing on the Directory or was removed from the Directory of this state or any other state. Yes No
- i. Applicant is enjoined or banned from selling any cigarettes by court order, state or federal agency ruling or determination of this state or any other state. Yes No
- j. A brand family formerly sold by applicant or brand family that applicant intends to sell is enjoined from sale by a state court, state agency or a federal court. Yes No

- k. A state or federal court has entered a judgment finding that applicant engaged in an unfair business practice or unfair competition relating to the sale of tobacco products. Yes No
- l. Applicant sold more than 2,000,000 cigarettes in New Mexico during any quarter of 2016. Yes No
- m. Applicant failed to timely file any completed form or document required by NMSA 1978, § 6-4-13, et seq. Yes No

PART IV. MARKETING/DISTRIBUTION INFORMATION

16. Tobacco Products Reclassified as Cigarettes or RYO Tobacco:

List all tobacco products sold by applicant that have been reclassified within the last two years as cigarettes or as roll-your own (RYO) tobacco by a federal agency, state or local government.

17. Sales of Tobacco Product into New Mexico:

For each entity in New Mexico to whom your product was shipped, and for each entity outside of New Mexico to whom your product was shipped with knowledge that such product would be sold in New Mexico, please provide a written summary of the date and amount of each such shipment of product.

18. Stamping Distributors:

Brand Family	Stamping Distributor	Address	Phone Number

19. Agreements with Participating Manufacturers (see instructions):

Brand Family	Participating Mfg.	Address	Phone Number

20. Agreements Regarding Compliance with the MSA (see instructions):

Brand Family	Name	Address

21. Agreements Regarding Compliance with NMSA 1978, § 6-4-13 (see instructions):

Brand	Name	Address

PART V. MANUFACTURING AND COMPLIANCE INFORMATION

22. Manufacturer(s):

For each brand family, list the name and address of the manufacturer (i.e., fabricator) of the Cigarettes, if other than applicant. Include all company names and addresses used by the manufacturer(s) in making cigarettes for sale in the United States.

Brand	Manufacturer or Fabricator	Street Address

23. Health Warning Rotation Plan (see instructions):

For each Brand Family, list the name and address of the entity which filed a cigarette health warning rotation plan with the Federal Trade Commission before the cigarettes were distributed into the United States.

Brand	Entity that Filed	Street Address

24. Ingredient Reporting (see instructions):

For each Brand Family, list the name and address of the entity which 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.

Brand	Submitter	Street Address

25. Cigarette Packaging:

For each Brand Family, list the address of the person, company or entity that placed the cigarettes into packages with the U.S. Surgeon General's warnings.

Brand	Packager	Street Address

26. Internet or Mail Order Sales (see instructions):

a. Websites:

b. Physical Address:

c. Total Internet Sales in New Mexico previous year:

d. Does your company have a policy or protocol regarding the prevention of the sale of your tobacco products via the internet?

- Yes, a copy of the policy or protocol is attached
- No

If your answer is "no", please answer below:

e. Have you filed any lawsuits against the owners or operators of any internet website that offers your Products for sale to the public? Yes No

f. Have you sent any "cease and desist" letters to the owners or operators of any internet websites that offers your products for sale to the public? Yes No

g. Do you have trade policies in place that govern the remote sales of your tobacco products: Yes No

h. If your answer is "yes", have you entered into any agreement with merchants requiring them to agree to comply with your trade policies? Yes No

Attach copies of the PACT Act reports filed with the New Mexico Department of Taxation and Revenue, as specified in the instructions.

**PART VI. DISCLOSURE OF ENFORCEMENT ACTIONS AND PRIOR DETERMINATIONS AFFECTING SALES TO DISTRIBUTORS
(If applicant is a PM skip Part VI and go directly to Part VII)**

27. Enforcement Actions Banning or Enjoining Sales:

Has applicant or any Person or Affiliate listed in applicant's responses to Part II, question 11 and Part III, questions 13 and 14 had any of its cigarettes banned or enjoined from sale by any state or federal court or administrative agency within the United States jurisdiction? For each such action banning or enjoining sales, list:

- a. The brand family(ies) banned and/or enjoined;
- b. The governmental entity (federal, state, local or foreign) or private plaintiff bringing the action;
- c. The case number;
- d. The name and address of the government attorney or official or private plaintiff bringing the action.

Yes, the details of each occurrence are attached to this Certification **Not Applicable**

28. Denials, Suspensions, Revocations of Permits or Licenses:

Has applicant or any Person or Affiliate listed in applicant's responses to Part II, question 11 and Part III, questions 13 and 14 been denied a permit, license, or been denied any other authorization to engage in any business relating to the sale of cigarettes by any government entity (federal, state, local or foreign) or had such permit, license or other authorization revoked, suspended or otherwise terminated? For every such denial, suspension or revocation of a permit, license or other authorization, list:

- a. The name of the applicant or other person or affiliate that had such permit, license or other authorization revoked, suspended or otherwise terminated;
- b. The governmental entity (federal, state, local or foreign) that denied, suspended or revoked such permit, license or other authorization;
- c. The case number, if any;
- d. The name and address of the government attorney or official or private plaintiff bringing the action.

Yes, the details of each occurrence are attached to this Certification **Not Applicable**

29. Convictions:

Has applicant or any Person or Affiliate listed in applicant's responses to Part II, question 11 and Part III, questions 13 and 14, been convicted of any crime under federal, state or foreign laws in connection with the sale of cigarettes? For every such conviction, list:

- a. The name of the applicant or other person or affiliate convicted;
- b. The governmental entity (federal, state, local or foreign) that prosecuted applicant or other person or affiliate;
- c. The case number;
- d. The name and address of the government attorney or official that prosecuted applicant or other person or affiliate.

Yes, the details of each occurrence are attached to this Certification **Not Applicable**

30. Denial of Listing:

Has applicant or any person or affiliate listed in applicant's responses to Part II, question 11 and Part III, questions 13 and 14 been denied listing on any state directory, which is similar to the subject of this Certification? For every such denial, list:

- a. The name of the applicant or other person or affiliate denied listing on a state directory;

- b. The Tobacco Product Manufacturer and/or brand family(ies) denied listing; and
- c. The state which denied listing.

Yes, the details of each occurrence are attached to this Certification Not Applicable

31. Compliance with the Provisions of NMSA 1978, § 6-4-12, et seq.:

Has any person listed in applicant's responses to Part II, question 11 and Part III, questions 13 and 14 been involved as an officer or owner of any other tobacco company or affiliate which has not made its escrow deposits as a Non-Participating Manufacturer under a state reserve fund statute (or escrow statute)? For each such occurrence, list:

- a. The name of the applicant or other person or affiliate which has not satisfied its NPM reserve fund obligations;
- b. The brand families for which there was a failure to comply; and
- c. The amounts of any escrow deposits that are still owed.

Yes, the details of each occurrence are attached to this Certification Not Applicable

PART VII: IMPORTED CIGARETTES – DOCUMENT AND VERIFICATION

32. U. S. Customs Documents:

Does the applicant sell or intend to sell cigarettes that are not made in the United States?

Yes No

If applicant's answer is "yes", applicant MUST provide the documents listed below:

- a. A copy of the sworn statement of the original manufacturer that it will timely submit ingredients to the Secretary of Health and Human Services as required by 19 USC 1681a(c)(1).
- b. A copy of the importer's certificate under penalty of perjury as required by 19 USC 168a(c) (2) regarding the precise format of warnings and the rotation plan for health warnings.
- c. A copy of the trademark holder's certificate under penalty of perjury that it has not withdrawn consent to import into the United States as required by 19 USC 1681a(c) (3) (A) **OR** a copy of the importer's certificate under penalty of perjury that the trademark owner has not withdrawn consent to import into the United States as required by 19 USC 1681a(c) (3) (B).
- e. Provide copies of U.S. Customs Form 7501 for all cigarettes sought to be listed by your company that were imported into the United States in the past calendar year and/or copies of all excise tax returns submitted to the Alcohol and Tobacco Tax and Trade Bureau during the past calendar year.
- f. Provide copies of the invoices corresponding to the U.S. Customs form 7501 for any cigarettes manufactured by or for your company and imported into the United States in the past calendar year and invoices corresponding to excise tax returns submitted to the Alcohol and Tobacco Tax and Trade Bureau in the past calendar year for any of the tobacco products that you seek to have included in the Directory.
- g. Provide a summary of the documents in Sub-parts "e" and "f" above reflecting a balance of the totals of the U.S. Customs form 7501, the corresponding invoices, and the excise taxes paid.

PART VIII: NPM APPLICANT CERTIFICATION

(If applicant is a PM skip Part VIII and go directly to DECLARATION, ACKNOWLEDGMENT AND SIGNATURE)

33. Agent for the Service of Process:

Please answer the following questions by placing an "X" before yes or no after each question:

- a. Is applicant domiciled in the State of New Mexico? Yes No
- b. Is applicant a non-resident or foreign NPM that has registered to do business in New Mexico as a foreign corporation or business entity? Yes No

- c. If applicant answered "no" to questions "a" and "b" above, applicant must appoint a resident agent for service of process and that agent for service must directly notify the New Mexico Attorney General in writing of that appointment.

34. Qualified Escrow Fund-Financial Institution:

Please indicate whether the following statements describe applicant by placing an "X" before yes or no after each question.

Applicant certifies that of the date of this Certification, applicant:

- a. Has established and continues to maintain a Qualified Escrow Fund. Yes No
- b. Has executed a Qualified Escrow Agreement that has been reviewed and approved by the Attorney General for the State of New Mexico and that governs that Qualified Escrow Fund for the State of New Mexico. Yes No
- c. An amendment(s) to the applicant's escrow agreement was executed in the past calendar year. (If your answer is yes, please provide a complete copy of the amended escrow agreement). Yes No

Please provide a written confirmation from the Escrow Agent stating the amount of funds in escrow.

Note: The NPM must certify satisfaction of the above-referenced requirements regarding the Qualified Escrow Fund to be eligible for the Directory. New Mexico's Escrow Agreement is available on the Attorney General's website.

35. Qualified Escrow Fund Deposit/Withdrawal History for New Mexico:

Date	Deposit	Withdrawal	Balance

36. Fire Safer Cigarette Requirement Commencing January 1, 2010:

I HEREBY ACKNOWLEDGE THAT I AM FAMILIAR WITH THE FIRE-SAFER CIGARETTE AND FIREFIGHTER PROTECTION ACT which became effective January 1, 2010 and that I have/will meet all requirements under that Act that are promulgated by the State Fire Marshal Division, Fire Code Enforcement Bureau of the State of New Mexico.

I FURTHER ACKNOWLEDGE that all requirements have been or will be renewed timely prior to or on the expiration of the current approval.

37. Declaration, Acknowledgment and Signature:

Under penalty of perjury under the laws of New Mexico, I declare and acknowledge that:

- 1. I have read the Instructions for this Certification for Listing on New Mexico's Tobacco Manufacturers Directory.
- 2. I understand that the Attorney General may require additional information and/or documentation to determine if applicant is qualified for listing on the New Mexico Tobacco Manufacturers Directory.
- 3. Applicant will immediately notify the New Mexico Office of the Attorney General, Tobacco Project, at P.O. Drawer 1508, Santa Fe, NM 87504-1508, if any information on this certification changes, before the Attorney General approves the Certification.
- 4. I am an officer authorized to legally bind the above-named company either under the laws of the State of New Mexico or of the jurisdiction where the manufacturer resides

or is organized. My position with the company and my actual authority to certify on behalf of applicant meets the foregoing requirements.

5. On behalf of the applicant, the undersigned agrees that any action or proceeding against it arising from enforcement of the provisions of NMSA 1978, §§ 6-4-12 - 6-4-24, and NMSA 1978, §§ 7-12-1 - 7-12-19 and any rules promulgated pursuant to these statutes, may be commenced against applicant in any state court within New Mexico, that the laws of the State of New Mexico will govern such proceedings, and that applicant waives any immunity from suit, liability, judgment and collection that applicant may possess.
6. I have examined this Certification, including all 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.

Name of Authorized Officer:

Title:

E-mail Address:

Telephone:

Signature of Authorized Officer _____ Date: _____

STATE OF _____)
COUNTY OF _____)
COUNTRY OF _____)

On _____, before, _____, personally appeared _____, personally known to me (or proven to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, by his/her/their signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

My commission expires _____

This Certification must be filed with the New Mexico Attorney General's Office. Please send to our physical or mailing address listed at the beginning of this form.