

**STATE OF NEW MEXICO
INSTRUCTIONS
CERTIFICATION FOR LISTING ON DIRECTORY**

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GENERAL INSTRUCTIONS

Who is required to file this certification?

Tobacco product manufacturers that intend to sell cigarettes within the state of New Mexico, 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 NMSA 1978 § 6-4-13 (1999).

When completed, the answers provided in this Certification must be reviewed and signed by an officer with the authority to bind the applicant company ("Applicant").

When is this certification due?

Tobacco Product Manufacturers that intend to sell Cigarettes in New Mexico shall file a Certification and qualify for listing on the Tobacco Manufacturers Directory prior to any sales in New Mexico. Tobacco Product Manufacturers listed on the Directory must file this form on or before April 30th of each year.

Supplemental Certifications: In completing a supplemental Certification, applicant must check the "Supplemental" box at the top of page one, enter only the new or changed information, then sign and date the supplemental Certification form. A Tobacco Product Manufacturer shall file a supplemental Certification no later than thirty days prior to any change in a fabricator for a Brand Family or any addition to or modification of its Brand Families by executing and delivering the supplemental Certification to the Attorney General. In all other circumstances in which information provided on the Certification becomes inaccurate, a supplemental Certification must be filed within thirty (30) days after the information becomes inaccurate.

Where is this Certification Filed?

This Certification must be filed with the New Mexico Office of the Attorney General:

Street Address:

**New Mexico Office of the Attorney General
Litigation Division - Tobacco Project
408 Galisteo Street
Santa Fe, NM 87501**

Mailing Address:

**New Mexico Office of the Attorney General
Litigation Division - Tobacco Project
P. O. Drawer 1508
Santa Fe, NM 87504-1508**

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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 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 all styles of Cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "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 NMSA 1978, § 6-4-12(D).
- (d) **"Directory"** means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of NMSA 1978, Sections 6-4-14 to 6-4-24 (2003) and all Brand Families that are listed in such certifications; except as provided by NMSA 1978, Sections 6-4-14 to 6-4-24 (2003).
- (e) **"Distributor"** means a person required to affix stamps on cigarette packages pursuant to NMSA 1978, § 7-12-5 or required to pay excise tax imposed on cigarettes pursuant NMSA 1978 § 7-12-A-3. "Distributor" does not include a retailer of cigarette packages upon which stamps were already affixed when the packages were received by that retailer.
- (f) **"Master Settlement Agreement"** has the same meaning as in NMSA 1978, § 6-4-12(E).
- (g) **"Non-Participating Manufacturer"** means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (h) **"Participating Manufacturer"** has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.
- (i) **"Qualified Escrow Fund"** has the same meaning as that term is defined in NMSA 1978, § 6-4-12(F).
- (j) **"Tobacco Product Manufacturer"** has the same meaning as that term is defined in NMSA 1978, § 6-4-12(I).
- (k) **"Units Sold"** has the same meaning as that term is defined in NMSA 1978, § 6-4-12(J).

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- **This Certification and all other required forms must be completed in English.**
- **For attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must be attached as well.**
- **All attachments to this Certification must indicate to which question it corresponds.**
- **If any section of this Certification is not applicable to your company, be sure to check the box “not applicable” where relevant.**

SPECIFIC INSTRUCTIONS

Part I: Questions 3 - 6: NMSA 1978, § 6-4-12 I (1), (2) and (3) sets forth three circumstances under which an entity is a Tobacco Product manufacturer. Those circumstances are individually set forth in questions 3, 4, and 5. If applicant answered “no” to question 3, 4, and 5, applicant must provide an explanation for its assertion that it is a Tobacco Product Manufacturer in its response to question 6.

Question 8: Indian Tribe Affiliation: If your answer to any of the questions in this section is “yes”, you must provide the information requested below and contact the New Mexico Office of the Attorney General to make arrangements to execute required waivers of sovereign immunity in order to appear on the New Mexico Tobacco Manufacturers Directory.

Part II: Brand Family Identification: Identify by Brand Family and Brand name all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory.

A Participating Manufacturer shall include a list of its Brand Families. The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General.

A Manufacturer shall include in its certification (i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the State during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the State at any time during the current calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year. The Non-Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Attorney General.

9. A. Attach samples of the actual packaging and labeling for each brand of cigarettes and RYO that applicant intends to sell in New Mexico, if not previously submitted.

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Part III: Additional Business and Ownership Information:

12. Organizational Documents to be attached:

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, country or municipality
Corporation	<ol style="list-style-type: none"> 1. Current copy of the corporate charter OR certificate of corporate existence or incorporation. This copy must be executed by the appropriate state officer for the jurisdiction in which incorporated. 2. Extracts of stockholders' meetings, bylaws, directors' meetings or other documents that list the officers authorized to sign documents or otherwise act on behalf of the corporation. The accuracy of the copy must be certified by an appropriate officer of the corporation
Limited liability company or other business organization	Current copy of the business document(s) filed with a state, county or municipality when such filing is required. The copy must show that it was filed with the appropriate government agency. A limited liability company must provide an accurate copy of its operating agreement.

14. Affiliates: Identify any affiliate that also manufactures, imports, distributes, or sells cigarettes or other tobacco products in New Mexico by completing the table on the application. For purposes of this Certification & Application for Listing, the term "own" means ownership of an equity interest, or the equivalent thereof, of 10 percent or more. List the names of the brands and the affiliate in the first two columns. List the type of business by writing in the third column (Type of Business): "M" for manufacturer, "I" for importer, "D" for distributor, and "W" for wholesaler.

Part IV: Marketing and Distribution Information

19. Agreements with Participating Manufacturers: Identify every agreement between applicant and any Participating Manufacturer (PM) or Affiliate of a PM which relates to the making, importing, distribution, transportation, or sale of a Brand Family. List the Brand Family and the name, address and phone number of the PM involved in any agreement. For each Brand Family, describe the agreement or arrangement with any PM or Affiliate of a PM in the making, importing, distribution, transportation or sale of the Brand Family, and provide the name and address of the PM(s), subsidiary(ies), Affiliate(s) or partner(s). Attach a copy of any written contract(s) or agreement(s).

20. Agreements Regarding Compliance with the MSA. List every Brand Family that is subject of an agreement regarding compliance with the MSA and the name, address and phone number of the Participating Manufacturer involved in such agreement(s).

21. Agreements Regarding Compliance with NMSA § 6-4-13. List every Brand Family that is subject of an agreement regarding compliance with NMSA § 6-4-13 and the name, address and phone number of the Participating Manufacturer or Non-Participating Manufacturer involved in such agreement(s).

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Part V: Manufacturing and Compliance Information

23. Health Warning Rotation Plan. A copy of the complete current health warning rotation plan submitted to the Federal Trade Commission ("FTC") pursuant to 15 U.S.C. § 1333. Additional information can be obtained at:

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

24. Ingredient Reporting. A copy of the Centers for Disease Control (CDC) ingredient-listing (cigarettes only) compliance letter(s) pertaining to the brands listed in this certification and a statement from the manufacturer 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>

26. Internet or Mail Order Sales. If applicant intends to sell any Cigarettes (including RYO tobacco) by mail order or through the internet, list and describe: (a) any website advertising the cigarettes, (b) the address from where the cigarettes will be shipped, and (c) the total sales in New Mexico in the previous year.

ATTACH COPIES OF PACT ACT REPORTS for the calendar year for which this report is being submitted. This includes both FEDERAL AND STATE (if available) REGISTRATION AND REPORTS. If applicant is applying for listing on New Mexico's Directory for the first time, attach copies of all reports filed with the New Mexico Taxation and Revenue Department in compliance with the PACT Act (Chapter 10A of Title 15 of the U.S. Code, Sections 375, et seq.) for sales in the preceding 12 months. If applicant has already been listed on New Mexico's Directory, but is applying to list other or new Brand Families, attach copies of the annual Certification of Compliance and the PACT Act reports for sales of the already-listed Brand Families for the period of time reported in applicant's annual Certification of Compliance. In the event the New Mexico Taxation and Revenue Department has not made a report available for state reporting purposes, provide a copy of the Federal (ATF) Registration and copies of invoices for all sales into New Mexico for the previous calendar year (unless you are a renewing NPM and have been providing these forms on a monthly basis. The ATF form and invoices must be submitted to the office of the Attorney General, Tobacco Project.

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Part VIII. NPM Applicant Certification (NPM Applicants Only)

33. Agent for Service of Process (NPM Applicants Only). Certify whether the NPM is (a) domiciled in the State of New Mexico; (b) a non-resident or foreign NPM that has registered to do business in New Mexico as a foreign corporation or business entity; or (c) an NPM that has appointed a resident agent for service of process pursuant to NMSA 1978, § 6-4-20, on whom all process, and any action against it concerning or arising out of the enforcement of the Master Settlement Agreement Complimentary Act and NMSA 1978, §§ 6-4-12 through 6-4-24, may be served in any manner authorized by law.

36. Fire Safer Cigarettes. Certify that all brands manufactured are certified as fire safe pursuant to the New Mexico Fire Marshal's requirements and attach a copy of the certificate evidencing that compliance. If your approval expires during the 2016 or 2017 calendar year, provide this office with renewals as soon as they are received.