



Non-participating Tobacco Manufacturer's Corporate Surety Bond Form - State of New Mexico

(Required pursuant to NMSA 1978, § 6-4-18.1)

1. Tobacco Manufacturer's Identification:

Name: _____

Address: _____

Phone: _____ FAX: _____

Email: _____

Federal EIN: _____

1. Corporate Surety (name and contact information):

2. Bond Information:

A. _____ Non-participating Manufacturer who has been deemed an "elevated risk" pursuant to NMSA1978, 6-4-18.1

Amount of Bond (greater of): _____ Fifty thousand dollars (\$50,000), or _____ Amount of Escrow Obligation for Previous Year: (\$ _____)

C. Effective date of Bond: _____

D. Bond Number: _____

3. We, the manufacturer and corporate surety, agree to all terms and conditions of the bond as attached. We witness our hands and seals this _____ day of _____, 20_____. Signed, sealed and delivered in the presence of:

Authorized Representative for Manufacturer:

Signature

Printed Name and Title

Authorized Representative for Corporate Surety:

Signature

Printed Name and Title (Seal)

Witnesses:

Signature

Printed Name

Signature

Printed Name

Return this Form to the following address:

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

Terms and Conditions of this Bond

1. **Bases:** The manufacturer party to this bond, identified in item 1, is a manufacturer of tobacco products, not party to the Master Settlement Agreement, and sells or intends to sell tobacco products in or into the State of New Mexico. The manufacturer is required to post this bond because it has been deemed a manufacturer at elevated risk for non-compliance with the New Mexico escrow statute pursuant to NMSA 1978, §§ 6-4-12 through 6-4-24.

The corporate surety, identified in item 2, is a corporation authorized by the New Mexico Department of Insurance to transact such business in the State of New Mexico. The manufacturer of tobacco products and the corporate surety are required to comply with all applicable provisions of NMSA 1978, §6-4-18.1 (C) which states as follows:

The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of Fifty Thousand Dollars (\$50,000.00) or the amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of its sales in the previous calendar year in New Mexico. The bond shall be written in favor of the State of New Mexico and shall be conditioned on the performance by the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the performance of the manufacturer in accordance with all of its obligations under the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 during the year in which the certification is filed and in the next succeeding calendar year.

2. **Effective date of the bond:** This bond is effective when the New Mexico Office of the Attorney General Tobacco Project accepts this bond; notice to manufacturer or corporate surety is not required. The effective date of the bond is stated in item 3 of this bond. If however, no date is listed, the date of execution in item 4 will be listed as the effective date.
3. **Liability:** The manufacturer, as the entity who sells or intends to sell tobacco products in or into New Mexico and does not participate with the Master Settlement Agreement, agrees to deposit funds into a qualified escrow fund for each “unit sold” for which it is liable pursuant to NMSA 1978, § 6-4-12 et seq. Furthermore, the manufacturer will make such payments in quarterly installments as required by the New Mexico Attorney General as required by NMSA 1978, § 6-4-21 E. Until all obligations accrued under NMSA 1978, § 6-4-12 et seq. have been fully satisfied, this bond remains in full force and effect for the manufacturer identified herein. Failure to make the required deposits shall result in the forfeiture of this bond in an amount equal to all funds due under NMSA 1978, § 6-4-12 et seq., plus any applicable penalties, costs, fees and interest owing the State of New Mexico.
4. **Effectiveness of bond:** For manufacturers deemed to pose an elevated risk for non-compliance, this bond shall remain in effect for the year in which it is executed and three (3) calendar years thereafter, or longer if the company is determined to continue to pose an elevated risk for noncompliance.
5. **Compliance:** If the manufacturer complies with all provisions of NMSA 1978, § 6-4-12 et seq., at the expiration of the relevant statutory time period, this obligation shall be null and void. If the manufacturer or the corporate surety, however, does not comply faithfully in all respects with such laws, rule, and regulation identified in this paragraph, this bond will remain in full force and effect.

6. **Changes while bond is in Effect:** This bond extends and applies to any change that requires the manufacturer to file for a new or amended certification.
7. **Action by the State of New Mexico:** The manufacturer and the corporate surety, identified herein, waive any right or privilege that the State of New Mexico must first start an action or otherwise exhaust remedies against either the manufacturer or the corporate surety before pursuing such remedies. If the manufacturer or the corporate surety breaches any condition of this bond, the State of New Mexico may pursue remedies against the manufacturer and/or the corporate surety.
8. **Relief of the Corporate Surety:** The corporate surety may cancel this bond at any time by giving written notice of the cancellation by registered mail to the Office of the Attorney General and to the manufacturer. All liability thereunder shall terminate sixty (60) days after receipt of the notice by the Office of the Attorney General, except that the liability of the manufacturer and corporate surety shall apply as provided herein to any acts or omissions which occurred prior to the effective date of the cancellation. In the event that the corporate surety elects to cancel this bond, manufacturer must secure an alternative bond by the expiration of the aforementioned sixty (60) day period. Failure to secure a supplemental bond will result in immediate removal of the manufacturer from the Directory, manufacturer and corporate surety shall remain liable for all obligations accrued prior to the effective date of the bond cancellation.
9. **Relief of the Manufacturer:** If the manufacturer no longer wishes to sell its product in or into the State of New Mexico, upon voluntary removal of the manufacturer's brand families from the New Mexico Attorney General's Directory of Compliant Non-Participating Manufacturers and satisfaction of any escrow obligation accrued under NMSA 1978, § 6-4-12 et seq., the manufacturer may cancel this bond. All liability thereunder shall terminate upon full satisfaction of the escrow obligation, except that the liability of the manufacturer and corporate surety shall apply as provided herein to any acts or omissions which occurred prior to the effective date of such cancellation.