

MONTANA DEPARTMENT OF JUSTICE

Instructions for Tobacco Product Manufacturer Certificate of Compliance

GENERAL INSTRUCTIONS

Who is required to file this Certification?

Tobacco Product Manufacturers (TPMs) whose cigarettes are sold in Montana, whether directly or through any distributor, wholesaler, retailer or similar intermediary, are required to complete and file this form. TPMs are responsible for sales of their cigarettes in the State.

This Certification is in addition to Quarterly Certificates of Escrow Deposit by Non-Participating Manufacturer (NPM) required by Montana's Tobacco Product Reserve Fund Statute (Mont. Code Ann. § 16-11-403) and implementing rules (Administrative Rules of Montana §§ 23.18.201 through 210).

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

When is this Certification due?

TPMs that intend to sell cigarettes in Montana shall file a Certification and must be certified by the Attorney General's Office for listing on the Tobacco Product Directory each year and prior to any sales in Montana. TPMs listed on the Tobacco Product Directory must file this form on or before April 30 each year. An original signature by the Applicant of the Certification must be submitted prior to any approval of an electronically submitted Certification. Applicant may submit an original signature page and need not resubmit the entire Certification and attachments.

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 TPM shall file a Supplemental Certification no later than 30 days prior to any change in a fabricator for any 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 30 days after the information becomes inaccurate. TPMs have a continuing duty to keep Certification information accurate and up to date.

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, as further defined in Mont. Code Ann. § 16-11-402(2).
- (b) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol," 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. Mont. Code Ann. § 16-11-502(1).
- (c) "Cigarette" has the same meaning as in Mont. Code Ann. § 16-11-402(4). Roll-your-own (RYO) tobacco is included in the definition of cigarette under Mont. Code Ann. § 16-11-402(4).
- (d) "Tobacco Product Directory" means the approved listing of all TPMs that have provided current and accurate TPM Certifications of Compliance conforming to the requirements of Mont. Code Ann. § 16-11-Part 4 and -Part 5, and implementing rules, and all approved Brand Families that are listed in such Certifications.

- (e) "MSA" means the "Master Settlement Agreement," as defined in Mont. Code Ann. § 16-11-402(5).
- (f) "Non-Participating Manufacturer," or "NPM," means any TPM that is not a Participating Manufacturer.
- (g) "Participating Manufacturer," or "PM," has the same meaning as in subsection II(j) of the MSA. Mont. Code Ann. § 16-11-502(6).
- (h) "Person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons. Mont. Code Ann. § 16-11-402(2).
- (i) "Qualified Escrow Fund" has the meaning as in Mont. Code Ann. § 16-11-402(6).
- (j) "Reserve Fund Statute" means Mont. Code Ann. §§ 16-11-401 through -512.
- (k) "Tobacco Product Manufacturer," or "TPM" has the meaning as in Mont. Code Ann. § 16-11-402(9).
- (l) "Units Sold" has the meaning as in Mont. Code Ann. § 16-11-402(10).
- (m) "Wholesaler" has the same meaning as in Mont. Code Ann. § 16-11-502(10).

This Certification and all other required forms must be completed in English. For all attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must also be attached.

All attachments to this Certification must indicate to which questions they correspond.

If any section of this Certification is not applicable to your company, check the box "Not Applicable" or state "NA" where relevant.

ANY PERSON WHO MAKES AN ASSERTION IN THIS CERTIFICATION THAT HE OR SHE KNOWS IS FALSE REGARDING A MATERIAL MATTER IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT OR A FINE, OR BOTH.

THE BURDEN OF PROOF IS ON THE TPM TO ESTABLISH THAT IT OR A PARTICULAR BRAND FAMILY IS ENTITLED TO BE LISTED ON THE TOBACCO PRODUCT DIRECTORY. Mont. Code Ann. § 16-11-504; Admin. R. Mont. 23.18.206

SPECIFIC INSTRUCTIONS

PART I: GENERAL BUSINESS AND OWNERSHIP INFORMATION

Questions 3-6: Montana Code Annotated § 16-11-402(9) sets forth three circumstances under which an entity is a TPM. Those circumstances are individually set out in questions 3, 4, and 5. If Applicant answered "No" to questions 3, 4 and 5, Applicant must provide an explanation for its assertion that it is a TPM in its response to question 6. Attach such documents as necessary to support the explanation.

PART II: BRAND FAMILY IDENTIFICATION

Brand Family Identification: Identify by Brand Family all of the cigarettes that the TPM intends to sell in Montana, whether directly or through any wholesaler, distributor, retailer, or similar intermediary, and seeks to have included in the Tobacco Product Directory. Only the Brand Families identified may be included in the Tobacco Product Directory. A PM shall list all of its Brand Families. By listing a Brand Family, the PM affirms that the Brand Family is deemed to be its cigarettes for the purpose of calculating its payments under the MSA for the relevant year. The PM shall update such list

at least 30 days prior to any addition to or modification of its Brand Families by executing and delivering a Supplemental TPM Certification of Certification to the Attorney General.

An NPM shall: (i) List all of its Brand Families and the number of units sold of each Brand Family that were sold in Montana during the preceding calendar year; (ii) Identify by an asterisk any Brand Family sold in Montana during the preceding calendar year that is no longer being sold in Montana as of the date of the Certification; (iii) Sales to date for each Brand Family; and (iv) Provide the complete name and address of every TPM that manufactured a Brand Family described in (i) above in the preceding calendar year. The NPM shall update such list at least 30 days prior to any addition to or modification of its Brand Families by executing and delivering a Supplemental TPM Certification of Compliance to the Attorney General. By listing a Brand Family, the NPM affirms that the Brand Family cigarettes in Montana are its cigarettes for the purpose of calculating its reserve fund deposits pursuant to Mont. Code Ann. § 16-11-403 and -Part 5 and implementing rules.

PART III: MANUFACTURING AND COMPLIANCE INFORMATION

5. Internet or Mail Order Sales. If Applicant sells any cigarettes by mail order, catalog, or through the internet to Montana consumers, list and describe: (a) any website advertising the tobacco, (b) the address from where the cigarettes will be shipped, and (c) the total sales by Brand Family in Montana in the previous year.

ATTACH COPIES OF PREVENT ALL CIGARETTE TRAFFICKING ("PACT") ACT REPORTS. If Applicant is applying for listing on Montana's Tobacco Product Directory for the first time, attach copies of all reports, if any, filed by Applicant and its distributors/wholesalers with the Montana Department of Revenue to comply with the PACT Act, 15 U.S.C. § 375 *et seq.*, for shipments and sales in the preceding 12 months.

If Applicant has been listed on the Tobacco Product Directory, attach copies of the Applicant's and distributors/wholesalers PACT Act reports for sales of the listed Brand Families for the prior calendar year, unless the PACT Act reports were previously provided to the Montana Department of Justice on a monthly basis.

Monthly submission of PACT Act Reports by TPMs, their importers, and their distributors/wholesalers to the Attorney General's Office reporting all of Applicant's cigarettes shipped into Montana is a requirement to remain on the Tobacco Product Directory. See *Tobacco PACT Act Reporting* on the Attorney General's Tobacco website <https://dojmt.gov/consumer/tobacco-sales-and-directory-tobacco-settlement/>

ATTACH A COPY OF THE APPLICANT'S PACT ACT REGISTRATION FILED WITH THE ATF AND THE MONTANA DEPARTMENT OF REVENUE.

PART IV: ADDITIONAL BUSINESS AND OWNERSHIP INFORMATION (NPM Applicants Only)

1. 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	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 and any amendments.

2. Affiliates. Identify any Affiliate that also manufactures, imports, distributes, transports, stores, or sells cigarettes or other tobacco products anywhere by completing the table on the application. For purposes of this Certification, the term "own" means ownership of an equity interest, or the equivalent thereof, of 10 percent or more. Mont. Code Ann. § 16-11-402(2). List the names of any brand 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, "w" for wholesaler, or "o" for other.

PART V: MARKETING AND DISTRIBUTION INFORMATION (NPM Applicants Only)

2. Brands made since 1999.

3. Distributors, Wholesalers, Retailers, and Importers of Applicant's cigarettes for the Montana market.

4. Distributors, Wholesalers, Retailers, and Importers of Applicant's cigarettes for the Montana market for the Previous Calendar Year.

5. Agreements with Participating Manufacturers. Identify every agreement between Applicant and any 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). A list of the PMs is available on the NAAG website under the Master Settlement Agreement at <http://www.naag.org>. **Attach a copy of any written contract(s) and/or agreement(s).**

6. Agreements Regarding Compliance with the MSA. List every Brand Family that is the subject of an agreement regarding compliance with the MSA and the name, address, and phone number of the PM involved in such agreement(s). **Attach a copy of any written contract(s) and/or agreement(s).**

7. Agreements Regarding Compliance with the Reserve Fund Statute. List every Brand Family that is the subject of an agreement regarding compliance with the Reserve Fund Statute and the name, address, and phone number of the person or entity with which Applicant has a contractual agreement and/or arrangement concerning compliance with the Reserve Fund Statute. **Attach a copy of any written contract(s) and/or agreement(s).**

PART VI: DISCLOSURE OF ENFORCEMENT ACTIONS (NPM Applicants Only)

PART VII: IMPORTED CIGARETTES - DOCUMENTATION & VERIFICATION (NPM Applicants Only)

PART VIII: NPM APPLICANT CERTIFICATION

1. AGENT FOR SERVICE OF PROCESS

Certify whether the NPM is: (1) domiciled in the State of Montana; (2) a non-resident or foreign NPM that has registered to do business in Montana as a foreign corporation or business entity; or (3) a NPM that has appointed a resident agent for service of process pursuant to Mont. Code Ann. § 16-11-503 on whom all process, and any action against it concerning or arising out of the enforcement of the Reserve Fund Statute and implementing rules, may be served in any manner authorized by law.

Where must this Certification be filed?

The original Certification and a complete copy of all required forms and documents must be mailed to:

Montana Attorney General's
Office of Consumer Protection
Attn: Tobacco Enforcement Program
555 Fuller Avenue (59601-3394)
P.O. Box 200151
Helena, MT 59620-0151

AND

Jason Lay
Miscellaneous Tax Unit
Montana Department of Revenue
125 N Roberts (59601-4558)
P.O. Box 5805
Helena, MT 59604-5805

In lieu of mailing, an electronic copy of the Certification and a complete copy of all required forms and documents can also be submitted via Certivault or emailed to AGTobacco@mt.gov.