

28 FINAL REGULATIONS

Document No. 4427
ATTORNEY GENERAL
CHAPTER 13

Statutory Authority: 1976 Code Sections 11-48-10 et seq. (Supp. 2005)

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- 13-1109. Notice of Approved Certification, Denial of Certification, and Removal from Tobacco Directory
- 13-1110. Bond Requirement for Nonparticipating Manufacturer
- 13-1111. Manufacturer and Importer Reports

Synopsis:

The South Carolina Office of the Attorney General proposes to add Article 3 to its Regulations, establishing a requirement of quarterly escrow deposits for certain tobacco product manufacturers as well as requirements related to the tobacco product manufacturer's annual Certificate of Compliance and various reports filed with the Office of the Attorney General.

The Notice of Drafting was published in the *State Register* on September 27, 2013.

Instructions:

Regulations should be placed in Chapter 13 of the Code of State Regulations. The Regulations should be placed as Article 3 immediately following Article 2, Securites, Subarticle 6. These Regulations should be published as Article 3, Tobacco Enforcement.

Text:

ARTICLE 3

TOBACCO ENFORCEMENT

13-1101. Definitions.

A. The following definitions shall apply to all rules promulgated and contained in Article 3:

1. "Brand Family" has the same meaning as in South Carolina Code Section 11-48-20(1).
2. "Cigarette distributor" has the same meaning as in South Carolina Code Section 11-48-20(6).
3. "Cigarette" has the same meaning as in South Carolina Code Section 11-48-20(2).
4. "Directory" means the listing of tobacco product manufacturers and brands maintained by the Attorney General pursuant to South Carolina Code Section 11-48-30.
5. "Escrow deposit" means deposits required to be made into a qualified escrow fund pursuant to South Carolina Code Section 11-47-30.

6. "Falsification" means no person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when the statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.

7. "Master Settlement Agreement" has the same meaning as in South Carolina Code Section 11-47-20(e).

8. "Nonparticipating manufacturer" has the same meaning as in South Carolina Code Section 11-48-20(3).

9. "Participating manufacturer" has the same meaning as in South Carolina Code Section 11-48-20(4).

10. "Qualified escrow fund" has the same meaning as in South Carolina Code Section 11-48-20(5)."

11. "Tobacco product manufacturer" has the same meaning as in South Carolina Code Section 11-48-20(7).

12. "Tobacco Product Manufacturer Certificate of Compliance" or "Certificate of Compliance" or "Certification" or "Certification application" or "application" means the application required to be completed and executed by all tobacco product manufacturers pursuant to South Carolina Code Section 11-48-30.

13. "Units sold" has the same meaning as in South Carolina Code Section 11-48-20(8).

13-1102. Quarterly Certifications and Escrow Deposits.

A. As authorized by South Carolina Code Section 11-48-50 and in order to promote compliance with South Carolina Code Section 11-47-10, et seq., all escrow deposits shall be made on a quarterly basis.

B.

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13-1105. Untimely or Incomplete Quarterly Reports or Escrow Deposits.

A. If the required quarterly escrow deposit is not timely made in full, or the required quarterly report is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families shall be removed from the directory in accordance with South Carolina Code Section 11-48-30. Any such nonparticipating manufacturer that fails in any quarter to place into escrow the funds required herein shall be subject to the penalty provisions of Section 11-47-30; shall be deemed to have failed to comply with Section 11-48-30; and shall be subject to all enforcement actions available for a violation of Section 11-48-30.

13-1106. Certification of Tobacco Product Manufacturers for Tobacco Directory.

A. Pursuant to South Carolina Code Section 11-48-30, tobacco product manufacturers who seek to certify their cigarette brands for sale in South Carolina must complete and submit no later than the thirtieth day of April each year the "Tobacco Product Manufacturer Certificate of Compliance" made available on the South Carolina Office of the Attorney General website.

B. In exercising the discretion granted by Section 11-48-30 when considering an application submitted for certification, the Attorney General may consider the following:

1. Whether the entity tendering a certification request is a tobacco product manufacturer;
2. Whether the tobacco product manufacturer is the tobacco product manufacturer, as defined by Section 11-47-20(i), of the cigarette brand listed on the certification application;
3. Whether the brand family sought to be certified by the tobacco product manufacturer is also manufactured by another entity; and whether the tobacco product manufacturer has exclusive rights to the trademark for the brand family. Whether any other tobacco product manufacturer also manufactures cigarettes within the same brand family
4. Completeness, or lack thereof, of the certification request made by the tobacco product manufacturer;
5. Whether the tobacco product manufacturer has provided all requested documents supporting its certification request;
6. Whether the certification request is based on misrepresentation, falsification of facts, false information, nondisclosure, or concealment of facts;
7. Whether the tobacco product manufacturer is in full compliance with all provisions of local, state and federal law;
8. Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand is the subject of litigation, including but not limited to violations of any South Carolina statute, regulation, or other law, including, but not limited to, violations of Sections 11-47-10, et seq., through 11-48-10, et seq.;
9. Whether the tobacco product manufacturer has failed to fully fund a qualified escrow fund approved by the Attorney General in a timely and thorough manner;
10. Whether all final judgments and penalties, including interest, costs and attorney fees thereon, in favor of the State of South Carolina, for violation of any South Carolina statute, regulation or other law, including but not limited to violations of Sections 11-47-10, et seq., through 11-48-10, et seq., have been fully satisfied for the brand family, or tobacco product manufacturer;

11. Whether the tobacco product manufacturer has failed to pay any judgment obtained in any jurisdiction, including any civil penalty stemming from any jurisdiction's escrow deposit laws, or whether the tobacco product manufacturer is a defendant in a pending lawsuit brought by another state for failing to sufficiently fund an escrow account pursuant to that state's escrow laws; or whether the tobacco product manufacturer has been removed from another state's tobacco directory;

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4. The nonparticipating manufacturer has failed to pay any judgment, regardless of the status of the judgment under applicable statutes of limitations, obtained in any jurisdiction, including any civil penalties and other monetary amounts awarded stemming from any jurisdiction's escrow deposit laws;

5. The nonparticipating manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families have been removed from the state's tobacco directory for noncompliance with the state law at any time during the calendar year or within the past three calendar years; or

6. In addition to the reasons specified above, the Attorney General may require a bond from a nonparticipating manufacturer if the Attorney General has reasonable grounds to believe the nonparticipating manufacturer may default on its obligations under the Tobacco Escrow Fund Act.

C. The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of one hundred thousand (\$100,000) dollars or the amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of its previous calendar year's sales in South Carolina. The bond shall be written in favor of the State of South Carolina and shall be conditioned on the performance by the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with the Tobacco Escrow Fund Act.

D. A newly qualified nonparticipating manufacturer may be required to post a bond under this section for the first three (3) years of the newly qualified nonparticipating manufacturer's listing or longer if the newly qualified nonparticipating manufacturer has been deemed to pose an elevated risk for noncompliance

13-1111. Manufacturer and Importer Reports.

A. Each manufacturer and importer that sells cigarettes in or into the State shall, within 15 days following the end of each month, file a report on a form to be prescribed by the Attorney General and certify to the State that the report is complete and accurate.

B. The report shall contain t

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F. A manufacturer that fails to file a complete and accurate report required herein may be removed from the Tobacco Directory.

Fiscal Impact Statement:

There will be no increased costs to the state or its political subdivisions.

Statement of Rationale:

The rationale for this regulation is to promote and enhance the enforcement of the South Carolina Tobacco Escrow Fund Act and the South Carolina Tobacco Qualified Escrow Fund Enforcement Act.