

**50-6a09. Non-participating manufacturers; required to post bond, conditions; amount; elevated risk, circumstances.** (a) Notwithstanding any other provision of law, if a newly qualified non-participating manufacturer is to be listed in the directory, or if the attorney general reasonably determines that any non-participating manufacturer who has filed a certification pursuant to subsection (c) of K.S.A. 50-6a04, and amendments thereto, poses an elevated risk for noncompliance with this act neither such non-participating manufacturer nor any of its brand families shall be included or retained in the directory unless and until such non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, has posted a bond in accordance with this section.

(b) The bond required by this section shall be posted by corporate surety located within the United States in an amount equal to the greater of \$50,000 or the amount of escrow the non-participating manufacturer in either its current or predecessor form was required to deposit for sales of cigarettes in this state during the previous calendar year. The bond shall be written in favor of the state of Kansas and shall be conditioned on the performance by the non-participating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection (c)(3)(I) of K.S.A. 50-6a04, and amendments thereto, of all of its duties and obligations under this act during the year in which the certification is filed and the next succeeding calendar year.

(c) A non-participating manufacturer may be deemed to pose an elevated risk for noncompliance with this act if:

(1) The non-participating manufacturer, or any affiliate thereof, has underpaid an escrow obligation with respect to any other state or jurisdiction that is a party to the master settlement agreement at any time within the three calendar years prior to the date of submission or approval of the most recent certification, unless:

(A) The non-participating manufacturer did not make the underpayment knowingly or recklessly and the non-participating manufacturer promptly cured the underpayment within 180 calendar days of notice of the underpayment; or

(B) the underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the attorney general and the underpayment is cured within 90 calendar days of entry of a final order establishing the amount of the required escrow payment;

(2) any state or jurisdiction that is party to the master settlement agreement has removed the non-participating manufacturer, or its brands or brand families, or an affiliate, or such affiliate's brands or brand families, from the state's directory for noncompliance with the corresponding laws of such other state or jurisdiction at any time within three calendar years prior to the date of submission or approval of the most recent certification; or

(3) any state or jurisdiction that is party to the master settlement agreement has pending litigation, or an unsatisfied judgment against the non-participating manufacturer, or any affiliate thereof, for unpaid escrow obligations, or associated penalties, costs or attorney fees.

(d) As used in this section, "newly qualified non-participating manufacturer" means a non-participating manufacturer that has not previously been listed in the directory. Such non-participating manufacturer may be required to post a bond in accordance with this section for the first five years of its listing, or longer, if they have been deemed to pose an elevated risk for noncompliance.

**History:** L. 2009, ch. 110, § 5; July 1.