

**68 O.S. § 360.9**

A. Notwithstanding any other provision of law, any nonparticipating manufacturer shall post a bond for the exclusive benefit of this state if:

1. It was not listed in the Oklahoma Tobacco Directory, hereinafter referred to as the Directory, during the four (4) consecutive calendar quarters preceding its application to be on the Directory;

2. It had been previously listed in the Directory, but was involuntarily removed or denied recertification for noncompliance with the Master Settlement Agreement Complementary Act or the Prevention of Youth Access to Tobacco Act, unless the removal was determined to have been erroneous or illegal; or

3. The Attorney General reasonably determines that the nonparticipating manufacturer who has filed a certification pursuant to Section 360.4 of this title poses an elevated risk for noncompliance with the Master Settlement Agreement Complementary Act or with the Prevention of Youth Access to Tobacco Act. A reasonable risk of noncompliance with this section or the Prevention of Youth Access to Tobacco Act includes, but is not limited to, the following circumstances and a nonparticipating manufacturer shall be deemed to pose an elevated risk for noncompliance if:

a. any state has removed the manufacturer or its brand or brand families or an affiliate or any of the affiliate's brands or brand families from the tobacco directory of the state or placed the manufacturer or its brand or brand families or an affiliate or any of the affiliate's brands on a list of noncompliant companies, brands or brand families for noncompliance with the state law at any time during the calendar year or within the past five (5) consecutive calendar years, unless it submits proof that its brands, or the brands of an affiliate were erroneously or illegally removed from a tobacco directory of a state,

b. any state, or the federal government, has filed litigation against or has an unsatisfied judgment against the manufacturer or any affiliate thereof for escrow or for penalties, costs, or attorney fees related to noncompliance with state escrow laws or complementary legislation, or

c. the nonparticipating manufacturer or any affiliate has been charged, entered a plea or has been convicted of violating the Contraband Cigarette Trafficking Act, the Jenkins Act or the PACT Act.

B. For purposes of this section, an affiliate is an entity or individual that either controls or is controlled by the nonparticipating manufacturer, regardless of whether the control being exercised is direct or indirect.

C. Neither a nonparticipating manufacturer nor any of its brand families shall be included in the Directory unless and until the nonparticipating manufacturer:

1. Undertakes joint and several liability with its importer for the performance of the manufacturer in accordance with Section 360.5-1 of this title and, if required, has posted a joint bond in accordance with this section;

2. The manufacturer and importer, if any, have:

a. registered to do business within the state with the Secretary of State,

b. maintained a registered service agent within the State of Oklahoma, and

c. agreed that the Secretary of State will act as service agent if the registered service agent dies, resigns or otherwise is unavailable to accept service on behalf of the nonparticipating manufacturer or importer; and

3. The manufacturer and importer, if any, consent to be sued in the district courts of the State of Oklahoma for purposes of the state enforcing any provision of the Prevention of Youth Access to Tobacco Act, the Master Settlement Agreement Complementary Act and Oklahoma cigarette excise tax statutes.

D. 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 fifty percent (50%) of the required escrow that the manufacturer in either its current or predecessor form was required to deposit as a result of its sales in Oklahoma during the last full calendar year it was listed in the Directory. The bond shall be written in favor of the State of Oklahoma 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 Section 360.5-1 of this title, of all of its duties and obligations under the Prevention of Youth Access to Tobacco Act and the Master Settlement Agreement Complementary Act during the year in which the certification is filed and the next succeeding calendar year.

E. Any manufacturer or importer required to post a bond in accordance with this section shall do so for three (3) consecutive years, or longer if the Attorney General determines the manufacturer or importer poses an elevated risk at the end of the three-year period.

F. If a nonparticipating manufacturer fails to make or have made in its behalf deposits equal to the full amount owed for a quarter within fifteen (15) days of the due date of the quarter, the State of Oklahoma may execute on the bond in the amount of the remaining escrow deposit

due. Escrow amounts collected from the bond shall be used to reduce the amount of escrow due from and penalties assessed against that nonparticipating manufacturer and unpaid escrow that exceeds the amount covered by the bond remains due from the nonparticipating manufacturer and any importer that is jointly and severally liable for its cigarette sales into the state.

G. In addition to the grounds contained in paragraph 3 of subsection B of Section 360.4 of this title, the Attorney General has the authority to not retain or not to include in the Directory any nonparticipating manufacturer, its brands and brand families if the manufacturer:

1. Does not certify it is subject to, without any immunity, the Master Settlement Agreement Complementary Act and the Prevention of Youth Access to Tobacco Act;

2. Fails to disclose that a state or the federal government has brought an action in compliance with any state or federal law, regulating the sale and or distribution of tobacco products, including the escrow statute of another state; or

3. Fails to sell only through an Oklahoma-licensed wholesaler any tobacco product sold into the state or fails to provide monthly PACT Act reports to the Oklahoma Tax Commission and the Oklahoma Attorney General for sales into the state.

H. The Attorney General shall have the authority to require a nonparticipating manufacturer to submit all information and materials the Attorney General deems appropriate to determine compliance of the nonparticipating manufacturer with this section and other related laws including the grounds for retaining or not including a manufacturer or its brands and brand families in the Directory.

Effective November 1, 2014.