

RULES OF THE DEPARTMENT OF LAW
CONSUMER INTEREST SECTION

CHAPTER 60-1-1

RULES GOVERNING ESCROW PAYMENTS
FROM NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURERS

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60-1-1-.01 Organization

- (1) The office and duties of the Attorney General are established by the Georgia Constitution, Article V, Section III. The authority of the Attorney General to promulgate rules and regulations necessary to effect the purposes of O.C.G.A. Section 10-13A-1 *et seq.* is set forth in O.C.G.A. Sections 10-13A-7(e) and 10-13A-9(d). Matters relating to these rules are handled by the Consumer Interests Section, Department of Law.
- (2) The public may obtain information regarding these rules or make submissions or requests by contacting the Consumer Interest Section, Department of Law, 40 Capitol Square, Atlanta, Georgia 30334, phone (404) 656-3202.

Authority: Ga. Constitution Article V, Section III, O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13A-9(d).

60-1-1-.02 Purpose.

The purpose of these Rules is to promote compliance with O.C.G.A. § 10-13-1, *et seq.* (“Chapter 13”) and O.C.G.A. § 10-13A-1, *et seq.* (“Chapter 13A”) by establishing guidelines for yearly and quarterly certifications and escrow deposits. The Attorney General is authorized to

require Non-Participating tobacco product manufacturers to make quarterly escrow deposits during the year in which the sales covered by such deposits are made.

Authority: O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13A-9(d).

60-1-1-03 Definitions.

- (1) "Brand Family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings," and "100s," 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.
- (2) Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
 - (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
 - (b) tobacco in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
 - (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
 - (d) "roll-your-own" tobacco. For purposes of this definition, 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette."
- (3) "Commissioner" means the State Revenue Commissioner.
- (4) "Directory" means the Attorney General's list of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of O.C.G.A. § 10-13A-3 and all Brand Families that are listed in such certifications.
- (5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.
- (6) "Non-Participating Manufacturer" means any tobacco product manufacturer that is not a Participating Manufacturer.
- (7) "Participating Manufacturer" has the meaning given that term in subsection II(jj) of the Master Settlement Agreement and all amendments thereto.
- (8) "Qualified Escrow Fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of a least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of the

releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing use of the funds' principal except as consistent with O.C.G.A. § 10-13-3(2)(B). Such fund must be approved by the Attorney General as being in compliance with O.C.G.A. § 10-13A-2(9).

- (9) "Tobacco Product Manufacturer" means any entity that either:
- (a) Physically manufactures cigarettes anywhere in the world that are intended for sale in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is a participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement), and provided further that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States; or
 - (b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere by others, and that the manufacturer does not intend to be sold in the United States; or
 - (c) Becomes a successor of an entity described in subparagraph (a) or (b) of this paragraph.
- (10) "Units sold" means the number of a Non-Participating Manufacturer's individual cigarettes sold in the state, as measured by excise taxes collected by the state on packs (or "roll-your-own" containers) bearing the excise tax stamp of the state.

Authority: O.C.G.A. §§ 10-13-2, 10-13A-2, 10-13A-7(e), 10-13A-9(d).

60-1-1-.04 Annual Escrow Deposits and Certifications.

- (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the Attorney General, a certification to the commissioner and Attorney General, no later than the thirtieth day of April each year, certifying that, as of the date of such certification, such tobacco product manufacturer either is a Participating Manufacturer or is in full compliance with Chapter 13 including all annual deposits required by paragraph (2) of Code Section 10-13-3.
- (2) A Participating Manufacturer shall include in its certification a list of its brand families. A Participating Manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and commissioner. A Participating Manufacturer may not include a brand family in its certification unless the Participating Manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement.

- (3) A Non-Participating Manufacturer shall include in its certification a list of all of its brand families, the number of units sold for each brand family that were sold in this state during the preceding calendar year, and a list of all of its brand families that have been sold in this state at any time during the current calendar year. The list shall indicate by an asterisk any brand family sold in this state during the preceding calendar year that is no longer being sold in this state as of the date of such certification, and shall identify by name and address any other manufacturer of such brand families in the preceding or current calendar year. The Non-Participating Manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and to the commissioner. A Non-Participating Manufacturer may not include a brand family in its certification unless such Non-Participating Manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Chapter 13. The certification must also certify:
- (a) That such Non-Participating Manufacturer is registered to do business in this state and has appointed a resident agent for service of process and provided notice thereof as required by Code Section 10-13A-6. Proof of appointment and availability of the resident agent for service of process shall be submitted in the form set out in Rule 60-1-1-.12(2);
 - (b) That such Non-Participating Manufacturer has established and continues to maintain a qualified escrow fund as required by Code Section 10-13-3 and has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;
 - (c) That such Non-Participating Manufacturer is in full compliance with Chapter 13 and Chapter 13A, and with any regulations promulgated pursuant to either such chapter; and
 - (d) The name, address, and telephone number of the financial institution where the Non-Participating Manufacturer has established such qualified escrow fund required pursuant to Chapter 13 and all regulations promulgated pursuant to such chapter; the account number of such qualified escrow fund and any sub account number for this state; the amount such Non-Participating Manufacturer placed in such fund for cigarettes sold in this state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and the amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Chapter 13 and all regulations promulgated pursuant to such chapter.
 - (e) Certification in accordance with this Rule shall be deemed to be in compliance with both Code Section 10-13-3(2)(C) and Code Section 10-13A-3.
 - (f) Certification in accordance with this Rule shall be in the form set out in Rule 60-1-1-.12(1).

Authority: O.C.G.A. § 10-13A-3; 10-13A-9(d).

60-1-1-.05 Quarterly Escrow Deposits.

In addition to the requirements of Rule 60-1-1-.04 above, a Non-Participating Manufacturer who meets any of the following criteria shall also make quarterly escrow deposits and certifications:

- (a) any Non-Participating Manufacturer that has not made a full and timely escrow deposit in any of the immediate past three years;
- (b) any Non-Participating Manufacturer that has failed to make a timely submission of the required certification for any prior calendar year;
- (c) any Non-Participating Manufacturer that has failed to pay any judgment entered against it, including any civil penalty;
- (d) any Non-Participating Manufacturer with sales of more than 250,000 sticks or 22,500 ounces of roll-your-own product during any quarter of the sales year;
- (e) In addition to the reasons specified above, the Attorney General may require quarterly payments from a Non-Participating Manufacturer if the Attorney General has reasonable cause to believe that the Non-Participating Manufacturer will be unable or unwilling to make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales are made.

Authority: O.C.G.A. § 10-13A-7(e).

60-1-1-.06 Deadline for Quarterly Escrow Deposits.

Non-Participating Manufacturers who are required to make quarterly escrow deposits, must do so no later than thirty (30) days after the end of the quarter in which the sales are made.

Authority: O.C.G.A. § 10-13A-7(e).

60-1-1-.07 Deadline for Submitting Quarterly Certification and Notifying the Attorney General of Quarterly Escrow Deposit.

Non-Participating Manufacturers who are required to make quarterly escrow deposits must provide the Attorney General with a quarterly certification in the form prescribed by the Attorney General in Rule 60-1-1-.12(3) along with official notification from the escrow agent of the quarterly escrow deposit. The quarterly certification and official notification must be submitted no later than ten (10) days after the deadline for payment of the quarterly escrow deposit. For example, the escrow deposit for sales made in January, February, and March is due April 30 of the same year, and the quarterly certification and official notification of such deposit are due May 10 of the same year.

Authority: O.C.G.A. § 10-13A-7(e).

60-1-1-.08 Quarterly Periods Defined

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Authority: O.C.G.A. § 10-13A-7(e).

60-1-1-.09 Calculating Escrow Deposits.

For purposes of this chapter, Non-Participating Manufacturers who are required to make escrow deposits must place into a qualified escrow account, within the time specified in this chapter, the following amounts (as such amounts are adjusted for inflation):

- (a) For each of 2003 through 2006: \$.0167539 per unit sold; and
- (b) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

Authority: O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13-3(2).

60-1-1-.10 Burden of Establishing Units Sold and Entitlement to be Listed in the Directory.

- (1) A written determination of the Attorney General to exclude or to remove from the directory a brand family or tobacco product manufacturer may be appealed to the Office of State Administrative Hearings. The notice of appeal shall be sent by certified mail, return receipt requested, addressed to "Section Chief, Consumer Interests Section, Department of Law," and must be received no later than thirty days from the date of notice of such written decision from the Attorney General.
- (2) The burden of proof shall be on the tobacco product manufacturer to establish the number of units sold in Georgia in any particular quarter or year.
- (3) The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the Directory.

Authority: O.C.G.A. §§ 10-13A-3(c), 10-13A-9(d).

60-1-1-.11 Untimely or Incomplete Certifications or Escrow Deposits.

If any escrow deposit is not made in full or the required certification with official notice of the escrow deposit is not provided to the Attorney General within the time required by law, the delinquent Non-Participating Manufacturer and its brand families may be removed from the Directory.

Authority: O.C.G.A. §§ 10-13A-7(e), 10-13A-9(d).

60-1-1-.12 Effective Date

These Rules shall become effective on January 1, 2005.

60-1-1-.13 Forms

Form AG03	Annual Certification Form required by Rule 60-1-1-.03(f), Code Section 10-13-3(2)(C) and Code Section 10-13A-3.
Form AG02	Registered Agent form
Form AG04	Quarterly escrow payment certification

**CERTIFICATION PURSUANT TO O.C.G.A. § 10-13A-3
STATE OF GEORGIA**

Part 1: Tobacco Product Manufacturer Identification

Company: _____
 Address: _____
 Address: _____
 Phone: _____ FAX: _____
 Email: _____ Web Address: _____
 Name/Title of person completing report: _____

The Tobacco Product Manufacturer identified above is, as of the date of this Certification: (check one)

- A Participating Manufacturer under the Tobacco Master Settlement Agreement**
- A Non-Participating Tobacco Product Manufacturer in full compliance with O.C.G.A. § 10-13-1, et seq.**

Part 2:

- A. Brand Family Identification (Attach additional Sheets if Necessary)**
 Participating Manufacturers complete A & B;
 Non-Participating Manufacturers complete A through E.

A. Brand Family Indicate with an asterisk (*) those brands no longer being sold in Georgia.	B. Brand Name	C. Units Sold in calendar year just completed	D. Units Sold in previous year	E. Fabricator

Note: By including a brand family in its certification, a Participating Manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of calculating its payments under the MSA. By including a brand family in its certification, a Non-Participating Manufacturer affirms that the brand family is deemed to be its cigarettes for escrow purposes.

B. For each brand family listed above, list the name and address of any other manufacturer who fabricated the brand family in the preceding or current calendar year:

C. Factory Identification

Name of Factory: _____ Phone Number: _____
Owner of Factory: _____ Fax Number: _____
Address of Factory: _____

Part 3: Non-Participating Manufacturer Certification

A. Registered Agent / Approved Agent for service of process

Agent Name: _____
Company: _____
Address, including county: _____
Address: _____
Phone: _____ FAX: _____
Email: _____

Complete and submit an Appointment of Registered Agent for the State of Georgia and Registered Agent's Statement form. (Form AG-02)

B. Qualified Escrow Fund – Financial Institution

Name of Institution: _____
Address: _____
Representative: _____
Phone: _____
Escrow Acct No: _____ State Account No: _____

Has the Qualified Escrow Agreement been approved by the Attorney General?

By Whom: _____ Approval Date: _____

Attach an executed copy of your Escrow Agreement

Part 4: Escrow Deposit Calculation

A. Sales Year:

The sales year for this certificate is January 1 through December 31, _____.

B. Units Sold: The number of individual cigarettes sold in Georgia by brand is:

Brand Name: _____	Number of individual cigarettes: _____
Brand Name: _____	Number of individual cigarettes: _____
Brand Name: _____	Number of individual cigarettes: _____
Brand Name: _____	Number of individual cigarettes: _____

Total: _____

C. Calculating the Deposit Amount

Follow these steps to calculate the appropriate amount to be deposited for the sales year:

- (1) Enter the total number from Part 4 Section B above: _____
- (2) Multiply that amount by the appropriate rate for the liability year as set forth in Rule 60-1-1-.09: _____
- (3) Enter the total here: _____

The amount that must be deposited on or before April 15 for the sales year will be the amount shown in Line C(3).

D. Escrow Deposit/Withdrawal History for Georgia

Date	Deposit	Withdrawal <small>Withdrawals must comply with O.C.G.A. § 10-13-3-(2)(B). Verification of compliance must be provided</small>	Balance

Attach a copy of your receipt or other proof of deposit from your financial institution.

Part 5. Execution by Authorized Designee

Under penalty of perjury, I state that the information contained in this Certification is true and accurate.

Designee (Print Name): _____ Title: _____

Signature of Designee: _____ Date: _____

Subscribed and sworn to before me on this date: _____

Signature of Notary Public: _____ City or County of _____

My Commission expires: _____

Mail the completed certificate of compliance to:

Consumer Interests Section
Office of the Attorney General
40 Capitol Square
Atlanta, Georgia 30334

and

Georgia Department of Revenue
Alcohol and Tobacco Tax Division
1800 Century Center Boulevard
Atlanta, Georgia 30345-3205

NON-PARTICIPATING MANUFACTURER'S (NPM) APPOINTMENT OF REGISTERED AGENT FOR THE STATE OF GEORGIA AND REGISTERED AGENT'S STATEMENT

Please print or type in permanent dark ink - Sign, date, and return original to:

**Office of the Attorney General for the State of Georgia
Georgia Department of Law
Consumer Interest Section
40 Capitol Square, SW
Atlanta, GA 30334**

NON-PARTICIPATING TOBACCO MANUFACTURERS:

The undersigned Non-Participating Manufacturer ("NPM") _____ hereby appoints and authorizes _____ as its registered agent to receive service of process on our behalf. The undersigned NPM agrees to provide notice to the Office of the Attorney General for the State of Georgia ("Attorney General"), at least 30 calendar days prior to termination of the authority of the registered agent, and to provide proof to the satisfaction of the Attorney General of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment.

Under penalty of perjury, I certify and declare that all of the statements and information contained in this Certification, including but not limited to any accompanying statements or attachments herewith, are true, accurate and complete in every particular and that I am a person authorized to bind the NPM making the Certification either under the laws of the State of Georgia or of the jurisdiction where the manufacturer resides or is organized. **Any violation of the requirements of O.C.G.A. 10-13A-6 is a basis for removal of the applicant's Brand Families from the list of compliant NPMs.**

**** This Certification must be signed and dated by an authorized notary public. **
Under penalty of perjury, I state that the information
contained in this document is true and accurate.**

Signature of Designee for Non-Participating Manufacturer: _____

Designee (Print Name): _____

Title: _____

Principal Place of Business (physical address): _____

STATE OF _____ }

COUNTRY OF _____ }

Subscribed and sworn to before me on this date: _____

Signature of Notary Public: _____ City or County of _____

My Commission expires: _____

NAME AND ADDRESS OF GEORGIA STATE REGISTERED AGENT:

Name: _____

Street Address (*Required – Must be within Georgia*): _____

P.O. Box: _____

City & State: _____ County: _____

Zip Code: _____

Telephone: _____

Fax: _____

Email Address: _____

I consent to serve as Registered Agent in the State of Georgia for _____, the above-named NPM, pursuant to O.C.G.A. 10-13A-6. I understand it will be my responsibility to receive Service of Process on behalf of the NPM; to forward mail to the NPM; and to immediately notify the Office of the Attorney General if I resign or change the office address of the Registered Agent.

**** This Certification must be signed and dated by an authorized notary public. ****

Signature: _____ Date: _____

Print Name: _____

Title: _____

STATE OF _____ }

COUNTRY OF _____ }

Subscribed and sworn to before me on this date: _____

Signature: _____

My Commission expires: _____

**CERTIFICATE OF NON-PARTICIPATING MANUFACTURER
REGARDING QUARTERLY ESCROW PAYMENT
STATE OF GEORGIA
2005**

PART 1: TOBACCO PRODUCT MANUFACTURER'S IDENTIFICATION

Company: _____

Address: _____

Address: _____

Phone: _____ FAX: _____

Email: _____ Web Address: _____

Name/Title of Person Completing Report: _____

PART 2: SALES YEAR

The sales year for this certificate is _____. The quarter being reported is (check one):

- | | |
|-------------------------------------|------------------------------------|
| <input type="checkbox"/> Jan.-Mar. | <input type="checkbox"/> Apr.-June |
| <input type="checkbox"/> July-Sept. | <input type="checkbox"/> Oct.-Dec. |

PART 3: BRAND SALES

A. The number of individual cigarettes or ounces of Roll Your Own tobacco sold in Georgia during the period specified above is as follows:

Brand Name: _____	Cigarettes or ounces sold: _____
Brand Name: _____	Cigarettes or ounces sold: _____
Brand Name: _____	Cigarettes or ounces sold: _____
Brand Name: _____	Cigarettes or ounces sold: _____

Total cigarettes or ounces sold: _____

B. The party listed in Part 1 is is not the fabricator of the brands listed above.
(check one)

C. For each brand listed above, list the name and address of any other manufacturer who fabricated the brand in the preceding or current calendar year:

Name: _____	Address: _____
Name: _____	Address: _____
Name: _____	Address: _____

PART 4: CALCULATING THE DEPOSIT AMOUNT

Follow these steps to calculate the appropriate amount to be deposited for quarterly period:

(1) Enter the total number from Part 3 Section A above: _____

(2) Multiply that amount by .0167539: _____

This is the amount provided in O.C.G.A. § 10-13-3, without the required inflation adjustment. You are responsible for accounting for the inflation adjustment in your yearly certification.

(3) Enter the total here: _____

The amount that must be deposited for the quarterly period will be the amount shown in Line 3 (c). Attach a copy of your receipt or other proof of deposit from your financial institution.

Part 5: Qualified Escrow Fund – Financial Institution

The NPM certifies that it has established, and continues to maintain, a fully funded, qualified escrow account.

Name of Institution: _____

Address: _____

Representative Name: _____

Phone: _____

Escrow Acct No: _____ State Account No: _____

Total amount held in this account solely for the State of Georgia: _____

Part 6. Execution by Authorized Designee

Under penalty of perjury, I state that the information contained in this Certification is true and accurate.

Designee (Print Name): _____ Title: _____

Signature of Designee: _____ Date: _____

STATE OF _____ }

COUNTRY OF _____ }

Subscribed and sworn to before me on this date: _____

Signature: _____

My Commission expires: _____

Mail the completed certificate of compliance to:

Consumer Interests Section
Office of the Attorney General
40 Capitol Square
Atlanta, Georgia 30334

Authority: O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13A-9(d)

60-1-1-.14 Petitions to Enact, Amend or Repeal Rules

- (a) A person whose legal rights are affected by these rules may petition the Attorney General to enact, amend or repeal any rule pertaining to Chapter 13 or Chapter 13A of Title 10.
- (b) The petition must set forth the proposed new regulation or amendment, or identify the rule for which repeal is sought, and the reasons therefore. In addition, the petition must include the petitioner's name and address, and a statement of their interest in the matter. The petition shall be sent by certified mail, return receipt requested, addressed to "Section Chief, Consumer Interests Section, Department of Law."
- (c) Within thirty days after receipt of such petition, the Attorney General shall deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings in accordance with O.C.G.A. § 50-13-4.

Authority: O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13A-9(d), O.C.G.A. § 50-13-9.

60-1-1-.15 Declaratory Rulings

- (a) A person whose legal rights are affected by these rules may petition the Attorney General for a declaratory ruling on the applicability of these rules.
- (b) Declaratory rulings shall not be made upon untrue, moot, contingent or hypothetical facts or situations, but only upon actual facts.
- (c) The petition must be verified under oath, and must set forth all pertinent facts and evidence necessary to make a ruling, the name and address of the petitioner, a statement of the petitioner's interest in the ruling sought, and any legal authorities relevant to the ruling. The petition shall be sent by certified mail, return receipt requested, addressed to "Section Chief, Consumer Interests Section, Department of Law."
- (d) The Attorney General shall dispose of a request for declaratory ruling as soon as practicable, or if it is determined that the requisites for a declaratory ruling are not present, shall issue a written explanation for such determination.

Authority: O.C.G.A. § 10-13A-7(e), O.C.G.A. § 10-13A-9(d), O.C.G.A. § 50-13-11.