

## Rule 905. Annual Recertification

**A. Recertification Requirement.** Pursuant to Section 803 of the Agreement, each member state shall annually recertify to the Governing Board by August 1 of each year that the state is in substantial compliance with each provision of the Agreement as required by Section 805 of the Agreement. As used in this rule, “compliance” means substantial compliance with each provision of the Agreement as required by Section 805 of the Agreement.

### **B. Compliance Review And Interpretations Committee.**

**1. Responsibility.** Pursuant to Article 7, Section 2 of the by-laws, the Compliance Review and Interpretations Committee (“CRIC”) is responsible for reviewing compliance review reports to determine any needs for re-assessment and recommending findings of compliance and non-compliance to the Governing Board.

**2. Recertification Documents.**

**a.** By August 1 of each year, each member state shall submit to the Executive Director a statement certifying that the state is in compliance with the Agreement as it exists on July 1st of the year or submit a statement of noncompliance. The Executive Director shall forward all statements and any accompanying documents to the Chair of ~~the Compliance Review and Interpretations Committee.~~

~~A member state shall indicate any known items of noncompliance that may occur at a date following its certification submission or action needed to be taken to comply with requirements of the Agreement with future effective dates.~~

**b.** With the statement ~~in subsection (a)~~, each member state shall submit: (1) a certificate of compliance that sets out the state’s statutes, rules, regulations, ~~and/or~~ other authorities that have been adopted to remain or come into compliance with the specific provisions of the Agreement as of July 1 of the year, (2) a list and the effective date of any changes in the state’s statutes, regulations, or written policies to remain or come into compliance since July 1 of the prior year, (3) its most current taxability matrix, (4) a statement disclosing any known items of noncompliance and any action the state intends to take to comply with requirements of the Agreement with future effective dates, and (5) a list any significant administrative or judicial decisions (regardless of outcome) that impact the state’s compliance.

**be.** Each member state shall post its statement of recertification or its statement of noncompliance and an updated certificate of compliance on the state’s web site by August 1 of each year. The updated certificate of compliance shall reflect the

state's compliance with the provisions of the Agreement through August July 1 of the recertification year-of submission. The Executive Director shall post all recertification filings on the Governing Board's web site.

### **3. Evaluation & Report.**

- a. By September 20th of the recertification year, The Compliance Review and Interpretations Committee (and/or any designees that the chair of the CRIC Committee appoints to provide assistance) shall review all statements and accompanying documents, hold one or more public meetings conducting a state by state review of each state's compliance with the Agreement, and issue its initial written report on each member state's compliance. With that report and all subsequent reports, CRIC shall recommend the appropriate sanctions for any state not found to be in compliance.
- b. By October 10th of the recertification year, The Compliance Review and Interpretations Committee shall submit to a member state any findings of noncompliance based on a review of a certificate of compliance or other documentation submitted with a member state's annual statement of recertification. Such each member state found to have a potential compliance issue by CRIC shall have 30 days to respond to the findings in writing to the chair of the Compliance Review and Interpretations Committee. The public shall also provide any written comments on a member state's compliance, and if applicable, recommended sanction, by that date.
- c. By November 1st of the recertification year, CRIC shall review the comments from the states and the public, hold at least one meeting for comments, and make public its preliminary final report.
- d. By November 10th of the recertification year, the member states and the public shall make any comments to issues raised in that report (or raise issues brought to CRIC's attention by the October 10th due date).
- e. By November 20th of the recertification year, CRIC shall hold a public meeting and vote on its findings of compliance with a separate vote conducted for each member state. A CRIC member shall not vote on its own state's compliance.
- f. By November 30th of the recertification year, CRIC shall issue its final report to the Governing Board. Such report shall note, as practical, the comments it received from the member states and the public, how CRIC addressed those comments, and the how each CRIC member voted. No sooner than 31 days after submission of the findings to the

~~member state, the Compliance Review and Interpretations Committee shall determine if further action is warranted.~~

~~b.—~~

~~If the Compliance Review and Certification Committee finds that a member state is in compliance with the Agreement, the committee shall report such findings to the Governing Board. If the Compliance Review and Interpretations Committee determines that a member state is not in compliance with the Agreement, the committee shall submit such findings to the Governing Board.~~

#### **4. Review Standards.**

**a. Scope of Review.** The member states annual recertification of compliance covers all aspects of the Agreement, including any applicable rules and interpretations, and is not limited to changes made in the prior year.

**b. Determination of Compliance.** If there is doubt or questions over whether a state is clearly in compliance, the conflict should be resolved towards the member state not being found in compliance.

**c. Reliance.** Any reliance on a member state being in compliance shall only be ascertained by reviewing the state's laws, regulations and/or written policies; such provisions listed in order of preference and reliance. Legislation shall only be relied upon if it has passed both legislative chambers (or the chamber for a unicameral state) and there is no threat of a Governor's veto. A regulation shall only be relied upon if it has been fully adopted. A written policy shall only be relied upon if it is accessible via the state revenue agency's website.

**5. Recommended Sanctions.** Recommended sanctions shall be based on the severity of a member state's failure to be in compliance. For example, compliance issues that a state indicates it can address by administering its sales and use taxes to be in compliance shall be afforded up to two years before severe sanctions are imposed. In contrast, issues that a state cannot administer to be in compliance that create substantial compliance issues for sellers and purchasers shall have less time before severe sanctions are imposed.

**C. Public Notice.** During the recertification process ~~t~~The Executive Director shall provide a copy of a statement of noncompliance from the member state and any findings of noncompliance by ~~the Compliance Review and Interpretations Committee~~ to and shall solicit comments from the following parties:

RP07014

September 27, 2007 Proposed Revisions 7-14-2009

- (1) the authorized representative of each member state;
- (2) the Chair of the State and Local Advisory Committee;
- (3) the Chair of the Business Advisory Council; and
- (4) the general public as provided in Rule 806.2.

**D. Governing Board Action Agenda.**

The Governing Board shall take action in a regular or special session meeting on CRIC's final report by January 31 subsequent to the recertification year. The Governing Board shall separately vote on each member state's compliance, regardless of whether CRIC found a state out of compliance. Immediately prior to voting on each state, the state and the public shall have the opportunity to make comments on that respective state's compliance. At the same meeting, subsequent to the Board voting on all the member states' compliance, No sooner than 60 days after the solicitation of comment, the statement of noncompliance from the member state and any findings of noncompliance by the Compliance Review and Interpretations Committee, the issue as to whether the member state is in compliance with the Agreement shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement.

**D.E. Appeal.** If the subject state or any person disagrees with the Governing Board's determination, the subject state may invoke the appeals process provided for in Section 1002 of the Agreement.

**E.F. Publication of the Decision.** Once the decision of the Governing Board becomes final, either because no appeal is filed or the appeal procedures have been exhausted, the decision shall be sent to the subject state and a copy of the decision shall be posted on the state's and the Governing Board's Website.