

## IDAPA 04 – IDAHO OFFICE OF THE ATTORNEY GENERAL

### 04.20.01 – Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act

#### **Who does this rule apply to?**

*These rules apply to those persons and entities involved with implementing, and maintaining, Idaho's Tobacco Master Settlement Agreement Complementary Act. These rules also apply to those persons and entities involved with the sale, stamping and reporting of cigarettes in Idaho.*

#### **What is the purpose of this rule?**

*The purpose these rules is to govern the implementation of, and compliance with, Idaho's Tobacco Master Settlement Agreement Complementary Act, and the sale, stamping and reporting of cigarettes in Idaho.*

#### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Health and Safety:

- [Section 39-8401, et seq., Idaho Code](#) – Tobacco Master Settlement Agreement Complementary Act

#### **Who do I contact for more information on this rule?**

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**04.20.01 – RULES IMPLEMENTING THE IDAHO TOBACCO MASTER  
SETTLEMENT AGREEMENT COMPLEMENTARY ACT**

**SUBCHAPTER A – GENERAL PROVISIONS AND DEFINITIONS  
(Rules 0 through 99)**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Title 39, Chapter 84, Idaho Code. (3-31-22)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** This chapter is titled “Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act.” (3-31-22)

**02. Scope.** These rules govern compliance with, and seek to implement, Idaho’s Tobacco Master Settlement Agreement Complementary Act and also pertain to the sale, stamping and reporting of cigarettes in Idaho. (3-31-22)

**002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General’s policies concerning administration of these rules will be maintained for public inspection. (3-31-22)

**003. PUBLIC RECORDS ACT COMPLIANCE (RULE 3).**

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General’s policies concerning administration of these rules are public records available for inspection. (3-31-22)

**004. ADMINISTRATIVE APPEALS (RULE 4).**

Except as provided by CAR 200 and Section 39-8407(1), Idaho Code, there is no provision for administrative appeals. (3-31-22)

**005. DEFINITIONS (RULE 5).**

In addition to those terms set forth in Section 39-7802, Idaho Code, which apply with full force and effect to all provisions and sections of these rules, including rules hereafter amended or supplemented, as used in this chapter: (3-31-22)

**01. Brand Family.** 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. (3-31-22)

**02. Directory.** Directory means the Directory of Compliant Tobacco Product Manufacturers and Brands, as provided for by Section 39-8403(2), Idaho Code. (3-31-22)

**03. Nonparticipating Manufacturer.** Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer. (3-31-22)

**04. Participating Manufacturer.** Participating manufacturer has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto. (3-31-22)

**05. Qualified Escrow Fund.** Qualified escrow fund has the same meaning as that term is defined in Section 39-7802(f), Idaho Code. (3-31-22)

**06. Stamping Agent.** Stamping agent means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under Title 63, Chapter 25, Idaho Code. (3-31-22)

**006. -- 099. (RESERVED)**

**SUBCHAPTER B – QUARTERLY CERTIFICATIONS AND ESCROW DEPOSITS**  
**(Rules 100 through 199)**

**100. QUARTERLY CERTIFICATIONS AND ESCROW DEPOSITS (RULE 100).**

To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers quarterly to certify their compliance with the Idaho tobacco master settlement agreement act. The Attorney General may also require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria: (3-31-22)

**01. No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; (3-31-22)

**02. No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year; (3-31-22)

**03. Untimely or Incomplete Deposits.** Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; (3-31-22)

**04. Outstanding Judgments.** Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty; (3-31-22)

**05. Large Sales Volume.** Nonparticipating manufacturers that have more than one million six hundred thousand (1,600,000) of their cigarettes sold during a quarter; and (3-31-22)

**06. Other Reasonable Cause.** In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarettes sales were made. (3-31-22)

**101. DEADLINE FOR QUARTERLY ESCROW DEPOSITS (RULE 101).**

Nonparticipating 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. For example, the deadline for making a quarterly escrow deposit for cigarette sales occurring in February is April 30 of the same year. (3-31-22)

**102. DEADLINE FOR SUBMITTING QUARTERLY CERTIFICATION AND NOTIFYING ATTORNEY GENERAL OF QUARTERLY ESCROW DEPOSIT (RULE 102).**

Nonparticipating manufacturers who are required to make quarterly escrow deposits, must provide the Attorney General with official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. Nonparticipating manufacturers must also provide their quarterly certifications within the same deadline. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year. (3-31-22)

**103. QUARTERLY PERIODS DEFINED (RULE 103).**

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. (3-31-22)

**104. UNTIMELY OR INCOMPLETE QUARTERLY CERTIFICATION OR QUARTERLY ESCROW DEPOSIT (RULE 104).**

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification 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 may be removed from the directory. (3-31-22)

**105. -- 199. (RESERVED)**

**SUBCHAPTER C – REVIEW OF DECISIONS TO EXCLUDE OR REMOVE FROM THE DIRECTORY**  
**(Rules 200 through 299)**

**200. REVIEW OF ATTORNEY GENERAL DECISIONS RELATED TO EXCLUDING OR REMOVING FROM THE DIRECTORY (RULE 200).**

A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act, Title 67, Chapter 52, Idaho Code. (3-31-22)

**201. -- 299. (RESERVED)**

**SUBCHAPTER D – DIRECTORY**  
**(Rules 300 through 399)**

**300. DIRECTORY (RULE 300).**

The Attorney General shall develop, maintain and publish the directory, which shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however, (3-31-22)

**01. Missing or Noncompliant Certification.** The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with Section 39-8403(1)(b) and (c), Idaho Code, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General. (3-31-22)

**02. Inadequate Escrow Deposit and Outstanding Judgments.** Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that: (3-31-22)

**a.** Any escrow payment required pursuant to Section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or (3-31-22)

**b.** Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer. (3-31-22)

**301. PUBLICATION OF DIRECTORY (RULE 301).**

The directory will be developed and published by September 1, 2003. The directory will be available on the Internet at the Attorney General's website. (3-31-22)

**302. DIRECTORY UPDATES (RULE 302).**

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter and Section 39-8403, Idaho Code. (3-31-22)

**303. DIRECTORY UPDATE NOTICES -- STAMPING AGENTS (RULE 303).**

The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General removing the tobacco product manufacturer or its brand family or both from the directory. (3-31-22)

**304. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- ADDITION (RULE 304).**

The first time a tobacco product manufacturer complies with Section 39-8403(1), Idaho Code, the Attorney General shall notify by mail the tobacco product manufacturer of such compliance and that it will be added to the directory.

The notice shall also indicate each brand family of the tobacco product manufacturer that the Attorney General has determined will be added to the directory. (3-31-22)

**305. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER --  
NONINCLUSION OR REMOVAL (RULE 305).**

The Attorney General shall notify by certified mail to the tobacco product manufacturer's agent for service of process of any decision not to include in or to remove from the directory the tobacco product manufacturer, a brand family of the tobacco product manufacturer, or both. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General taking action as provided in the notice. (3-31-22)

**306. BURDEN OF ESTABLISHING ENTITLEMENT TO BE LISTED IN THE DIRECTORY (RULE 306).**

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. (3-31-22)

**308. -- 999. (RESERVED)**