

CHAPTER 234
TOBACCO MASTER SETTLEMENT AGREEMENT

Chapter rescission date pursuant to Iowa Code section 17A.7: 4/23/30

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

701—234.1(453C) National uniform tobacco settlement and definitions.

234.1(1) Purpose. In 1998, the state of Iowa joined a multistate agreement with cigarette manufacturers called the Master Settlement Agreement (MSA). Subsequent to entering into that agreement, in 1999 the Iowa general assembly enacted Iowa Code chapter 453C that requires the department to promulgate regulations to ascertain the amount of excise tax paid on cigarettes sold by nonparticipating tobacco product manufacturers in Iowa each year.

234.1(2) Definitions. For the purposes of this chapter, the definitions set forth in Iowa Code section 453C.1 apply.

[ARC 9042C, IAB 3/19/25, effective 4/23/25]

701—234.2(453C) Annual report.

234.2(1) Filing. A report must be filed by tobacco products distributors, cigarette distributors, and persons who sell tobacco products at retail that were purchased from a person who is not required to file a distributor report.

234.2(2) Annual reporting. The report must be filed annually on or before the last day of the month following the close of the calendar year in which the sales were made and must be in a form and manner prescribed by the department. The reports must be submitted electronically via GovConnectIowa.

234.2(3) Report information. The report must include the following information with respect to units sold that were not purchased from a participating tobacco product manufacturer or units sold that were purchased from a participating tobacco product manufacturer but are not units sold as covered by the MSA:

- a. Number of units sold.
- b. Brand of the units sold.
- c. Name and address of the person from whom each unit was purchased.
- d. Name and address of the manufacturer of the unit, if known.
- e. Name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

234.2(4) Other reporting. A retailer may need to file a report when purchasing roll-your-own tobacco or cigarettes over the Internet, through a catalog from a vendor located outside of Iowa, from an Indian tribe or from an enrolled member of an Indian tribe located on a reservation in or outside Iowa, by mail order, or from a vendor located in another state.

234.2(5) Reporting purchases from participating tobacco product manufacturer. A retailer must also, upon request by the department, report information with respect to units sold that were purchased from any participating tobacco product manufacturer.

[ARC 9042C, IAB 3/19/25, effective 4/23/25]

701—234.3(453C) Recordkeeping. Every person who sells at retail tobacco products purchased from a person who is not required to file a report required by this chapter, and every tobacco products distributor and cigarette distributor subject to this reporting rule, must maintain complete and accurate records and underlying documentation for five years to support the data required to be supplied to the department under rule 701—234.2(453C). Upon request, all requested records and documents must be provided to the department.

[ARC 9042C, IAB 3/19/25, effective 4/23/25]

701—234.4(453C) Disclosure to attorney general permitted. The department may disclose any and all information filed pursuant to rule 701—234.2(453C) to the attorney general for use in enforcing compliance with Iowa Code chapter 453C.

[ARC 9042C, IAB 3/19/25, effective 4/23/25]

These rules are intended to implement Iowa Code chapter 453C.

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

701—234.5(453D) Purpose and definitions.

234.5(1) Purpose. Violations of Iowa Code chapter 453C threaten the integrity of the tobacco MSA, the fiscal soundness of the state, and the public health. In 2003, the general assembly enacted Iowa Code chapter 453D to establish procedural enforcement enhancements to aid in the enforcement of Iowa Code chapter 453C.

234.5(2) Definitions. For purposes of this division, the definitions set forth in Iowa Code section 453D.2 apply.

[ARC 9042C, IAB 3/19/25, effective 4/23/25]

701—234.6(453D) Directory of tobacco product manufacturers.

234.6(1) Directory of cigarettes approved for stamping and sale in Iowa.

a. A tobacco product manufacturer and a brand family shall not be included in the directory authorized by Iowa Code section 453D.3 after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of Iowa Code section 453D.3.

b. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with Iowa Code section 453D.3 and that neither Iowa Code section 453D.3(2)“b”(1) nor 453D.3(2)“b”(2) applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory.

c. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of Iowa Code section 453D.3, or that either Iowa Code section 453D.3(2)“b”(1) or 453D.3(2)“b”(2) applies.

234.6(2) Notice of inclusion in directory. The attorney general shall notify a tobacco product manufacturer by mail that the tobacco product manufacturer has met the requirements of Iowa Code section 453D.3 and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

234.6(3) Notice of noninclusion in or deletion from the directory. Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer's agent for service of process by certified mail.

234.6(4) Procedure for contesting notice of noninclusion or deletion.

a. Appeals. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing an appeal of that decision with the department. Appeals shall conform generally to the requirements of the “appeals” rule contained in 701—Chapter 7 to the extent applicable. The appeal will, thereafter, be processed and a contested case hearing will be held in general conformity with the requirements of the “filings with the department” and “service by the department” subrules contained in 701—Chapter 7; the requirements of the “docket,” “answer,” “commencement of contested case proceedings,” “discovery,” and “prehearing conference” rules contained in 701—Chapter 7; the requirements of the “orders” subrule contained in 701—Chapter 7; and the requirements of the “record and

transcript,” “application for rehearing,” and “ex parte communication and disqualification” rules contained in 701—Chapter 7 to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that the tobacco product manufacturer or a particular brand family is entitled to be listed in the directory.

b. Orders. The form, status, finality and appealability of orders shall be controlled by the general provisions of the “orders” subrule contained in 701—Chapter 7, except that no appeal to, or motion of, any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays and bonds. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under the requirements of the “stays” subrule contained in 701—Chapter 7. However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. Forfeit of bond. If a claim is made that a particular entity is the tobacco product manufacturer, the entity obtains an order allowing the entity and any of the brands the entity claims to be responsible for to be listed in the directory pending final resolution of the entity’s status, and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond is forfeited to the state.

These rules are intended to implement Iowa Code chapter 453D.

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