

CHAPTER 85
TOBACCO MASTER SETTLEMENT AGREEMENT

DIVISION I
TOBACCO MASTER SETTLEMENT AGREEMENT

701—85.1(453C) National uniform tobacco settlement. In 1998 the state of Iowa entered into an 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. The statute requires the department of revenue to promulgate regulations to ascertain the amount of excise tax paid on cigarettes sold by nonparticipating tobacco product manufacturers in Iowa each year.

701—85.2(453C) Definitions. For the purposes of this chapter, the definitions set forth in Iowa Code section 453C.1 shall apply.

701—85.3(453C) Report required. Reports 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. 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 requested by the department. The reports are to be mailed to Iowa Department of Revenue, Compliance Division, Cigarette Tax Unit, P.O. Box 10456, Des Moines, Iowa 50306-0456.

701—85.4(453C) 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:

1. The number of units sold.
2. The brand of the units sold.
3. The name and address of the person from whom each unit was purchased.
4. The name and address of the manufacturer of the unit, if known.
5. The name and address of the importer of the unit, if known, and whether that importer is the exclusive importer of the unit, if known.

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.

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.

701—85.5(453C) Record-keeping requirement. 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—85.4(453C). Upon request, all requested records and documents must be provided to the department.

701—85.6(453C) Confidentiality. The department of revenue may disclose any and all information filed pursuant to rule 701—85.4(453C) to the attorney general for use in enforcing compliance with Iowa Code chapter 453C.

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

701—85.7 to 85.20 Reserved.

DIVISION II
TOBACCO PRODUCT MANUFACTURERS' OBLIGATIONS AND PROCEDURES

701—85.21(80GA,SF375) Definitions. For purposes of this division, the definitions set forth in 2003 Iowa Acts, Senate File 375, section 2, shall apply.

701—85.22(80GA,SF375) Directory of tobacco product manufacturers.

85.22(1) *Directory of cigarettes approved for stamping and sale in Iowa.* A tobacco product manufacturer and a brand family shall not be included in the directory authorized by 2003 Iowa Acts, Senate File 375, section 3, after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3. 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 2003 Iowa Acts, Senate File 375, section 3, and that neither subsection (2)“b”(1) nor (2)“b”(2) of section 3 applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory. 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 2003 Iowa Acts, Senate File 375, section 3, or that either subsection (2)“b”(1) or (2)“b”(2) of section 3 applies.

85.22(2) *Notice of inclusion in directory.* The attorney general shall notify a tobacco product manufacturer by mail that it has met the requirements of 2003 Iowa Acts, Senate File 375, section 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.

85.22(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.

85.22(4) *Procedure for contesting notice of noninclusion or deletion.* 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 a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.41(17A). The protest shall conform generally to the requirements of 701—subrules 7.41(1) and 7.41(2) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with the rules set forth in 701—Chapter 7, Division II, rules 7.43(17A), 7.45(17A), and 7.47(17A) to 7.49(17A), subrule 7.50(7), and rules 7.51(17A) to 7.54(17A) to the extent applicable. 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.

The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.50(7), except that no appeal to or on motion of the state board of tax review or any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

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 701—subrule 7.50(8). 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.

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

These rules are intended to implement 2003 Iowa Acts, Senate File 375.

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