

## 26-239 Office of the Attorney General

### Chapter 200: RULES IMPLEMENTING THE MAINE TOBACCO MASTER SETTLEMENT AGREEMENT

**SUMMARY:** This chapter describes the procedures under which the Attorney General may require a tobacco product manufacturer to make quarterly certifications and escrow deposits and certain procedures relating to the directory. The Tobacco Manufacturers Act, 22 M.R.S.A. § 1580-G, et seq., and the Tobacco Product Manufacturers Act, 22 M.R.S.A. § 1580-L (hereinafter, collectively known as the “Tobacco Acts”) were passed as a result of the Master Settlement Agreement (“MSA”) entered into between 46 states, including Maine, and the major tobacco companies, requiring tobacco product manufacturers not participating in the MSA to set up qualified escrow accounts and to deposit funds into the accounts based on the number of manufacturers’ cigarettes sold in each state. The Tobacco Acts provide for enforcement of the escrow obligations through setting up a directory to which all compliant tobacco product manufacturers are listed. These Rules provide tobacco product manufacturers with guidelines on how to become compliant and maintain their compliant status. Pursuant to 22 M.R.S.A. § 1580-L(14), the Department of the Attorney General is responsible for administering the Tobacco Acts, and for promulgating these Rules.

#### SECTION 1. PURPOSE AND DEFINITIONS

- A. **Purpose.** These Rules are promulgated pursuant to the Tobacco Product Manufacturers Act, 22 M.R.S.A. § 1580-L. They set forth instructions to provide tobacco product manufacturers, distributors and retailers clear guidance on how to comply with this law.
- B. **Definitions.** Unless otherwise stated, terms used in these regulations are as defined below or as used in the Tobacco Manufacturers Act, 22 M.R.S.A. § 1580-G, et seq. and the Tobacco Product Manufacturers Act, 22 MRSA § 1580-L.
1. **Brand Family.** Brand family has the same meaning as that term is defined in 22 M.R.S.A. §1580-L(1)(A).
  2. **Cigarette.** Cigarette has the same meaning as that term is defined in 22 M.R.S.A. §1580-H(4).
  3. **Directory.** Directory has the same meaning as provided for by Section 22 M.R.S.A. §1580-L(6).
  4. **Master Settlement Agreement.** Master settlement agreement has the same meaning as that term is defined in 22 M.R.S.A. §1580-H(5).
  5. **Nonparticipating Manufacturer.** Nonparticipating manufacturer has the same meaning as that term is defined in 22 M.R.S.A. §1580-L(1)(D).
  6. **Participating Manufacturer.** Participating manufacturer has the same meaning as that term is defined in 22 M.R.S.A. §1580-L(1)(E).
  7. **Qualified Escrow Fund.** Qualified escrow fund has the same meaning as that term is defined in 22 M.R.S.A. §1580-H(6).
  8. **Tobacco Product Manufacturer.** Tobacco product manufacturer has the same meaning as that term is defined in 22 M.R.S.A. §1580-H(9).

#### SECTION 2. QUARTERLY CERTIFICATIONS AND ESCROW DEPOSITS

- A. **Quarterly Certifications and Escrow Deposits.** To promote compliance with 22 M.R.S.A. § 1580-G et seq., the Attorney General may require nonparticipating manufacturers quarterly to certify their compliance with the Tobacco Act. The Attorney General may also require nonparticipating manufacturers to make the

escrow payments required by 22 M.R.S.A. § 1580-I(2) 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:

1. **No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Maine;
  2. **No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year in Maine;
  3. **Untimely or Incomplete Deposits.** Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year;
  4. **Outstanding Judgments.** Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty;
  5. **Large Sales Volume.** Nonparticipating manufacturers that have more than 1,000,000 of their cigarettes sold in Maine during a quarter; and
  6. **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.
- B.** Notice to Nonparticipating Manufacturers. Any nonparticipating manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.
- C.** Deadline for Quarterly Escrow Deposits. Nonparticipating manufacturers that 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.
- D.** Deadline for Submitting Quarterly Certification and Notifying Attorney General of Quarterly Escrow Deposit. Nonparticipating manufacturers that 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.
- E.** 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.
- F.** Untimely or Incomplete Quarterly Certification or Quarterly Escrow Deposit. If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General in a timely fashion, 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 immediately removed from the directory.

### SECTION 3. DIRECTORY

- A.** Directory. 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 22 M.R.S.A. § 1580-G, et seq. (Tobacco Manufacturers Act) and 22 M.R.S.A. § 1580-L (Tobacco Product Manufacturers) and all brand families that are listed in such certifications; provided, however,

1. **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 22 M.R.S.A. § 1580-G, et seq. (Tobacco Manufacturers Act) and 22 M.R.S.A. § 1580-L (Tobacco Product Manufacturers), unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General.
  2. **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:
    - a. Any escrow payment required 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
    - b. Any outstanding final judgment, including interest thereon, for a violation of Maine's Master Settlement Agreement has not been fully satisfied for such brand family and/or such manufacturer.
  3. **Misrepresentations.** The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer whose certification the Attorney General determines is based on misrepresentation, false information, nondisclosure or concealment of fact.
- B.** Publication of Directory. The directory is available on the Internet at the Attorney General's website. Alternatively, it will be provided by mail upon request to the Attorney General.
- C.** Directory Updates. 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 22 M.R.S.A. §1580-L.
- D.** Directory Update Notices – Stamping Agents. The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to all persons who ask to receive it, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family.
- E.** Burden of Establishing Entitlement to Be Listed in the Directory. 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.
- F.** Review of Attorney General Decisions Related to Excluding or Removing From the Directory. A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to administrative review in accordance with the provisions of 5 M.R.S.A. Chapter 375, subchapter IV.

**STATUTORY AUTHORITY:** 22 M.R.S.A. §1580-L(14).