



**OFFICE OF THE ATTORNEY GENERAL**

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For Office Use Only

**IDAHO ANNUAL CERTIFICATION OF ESCROW FUNDING COMPLIANCE FOR 2016 SALES**

(This form is due April 30, 2017)

Please note: If you are a Non-Participating Manufacturer that is required to make quarterly escrow deposits, do not use this form. Instead, use the Idaho Quarterly Certification of Escrow Funding Compliance form. As part of certification, the Idaho Attorney General advised whether the Non-Participating Manufacturer must make quarterly escrow deposits.

**PART 1: NON-PARTICIPATING MANUFACTURER IDENTIFICATION**

Company Name: \_\_\_\_\_

Physical Address: (street address only; no post office box):

\_\_\_\_\_  
\_\_\_\_\_

Mailing Address (if different from above):

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

FEIN: \_\_\_\_\_

Name of Person Completing Certification: \_\_\_\_\_

Title: \_\_\_\_\_

**PART 2: SALES YEAR**

The sales year for this Idaho Certification of Escrow Funding Compliance is the **calendar year 2016**. Complete this form only for calendar year 2016 sales.

**PART 3: UNITS SOLD FOR CALENDAR YEAR 2016**

Indicate the number of Units Sold (an individual cigarette from a pack that bears an Idaho state cigarette excise tax stamp or .09 ounces of roll-your-own tobacco equals one Unit Sold) by the above-named Non-Participating Manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, for the calendar year 2016, and write that amount here:

A. \_\_\_\_\_

**PART 4: ESCROW PAYMENT AMOUNT**

Calculate the appropriate escrow deposit amount. Multiply the number of Units Sold listed in part 3.A. by \$0.0327588 and write that amount here.\*

A. \_\_\_\_\_

The calculated figure in 4.A. is the amount that must be deposited by April 15, 2017, on behalf of the State of Idaho in the certifying Non-Participating Manufacturer's Qualified Escrow Fund for calendar year 2016.

**PART 5: FINANCIAL INSTITUTION/ESCROW INFORMATION**

Name of Qualified Escrow Fund Financial Institution: \_\_\_\_\_

Authorized Escrow Agent Contact Name and Title: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Qualified Escrow Fund Account Number: \_\_\_\_\_

Qualified Escrow Fund Idaho Subaccount Number: \_\_\_\_\_

**Attached is a copy of the financial institution's receipt or other proof from the Escrow Agent of the escrow deposit. Pursuant to Idaho Code §39-8403(1)(c)(iv)(3) the Office of the Attorney General requires verification from the financial institution of the amount and date of deposit to be attached to the Idaho Annual Escrow Certification of Escrow Funding Compliance.**

\* Idaho Code § 39-7803(b)(1) requires payments to be "adjusted for inflation." Idaho Code § 39-7802(a) defines "adjusted for inflation" as cumulative increases "in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement." Each year, this figure increases 3% or the actual inflation rate, whichever is greater. Because the actual inflation rate cannot be determined until the end of 2016, tobacco product manufacturers required to make quarterly escrow payments will be required, in their quarterly escrow payments, to deposit an amount that has been cumulatively adjusted for inflation by 3%. When the adjusted for inflation rate for 2016 has been determined, manufacturers will be advised and then have until April 15, 2017, to deposit any additional money, if necessary, to satisfy the actual adjusted for inflation amount under the Act. The 2016 cumulative adjusted for inflation rate, increased by 3%, is 73.80355%. Multiplying the base escrow deposit amount, \$.0188482, by the cumulative adjusted for inflation rate, 73.80355%, equals the cumulative inflation adjustment amount of \$.0139106. Adding the base escrow deposit amount, \$.0188482, to the cumulative inflation adjustment amount, \$.0139106, equals \$.0327588.

**PART 6: CERTIFICATION**

The above-identified Non-Participating Manufacturer certifies that (initial all four):

\_\_\_\_\_ It has previously submitted an Idaho Non-Participating Manufacturer Certification of Compliance to the Office of the Attorney General. Date submitted: \_\_\_\_\_ ;

\_\_\_\_\_ Its Qualified Escrow Fund complies with Idaho Code §§ 39-7802(f) and 39-8403(1)(c);

\_\_\_\_\_ Any escrow funds held or to be held in its Qualified Escrow Fund on behalf of the State of Idaho are or will be held in a separate segregated account, separate and apart from escrow funds held on behalf of any other beneficiary; and

\_\_\_\_\_ There is no security interest, as defined by Idaho Code § 28-1-201(35), that has been granted in or has attached or is otherwise applicable to any escrow funds held or to be held in the above-identified Non-Participating Manufacturer’s Qualified Escrow Fund on behalf of the State of Idaho.

**PART 7: AUTHORIZED DESIGNEE SIGNATURE AND CERTIFICATION**

Under penalty of perjury, the Non-Participating Manufacturer’s Authorized Designee certifies and declares that all of the statements and information contained in this Idaho Annual Certification of Escrow Funding Compliance for the year being reported, including attachments, if any, are true, correct, accurate and complete in every particular, and that he or she is a person authorized to bind the above-identified Non-Participating Manufacturer either under the laws of the State of Idaho or of the jurisdiction where the Non-Participating Manufacturer resides or is organized. Any violation of these requirements or these representations is a basis for removal of the Non-Participating Manufacturer and/or its Brand Families from the Idaho Directory of Compliant Tobacco Product Manufacturers and Brand Families.

Authorized Designee: \_\_\_\_\_ Title: \_\_\_\_\_

Signature of Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn to before me on this date: \_\_\_\_\_

Signature of Notary Public: \_\_\_\_\_

City or County of: \_\_\_\_\_

Printed Name of Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Seal:

# INSTRUCTIONS FOR IDAHO ANNUAL CERTIFICATION OF ESCROW FUNDING COMPLIANCE FOR 2016 SALES

## General Information

### **Who must file an Idaho Annual Certification of Escrow Funding Compliance?**

Any Non-Participating Manufacturer whose Cigarettes (including roll-your-own tobacco – see Definitions on page 2) are sold in the state of Idaho, whether directly or through any distributor, retailer, or similar intermediary, must execute and deliver an Idaho Annual Certification of Escrow Funding Compliance (Idaho Annual Escrow Certification) to the Office of the Attorney General. An Idaho Quarterly Certification of Escrow Funding Compliance (Idaho Quarterly Escrow Certification) must be executed and delivered quarterly by Non-Participating Manufacturers that meet one of the following criteria: they have not previously established and funded a Qualified Escrow Fund in Idaho; they have not made any escrow deposits for more than one year; they have failed to make a timely and complete escrow deposit for any prior calendar year; they have failed to pay any judgment, including any civil penalty; or they have sold more than 1,600,000 of their Cigarettes during a quarter.

Additionally, the Attorney General may require quarterly escrow deposits from a Non-Participating Manufacturer if the Attorney General has reasonable cause to believe the Non-Participating Manufacturer may not make its full required escrow deposit by April 15th of the year following the year in which the Cigarette sales were made.

The Idaho Annual Escrow Certification and the Idaho Quarterly Escrow Certification and information about their applicability are located at: [www.ag.idaho.gov](http://www.ag.idaho.gov).

**Please note:** The Idaho Annual Escrow Certification (or the Idaho Quarterly Escrow Certification as applicable) is in addition to Idaho's Non-Participating Manufacturer Certification of Compliance that all Non-Participating Manufacturers must execute and deliver to the Office of the Attorney General before Cigarettes of the Non-Participating Manufacturer may be sold in the State of Idaho and annually thereafter. The Idaho Annual and Quarterly Escrow Certifications and the instructions for completing them are located at the website noted above.

### **When is the Idaho Annual Escrow Certification due?**

The Idaho Annual Escrow Certification must be received on or before April 30th of the year following the sales year indicated. The Idaho Annual Certification of Escrow Funding Compliance for 2016 sales is due April 30, 2017.

### **To whom must the Idaho Annual Escrow Certification be delivered?**

Mail the original Idaho Annual Escrow Certification and a complete copy of all supporting documents to:

OFFICE OF THE ATTORNEY GENERAL  
Consumer Protection Division  
954 W. Jefferson, 2nd Floor  
P. O. Box 83720  
Boise, ID 83720-0010  
Attention: Tobacco Enforcement

If convenient, a signed Certification may be scanned and e-mailed to: [tobaccoenforcement@ag.idaho.gov](mailto:tobaccoenforcement@ag.idaho.gov).

## DEFINITIONS<sup>1</sup>

- (a) “Cigarette” has the same meaning given the term in Idaho Code § 39-7802(d), and includes any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. The term “cigarette” includes “roll-your-own” tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one (1) individual “cigarette.”
- (b) “Directory” means the Idaho Directory of Compliant Tobacco Product Manufacturers and Brand Families as provided for by Idaho Code § 39-8403(2).
- (c) “Non-Participating Manufacturer” has the same meaning given the term in Idaho Code § 39-8402(5) and includes any Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (d) “Participating Manufacturer” has the same meaning given the term in Idaho Code § 39-8402(6) and includes any Tobacco Product Manufacturer that has joined the Master Settlement Agreement.
- (e) “Qualified Escrow Fund” has the same meaning given the term in Idaho Code § 39-7802(f) and includes an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any Tobacco Product Manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties like the State of Idaho and prohibits the Tobacco Product Manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Idaho Code § 39-7803 of the Idaho Tobacco Master Settlement Agreement Act.
- (f) “Tobacco Product Manufacturer” has the same meaning given the term in Idaho Code § 39-7802(i) and includes an entity that directly manufactures Cigarettes anywhere that such manufacturer intends to be sold in the United States, including Cigarettes intended to be sold in the United States through an importer.
- (g) “Units Sold” has the same meaning given that term in Idaho Code § 39-7802(j) and includes the number of individual cigarettes sold in the state by the applicable Tobacco Product Manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or “roll-your-own” tobacco containers) bearing the Idaho state excise tax stamp or on unstamped “roll-your-own” tobacco containers, with each nine one-hundredths (0.09) ounces of “roll-your-own” tobacco equaling one (1) Unit Sold.

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<sup>1</sup> Defined terms are capitalized throughout these instructions and the Idaho Annual Escrow Certification.

## SPECIFIC INSTRUCTIONS

### **PART 1: NON-PARTICIPATING MANUFACTURER IDENTIFICATION.**

Identify the Non-Participating Manufacturer's name, physical, mailing, email, and website addresses and telephone and fax numbers. Also identify the name and title of the person completing the Idaho Annual Escrow Certification who will serve as the contact person for the NPM.

### **PART 2: SALES YEAR.**

Use this form only for calendar year 2016 sales.

### **PART 3: UNITS SOLD FOR CALENDAR YEAR 2016.**

Write the number of Units Sold by the Non-Participating Manufacturer in Idaho for the calendar year 2016. A Unit Sold equals an individual cigarette from a pack that bears an Idaho state cigarette excise tax stamp or .09 ounces of roll-your-own tobacco.

### **PART 4: ESCROW DEPOSIT AMOUNT.**

Multiply the number of Units Sold listed in Part 3.A. by the indicated escrow deposit rate per Unit Sold. This is the amount to be deposited into the Non-Participating Manufacturer's Qualified Escrow Fund for the calendar year 2016.

### **PART 5: FINANCIAL INSTITUTION.**

The Non-Participating Manufacturer must identify (i) the name, address and telephone and fax numbers of the financial institution where it has established a Qualified Escrow Fund; and (ii) the account number of the Qualified Escrow Fund and the sub-account number for the benefit of Idaho. A copy of a receipt or other proof of deposit from the financial institution must be attached to the Idaho Annual Escrow Certification provided to the Office of the Attorney General.

### **PART 6: CERTIFICATION.**

The Non-Participating Manufacturer must certify four things: (1) it has previously submitted an Idaho Non-Participating Manufacturer Certification of Compliance; (2) its Qualified Escrow Fund complies with Idaho Code §§ 39-7802(f) and 39-8403(1)(c)(ii); (3) any escrow funds held or to be held in its Qualified Escrow Fund on behalf of the State of Idaho are or will be held in a separate segregated account, separate and apart from escrow funds held on behalf of any other beneficiary; and (4) no security interest, as defined by Idaho Code § 28-1-201(35), has been granted, attached or is otherwise applicable to any escrow funds held or to be held in the Certifying Non-Participating Manufacturer's Qualified Escrow Fund on behalf of the State of Idaho.

### **PART 7: AUTHORIZED DESIGNEE SIGNATURE AND CERTIFICATION.**

The person executing the Idaho Annual Escrow Certification must be authorized to bind the Non-Participating Manufacturer identified in Part 1. The authorized designee's name and title must be printed, and the Idaho Annual Escrow Certification must be executed in the presence of a notary public.