

MASTER SETTLEMENT AGREEMENT

323.800 Definitions for ORS 323.800 to 323.806. As used in ORS 323.800 to 323.806:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2)(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(b) For purposes of defining "affiliate":

(A) The terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(B) The term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4)(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product and that 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

(C) Any roll of tobacco wrapped in any substance containing tobacco that, 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 described in subparagraph (A) of this paragraph.

(b) The term "cigarette" includes "roll-your-own tobacco" (i.e., tobacco that, 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 paragraph, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the State of Oregon and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means 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 \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds' principal except as consistent with ORS 323.806 (2)(b).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9)(a) "Tobacco product manufacturer" means an entity that, after October 23, 1999, directly (and not exclusively through any affiliate):

(A) 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 (except where such importer is an Original Participating Manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(b) The term “tobacco product manufacturer” does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A), (B) or (C) of this subsection.

(10) “Units sold” means the number of individual cigarettes sold in the State of Oregon 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 of Oregon on roll-your-own tobacco containers or on packs bearing the excise tax stamp of this state. The Department of Revenue shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [Formerly 293.533; 2005 c.22 §228; 2007 c.707 §1]

Note: 323.800 to 323.806 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 323 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

323.803 Findings and purpose. (1) Cigarette smoking presents serious public health concerns to the State of Oregon and to the citizens of the State of Oregon. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for this state. Under certain health care programs, the State of Oregon may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under those health care programs, the State of Oregon pays millions of dollars each year to provide medical assistance for persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State of Oregon that financial burdens imposed on this state by cigarette smoking be borne by tobacco product manufacturers rather than by this state to the extent that such manufacturers either determine to enter into a settlement with the State of Oregon or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the “Master Settlement Agreement,” with the State of Oregon. The Master Settlement Agreement obligates those manufacturers, in return for a release of past, present and certain future claims against them as described in the Master Settlement Agreement:

(a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);
 (b) To fund a national foundation devoted to the interests of public health; and
 (c) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [Formerly 293.530]

Note: See note under 323.800.

323.806 Required actions by manufacturers. Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

(1) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) For 1999, \$0.0094241 per unit sold after October 23, 1999.

(B) For 2000, \$0.0104712 per unit sold.

(C) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

(D) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

(E) For 2007 and each year thereafter, \$0.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraph (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall:

(A) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation. [Formerly 293.535]

Note: The amendments to 323.806 [formerly 293.535] by section 22, chapter 801, Oregon Laws 2003, become operative only if there is a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003. If the court enters a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003, the amendments to 323.806 by section 22, chapter 801, Oregon Laws 2003, become operative 31 days after entry of the final judgment. See section 25, chapter 801, Oregon Laws 2003. The text that, if the court enters a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003, is operative 31 days after entry of the final judgment is set forth for the user's convenience.

323.806. Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

(1) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) For 1999, \$0.0094241 per unit sold after October 23, 1999.

(B) For 2000, \$0.0104712 per unit sold.

(C) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

(D) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

(E) For 2007 and each year thereafter, \$0.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than this state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraph (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall:

(A) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a knowing

violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

(Tobacco Master Settlement Agreement)

180.400 Legislative findings. The Legislative Assembly finds that violations of ORS 323.800 to 323.806 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. The Legislative Assembly finds that enacting procedural enhancements will aid the enforcement of ORS 323.800 to 323.806 and thereby safeguard the integrity of the Master Settlement Agreement, the fiscal soundness of the state and the public health. The provisions of ORS 180.400 to 180.455 and 323.106 are not intended to and may not be interpreted to amend ORS 323.800 to 323.806. [2003 c.801 §1; 2005 c.22 §125]

Note: 180.400 to 180.455 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.405 Definitions. As used in ORS 180.400 to 180.455 and 323.106:

(1) "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, cigarettes labeled "menthol," "lights," "kings," "100s" and any cigarettes sold under a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or other indicia of product identification, that are identical to, similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning given that term in ORS 323.800.

(3) "Distributor" means a person who is licensed under ORS 323.105 and any other person who is a distributor for the purposes of ORS 323.005 to 323.482.

(4) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning given that term in section II(jj) of the Master Settlement Agreement.

(7) "Qualified escrow fund" has the meaning given that term in ORS 323.800.

(8) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

(9) "Units sold" has the meaning given that term in ORS 323.800. [2003 c.801 §2]

Note: See note under 180.400.

180.410 Manufacturer certification. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary shall execute and deliver a certification to the Attorney General certifying that as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with ORS 323.806 and with rules adopted under ORS 180.445 and 180.450.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under ORS 180.425 if the tobacco product manufacturer elects to receive electronic mail notice.

(3) A participating manufacturer shall include in the certification required by subsection (1) of this section a list of its brand families. The participating manufacturer shall update the list at least 30 days prior to

any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(4) A participating manufacturer may not include a brand family in the list required by subsection (3) of this section unless the participating manufacturer affirms that the cigarettes in the brand family are to be considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined under the Master Settlement Agreement. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806.

(5) A nonparticipating manufacturer shall include in the certification required by subsection (1) of this section a complete list of:

(a) All of its brand families and the number of units of each brand family that were sold in the state during the preceding calendar year;

(b) All of its brand families that have been sold in the state at any time during the current calendar year;

(c) Any brand family of the manufacturer sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification, which may be indicated on the list described in paragraph (a) of this subsection by an asterisk; and

(d) The name and address of every other tobacco product manufacturer that manufactured a brand family described in paragraph (a) or (b) of this subsection in the preceding or current calendar year.

(6) A nonparticipating manufacturer shall update the list required by subsection (5) of this section at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(7) A nonparticipating manufacturer may not include a brand family in the list required by subsection (5) of this section unless the nonparticipating manufacturer affirms that the cigarettes in the brand family are to be considered the nonparticipating manufacturer's cigarettes for purposes of ORS 323.800 to 323.806. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806. [2003 c.801 §3; 2005 c.22 §126]

Note: See note under 180.400.

180.415 Nonparticipating manufacturer certification; rules. In the certification required by ORS 180.410 (1), a nonparticipating manufacturer shall further certify:

(1) That the nonparticipating manufacturer is registered to do business in the State of Oregon or has appointed a resident agent for service of process and provided notice of the appointment as required by ORS 180.430.

(2) That the nonparticipating manufacturer:

(a) Has established and continues to maintain a qualified escrow fund; and

(b) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund. The Attorney General shall adopt rules defining the form and content of a model escrow agreement. A nonparticipating manufacturer that executes the model escrow agreement is deemed to have satisfied the requirement that it use a form of escrow agreement that has been reviewed and approved by the Attorney General.

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by ORS 323.806;

(b) The account number of the qualified escrow fund and any subaccount number for the State of Oregon;

(c) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Oregon during the preceding calendar year, the amount and date of each deposit and evidence or verification as may be deemed necessary by the Attorney General to confirm the amounts and dates; and

(d) The amount and date of any withdrawal of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806. [2003 c.801 §4]

Note: See note under 180.400.

180.420 Document retention period. A tobacco product manufacturer that certifies to the Attorney General as required by ORS 180.410 and 180.415 shall retain all invoices and documentation of sales and other information relied upon for the certifications for a period of five years. [2003 c.801 §5]

Note: See note under 180.400.

180.425 Attorney General's directory; rules. (1) The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are listed in the certifications.

(2) The Attorney General may not include or retain in the 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 ORS 180.410 and 180.415, unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the criteria by which the Attorney General will exercise the discretion granted by this subsection.

(3) The Attorney General may not include or retain in the directory a nonparticipating manufacturer or a brand family if the Attorney General concludes that:

(a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS 323.806 for any period for any brand family, whether listed or not listed by the 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 ORS 323.806 has not been fully satisfied for the brand family or the nonparticipating manufacturer.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new brand families upon receipt of an annual or supplemental certification listing new brand families if the Attorney General determines that the annual or supplemental certification is in compliance with the requirements of ORS 180.410 and 180.415. The Attorney General shall make the determination about compliance within 45 days of receipt of the certification.

(5) The Attorney General shall:

(a) Create and maintain a list of persons, including but not limited to tobacco product manufacturers and distributors, that are interested in receiving electronic mail notifications of changes in the directory developed under this section;

(b) Develop a registration form to be completed by persons interested in receiving electronic mail notification of changes in the directory developed under this section that are not otherwise required by ORS 180.435 (4) or rules adopted under ORS 180.445 or 180.450 to submit their electronic mail addresses to the Attorney General; and

(c) Immediately upon making any change in the directory developed under this section, send electronic mail notices of the change to all persons on the list created under this subsection. [2003 c.801 §6; 2009 c.227 §2]

Note: See note under 180.400.

180.430 Nonresident nonparticipating manufacturer service agent. (1)(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State of Oregon as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory developed under ORS 180.425, appoint and continuously engage the services of a resident agent in this state. The agent shall act as agent for service of process on whom all process in any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this section or ORS 180.410, 180.415, 180.420, 180.435, 180.440 or 323.806, or rules adopted under ORS 180.445 or 180.450, may be served in any manner authorized by law. Service on the agent constitutes legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide the name, address, telephone number and proof of the appointment and availability of the agent to the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General at least 30 calendar days prior to termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the Attorney General of the appointment of a new agent.

(3) A nonparticipating manufacturer whose cigarettes are sold in this state who has not appointed or designated an agent as required by this section shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State as the agent does not satisfy the condition precedent to having brand families of the nonparticipating manufacturer listed or retained in the directory. [2003 c.801 §7]

Note: See note under 180.400.

180.435 Distributor obligations; production of records and testimony; Attorney General and Department of Revenue information sharing; nonparticipating manufacturer escrow requirements. (1) Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, a distributor shall report such information as the Attorney General requires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445 and 180.450. The information shall include, but need not be limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor affixed stamps or otherwise paid the tax due during the previous calendar quarter.

(2) A distributor shall maintain for a period of five years all invoices and documentation of sales of cigarettes manufactured by nonparticipating manufacturers and any other information relied upon in reporting to the Attorney General under subsection (1) of this section. The distributor shall make the invoices and other documentation available to the Attorney General upon request.

(3)(a) The Attorney General may compel by subpoena the production of any books, papers, records or other information required to be maintained under subsection (2) of this section and may require any person to appear and provide testimony pertinent to the information described in subsection (2) of this section. The

subpoena shall have the same force and effect and be served in the same manner as in a civil action in the circuit court.

(b) If a person fails to produce any books, papers, records or other information required to be produced, fails to appear or testify about a matter for which testimony may be compelled or otherwise fails to comply with a subpoena issued under this subsection, the Attorney General may apply to the circuit court of the county in which the person to whom the subpoena was issued resides or may be found. The application shall be for an order requiring the person to comply with the demand or request of the Attorney General. The application shall be made by ex parte motion. The order of the court shall require the person against whom the order is directed to comply with the request or demand of the Attorney General within 10 days after the service of the order, or such further time as the court may grant, or to justify the failure to comply with the order within that time.

(c) Failure to comply with an order under this subsection shall constitute contempt of court. The remedy provided under this paragraph shall be in addition to any other remedy provided by law.

(4) A distributor shall provide the Attorney General with an electronic mail address so that the Attorney General may notify the distributor of the information required under subsections (1) and (8) of this section.

(5) The Attorney General and the Department of Revenue may share with each other information received under this section and ORS 180.410, 180.415 and 323.106 and may share such information with federal, state or local agencies for purposes of enforcement of this section and ORS 180.410, 180.415, 180.420, 180.430, 180.440 and 323.806, rules adopted under ORS 180.445 and 180.450 and corresponding laws of other states.

(6) The Attorney General may at any time require a nonparticipating manufacturer to produce proof from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with ORS 323.806 of the amount of moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and date of each withdrawal from the fund.

(7) The Attorney General shall, upon request of a nonparticipating manufacturer whose compliance with escrow requirements is at issue, provide the manufacturer with copies of all documents upon which any proposed addition to the escrow is based. Documents required to be provided under this subsection include, but are not necessarily limited to, reports under this section from distributors. The information provided to the manufacturer under this subsection may not include information about brand families or products of any tobacco product manufacturer other than the one to whom the information is provided. The information may be used only for the purpose of determining the appropriate amount of escrow deposits.

(8) The Attorney General may require a distributor or a tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging and labeling of each brand family, to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440 and with rules adopted under ORS 180.445 and 180.450. [2003 c.801 §8; 2009 c.227 §1]

Note: See note under 180.400.

180.440 Prohibited conduct; penalty. (1) A person may not:

(a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory developed under ORS 180.425;

(b) Sell, offer for sale or possess for sale cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425; or

(c) Possess in this state for sale in another jurisdiction cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425 and was not in compliance with the Master

Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported cigarettes that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2003 c.801 §11; 2009 c.70 §1]

Note: See note under 180.400.

180.445 Quarterly escrow deposits; rules. (1) To promote compliance with the provisions of ORS 180.410, 180.415, 180.420, 180.430, 180.435 and 180.440, the Attorney General may adopt rules requiring a nonparticipating manufacturer to make the escrow deposits required by ORS 323.806 in quarterly installments during the year in which the sales covered by the deposits are made. The Attorney General may require a nonparticipating manufacturer to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make escrow deposits in quarterly installments, the rules may also provide that a nonparticipating manufacturer that has been in continuous compliance for one year with ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 and 323.806 may make escrow deposits required by ORS 323.806 in annual payments during the second and subsequent years in which deposits are required. [2003 c.801 §9]

Note: See note under 180.400.

180.450 Judicial review; civil remedies; rules. (1) A determination by the Attorney General to omit or remove from the directory developed under ORS 180.425 a brand family or tobacco product manufacturer is subject to review in the manner prescribed by ORS 183.484 for judicial review of orders in other than contested cases.

(2) The Attorney General may adopt rules necessary to effect the purposes of ORS 180.400 to 180.455 and 323.106.

(3) In any action brought by the state to enforce ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 or 323.806, or any rule adopted under this section or ORS 180.445, the state may recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established under ORS 180.205.

(4) If a court determines that a person has violated any provision of ORS 180.410, 180.415, 180.420, 180.430, 180.435 or 180.440, or any rule adopted under this section or ORS 180.445, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

(5) Unless otherwise expressly provided, the remedies or penalties provided by this section and ORS 180.440 and 180.455 are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c.801 §10]

Note: See note under 180.400.

180.455 Revocation or suspension of distributor license; refusal to issue license; penalties; remedies.

(1) Upon a determination that a distributor has violated ORS 180.440, the Department of Revenue may revoke or suspend the license of the distributor in the manner provided by ORS 323.140. Each stamp affixed and each offer to sell cigarettes in violation of ORS 180.440 constitutes a separate violation.

(2) Upon a determination that a person applying for a license under ORS 323.105 has violated ORS 180.440 at any time within the five years preceding the application, the department may refuse to issue the

license. The department shall provide opportunity for hearing and judicial review in the manner provided in ORS 323.140.

(3)(a) Upon a determination that a person has violated ORS 180.440 (1)(b) or (c), the department may impose a civil penalty in an amount not to exceed the greater of \$5,000 or 500 percent of the retail value of the cigarettes sold, offered for sale or possessed for sale. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(b) Upon a determination that a person has violated ORS 180.440 (1)(a), the department may impose a civil penalty in an amount not to exceed \$5,000. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(4) The Attorney General may seek an injunction to restrain a threatened or actual violation of ORS 180.435 or 180.440 by a person and to compel the person to comply with those sections. In any action brought pursuant to this subsection, the state may recover the costs of investigation, the costs of the action, reasonable attorney fees and a civil penalty for each violation not to exceed \$5,000. The civil penalty must be imposed in the manner provided by ORS 183.745.

(5) A person who violates ORS 180.440 (1) engages in an unlawful practice in violation of ORS 646.608. [2003 c.801 §12; 2009 c.70 §2]

Note: See note under 180.400.