

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) “Importer” means:

(a) Any person in the United States to whom cigarettes are shipped or consigned, if federal excise tax has not been paid on the cigarettes, and if the cigarettes are manufactured in a foreign country;

(b) Any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; or

(c) Any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

(6) “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.

(7) “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 (1)(b)(B).

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

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

(10)(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.

(11)(a) "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 that are required to bear the excise tax stamp of this state or that are sold as "roll-your-own tobacco" on which excise tax is due. The Department of Revenue and the Attorney General may promulgate such rules as are necessary to ascertain the number of units sold of such tobacco product manufacturer for each year.

(b) "Units sold" does not include cigarettes neither the purchase nor the use of which the state may tax under the Constitution or statutes of the United States. [Formerly 293.533; 2005 c.22 §228; 2007 c.707 §1; 2017 c.687 §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 people 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; 2017 c.315 §31]

Note: See note under 323.800.

323.806 Required actions by manufacturers; liability of importers. (1) 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:

(a) 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

(b)(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):

- (i) For 1999, \$0.0094241 per unit sold after October 23, 1999.
- (ii) For 2000, \$0.0104712 per unit sold.
- (iii) For each of the years 2001 and 2002, \$0.0136125 per unit sold.
- (iv) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

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

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph 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:

(i) 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 sub-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;

(ii) 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

(iii) To the extent not released from escrow under sub-subparagraph (i) or (ii) of this subparagraph, 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 paragraph shall annually certify to the Attorney General that it is in compliance with this paragraph. 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 paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a violation of this paragraph, 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;

(ii) 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 paragraph. The court, upon a finding of a knowing violation of this paragraph, 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

(iii) 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.

(2) In the case of units sold that are cigarettes manufactured outside the United States and imported into the United States by an importer:

(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies or other relief that may be awarded against the tobacco product manufacturer of the cigarettes as provided in subsection (1)(b)(C) of this section;

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to deposit the funds into escrow for which it is jointly and severally liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the importer shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as provided under ORS 323.248; and

(d) A nonparticipating manufacturer located outside the United States that conducts business in this state shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer intended for sale in this state stating that the importer accepts liability pursuant to subsection (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes of enforcing this section. [Formerly 293.535; 2017 c.687 §2]

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, becomes operative 31 days after entry of the final judgment, including amendments by section 3, chapter 687, Oregon Laws 2017, is set forth for the user's convenience.

323.806. (1) 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:

(a) 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

(b)(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):

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

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

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

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

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

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph 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:

(i) 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 sub-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;

(ii) 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

(iii) To the extent not released from escrow under sub-subparagraph (i) or (ii) of this subparagraph, 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 paragraph shall annually certify to the Attorney General that it is in compliance with this paragraph. 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 paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a violation of this paragraph, 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;

(ii) 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 paragraph. The court, upon a finding of a knowing violation of this paragraph, 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

(iii) 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.

(2) In the case of units sold that are cigarettes manufactured outside the United States and imported into the United States by an importer:

(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies, or

other relief that may be awarded against the tobacco product manufacturer of the cigarettes as provided in subsection (1)(b)(C) of this section;

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to deposit the funds into escrow for which it is jointly and severally liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the importer shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as provided under ORS 323.248; and

(d) A nonparticipating manufacturer located outside the United States that conducts business in this state shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer intended for sale in this state stating that the importer accepts liability pursuant to subsection (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes of enforcing this section.

Note: See note under 323.800.