

TOBACCO SETTLEMENT “MODEL ACT” - REQUIREMENTS

DC Code § 7-1801.02

District of Columbia Official Code 2001 Edition
Division I. Government of District.
Title 7. Human Health Care and Safety.
Subtitle H. Tobacco Smoking, Sales, Distribution, Regulation, and Settlement.
Chapter 18. Tobacco Master Settlement Agreement.
Subchapter I. Establishment of Reserve Fund by Tobacco Product Manufacturers Not Participating in the Master Settlement Agreement.
Part A. Definitions and Requirements.

§ 7-1801.02. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 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):

(i) 1999: \$.0094241 per unit sold after June 30, 1999;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of 2001 and 2002: \$.0136125 per unit sold;

(iv) For each 2003 through 2006: \$.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: \$.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 District of Columbia or any releasing party located or residing in the District of Columbia. 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;

(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 the District of Columbia in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the Master Settlement Agreement, including 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, the excess shall be released from escrow and revert back to the tobacco product manufacturer; or

(iii) To the extent not released from escrow under sub-paragraphs (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)(i) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Chief Financial Officer of the District of Columbia that it is in compliance with this paragraph. The Corporation Counsel may bring a civil action on behalf of the District of Columbia against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(I) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% 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 it into compliance with this section. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty 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% 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 District of Columbia (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

(ii) Each failure to make an annual deposit required under this section shall constitute a separate violation.

(D) If the District of Columbia prevails in a civil suit brought under subparagraph (C) of this paragraph, it shall also be entitled to attorneys' fees, plus the costs of the action.

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