

ASSIST Coordinating Center
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**Q&A About the National Tobacco Settlement:
Enforcement of the Settlement**

Definitions: *The term “court” refers to the respective court of each State.*
 The term “State” refers to any of the 46 States that signed the settlement agreement on or before November 23, 1998.
 The term “tobacco company” refers to the 4 tobacco companies—Philip Morris, RJ Reynolds, Brown & Williamson and Lorillard—that signed the settlement agreement on or before November 23, 1998.
 The term “consent decree” refers to each State-specific consent decree.
 The acronym “NAAG” refers to the National Association of Attorneys General.

Who has jurisdiction over the settlement?

- The court of each State has complete jurisdiction for the implementation and enforcement of the agreement and the consent decree for that State.
- Appellate review is available for all orders and judicial determinations made by any court in connection with the agreement or a consent decree.

What is the procedure for enforcing the terms of the *consent* decree?

- Any of the 46 States or 4 tobacco companies may apply to the court to enforce the terms of the consent decree regarding violations within that State.
- If the court determines that the consent decree has been violated, the party that initiated the proceedings may request any relief available within the State.

What is the procedure for enforcing the terms of the *agreement*?

- States or tobacco companies may bring an action to the court to enforce the terms of the agreement.
- At least 30 days before initiating an action, a party must provide written notice of its intent to NAAG, the tobacco companies, and the attorney general of the relevant State.
- If the relevant attorney general determines that there is a time-sensitive public health and safety concern requiring immediate action, the 30-day notice period may be shortened.
- If the court determines that the agreement has been violated, the party that initiated action may request an order restraining the violation, and/or ordering compliance within the State.
- If a tobacco company fails to comply with a court enforcement order, the attorney general may seek an interpretation and sanctions to enforce compliance.
- If the court finds that a legitimate dispute exists regarding the terms of the agreement, the court may require compliance.

Who is affected by the remedies, penalties, and sanctions resulting from a violation of the agreement or the consent decree?

- The remedies, penalties, and sanctions apply only to the 4 tobacco companies in their corporate capacity and do not apply to any employee, officer, or director of any tobacco company, or any other person.

What are the inspection and discovery rights of the attorneys general regarding an alleged violation?

- For 7 years after the settlement is final, representatives of the attorneys general may inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes, and other documents of each tobacco company.
- They may interview each tobacco company's directors, officers, and employees with respect to relevant non-privileged, non-work-product matters.
- These activities must be done during regular office hours and with a written notice of at least 10 working days.

What are the responsibilities of NAAG regarding enforcement?

NAAG will coordinate and facilitate the implementation and enforcement of the agreement on behalf of the attorneys general of the States:

- NAAG will coordinate the inspection and discovery rights provided to States, in order to prevent repetitive and excessive activity.
- NAAG will convene at least two meetings per year and one major national conference every 3 years for the attorneys general, the directors of the Foundation, and three persons designated by each tobacco company. The meetings will be held to evaluate the success of the settlement and to coordinate the efforts of the attorneys general and the tobacco companies to reduce smoking by youths.
- NAAG will periodically inform the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, and the National League of Cities of the results of these meetings and conferences.
- NAAG will receive \$150,000 per year beginning December 31, 1998, through December 31, 2007, from the industry for costs of implementing its responsibilities.
- NAAG will monitor potential conflicting interpretations of the settlement by courts of different States.
- NAAG will establish the Tobacco Enforcement Fund, to which the industry will pay \$50 million on March 31, 1999. The funds will be used to assist the States in enforcing and implementing the agreement and to investigate and litigate violations.

What are the standards and procedures relative to grant applications for the Tobacco Enforcement Fund?

- States may request disbursement from the Tobacco Enforcement Fund by completing a grant application.
- The application must include:
 - a description of the contemplated action,
 - a statement about whether the action is actively pursued by any other attorney general or other prosecuting authority,
 - a description of the purposes for which the monies sought will be used, and
 - the amount requested.
- A special committee composed of the attorney general of the State of Washington, the chair of NAAG's antitrust committee, and the chair of NAAG's consumer protection committee will determine whether and to what extent a grant application will be funded.
- The attorney general who receives grant money must promise to pay back to the Fund all of the money received from the Fund if that the State is successful in litigation or settlement of a violation.

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**Q&A About the National Tobacco Settlement:
Restrictions on Lobbying by the Tobacco Industry**

Definition: *Lobbying activities are those that support or oppose (or cause to support or oppose, through any third party or affiliate) State or local legislative proposals or administrative rules.*

What restrictions will be placed on the industry's lobbying activities in the States in the settlement?

After the settlement agreement becomes final, the participating tobacco manufacturers may *not*:

- Lobby for any legislation or rules that would preempt, override, abrogate, or diminish any State's rights or recoveries under the agreement.
- Lobby to divert any settlement proceeds to any program or use that is not related to tobacco or health.
- Lobby against the passage of legislation or rules intended to reduce youth access to or consumption of tobacco products. (Please see the list below of eight types of legislation specified in the proposed settlement.)

What specific legislation/rules will the industry be restricted from opposing?

Participating manufacturers may not oppose any legislation/rules intended to do the following:

- Limit youth access to vending machines.
- Include cigars within the definition of tobacco products.
- Enhance enforcement efforts to identify and prosecute violations of laws prohibiting retail sales to youth.
- Encourage or support the use of technology to increase effectiveness of age-of-purchase laws (e.g., the use of programmable scanners, scanners to read drivers' licenses, or other age/ID data banks).
- Limit promotions for non-tobacco goods that use tobacco products as prizes or giveaways.
- Enforce access restrictions through penalties on youths for possession or use.
- Limit tobacco product advertising or the wearing of tobacco logo merchandise in or on school property.
- Limit non-tobacco products designed to look like tobacco products, such as candy cigarettes.

What lobbying activities will participating manufacturers be permitted to do?

- If, in addition to measures the manufacturers are prohibited from opposing, a legislative proposal or administrative rule also includes other types of measures, then the manufacturers are permitted to lobby against the proposal/rule.
- Manufacturers may challenge or sue, on any grounds, the enforcement of any new legislation or rule.

- Manufacturers may continue to lobby, for the duration of the legislative session, against the passage of legislation or rules introduced before the State's settlement became final.
- Manufacturers may lobby against any excise tax or income tax provision or any user fee or other payments relating to tobacco products or manufacturers.
- Manufacturers (and States in the settlement) may advocate the terms of any national settlement or may take any other positions on tobacco-related issues.

What restrictions will there be on lobbyists?

Participating manufacturers will require all officers, employees, contractors, and third parties who engage in lobbying activities on their behalf to certify the following in writing:

- They will not support or oppose any State, local, or Federal legislation or any government action without the manufacturer's advance express authorization (except where the latter is not reasonably practicable).
- They have reviewed and will fully abide by the manufacturer's corporate principles promulgated pursuant to the settlement agreement. The corporate principles express the manufacturer's commitment to comply with the provisions of the agreement and to assist in reducing the use of tobacco products by youths.
- They are aware of and will comply fully with the settlement agreement and all laws and regulations applicable to their lobbying activities, including those related to disclosure of financial contributions.

What if a State has no laws on disclosure of financial contributions for lobbying?

In this case, the manufacturer will disclose the payment amounts and recipients to the State's attorney general twice each year.

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**Q&A About the National Tobacco Settlement:
The National Foundation and the National Public Education Fund**

What is the National Foundation?

- The National Foundation will be a charitable foundation or organization (501c3) formally affiliated with an educational or medical institution.
- The Foundation will be responsible for coordinating and supporting a comprehensive program of public education and study. The Foundation will manage specific funds from the tobacco settlement for the purposes of educational and research programs to reduce tobacco use and substance abuse among youths and to prevent the diseases associated with the use of tobacco products.

What is the National Public Education Fund?

- The National Public Education Fund will be a program operated within the National Foundation.
- The Fund will support public education and advertising regarding the addictiveness, health effects, and social costs related to the use of tobacco products.

How will the Foundation and the Public Education Fund be supported?

- Each year for 10 years, each manufacturer participating in the agreement will contribute its relative market share to a \$25 million fund to support the Foundation.
- For the first 5 years of the 10-year life of the Foundation, each participating manufacturer will also support the Foundation's National Public Education Fund by paying its relative market share of "base amounts," which will total \$250 million on March 31, 1999, and \$300 million on March 31 of the following 4 years.
- Additional funds will be contributed by other entities.

Who will govern the Foundation?

- The Foundation will be governed by a geographically diverse 11-member board of directors.

Six of the directors (2 each) will be selected by the National Association of Attorneys General, the National Governors Association, and the National Conference of State Legislatures. These 6 directors will select 5 additional directors, one with expertise in public health and 4 others with expertise in medical, child psychology, or public health disciplines.

What will be the functions of the Foundation?

The Foundation's functions will be to:

- Carry out a nationwide, sustained advertising and education program to counter the use and purchase of tobacco products by youths and to educate consumers about the cause and prevention of diseases associated with tobacco products.
- Develop, disseminate, and test model advertising and education programs to counter the purchase and use of tobacco and illegal substances by youth, with an emphasis on reducing smoking by youths.

- Develop, disseminate, monitor, and test the effectiveness of model classroom education programs and curriculum ideas about smoking and substance abuse in the K-12 school system, including specific programs for special at-risk populations.
- Develop, disseminate, monitor, and test criteria for effective cessation programs, and revise the criteria as appropriate.
- Commission studies, fund research, and publish reports on factors that influence youth smoking and substance abuse, and develop strategies to address the conclusions of such studies.
- Develop other innovative programs to prevent youths from smoking.
- Provide training and information for parents.
- Maintain a library, open to the public, of Foundation-funded studies, reports, and other publications.
- Track and monitor the rates of smoking and substance abuse among youths, with a focus on the reasons for increased rates or failures to decrease rates and on actions that can be taken to reduce these rates.
- Receive, control, and manage the funds paid to the Foundation.
- Make grants from the National Public Education Fund to the States for sustained advertising and educational programs.

Who will get grants from the National Public Education Fund?

The Fund will award grants to the settling States or their political subdivisions to carry out sustained advertising and education programs to counter the use of tobacco products by youths and to educate consumers.

What factors will be considered in awarding grants?

Factors include whether the applicant:

- (1) demonstrates the extent of the problem of youth smoking in the State,
- (2) is proposing to implement a model program developed by the Foundation or provides a specific plan for the intended use of the grant and demonstrates the ability to develop and assess an effective advertising/education campaign, and
- (3) has other funds readily available to carry out a program.

What can the funds be used for?

- The funds can be used only for public education and advertising regarding the addictiveness, health effects, and social costs related to the use of tobacco products—not for political activities, lobbying, or attacks on persons, companies, or government agencies.
- Activities are to be carried out in a culturally and linguistically appropriate manner.

Who will be responsible for payments and activities?

- Payments will be made at the direction and on behalf of the settling States, and activities will be carried out solely within the States.
- Manufacturers have no responsibility for the operation of the Foundation or National Public Education Fund.

Will all settling States take part in the National Foundation?

If the Attorney General of a settling State determines the State may not lawfully enter into this agreement because of State law, the section of the agreement concerning the National Foundation can be severed from the settlement with that State.