

4/12/01

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Revenue		2001 MAY -4 PM 3:35 REVIEW COMMISSION
(2) I.D. Number (Governor's Office Use) 15-416		IRRC Number: 2198
(3) Short Title Master Settlement Agreement		
(4) PA Code Cite 61 Pa. Code §§ 71.31 - 71.33	(5) Agency Contacts & Telephone Numbers Primary Contact: Anita M. Doucette (717) 787-1382 Secondary Contact: Douglas A. Berguson (717) 787-1382	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>This regulation provides guidance to cigarette stamping agents, tobacco product manufacturers and nonparticipating tobacco product manufacturers with regard to Act 54-2000, the Tobacco Settlement Agreement Act (35 P.S. §§ 5671 - 5675).</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>Statutory authority for the regulation is contained in 35 P.S. § 5673 in the definition of the term "units sold" and section 6 of the Fiscal Code (72 P.S. § 6).</p>		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation provides necessary guidance to cigarette stamping agents, tobacco product manufacturers and nonparticipating tobacco product manufacturers with regard to Act 54-2000, the Tobacco Settlement Agreement Act (35 P.S. §§ 5671 - 5675).

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Cigarette stamping agents and tobacco product manufacturers will benefit from having specific guidelines regarding the Tobacco Settlement Agreement Act set for in a regulation.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All cigarette stamping agents and tobacco product manufacturers will be required to comply with the regulation. As of January 2001, there were 162 licensed cigarette stamping agents in the Commonwealth that would be required to comply with the regulation. The number of tobacco product manufacturers required to comply with the regulation is indeterminable.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the Office of Attorney General, the Federation of Tax Administrators and the Pennsylvania Distributors Association. The regulation was listed in the Department's Agenda of Regulations published at 31 Pa.B. 711 (February 3, 2001) and forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There is no specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

To meet the annual reporting requirements to the Office of Attorney General regarding cigarettes sold in this Commonwealth necessitated by Act 54-2000, the Department has determined that it will require additional staffing, including one or two clerical positions and one systems analyst position. Costs will also include any related equipment and supplies for such personnel.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government	Minimal					
Total Costs	Minimal					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

(20a) Explain how the cost estimates listed above were derived.

Costs to implement the requirements of Act 54-2000 will include one or two clerical positions and one systems analyst as well as related equipment and supplies.

Regulatory Analysis Form				
(20b) Provide the past three year expenditure history for programs affected by the regulation.				
Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A
(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs. N/A				
(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal. There are no nonregulatory alternatives associated with the regulation.				
(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal. There are no alternative regulatory schemes associated with the regulation.				

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states. Delaware, Maryland, Virginia, West Virginia, Ohio, New York and New Jersey are part of the Master Settlement Agreement and have enacted legislation similar to Act 54-2000.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The additional paperwork and record keeping requirements are the result of the provisions of Act 54-2000.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED
2001 MAY -4 PM 3:36

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

4/12/01

Copy below is hereby approved as to
form and legality. Attorney General

By: [Signature]
(DEPUTY ATTORNEY GENERAL)

APR 26 2001

DATE OF APPROVAL

Agency)

☐ Check if applicable.
Copy not approved. Objections
attached.

2198

Copy below is hereby certified to be true and correct copy
of document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-416

Date of Adoption

By: [Signature]
Larry P. Williams
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to
form and legality. Executive or Independent
Agency

By: [Signature]

4/16/01
Date of Approval

(Deputy General Counsel)
(Chief Counsel, Independent)

(Strike inapplicable title)

☐ Check if applicable. No Attorney
General approval or objection
within 30 days after submission

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Cigarette Tax

61 Pa. Code §§ 71.31 - 71.33

Master Settlement Agreement

PREAMBLE

The Department of Revenue (Department), under authority contained in section 3 of the Tobacco Settlement Agreement Act (35 P.S. § 5673, definition of the term "units sold") and section 6 of the Fiscal Code (72 P.S. § 6), proposes to amend 61 Pa. Code, Chapter 71. General Provisions, by adding sections 71.31 - 71.33 (relating to definitions; additional cigarette stamping agent responsibilities; and tobacco product manufacturer responsibilities) to read as set forth in Annex A.

Purpose of Regulation

This regulation provides guidance to cigarette stamping agents, tobacco product manufacturers and nonparticipating tobacco product manufacturers with regard to Act 54-2000, the Tobacco Settlement Agreement Act (35 P.S. §§ 5671 - 5675).

Explanation of Regulatory Requirements

Section 71.31 defines several terms for use in the section and §§ 71.32 and 71.33. Section 71.32 sets forth cigarette stamping agent report requirements as necessitated by the provisions of Act 54. Section 71.33 sets forth the tobacco product manufacturer responsibilities as established in Act 54.

Affected Parties

Cigarette stamping agents and tobacco product manufacturers will be affected by the regulation.

Fiscal Impact

The Department has determined that the proposed regulation will have no significant fiscal impact on the Commonwealth. Costs to the Department to implement the requirements of Act 54 will include one or two clerical positions and one systems analyst as well as related equipment and supplies.

Paperwork

The proposed regulation will not require significant additional paperwork for the public or the Commonwealth. Any additional paperwork and record keeping requirements are the result of the provisions of Act 54.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed regulation to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on *May 4, 2001*, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

LARRY P. WILLIAMS
SECRETARY OF REVENUE

04/05/01

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article III. Cigarette and Beverage
Taxes, Chapter 71. General Provisions.

GENERAL

§ 71.5. * * * * *

§ 71.6. * * * * *

§ 71.7. * * * * *

§ 71.8. * * * * *

§ 71.9. * * * * *

§ 71.10. * * * * *

§ 71.11. * * * * *

MASTER SETTLEMENT AGREEMENT

(Editor's Note: The Department is proposing to add §§ 71.31 -
71.33, to ease readability, the text is not underscored.)

§ 71.31. Definitions.

The following words and terms, when used in this section and
§§ 71.32 and 71.33 (relating to additional cigarette stamping
agent responsibilities; and tobacco product manufacturer
responsibilities), have the following meanings, unless the
context clearly indicates otherwise:

Affiliate - A person who, directly or indirectly, owns or
controls, is owned or controlled by, or is under common ownership

or control with, another person. For purposes of this definition, the terms owns, is owned and ownership mean ownership of an equity interest, or the equivalent thereof, of 10% or more.

Cigarette - Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

(ii) 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.

(iii) 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 described in subparagraph (i).

(iv) Any roll-your-own, which means 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, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

Nonparticipating tobacco product manufacturer - A tobacco product manufacturer who does not participate in the Master

Settlement Agreement (published at 30 Pa.B. 5619 (October 28, 2000)) entered into on November 23, 1998, by the Commonwealth and leading United States tobacco product manufacturers in the action entitled Commonwealth v. Philip Morris Inc., et al., Philadelphia County, April term, No. 97-2443, January 13, 1999, 40 Pa. D. & C.4th 225 (1999).

Qualified escrow fund - An escrow arrangement with a federally chartered or State-chartered financial institution that has no affiliation with any tobacco product manufacturer and has assets of at least \$1,000,000,000 in which the escrow arrangement:

(i) Requires that the financial institution hold the principal of the escrowed funds for the benefit of releasing parties.

(ii) Prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the principal of the funds except as consistent with 35 P.S. § 5674.

Tobacco product manufacturer -

(i) A person that after June 22, 2000, directly and not exclusively through any affiliate does one of the following:

(A) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the 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 the 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 the cigarettes does not market or advertise the 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.

(C) Becomes a successor of a person described in clause (A) or (B).

(ii) The term shall not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls under subparagraph (i)(A), (B) or (C).

Units sold - The number of individual cigarettes sold in this Commonwealth by the applicable tobacco product manufacturer during the year in question, as measured by taxes collected by the Commonwealth on packs, or roll-your-own tobacco containers, bearing the tax stamp of the Commonwealth required under section 1215 of the TRC (72 P.S. § 8215).

§ 71.32. Additional cigarette stamping agent responsibilities.

(a) The Tobacco Settlement Agreement Act (35 P.S. §§ 5671 - 5675), requires that the Department collect and maintain data

relating to the number of Pennsylvania state cigarette excise tax stamps affixed to packages of cigarettes. As part of the monthly cigarette tax report required by § 71.9(a) (relating to cigarette stamping agent report requirements), every licensed cigarette stamping agent shall complete and attach to the report a schedule, in the form as is prescribed by the Department, to account for and reconcile the number of Pennsylvania cigarette excise tax stamps affixed to packages of cigarettes by the agent during the monthly period covered by the associated cigarette tax report. The schedule shall contain the following information:

(1) A listing of the name and address of each nonparticipating tobacco product manufacturer from which the cigarette stamping agent made direct purchases of packages of cigarettes that were actually manufactured by the manufacturer, and the number of Pennsylvania cigarette excise tax stamps affixed to the packages of cigarettes purchased from each manufacturer.

(2) A listing of the name and address of all suppliers, other than nonparticipating tobacco product manufacturers, from which the cigarette stamping agent made purchases of cigarettes, including cigarettes purchased from one tobacco product manufacturer that were actually manufactured by another manufacturer. This listing shall include all purchases of cigarettes made by the cigarette stamping agent during the

month, other than directly from the actual manufacturer of the cigarettes.

(3) For each individual supplier listed under paragraphs (1) and (2), a listing of all brands of cigarettes purchased from the supplier and the number of Pennsylvania cigarette excise tax stamps affixed to cigarette packages by the cigarette stamping agent with respect to each brand.

(4) For each brand of cigarettes listed for each supplier pursuant to paragraph (3), the following additional information, if known:

(i) The name and address of the tobacco product manufacturer of the cigarettes.

(ii) The name and address of the person or entity first responsible for the cigarettes being designated or identified for sale in the United States.

(b) Every cigarette stamping agent shall keep complete and accurate records of cigarettes sold and shall preserve and keep for a period of four years all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes.

(c) All books, records, other papers and documents that are required to be kept shall be made available in the English language, and shall, at all times during the usual business hours

of the day, be subject to inspection by the duly authorized agents and employees of the Office of Attorney General or the Department of Revenue.

(d) Any monthly report that is not accompanied by the schedule prescribed by this section shall be considered incomplete. Extensions of time for filing purposes may be granted at the discretion of the Department.

(e) The failure of a licensed cigarette stamping agent to comply with the provisions of this section by not furnishing the schedule required by subsection (a), or by not furnishing complete and accurate information as required by the schedule, shall be deemed a violation of section 1276(a) of the TRC (72 P.S. § 8276(a)) and the agent's license shall be subject to suspension or revocation pursuant to the provisions of section 1276(b) of the TRC (72 P.S. § 8276(b)).

§ 71.33. Tobacco product manufacturer responsibilities.

(a) Any tobacco product manufacturer engaged in the activity of selling cigarettes into this Commonwealth (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 22, 2000, shall do one of the following:

(1) Become a participating manufacturer and adhere to the terms and provisions of the Master Settlement Agreement.

(2) Establish and contribute to a qualified escrow fund. If this provision is selected, the manufacturer shall:

(i) Certify to the Office of Attorney General, no later than April 15, 2001 or April 15 following the calendar year of activity, that a qualified escrow fund was established and provide the Office of Attorney General with a copy of the escrow agreement signed by the tobacco product manufacturer and financial institution.

(ii) Make a payment to the qualified escrow fund by April 15th of the year following the year in question according to the following base amounts which shall be adjusted for inflation each year under the formula in Exhibit C of the Master Settlement Agreement:

(A) June 22, 2000 through December 31, 2000:
\$0.0104712 per unit sold.

(B) 2001 and 2002: \$0.0136125 per unit
sold.

(C) 2003 through 2006: \$0.0167539 per unit
sold.

(D) 2007 and each year thereafter:
\$0.0188482 per unit sold.

(E) The Office of Attorney General will provide the adjusted figures to known nonparticipating tobacco product manufacturers by March of each year.

(iii) Certify to the Office of Attorney General by April 15th of each year the applicable number of units sold in Pennsylvania during the prior calendar year and the amount

deposited in the qualified escrow fund. Verification of the deposit must be evidenced by a statement from the financial institution.

(b) Every nonparticipating tobacco product manufacturer shall keep complete and accurate records of cigarettes sold and shall preserve and keep for a period of four years all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes.

(c) All books, records, other papers and documents that are required to be kept shall be made available in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the duly authorized agents and employees of the Office of Attorney General or the Department of Revenue.

04/05/01

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-416
SUBJECT: Cigarette Tax - Master Settlement Agreement
AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

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REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/4/01	<i>Janice Hesse</i>	HOUSE COMMITTEE ON FINANCE
5/4/01	<i>Janice Hesse</i>	SENATE COMMITTEE ON FINANCE
5/4/01	<i>Elina Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/4/01	<i>Mayra Garces</i>	LEGISLATIVE REFERENCE BUREAU

April 30, 2001