

TITLE 3: HUMAN RESOURCES
DIVISION 2: HEALTH

§ 2171. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

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

(B) “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. Solely for purposes of this definition, the terms “owns”, “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(C) “Allocable share” means Allocable Share as that term is defined in the Master Settlement Agreement.

(D) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) 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; or (3) 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 clause (1) of this definition. The term “cigarette” includes “roll-your-own” (i.e., 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 of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(E) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the Attorney General of the CNMI and leading United States tobacco product manufacturers.

(F) “Qualified escrow fund” means an escrow arrangement with a federally or Commonwealth chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000, 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 placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with section 2172(B)(2) of this Act.

(G) “Released claims” means Released Claims as that term is defined in the Master Settlement Agreement.

TITLE 3: HUMAN RESOURCES
DIVISION 2: HEALTH

(H) “Releasing parties” means Releasing Parties as that term is defined in the Master Settlement Agreement.

(I) “Tobacco Product Manufacturer” means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) 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 11(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;

(2) 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

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1) - (3) above.

(J) “Units sold” means the number of individual cigarettes sold in the CNMI 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 Government of the CNMI on packs (or “roll your own” tobacco containers). The Department of Revenue and Taxation shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Source: PL 12-45, § 2; amended by PL 13-15, § 1(2), modified; (J) amended by PL 14-10, § 8; (J) amended by PL 14-10, § 8.

Commission Comment: PL 12-45, which took effect on April 20, 2001, included the following findings and purposes, severability, and savings clause provisions:

Section 1. Findings and Purposes.

(A) Cigarette smoking presents serious public health concerns to the CNMI and its citizens. 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.

(B) Cigarette smoking also presents serious financial concerns for The CNMI. Under certain health-care programs, the Government of The CNMI may have a legal obligation to provide medical assistance to eligi-

TITLE 3: HUMAN RESOURCES
DIVISION 2: HEALTH

ble persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(C) Under these programs, the Government of The CNMI pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking. Diseases partially attributed to cigarette smoking or tobacco use include, but are not limited to, coronary heart disease, heart attacks, chronic obstructive lung disease, emphysema, stroke, and a variety of cancers including lung cancer. Lung cancer rates per capita of Chamorro males have already exceeded the rates of lung cancer mortality among males in the mainland U.S. The CNMI Department of Public Health estimates that 18% of the total cost of hospital days in 1994 for Chamorro and Carolinian patients can be attributed to smoking.

(D) It is the policy of the Government of The CNMI that financial burdens imposed on the Government of The CMMI by cigarette smoking be borne by tobacco product manufacturers rather than by the Government of The CNMI to the extent that such manufacturers either determine to enter into a settlement with the Government of The CNMI or are found culpable by the courts.

(E) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with The CNMI. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the Government of The CNMI (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(F) It would be contrary to the policy of the Government of The CNMI if tobacco product manufacturers who determine not to enter into a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the Government of The CNMI 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 Government of The CNMI 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.

. . .

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under con-

TITLE 3: HUMAN RESOURCES

DIVISION 2: HEALTH

tract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repeaters contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

PL 13-15, which amended PL 12-45, took effect July 1, 2002. Contained in PL 13-15 was the following amended findings and purpose:

Section 1. Findings and Purpose.

(A) Cigarette smoking presents serious public health concerns to the CNMI and its citizens. 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.

(B) Cigarette smoking also presents serious financial concerns for The CNMI. Under certain health-care programs, the Government of The CNMI 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.

(C) Under these programs, the Government of The CNMI pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

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

(E) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with The CNMI. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the Government of The CNMI (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(F) It would be contrary to the policy of the Government of The CNMI if tobacco product manufacturers who determine not to enter into a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the Government of The CNMI 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 Government of The CNMI to require that such manufactur-

TITLE 3: HUMAN RESOURCES
DIVISION 2: HEALTH

ers 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.

PL 14-10, which took effect on May 28, 2004, established additional licensing requirements to sell tobacco (see 4 CMC §§ 50161-50166) and included the following findings:

Section 1. Findings. The Legislature finds that violations of Public Law 13-15, the Model Escrow Statute, threaten the integrity of the Tobacco Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health. The Legislature finds that enacting procedural enhancements is necessary to aid the enforcement of the Model Escrow Statute and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the Commonwealth, and the public health.