

COURT ORDER REQUIRING TOBACCO MANUFACTURERS TO POST CERTAIN STATEMENTS AT RETAIL LOCATIONS

FREQUENTLY ASKED QUESTIONS

WHAT IS THIS LITIGATION ABOUT?

The major tobacco companies—Altria, Philip Morris USA, Inc. and R.J. Reynolds Tobacco Company—and the United States Department of Justice (“U.S. DOJ”) along with several public health organizations engaged in a decades long litigation regarding statements the tobacco manufacturers made to the public about tobacco products. In 2006, a federal judge entered judgment in favor of the Government and ordered the major tobacco manufacturers to take a variety of actions including making “corrective statements” on certain topics. Since 2010, the parties have litigated the implementation of these “corrective statements.” ITG Brands LLC (“ITG”) became a party to the litigation for purposes of the remedies when it purchased four cigarette brands from RJR in 2015. Altria, R.J. Reynolds Tobacco Company, and Philip Morris USA Inc. are the “Manufacturers” subject to the agreement explained in these frequently asked questions.

After years of litigation, the parties to the litigation reached an agreement that requires the Manufacturers to place corrective statements in retail stores that sell cigarettes and have contracts with one or more of the Manufacturers.

This agreement is referred to as the Court Order.

WHAT IS NACS’ INVOLVEMENT IN THE LITIGATION AND AGREEMENT?

NACS is not a party to the litigation, but the Court invited NACS to participate to represent retailers’ interests. NACS has litigated against the court’s decision to require Corrective-Statement Signs including filing successful briefs with the United States Court of Appeals for the DC Circuit and additional briefs with the trial court.

NACS participated in settlement discussions between the U.S. DOJ, public health organizations, and tobacco manufacturers to advocate for retailers’ perspectives.

WHAT DOES THE COURT ORDER REQUIRE?

Manufacturers must display Corrective-Statement Signs in all retail locations if the retailer participates in a cigarette retail program agreement with one or more of the Manufacturers. The signs must be in place within nine months of the date that the court approves the agreement between the Government and the Manufacturers. Retailers must keep the initial signs in place for at least 9 months. Following that initial 9 months, there will be three months during which manufacturers will provide a different sign to every store and those new signs must replace the previous signs. The new signs will be required to stay in place for 9 months following the end of the three-month rotation period.

WHAT ARE CORRECTIVE STATEMENTS?

The Corrective-Statement Signs are signs that the U.S. DOJ created and that must be displayed in retail stores that have contracts with one or more of the Manufacturers. The signs will each carry one of 17 different messages about tobacco.

WHAT DO THE CORRECTIVE-STATEMENT SIGNS LOOK LIKE AND HOW WILL THEY BE DISPLAYED IN MY STORES?

The messages on the signs and a full explanation of how they will look can be found [here](#). The Court Order's requirements about where the Corrective-Statement Signs should be displayed can be found [here](#).

WHERE WILL THE SIGNS BE PLACED?

How a Corrective-Statement Sign will appear in your stores will depend on each store's layout. All stores (except kiosks) will display a primary sign that will be 348 square inches in size. The sign must be placed in one of the following locations (ranked in order of placement preference):

1. Option 1: Attached to and above (or hung above) the main cigarette merchandising set.
2. Option 2: If option 1 is not possible given the layout of the merchandising set in a retail store, the sign should be attached and adjacent or hung adjacent to the main merchandising set.
3. Option 3: If options 1 and 2 are not possible, the retail store has two options for placement of the primary sign: (1) in a highly visible location within 48" of the main customer entrance and that can be seen by customers when they enter the store; or (2) within 48" of the cash register/point of sale and at least 48" above the floor.
4. Option 4: If options 1-3 are not possible, the retail store has the option to place the sign (1) perpendicular to the main cigarette merchandising set and at least 48" above the floor; or (2) on a wall in front of the recessed main cigarette merchandising set but in a plane parallel to the front of the merchandising set and at least 48" above the floor.
5. Option 5: If options 1-4 are not possible, the retailer may seek assistance from a group appointed by the court to handle questions about the agreement.

If a retail store also displays advertisements for Manufacturers' cigarettes that are not attached to the merchandising set ("off-set signage"), a second Corrective-Statement Sign must be displayed in the store. This second sign must be 144 square inches and be displayed in a highly visible location within 48" of the main customer entrance to the store. The sign must also be at least 48" above the floor.

WHO IS RESPONSIBLE FOR MAKING AND PLACING THE SIGNS?

The Manufacturers will produce and distribute the signs. In most cases, the Manufacturers' representatives will post the required signs. In some cases, a retailer may be instructed how to post the signs. But, in all cases, the signs must be provided by one of the Manufacturers.

CAN I SELECT ANY OF THE OPTIONS FOR PLACEMENT OF THE PRIMARY SIGN?

No. The primary sign must be placed according to option 1 if it is possible in the retail store. If option 1 is not available, the sign must be placed according to option 2, and so on.

I HAVE A KIOSK STORE. IS MY STORE SUBJECT TO THE SAME REQUIREMENTS?

If your kiosk store is part of a contract with one of the three tobacco manufacturers, your kiosk store is subject to the Court Order's requirements.

However, kiosk stores are not required to post the same 348 square inch sign as other retail stores. Kiosks stores are only required to post a 144 square inch primary sign. This sign must be displayed near the selling window and be highly visible to the customer.

The Court Order includes requirements about where the Corrective-Statement Signs should be displayed. These requirements can be found [here](#).

WHO ARE THE MANUFACTURERS INVOLVED?

The tobacco manufacturers involved in the court order are R.J. Reynolds, Philip Morris USA Inc., and ITG Brands, LLC.

CAN MANUFACTURERS REQUIRE ME TO POST OFF-SET ADVERTISEMENTS?

No. Manufacturers cannot require you to post off-set advertisements if you do not post off-set advertisements for another tobacco manufacturer. Retailers get to decide if they want those ads – and the additional Corrective-Statement Sign that would be required along with them.

WHEN DOES THE ORDER GO INTO EFFECT?

The Court will consider whether to approve the consent order during a hearing on July 28 and 29, 2022. The Order will go into effect once the Court enters the order, which will start a 6-month ramp up period followed by a three-month posting period before stores are required to post signs.

WILL MY STORE BE IMPACTED?

If you are a retailer that participates in a cigarette retail program agreement with one of the Manufacturers, you are impacted by the Court Order.

If you do not participate in a cigarette retail program agreement with any of the above-listed Manufacturers, you are not impacted by the Court Order and do not need to post any Corrective-Statement Signs.

WHAT IF MY CONTRACTS WITH MANUFACTURERS DO NOT REQUIRE ME TO POST THIS SIGNAGE?

The Court Order requires the Manufacturers to amend their contracts with retailers to require that retailers agree to placement of the Corrective-Statement Signs as required under the Court Order.

The Consent Order will require a graduated scale of penalties if retailers repeatedly fail to comply with the sign placement requirements.

WHAT DO I HAVE TO DO?

In most cases, the Manufacturers' representatives will post the required signs. In some cases, a retailer may be instructed how to post the signs. In all cases, the signs must be provided by one of the Manufacturers. We recommend retailers confer with the Manufacturers' representatives that visit your stores to consider the possible locations for posting signs as specified in the Court Order.

HOW LONG DO I HAVE TO DISPLAY THESE SIGNS IN MY STORES?

The signs must be displayed for a period of at least 21 months—a first sign is posted for 9 months then there is a 3-month period where retailers will receive a new sign and need to replace the first sign, and that second sign must be posted for an additional 9 months following the end of the 3-month rotation period.

The entirety of this period is referred to as the “Implementation Period.”

WILL I POST THE SAME SIGN FOR 21 MONTHS?

No. Manufacturers will provide retail stores with a new Corrective-Statement Sign (or more if the store must display more than one sign) approximately halfway through the Implementation Period. A first sign is posted for 9 months then there is a 3-month period where retailers will receive a new sign, and that second sign (which replaces the first sign) must be posted for an additional 9 months.

WHAT IF I DON'T WANT TO POST THESE SIGNS?

NACS understands your concerns regarding posting these Corrective-Statement Signs. However, if you participate in a cigarette retail program agreement with one or more of the Manufacturers, you must comply with the requirements of the Court Order or face potential penalties.

WHAT IF I DON'T POST THE SIGNS IN MY STORE?

If a retail store does not place the required signage in its store, the retail store may be deemed out of compliance with the Court Order.

The Manufacturers are required to hire an audit firm to periodically visit retail locations to assess compliance with the Court Order. This is referred to as the “audit process.” The audit process determines whether a store is in compliance with the Court Order.

WHAT IS THE AUDIT PROCESS?

During the Implementation Period, there will be four audit periods, two of which will occur before the Corrective-Statement Signs are rotated by the Manufacturers, and two audits after the Corrective-Statement Signs are rotated by the Manufacturers.

In addition, photos of Corrective-Statement Signs posted in retail and kiosk stores will be submitted to a photo database. The auditor will review photos submitted to the database. If the auditor sees a photo that appears out of compliance, the auditor will send the retailer and a group appointed by the court to handle questions and disputes a notice of noncompliance.

If a retail store receives an initial notice of non-compliance, the retail store will have 30 days to correct the alleged non-compliance by submitting a new photo to the database. If the retail store fails to show compliance, the retail store may have an in-person audit.

HOW DO THE AUDITORS DECIDE WHICH STORES WILL RECEIVE AN IN-PERSON AUDIT?

There are two categories of retail stores that are eligible for in-person audits: (1) those retail stores that fall within a representative sample and (2) stores that are suspected to be out of compliance with the Court Order.

Representative Sample Pool: Given the number of retail stores, it would be impossible and cost prohibitive to conduct in-person audits of each store during the Implementation Period. As a result, 6,000 retail stores will be subject to an in-person audit during each audit period.

Suspected Noncompliance Pool: Auditors will conduct in-person audits of up to 4,000 stores that are on the suspected non-compliance list.

WHY WOULD A STORE BE SUSPECTED OF NON-COMPLIANCE?

A retailer could be suspected of non-compliance if no photo was submitted to the auditor to show the posted signs, if a member of the public called the tip line to report a potential violation of the rules, or if a retailer was found to be in Major Noncompliance as a result of an in-person audit in the immediately prior audit period.

DO I HAVE TO PAY FOR THE AUDITOR TO COME TO MY STORE?

No. The tobacco manufacturers are responsible for paying the auditors.

WILL MY STORE BE AUDITED?

Maybe. The Manufacturers will provide the U.S. DOJ with a list of retail stores and kiosk stores that participate in a cigarette retail program agreement. Stores to be audited will be selected from that list.

WILL THERE BE IN-PERSON AUDITS DURING THE ROTATION PERIOD?

No.

WHAT HAPPENS IF THE AUDITOR IS DISRUPTIVE?

Auditors will make an effort not to disrupt or interfere with the retail store's business activities.

WHAT IS THE TIP LINE?

The tip line will be a way for the public to submit concerns about suspected non-compliance with the Court Order. Members of the public will be able to submit concerns via phone or online.

WHAT HAPPENS IF SOMEONE SUBMITS A TIP ABOUT MY STORE?

The auditor will notify the retail store and the working group of tips regarding suspected non-compliance. The store will be added to a list of stores that are suspected to be out of compliance with the Court Order and your store may receive an in-person audit.

WHAT HAPPENS IF I DON'T POST A REQUIRED SIGN?

If an auditor finds you are not following the court's order, you may face penalties. The penalties depend on whether you are simply out of compliance with a minor part of the court's order or if you are far out of compliance (for example, by not posting any corrective statement at all).

Minor noncompliance includes:

- Obstructing any portion of a Corrective-Statement Sign.
- Placing an on-set Corrective-Statement Sign in a store in the wrong place (unless you have previously been told by an auditor you had the sign in the wrong place)
- Posting a Corrective-Statement Sign in English where it is required to post a sign in Spanish (unless you have previously been found noncompliant on this basis via in-person audit)

Examples of major non-compliance include:

- Failing to post a required Corrective-Statement Sign.
- Posting a Corrective-Statement Sign in a location that results in the message not being visible to customers.
- Obstructing any portion of the message or icon on any Corrective-Statement Sign that must be posted in the retail store.
- Defacing or damaging a Corrective-Statement Sign in any way that renders unreadable from the customer's vantage point any Corrective-Statement Sign that must be posted in the retail store.
- Taking down a Corrective-Statement Sign that must be posted in the retail store.
- Placing an on-set Corrective-Statement Sign in a store out of the order of preference for placement, where the location has previously been found noncompliant on this basis via in-person audit. E.g.: A retail location placing a Corrective-Statement Sign according to option #3 when option #1 or #2 is possible.
- Failing to rotate a Corrective-Statement Sign as required, as determined in an in-person audit, unless the retail location has uploaded a photo showing compliance with the rotation requirement within 30 days of the finding of noncompliance.
- Posting a Corrective-Statement Sign in English where it is required to post a Corrective-Statement Sign in Spanish, where the location has previously been found noncompliant on this basis via in-person audit

WHAT HAPPENS IF I AM FOUND IN MINOR NON-COMPLIANCE?

- 1st incidence of minor non-compliance: Retail store will be counseled into compliance by the Manufacturers.
- 2nd incidence of minor non-compliance: Retail store will , receive a warning letter that the third finding of non-compliance will result in posting another sign.
- 3rd incidence of minor non-compliance: Retail store will be , required to post an additional 144 sq. in. Corrective-Statement Sign for 120 days.

WHAT HAPPENS IF I AM FOUND IN MAJOR NON-COMPLIANCE?

- 1st incidence of major non-compliance: Retail store will be counseled into compliance and required to post an additional 144 sq. in. Corrective-Statement Sign for the remainder of the Implementation Period.
- 2nd incidence of major non-compliance: Retail store will owe to each Manufacturer with which it is contracted a payment equal to any Price Promotion for Covered Brands owed to the Participating Retailer Location by each contracted Manufacturer for a period of 4 weeks.
- 3rd incidence of major non-compliance: Retail store will owe to each Manufacturer with which it is contracted a payment equal to any Price Promotion for Covered Brands owed to the Participating Retailer Location by each contracted Manufacturer for a period of 13 weeks.
- 4th incidence of major non-compliance: Retail store will be suspended for 17 weeks from the Participating Retailer Contracts of each Manufacturer with which it is contracted. This suspension period will begin 45 days after the Final Determination of such noncompliance.

HOW DO I PAY A MANUFACTURER IF I AM FOUND IN MAJOR NON-COMPLIANCE AND OWE PAYMENT TO A MANUFACTURER?

For any payments owed to Manufacturers for non-compliance, the retailer can either pay the amount owed or offset it from upcoming payments a retailer is to receive from the Manufacturer.

WHAT IF CUSTOMERS COMPLAIN ABOUT THE MESSAGES IN THE SIGNS?

NACS understands that customers may dislike and complain about the Corrective-Statement Signs. This is one of the many reasons why, throughout this litigation, NACS advocated against the requirement that these Corrective-Statement Signs be placed in retail stores.

Unfortunately, retail stores that are subject to this Court Order must keep Corrective-Statement Signs posted for the duration of the Court Order. Retail stores may explain to customers that these Corrective-Statement Signs are a requirement imposed by the U.S. government on the Manufacturers and the messages are created by the U.S. government. You can make clear that the messages are not coming from you and/or that you disagree with them.

CAN I APPEAL A FINDING OF MINOR OR MAJOR NON-COMPLIANCE?

Yes. Retailers can appeal any determination of non-compliance to the Working Group.

If the Working Group's decision is a tie or an adverse determination on a major non-compliance issue, a retailer can appeal to a neutral, third-party adjudicator, and then, if desired, in the case of a major non-compliance issue, to the court.

WHAT IS THE WORKING GROUP?

The Working Group consists of 10 individuals approved by the court to handle questions that come up about this order. It will include: three individuals appointed by the U.S. DOJ, two individuals appointed by the public health groups, one individual appointed by Altria or Philip Morris USA Inc., one individual appointed by R.J. Reynolds Tobacco Company, one individual appointed by ITG Brands, LLC, one individual appointed by NATO, and one individual appointed by NACS.

WHAT IF I WANT TO TELL THE COURT WHAT I THINK ABOUT THE SETTLEMENT?

Written statements supporting or opposing the Proposed Point-of-Sale Consent Order must be submitted to the Court on or before July 25, 2022 by emailing the statement to the following address: DCD_PhilipMorrisSettlement@dcd.uscourts.gov or by mailing it to:

The Honorable Paul L. Friedman
U.S. District Court for the District of Columbia,
E. Barrett Prettyman U.S. Courthouse
William B. Bryant Annex Room 6012
333 Constitution Avenue, N.W.
Washington, D.C. 20001

All written statements must be received no later than **July 25, 2022.**

If you want to make comments during the hearing, you may do so in person or virtually. Virtual attendance at the Point-of-Sale Settlement Hearing will be permitted only for participating retailers who have submitted written statements to the Court in advance of the

hearing. Zoom videoconference information will be made available upon request by the Courtroom Deputy Clerk, Tanya Johnson, who can be contacted at Tanya_Johnson@dcd.uscourts.gov.

Due to technology constraints, those participating virtually will not be able to present any exhibits to the Court or view any that are physically displayed in the Ceremonial Courtroom during the hearing. Virtual attendance at the Point-of-Sale Settlement Hearing will not be permitted for any participating retailer that has not submitted a written statement to the Court in advance of the hearing. Any participating retailers may listen to the hearing via the public phone line.

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Please do not hesitate to contact NACS with any questions about the Court Order and how the Court Order may apply to you and your stores. You can contact NACS General Counsel Doug Kantor at dkantor@convenience.org or (703) 518-4228.