

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 16. Master Settlement Agreement, Tobacco

TEXT OF PROPOSED AMENDED REGULATIONS

§ 999.10. ~~Scope and Purpose, Definitions, and Written Confirmation of Compliance with Reserve Fund Requirements by Non-Participating Tobacco Product Manufacturers.~~

(a) Scope and Purpose

The purpose of these regulations is to implement California's Reserve Fund Statute (codified at Health and Safety Code sections 104555, 104556 and 104557) by providing Tobacco Product Manufacturers clear definitions, instructions, guidance and forms to comply with the requirement to establish a reserve fund for tobacco-related illness and other potential liabilities. The Legislature imposed the reserve fund requirements to ensure a source of compensation for the financial burdens imposed upon the State by cigarette-smoking related illness and other health conditions. Health and Safety Code sections 104555-104557 essentially require Tobacco Product Manufacturers to provide a surety bond against future liability for cigarette-smoking related healthcare costs. This surety bond is imposed upon manufacturers ~~which~~ that choose to avoid the conduct restrictions that apply if they sign the Master Settlement Agreement (“MSA”). Government Code sections 11110-11113 require the Attorney General to adopt regulations to provide forms for surety bonds which are approved by the Attorney General as conforming with applicable law. Revenue and Taxation Code section 30165.1(o) also authorizes the Attorney General to adopt emergency rules and regulations regarding the reserve fund requirements of Tobacco Product Manufacturers.

The Legislature also intended to prevent the unfair competition that would occur if Tobacco Product Manufacturers who did not sign the MSA and did not incur the financial obligation under the MSA were allowed to derive large short-term profits to the disadvantage of those manufacturers participating in the MSA. These regulations are also intended to protect tobacco Distributors and Wholesalers from the financial risk of accepting orders for tobacco products or purchasing tobacco products that may be banned from sale by a court or are not listed on California's Directory of Tobacco Product Manufacturers and Brand Families because the Tobacco Product Manufacturer failed to make the required deposits or otherwise comply with the Reserve Fund Statute and Revenue and Taxation Code section 30165.1.

Through the definitions, instructions, guidance and forms provided, these regulations also make available to the public and local and state government officials the Attorney General's enforcement policy and interpretation of how Tobacco Product Manufacturers should comply with the reserve fund requirements to avoid unfair and unlawful business conduct and activity. Toward that end, these regulations are intended to describe the meaning of compliance with the

reserve fund requirements, the proper interpretation of the statutory requirements and the enforcement policy designed to protect those manufacturers which do comply from unfair competition by those manufacturers which might otherwise fail to comply with the reserve fund requirements without the definitions, instructions, guidance and forms provided.

The purpose of regulations 999.16 through 999.239 is also to implement Revenue and Taxation Code section 30165.1 by prescribing procedures to be followed by all Tobacco Product Manufacturers who wish to sell Cigarettes in California. Section 30165.1 requires the Attorney General to develop, publish and maintain on its internet website a Directory of Tobacco Product Manufacturers and Brand Families that are in compliance with the statute. Any person who sells, distributes, acquires, holds, owns, possesses, transports, imports, or causes to be imported Cigarettes, ~~or Roll-your-own~~ which includes Roll-Your-Own tobacco, that the person knows or should know are not included on the Directory commits a misdemeanor, as well as a violation of California's Unfair Competition Law, and is subject to civil penalties, license suspension and revocation, and criminal prosecution.

Regulations 999.16 through 999.239 set forth the certification process for inclusion on California's Directory of Tobacco Product Manufacturers and Brand Families, as well as the conditions under which a Tobacco Product Manufacturer must provide supplemental certifications. ~~The regulations also specify the circumstances under which Tobacco Product Manufacturers must certify and make escrow deposits more frequently than on an annual basis.~~ The regulations state the requirements for records retention and production of documents by Tobacco Product Manufacturers, Distributors and Wholesalers. The regulations set forth additional requirements on Non-Participating Manufacturers who are non-resident or foreign and who are not registered to do business in California. The regulations clarify the requirements and protections of California Distributors under Section 30165.1. Finally, the regulations delineate the conditions a Tobacco Product Manufacturer which has been removed from the Directory must satisfy if it seeks to be relisted with its Brand Families.

(b) Definitions

All terms used in these regulations, which are defined in Revenue and Taxation Code section 30165.1 and/or Health and Safety Code sections 104555-104557, shall have the same meaning in these regulations.

The definitions contained in this subdivision shall govern the construction of this chapter.

~~(1) "Board" means the State Board of Equalization.~~

~~(2) "Brand Family" shall have the same meaning as in Revenue and Taxation Code section 30165.1(a)(2).~~

(2) "Brand Style" means the different Cigarettes within a Brand Family of Cigarettes, including but not limited to, menthol flavor or Cigarette length.

(3) “California Tobacco Directory,” “Directory,” and “Tobacco Directory” shall have the same meaning as Revenue and Taxation Code section 30165.1(c).

(4) “CDTFA” means the California Department of Tax and Fee Administration.

(5) “Certification” means PM Certification and NPM Certification and includes a supplemental certification.

(36) “Cigarette” shall have the same meaning as in Health and Safety Code section 104556(d), which section includes Roll-Your-Own tobacco (“RYO”).

(7) “Deposit Date” means the date that Qualified Escrow Fund Principal was deposited into a Qualified Escrow Fund.

(48) “Distributor” shall have the same meaning as in Revenue and Taxation Code section 30011.

(9) “Escrow Agent” shall mean the financial institution described in Health and Safety Code section 104556(f) and holding a Qualified Escrow Fund Principal account for the benefit of the State.

(10) “Escrow Rate” shall have the same meaning as Health and Safety Code section 104557(a)(2).

(11) “Fire Standard Compliant” and “FSC” means the requirements of the California Cigarette Fire Safety and Firefighter Protection Act at Health and Safety Code sections 14950 through 14960.

(12) “JUS-TOB1” means the Participating Tobacco Product Manufacturer (“PM”) Certification Seeking Listing on the California Directory form (JUS-TOB1, Rev. 11/2021), which is hereby incorporated by reference.

(13) “JUS-TOB2” means the Notice of Appointment of Registered Agent and Registered Agent's Statement for Non-Participating Manufacturer form (JUS-TOB2, Rev. 02/2011), which is hereby incorporated by reference.

(14) “JUS-TOB3” means the Certification of Compliance and Affidavit by Non-Participating Tobacco Product Manufacturer form (JUS-TOB3, Rev. 11/2021), which is hereby incorporated by reference.

(15) “JUS-TOB4” means the CIG-Sales form (JUS-TOB4, Rev. 11/2021), which is hereby incorporated by reference.

(16) “JUS-TOB5” means the Non-Participating Manufacturer Certification (“NPM”) Seeking Listing on the California Directory form (JUS-TOB5, Rev. 11/2021), which is hereby incorporated by reference.

(17) “JUS-TOB6” means the Approved Tobacco Escrow Agreement (JUS-TOB6, Rev. 05/2019), which is hereby incorporated by reference.

(18) “JUS-TOB7” means the CIG-Map form (JUS-TOB7, Rev. 09/2020), which is hereby incorporated by reference.

(19) “JUS-TOB8” means the Brand List form (JUS-TOB8, Rev. 11/2021), which is hereby incorporated by reference.

(20) “JUS-TOB9” means the Waiver of Tribal Sovereign Immunity by Native American Tribe form (JUS-TOB9, Rev. 10/2011), which is hereby incorporated by reference.

(21) “JUS-TOB10” means the Waiver of Sovereign Immunity by Government-Owned Tobacco Company form (JUS-TOB10, Rev. 10/2011), which is hereby incorporated by reference.

(22) “JUS-TOB11” means the Standard Waiver of Sovereign Immunity by Tobacco Manufacturer or Importer form (JUS-TOB11, Rev. 08/2011), which is hereby incorporated by reference.

(23) “JUS-TOB12” means United States Importer Declaration Accepting Joint and Several Liability (JUS-TOB12, Rev. 02/2011), which is hereby incorporated by reference.

(24) “JUS-TOB13” means the Notice of Appointment of Registered Agent and Registered Agent's Statement Form for Importer (JUS-TOB13, Rev. 02/2011), which is hereby incorporated by reference.

(25) “JUS-TOB14” means the California Tobacco Manufacturer and Importer Surety Bond form (JUS-TOB14, Rev. 10/2011), which is hereby incorporated by reference.

(26) “Ledger” has the same meaning as in section 2.I of JUS-TOB6.

(27) “MSA” means the Master Settlement Agreement and has the same meaning as in Health and Safety Code section 104556(e).

(28) “~~Non-participating tobacco product manufacturer~~ Non-Participating Tobacco Product Manufacturer” or “(NPM)” means any Tobacco Product Manufacturer selling Cigarettes to consumers within the state, whether directly or through a Distributor, retailer or similar intermediary or intermediaries, which has not become a ~~participating manufacturer~~ Participating Manufacturer as that term is defined in section II(jj) of the Master Settlement Agreement (MSA) or has become a ~~participating manufacturer~~ Participating Manufacturer but does not generally perform its financial obligations under the MSA.

(29) “NPM Certification” means a California Tobacco Directory certification submitted by an NPM using a JUS-TOB5.

(30) “PACT Act” means the Prevent All Cigarette Trafficking Act at 15 U.S.C. §§ 375-378.

~~(631)~~ “Original Participating Manufacturer (OPM)” mean the companies specified in section II(hh) of the MSA which are generally performing their obligations under the MSA.”
“Participating Manufacturer” or “PM” has the same meaning as in Revenue and Taxation Code section 30165.1(a)(7) and section II(jj) of the MSA.

~~(32)~~ “PM Certification” means a California Tobacco Directory certification submitted by a PM using a JUS-TOB1.

~~(733)~~ “Qualified Escrow Fund” shall have the same meaning as in Health and Safety Code section 104556(f)

~~(34)~~ “Qualified Escrow Fund Principal” and “Qualified Escrow Principal” has the same meaning as in section 2.R of JUS-TOB6.

~~(35)~~ “Quarter(s)” and “Quarterly” means the following periods of the year: January 1 through March 31 (first quarter); April 1 through June 30 (second quarter); July 1 through September 30 (third quarter); and October 1 through December 31 (fourth quarter).

~~(836)~~ “Reserve Fund Statute” means Chapter 1 of Part 3 of Division 103 of the Health and Safety Code (sections 104555-104557).

~~(937)~~ ~~“Roll-your-own”~~ “Roll-Your-Own” or “RYO” tobacco 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. Each 0.09 ounces of RYO equals one Cigarette.

~~(4038)~~ “Tobacco Product Manufacturer” shall have the same meaning as in Health & Safety Code section 104556(i).

~~(39)~~ “Sales Year” means the calendar year during which the Tobacco Product Manufacturer sold Cigarettes in California requiring a deposit of Qualified Escrow Fund Principal or an MSA payment.

~~(4140)~~ “Units ~~sold~~ Sold” shall have the same meaning as in Health and Safety Code section 104556(j).

~~(4241)~~ “Wholesaler” shall have the same meaning as in Revenue and Taxation Code section 30016.

~~(c) Confirmation of Compliance with Reserve Fund Requirements~~ Escrow Deposits by NPMs Pursuant to the Reserve Fund Statute and Tobacco Directory

~~(1) Before an NPM sells or ships Cigarettes or Roll-your-own tobacco to a Distributor or Wholesaler for sale in California, the NPM shall provide written confirmation to the Distributor or Wholesaler that said manufacturer has either become a participating manufacturer under the~~

~~MSA and is generally performing its financial obligations under the MSA, or has made the requisite escrow deposits and certification of compliance required of NPMs by Health and Safety Code section 104557 and these regulations. A copy of the CERTIFICATION OF COMPLIANCE AND AFFIDAVIT BY NON PARTICIPATING TOBACCO PRODUCT MANUFACTURER REGARDING DEPOSIT OF RESERVE FUNDS INTO ESCROW ("Certificate of Compliance" JUS TOB3 Rev. 02/2011) filed with the Attorney General by an NPM or an equivalent notarized statement which has been approved by the Attorney General pursuant to section 999.11 is adequate written confirmation for the purposes of this section. All NPMs shall deposit escrow Quarterly on all Units Sold in California as required by the Reserve Fund Statute. Qualified Escrow Fund Principal for the first quarter, January 1 through March 31, is due on or before April 21. Qualified Escrow Fund Principal for the second quarter, April 1 through June 30, is due on or before July 21. Qualified Escrow Fund Principal for the third quarter, July 1 through September 30, is due on or before October 21. Qualified Escrow Fund Principal for the fourth quarter, October 1 through December 31, is due on or before January 21.~~

~~(2) An NPM which has not sold tobacco products in California before these regulations become effective shall not sell or ship Cigarettes or Roll-your-own tobacco to a Distributor or Wholesaler purchasing or accepting orders for any Cigarettes or Roll-your-own tobacco for sale in California, unless the NPM has provided written confirmation to the Distributor or Wholesaler that the NPM has received and reviewed a copy of Health and Safety Code sections 104555-104557 and these implementing regulations. During the first quarter year of sales in California, an NPM must provide written confirmation of compliance either by producing a copy of the ACKNOWLEDGMENT OF RECEIPT & REVIEW OF NPM RESERVE FUND STATUTE, IMPLEMENTING REGULATIONS & FORMS ("Acknowledgment of Receipt & Review" form JUS TOB5 Rev. 04/2004), or an equivalent notarized statement which has been approved by the Attorney General, filed with the Attorney General.~~

~~An NPM shall complete and file the Acknowledgment of Receipt & Review (JUS TOB5 Rev. 04/2004) with the Attorney General within thirty (30) days of receipt. Thereafter, the NPM shall provide copies of the form, as filed with the Attorney General, to Wholesalers and Distributors before the NPM sells or ships its tobacco products to a Wholesaler or Distributor until the end of the first quarter year in which the NPM began selling in California, when it must file its first Certificate of Compliance (JUS TOB3 Rev. 02/2011). The filed Acknowledgment of Receipt & Review (JUS TOB5 Rev. 04/2004) shall constitute adequate written confirmation of compliance only until the end of the first quarter year in which the NPM began selling tobacco products in California. No deviation from the Acknowledgment of Receipt & Review shall be permitted without the prior written approval of the Attorney General.~~

~~The NPM shall within nine (9) days of depositing Qualified Escrow Fund Principal for the benefit of California execute and submit to the Attorney General's Office both:~~

~~(A) a JUS-TOB3; and~~

~~(B) a JUS-TOB4.~~

~~(3) If an NPM fails to provide the requisite written confirmation of compliance, the Wholesaler or Distributor shall request the NPM to provide written confirmation of compliance prior to the manufacturer selling or shipping its tobacco products to the Wholesaler or Distributor. If the Distributor or Wholesaler does not receive any written confirmation prior to the NPM shipping or offering to sell its tobacco products, or receives inadequate confirmation, the Distributor or Wholesaler shall report the lack of prior confirmation or inadequate confirmation to the Attorney General (attention: Tobacco Litigation & Enforcement Section) within fourteen (14) business days after the failure to provide confirmation or the provision of inadequate confirmation. The report shall be in writing and include the name, address and telephone number of the NPM and details of the request for confirmation pursuant to this section and the inadequacies in the confirmation, or details of the failure to provide the requested written confirmation. The report shall also specify whether the failure to provide confirmation or inadequate confirmation may be because the NPM has not sold tobacco products in California.~~

~~(4) Upon request of the Attorney General, the Distributor or Wholesaler shall provide such further information as may be required by the Attorney General to confirm compliance by the Tobacco Product Manufacturer or to seek a court order barring the NPM from further sales of tobacco products pending proof of compliance or other enforcement action by the Attorney General.~~

~~(5) Tobacco Product Manufacturers shall provide such information as required by the State Board of Equalization ("Board"), or requested by Distributors, Wholesalers, retailers or other intermediaries required to report to the Board, when the reports required by the Board are to assist the Board to determine the number of units sold in California. NPMs shall also provide such information as required by the Attorney General or requested by Distributors or Wholesalers, as required by this section, to confirm and enforce compliance with the requirements of Health and Safety Code sections 104555-104557 and prevent the unfair competition resulting from non-compliance. The information required by the Board and the Attorney General includes, but is not limited to:~~

~~(A) Brand names;~~

~~(B) Unit sales of each brand;~~

~~(C) Corporate or business name, and address of importer;~~

~~(D) Corporate or business name, and address of manufacturer;~~

~~(E) Whether the seller was the manufacturer, and;~~

~~(F) Whether the seller was the first importer for resale in the United States.~~

~~For the purposes of information reports required by the Attorney General, Distributors and Wholesalers shall deem any brand, which is not on the list of brands of participating manufacturers provided by the Board or the Attorney General, to be the brand of an NPM and provide the information and reports required of such NPM brands. The Board may also require~~

such reports pursuant to Revenue and Taxation Code section 30454 or Health and Safety Code section 104556(j) or other authority.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code; Sections 11110-11113, Government Code; Section 104557(c), Health and Safety Code; and Article 5, Section 13 of the California Constitution. Reference: Section 30165.1(a), Revenue and Taxation Code; and Sections 104555, 104556 and 104557, Health and Safety Code.

§ 999.11. [Repealed] Certificate of Compliance Form.

~~(a) The certification required of NPMs by Health and Safety Code section 104557(c) shall be on the Certificate of Compliance (JUS TOB3 Rev. 02/2011). The completed form shall be signed under oath before a notary public and include the following information:~~

- ~~(1) The escrow account number and the amount held in the account;~~
- ~~(2) A copy of the receipt or other proof of escrow deposit from the financial institution;~~
- ~~(3) A copy of the escrow agreement; and~~
- ~~(4) Date and signature of a notary public.~~

~~(b) No deviation from the Certificate of Compliance (JUS TOB3 Rev. 02/2011) shall be permitted without the prior written approval of the Attorney General. Except when more frequent escrow deposits and certifications are required by 999.20 or directed by the Attorney General, the completed Certificate of Compliance must be received by the Attorney General on or before April 30 of the year following the sales year that is the subject of the certificate. A BRAND FAMILIES UNIT SALES SCHEDULE 1 (JUS TOB4 Rev. 02/2011, or “Schedule 1”) must be completed and attached to the completed Certificate of Compliance.~~

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code; Sections 11110-11113, Government Code; Section 104557(c), Health and Safety Code; and Article 5, Section 13 of the California Constitution. Reference: Section 30165.1(a), Revenue and Taxation Code; and Section 104557(c), Health and Safety Code.

§ 999.12. Escrow Agreement for Non-Participating Manufacturer

[NO CHANGES]

§ 999.14. Escrow Adjustments and Release Requests

(a) Introduction; grounds

The Reserve Fund Statute authorizes the release of funds from ~~escrow~~ Qualified Escrow Fund Principal only under certain circumstances. Section 104557(b) authorizes the release of funds from escrow to the extent that an NPM “establishes that the amount it was required to place into

escrow in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the agreement including after the final determination of all adjustments, that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer.” (Health & Saf. Code, § 104557(b)(2).) ~~To establish entitlement to an escrow adjustment on this ground, an NPM must calculate the total payments that it would have made as a participating manufacturer during a particular year absent certain adjustments, offsets and reductions.~~

~~Adjustments to escrow accounts deposited pursuant to Health & Safety Code sections 104555-104557, including balances due for deposit, may occur upon a showing that the adjustment is authorized pursuant to Health & Safety Code section 104557(b)(2) in response to requests for adjustments (i) by the tobacco manufacturer or (ii) by the Board or the Attorney General as a result of additional information not known to the Attorney General when the initial, or most recent, deposit was deemed sufficient or when a release from escrow was authorized and implemented.~~

(b) Time for filing request

Requests for adjustments must be filed ~~in a timely manner and~~ no later than three years after the ~~initial~~ deposit was due for the relevant year of sales Sales Year. (See Code Civ. Proc., §338(a)(c).)

~~(c) Form and contents of request~~

~~To be eligible for consideration, a request for an adjustment by must be made in writing and must be accompanied by supporting documentation which establishes compliance with all other aspects of the reserve fund requirements and the basis for the escrow release request. The supporting documentation, at a minimum, must include:~~

~~(1) A timely filed Certification of Compliance (JUS-TOB3 Rev. 02/2011) or timely filed Acknowledgment of Receipt & Review (JUS-TOB5 Rev. 04/2004), a timely filed Schedule 1 (JUS-TOB4 Rev. 02/2011), an Escrow Agreement (JUS-TOB6 Rev. 02/2004) and an affidavit identifying all current officers, owners and agents for service of process for the manufacturer and all cigarette brands owned or made by the manufacturer. When a manufacturer does not own the trademark(s) for the cigarette brand(s) that it makes or imports or sells, the affidavit shall identify the trademark owner(s) of the cigarette brand(s) sufficiently to enable regular contact and communication with the brand owner(s) by the State. These forms must be completed and timely filed in compliance with Health & Safety Code sections 104555-104557.~~

Escrow Rate Adjustment requests

(1) Under Health and Safety Code section 104557(b)(2), NPMs may request a release of Qualified Escrow Fund Principal that is on deposit for the benefit of California based upon the escrow rate used by California for a particular Sales Year. (“Escrow Rate Adjustment”). NPMs must establish that the amount it was required to place into escrow for a particular Sales Year was greater than the Master Settlement Agreement (“MSA”) payments, as determined pursuant

to section IX(i) of the MSA, including after the final determination of all adjustments, that the NPM would have been required to make on account of the Units Sold had it been a PM.

(2) An NPM seeking an Escrow Rate Adjustment shall submit an affidavit, signed by an executive officer of the NPM, setting forth the officer's authority to bind and act on behalf of the NPM, the Escrow Rate that the NPM contends that California should have used under Health and Safety Code section 104557(b)(2), and all the facts and contentions in support of the NPM's request.

(d) Units Sold Adjustment requests

To be eligible for consideration, an NPM's request for release of Qualified Escrow Fund Principal under Health and Safety Code section 104557(b)(2) based upon the NPM's volume of Units Sold in California during a particular Sales Year, shall accurately apportion by Distributor and by Brand Family all of the NPM's Cigarettes sold in California for the Sales Year at issue to establish compliance with the Reserve Fund ("Units Sold Adjustment").

(1) The total of the NPM's Cigarettes sold in California during the Sales Year at issue, including but not limited to, all Units Sold, itemized by Distributor and by Brand Family on JUS-TOB4. The NPM shall also submit all invoices, shipping records, and all other evidence in their possession, custody, or control regarding the number of the NPM's Cigarettes sold in California, as well as any shipments of the NPM's Cigarettes into or out of California, during the Sales Year at issue.

(2) An affidavit, signed by the executive officer of the ~~manufacturer~~ NPM responsible for escrow compliance, setting forth the officer's authority to bind and act on behalf of the ~~manufacturer~~ NPM and demonstrating the facts which support the adjustment requested;

(3) All records and/or other documentation demonstrating the facts offered in support of the requested adjustment, as well as documentation evidencing timely and full deposit into escrow prior to a request for adjustment; and any legal argument or analysis in support of the requested adjustment. The NPM shall submit a proposed calculation of the annual deposit due, a proposed calculation of the refund amount and a draft letter of instructions to the Escrow Agent concerning the proposed refund. To document its national unit sales, the NPM shall include copies of the NPM's bi-monthly Excise Tax Returns filed with the U.S. Treasury, Tobacco Tax Bureau (TTB), formerly the Bureau of Alcohol, Tobacco & Firearms (BATF). To document its unit sales in California (as measured by excises taxes paid), the NPM shall include copies of filed California excise tax returns for its tobacco products or arrange for equivalent excise tax payment documentation from the State of California.

The State may request such further information as is required in light of the specific facts, including, but not limited to, information on compliance with the Reserve Fund Statute ~~reserve fund requirements~~ and the basis for any adjustment requested.

~~(d) Data to Be Used~~

~~Requests for adjustments to escrow must use the most recent data available for the Original Participating Manufacturers' (OPM) aggregate percentage of the total market and total payment due from the OPMs. The only data which will be accepted in such submittals is the data provided to the State from the Independent Auditor under the MSA. An NPM submitting a request for an adjustment to escrow may obtain this information from the State.~~

~~(e) Preliminary requests for review~~

~~Preliminary requests for releases from escrow may be submitted for review and consideration by the Board and the Attorney General. Preliminary requests for release must satisfy all the requirements for requests for adjustments to escrow, including but not limited to the timeliness, forms, content, data and documentation requirements in these regulations. The NPM is responsible for ensuring that all information and documentation necessary for a determination is provided. If all the foregoing requirements are satisfied and all the required information and documentation is provided, and the Attorney General makes a determination on a preliminary request for a release from escrow before the initial escrow payment is made, the Attorney General shall authorize an adjustment to escrow consistent with that determination as soon as practicable within thirty (30) days of the receipt of confirmation of the escrow deposit to the Board and the Attorney General. The Attorney General shall notify the submitting manufacturer by April 1st if the determination of a preliminary request for release from escrow will not be made by April 15th. All correspondence regarding this section shall be sent to Office of the Attorney General, Tobacco Unit, 1300 I Street, Suite 125, Sacramento, CA 95814.~~

~~(f) Independent review~~

~~The Board and the Attorney General may initiate an adjustment to escrow should additional facts become available during the three-year period after the initial deposit was due for the relevant year of sales showing that the escrow amount paid or escrow amount released was incorrect. Bases for adjustment include, but are not limited to, new information showing inaccurate reporting of the number of units or a change in the OPM market share or any other failure by the NPM to comply with these regulations or Health and Safety Code sections 104555, 104556 and 104557.~~

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code; Sections 11110-11113, Government Code; Section 104557(c), Health and Safety Code; and Article 5, Section 13 of the California Constitution. Reference: Section 30165.1(a), Revenue and Taxation Code; and Sections 104556 and 104557, Health and Safety Code.

§ 999.15. Notice of Decision on Requests for Release.

(a) ~~Except as provided in subsection (f) of 999.14, a~~ A request for an adjustment of escrow account will be decided within sixty (60) days of the submission of all of the information necessary for its determination. The Attorney General will send a copy of the release determination to the ~~manufacturer~~ Tobacco Product Manufacturer and, if the release request has

been allowed in whole or in part, to the ~~financial institution holding the funds in escrow~~ Escrow Agent.

(b) Decisions to deny escrow release requests in whole or in part must contain (1) a statement of reasons for the denial; and (2) a statement of the means and deadline by which review of the decision may be obtained.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code; Sections 11110-11113, Government Code; Section 104557(c), Health and Safety Code; and Article 5, Section 13 of the California Constitution. Reference: Section 30165.1(a), Revenue and Taxation Code; and Sections 104556 and 104557, Health and Safety Code.

§ 999.16. Certifying for Listing on Directory of Tobacco Product Manufacturers and Brand Families.

(a) ~~Certification Process~~ Tobacco Product Manufacturer Certifications

~~A Tobacco Product Manufacturer~~ shall apply for listing on the California Tobacco Directory ~~established by the Attorney General~~ by submitting a complete, timely and accurate ~~Certification certification~~ with supporting documentation in the manner specified and on forms required by the Attorney General. A Tobacco Product Manufacturer and its Brand Families will not be listed on the Directory, or will be removed from the Directory, if the Tobacco Product Manufacturer or any of its Brand Families are not in full compliance with the terms and requirements of the Reserve Fund Statute, Revenue and Taxation Code section 30165.1 and any regulations adopted pursuant thereto.

~~(1) Timing: No later than April 30, 2004, all Tobacco Product Manufacturers whose Cigarettes are sold in California shall submit a completed CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS-TOB1 Rev. 06/2012, or "Certification"), with supporting documentation as specified. After April 30, 2004, Tobacco Product Manufacturers which intend to sell Cigarettes in California shall complete and submit a Certification and be listed on the Directory prior to any sales in California.~~

~~Thereafter, all Tobacco Product Manufacturers listed on the Directory must execute and submit a Certification with supporting documentation on or before April 30th each year.~~

~~(2) Only Authorized Individuals Can Sign~~

~~All forms required by these regulations shall be signed by an officer or other authorized individual of the Tobacco Product Manufacturer who certifies that the responses and disclosures in the forms are true and accurate and that the individual completing the forms is authorized to bind the Tobacco Product Manufacturer.~~

~~b) Required Documentation: Tobacco Product Manufacturers must complete and submit the following documents with their annual Certification:~~

(1) All Tobacco Product Manufacturers must submit samples of packaging and labeling for all Brand Families and styles, their signed waiver of sovereign immunity pursuant to Section 999.24 and their completed Cigarette Brand Styles Authentication form pursuant to Section 999.29.

(2) Non-Participating Manufacturers (NPMs) must also submit:

(A) ~~CERTIFICATION OF COMPLIANCE AND AFFIDAVIT BY NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER REGARDING DEPOSIT OF RESERVE FUNDS INTO ESCROW (JUS-TOB3 Rev. 02/2011, or "Certification of Compliance").~~ This form is required to comply with California's Reserve Fund Statute (Health and Saf. Code, §§ 104555-104557). ~~The CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS-TOB1 Rev. 06/2012) required by Revenue and Taxation Code section 30165.1 does not replace this form (JUS-TOB3 Rev. 02/2011). Both forms must be filed on or before April 30th of each year, unless the NPM is required by regulation or directed by the Attorney General to submit this form (JUS-TOB3 Rev. 02/2011) more frequently.~~

(B) ~~BRAND FAMILIES UNIT SALES SCHEDULE 1 (JUS-TOB4 Rev. 02/2011, or "Schedule 1").~~ This form is required to comply with California's Reserve Fund Statute.

(C) ~~NOTICE OF APPOINTMENT OF REGISTERED AGENT AND REGISTERED AGENT'S STATEMENT FOR NON-PARTICIPATING MANUFACTURER (JUS-TOB2 Rev. 02/2011):~~ If a non-resident or foreign NPM is not registered to do business in California, the NPM shall complete, sign and file with the Attorney General a NOTICE OF APPOINTMENT OF REGISTERED AGENT AND REGISTERED AGENT'S STATEMENT FOR NON-PARTICIPATING MANUFACTURER (JUS-TOB2 Rev. 02/2011). (See section 999.21 for requirements upon the termination of the appointed agent for service.)

(D) Copies of all current licenses, if any, issued by the Board pursuant to Division 8.6 (commencing with section 22970) of the Business and Professions Code.

(E) If the NPM is a corporation: (1) a current copy of its corporate charter or certificate of corporate existence or incorporation, and; (2) document(s) identifying officers and directors and each person who holds more than ten percent of the stock of such corporation.

(F) If the NPM is a partnership or association, a current copy of its articles of partnership or association, if any, or the certificate of partnership or association where required to be filed by any nation, state, county, or municipality.

(G) Documents filed under the federal Jenkins Act: Copies of all reports, if any, filed with the Board to comply with the Jenkins Act (15 U.S.C. section 375) for sales in the preceding 12 months.

(H) For each Brand Family, a copy of the Federal Trade Commission's written approval of the annual cigarette health warning rotation plan prior to distribution in the United States (15 U.S.C. section 1333).

~~(I) A copy of all certificates of compliance received by the NPM from the U.S. Department of Health and Human Services for the annual ingredient reporting required by the Federal Cigarette Labeling and Advertising Act (15 U.S.C. section 1335a).~~

~~(J) A copy of the NPM's current permit as a manufacturer or importer of tobacco products obtained from the United States Treasury, Tobacco Tax Bureau (TTB), formerly Bureau of Alcohol Tax and Firearms (BATF), pursuant to 26 U.S.C. Chapter 52, and regulations issued thereunder.~~

~~(K) For each Brand Family that is imported into the United States, copies of the following documents:~~

- ~~1. the sworn statement(s) of the original manufacturer that it will timely submit ingredients to the Secretary of Health and Human Services as required by 19 U.S.C. section 1681a.~~
- ~~2. the importer's certificate(s) under penalty of perjury as required by 19 U.S.C. section 1681a regarding the precise format of warnings and the rotation plan for health warnings.~~
- ~~3. the trademark holder's certificate(s) under penalty of perjury that it has not withdrawn consent to import into the United States as required by 19 U.S.C. section 1681a OR the importer's certificate(s) under penalty of perjury that the trademark owner has not withdrawn consent to import into the United States as required by 19 U.S.C. section 1681a.~~

~~(L) Copies of all the following forms completed by their importers as specified in section 999.25:~~

- ~~1. UNITED STATES IMPORTER DECLARATION ACCEPTING JOINT AND SEVERAL LIABILITY (JUS-TOB12 Rev. 02/2011)~~
- ~~2. NOTICE OF APPOINTMENT OF REGISTERED AGENT AND REGISTERED AGENT'S STATEMENT FOR IMPORTER (JUS-TOB13 Rev. 02/2011)~~
- ~~3. All current licenses issued by the Board pursuant to Division 8.6 (commencing with section 22970) of the Business and Professions Code to each United States importer who sell or will sell its cigarettes in California.~~

~~(M) All surety bonds posted as specified in section 999.26.~~

(b) Participating Manufacturers shall complete and submit a PM Certification. The Attorney General's forms in support of a PM's Certification include:

(1) Brand List, JUS-TOB8;

(2) Surety bonds posted, as specified in section 999.26, using a JUS-TOB14;

(3) Waivers of sovereign immunity, as specified in section 999.24, using a JUS-TOB9, JUS-TOB10, or JUS-TOB11.

~~(e) Changes in Ownership or Control Requiring New Certification~~

~~An NPM must submit a new CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS-TOB1 Rev. 06/2012) whenever there are changes in ownership or control, including but not limited to:~~

~~(1) Transfer of Ownership~~

~~Where there is a transfer of ownership of the business (including a change of any member of a partnership or association) of a Tobacco Product Manufacturer, the successor shall submit a new Certification within thirty (30) days after the transfer of ownership occurs.~~

~~(2) Change in Control of Corporation~~

~~Where the issuance, sale, or transfer of the stock of a corporation results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporation shall submit a new Certification within thirty (30) days after the change occurs.~~

~~(3) Fiduciary Successor~~

~~When an administrator, executor, receiver, trustee, assignee, or other fiduciary takes over the business of a Tobacco Product Manufacturer as a continuing operation, such fiduciary shall submit a new Certification within thirty (30) days thereafter.~~

(c) Non-Participating Manufacturers shall complete and submit a NPM Certification, including all additional forms, supporting documentation, and exhibits required by the NPM Certification. The Attorney General forms in support of a NPM's Certification include:

(1) Appointment of Registered Agent for Service, as specified in section 999.21, using JUS-TOB2;

(2) California's Approved Tobacco Escrow Agreement, JUS-TOB6;

(3) CIG-MAP JUS-TOB7, which shall be updated by the NPM for two (2) additional years to update all sales totals, additional deposits of escrow or equity fee, or withdrawals of escrow by April 30 of each year;

(4) Brand List, JUS-TOB8;

(5) Waivers of sovereign immunity, as specified in section 999.24, using a JUS-TOB9, JUS-TOB10, or JUS-TOB11;

(6) Importer forms accepting joint and several liability, as specified in section 999.25, using JUS-TOB12;

(7) Importer forms appointing a registered agent, as specified in section 999.25, using JUS-TOB13;

(8) Surety bonds posted, as specified in section 999.26, using JUS-TOB14.

(d) Timing: Tobacco Product Manufacturers shall complete and submit a certification and be listed on the Directory prior to any sales in California. To remain on the California Tobacco Directory, Tobacco Product Manufacturers shall apply to reestablish their eligibility for listing by submitting a certification to the Office of the Attorney General no later than April 30 of each year.

(e) Only Authorized Individuals Can Sign

All forms required by these regulations shall be signed by an officer or other authorized individual of the Tobacco Product Manufacturer who certifies that the responses and disclosures in the forms are true and accurate and that the individual completing the forms is authorized to bind the Tobacco Product Manufacturer.

(f) Changes in Ownership or Control Requiring New Certification

An NPM must submit a new JUS-TOB5 whenever there are changes in ownership or control, including but not limited to:

(1) Transfer of Ownership

Where there is a transfer of ownership of the business (including a change of any member of a partnership or association) of a Tobacco Product Manufacturer, the successor shall submit a new certification within thirty (30) days after the transfer of ownership occurs.

(2) Change in Control of Corporation

Where the issuance, sale, or transfer of corporation stock results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporation shall submit a new certification within thirty (30) days after the change occurs.

(3) Fiduciary Successor

When an administrator, executor, receiver, trustee, assignee, or other fiduciary takes over the business of a Tobacco Product Manufacturer as a continuing operation, such fiduciary shall submit a new certification within thirty (30) days thereafter.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1(b), 30165.1(e), 30165.1(f) and 30165.1(g), Revenue and Taxation Code.

§ 999.17. Supplemental Certifications.

(a) ~~In those instances in which a supplemental Certification~~ When a supplemental certification is required by Revenue and Taxation Code section 30165.1(b)(1) or section 30165.1(b)(2)(D), a the Tobacco Product Manufacturer shall submit a supplemental ~~CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS TOB1 Rev. 06/2012)~~ CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS TOB1 Rev. 06/2012) certification for listing on the California Tobacco Directory with the Attorney General no later than thirty (30) days prior to the specified changes.

(b) A Tobacco Product Manufacturer shall also submit a supplemental ~~Certification where certification when any of the~~ information in a previously submitted ~~Certification certification~~ or documents submitted along with the previously submitted ~~Certification certification~~ are no longer accurate ~~and or~~ complete. The supplemental ~~CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS TOB1 Rev. 06/2012)~~ CERTIFICATION FOR LISTING ON CALIFORNIA DIRECTORY (JUS TOB1 Rev. 06/2012) certification for listing on the California Tobacco Directory must be submitted no later than thirty (30) days after the information ~~has become~~ became inaccurate or incomplete.

(c) The Tobacco Product Manufacturer shall check the box marked “supplemental” ~~at the top of~~ on the form, enter only the changed information, and sign and date the form.

(d) The failure to timely submit a supplemental ~~Certifications certification~~ may subject the Tobacco Product Manufacturer and its Brand Families to removal from the Directory.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1(b), Revenue and Taxation Code.

§ 999.18. Records Retention by Tobacco Product Manufacturers and Availability for Review, Inspection and Copying.

(a) A Tobacco Product Manufacturer shall retain copies of all documents filed with the Attorney General’s Office in connection with the ~~Certification~~ certification and annual certification process, as well as all documents relied upon in completing documents filed with the Attorney General’s Office, including invoices, calculations and documentation of sales.

(b) Unless required to retain them longer by another law or regulation, ~~A tobacco~~ a Tobacco Product Manufacturer shall maintain all of the documents in one designated location for a minimum of five years and shall make such documents available for review, inspection, and copying upon request of the Attorney General’s Office or ~~the Board~~ CDTFA.

(c) If any Tobacco Product Manufacturer refuses or neglects to retain or make available the foregoing documents for inspection and copying within thirty (30) days of such request, the Tobacco Product Manufacturer and its Brand Families are subject to removal from the Directory until all requested documents are provided or production is waived by the Attorney General.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1~~(b)~~ (g), Revenue and Taxation Code.

§ 999.19. Records Retention by Distributors and Wholesalers and Availability for Review, Inspection, and Copying.

(a) Records Retention

A Wholesaler or Distributor of Cigarettes ~~or tobacco products~~ shall maintain in one designated location the following documents:

(1) Copies of all ~~written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS TOB1 Rev. 06/2012), stamped Certifications of Compliance (JUS TOB3 Rev. 02/2011) or Acknowledgments of Receipt & Review (JUS TOB5 Rev. 04/2004)~~ California Tobacco Directory approval letters, removal notices, or other California Tobacco Directory Notices provided to the Distributor or Wholesaler by a Tobacco Product Manufacturer;

(2) Copies of all ~~requests by the Distributor or Wholesaler for a copy of written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS TOB1 Rev. 06/2012), stamped Certifications of Compliance (JUS TOB3 Rev. 02/2011), or Acknowledgments of Receipt & Review (JUS TOB5 Rev. 04/2004) when not provided by the Tobacco Product Manufacturer;~~

(3) Copies of all ~~reports by the distributor or wholesaler to the Attorney General of the failure of a Tobacco Product Manufacturer to provide copies of written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS TOB1 Rev. 06/2012), stamped Certification of Compliance (JUS TOB3 Rev. 02/2011) or Acknowledgment of Receipt & Review (JUS TOB5 Rev. 04/2004);~~

(4) All sales invoices and receipts issued by a Tobacco Product Manufacturer, Distributor, or Wholesaler, related to the sale of Cigarettes ~~or RYO~~;

(5) Copies of all certifications, reports, notices and documents as identified in Revenue and Taxation Code section 30165.1, subdivisions (g)(1) and (i).

(6) All documents or communications to and from a Tobacco Product Manufacturer regarding its compliance with the Master Settlement Agreement and the Reserve Fund Statute for Cigarettes sold in California.

(7) Copies of all reports of the Cigarette excise taxes or surcharges paid by the Distributor or Wholesaler.

(b) The Distributor or Wholesaler shall maintain all of the foregoing documents in one designated location for a minimum of five (5) years and shall make such documents available for review, inspection and copying upon request of the Attorney General's Office or ~~the Board~~ CDTFA. Any Distributor or Wholesaler who refuses or neglects to retain or make available the foregoing documents for inspection and copying within thirty (30) days of such request, shall be

subject to license suspension, license revocation, and civil and criminal penalties as provided by law.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1(b) and 30165.1(g), Revenue and Taxation Code.

§ 999.20. ~~[Repealed] More Frequent Installment Escrow Deposits for Certain Non-Participating Manufacturers.~~

~~(a) Quarterly or More Frequent Installments and Certifications: When directed by the Attorney General, an NPM shall make quarterly or more frequent deposits into a Qualified Escrow Fund and certify compliance to the Attorney General. Quarterly deposits are due on or before the following dates: April 21, July 20, October 21, and January 21. The NPM shall instruct the financial institution where its Qualified Escrow Fund is maintained to provide quarterly or more frequent reports of all the escrow transactions, including all deposits, withdrawals, or transfers made that quarter. Where the NPM is required to make quarterly or more frequent escrow deposits, the NPM shall also complete and file a Certification of Compliance (JUS-TOB3 Rev. 02/2011) and Schedule 1 (JUS-TOB4 Rev. 02/2011) for each such reporting period.~~

~~(b) Under one or more of the following circumstances, an NPM shall make quarterly deposits and certifications for two years, unless otherwise directed by the Attorney General:~~

~~(1) New NPMs: The NPM did not sell Cigarettes in California in the preceding calendar year or did not make escrow deposits pursuant to the Reserve Fund Statute in the preceding calendar year;~~

~~(2) New Brand Families: The NPM lists a Brand Family on an initial, annual or supplemental Certification or other document, or sells a Brand Family in California which it did not sell in California in the preceding calendar year or did not make escrow deposits pursuant to the Reserve Fund Statute for that Brand Family;~~

~~(3) New Manufacturer: When there is a change in manufacturer (i.e., fabricator) of any brand of Cigarettes;~~

~~(4) Internet, Mail Catalog or other Delivery Sellers: The NPM advertises or sells its Cigarettes or RYO tobacco via the internet or through catalogs and ships them through the mail or other delivery service to California consumers;~~

~~(5) Failure to Timely Comply with Reserve Fund Requirements Before Establishment of California Directory or Anytime Thereafter: The NPM failed to timely comply with California's Reserve Fund Statute prior to the establishment of the Directory, or at any time thereafter;~~

~~(6) NPMs or Brand Families Previously Denied Listing or Removed from Directory: The NPM or Brand Family was previously denied listing or was removed from the Directory for any reason;~~

~~(7) Banned or Enjoined Sales: The NPM is enjoined or banned from selling any tobacco products by court order, state or federal agency ruling or determination or its Brand Family is enjoined from sale in that state by a court of that state, a state agency or a federal court;~~

~~(8) Judgment or Conviction that the NPM Engaged in Unfair Business Practice or Unfair Competition: A state or federal court has entered a judgment finding that the NPM engaged in an unfair business practice or unfair competition;~~

~~(9) Large Sales Volume: The NPM has sold more than 1,600,000 of its Cigarettes in California during any quarter.~~

~~(10) Failure to Timely Submit Forms and Other Documents: The NPM fails to submit and/or complete any required forms, documents, certification, or notices, in a timely manner and/or to the satisfaction of the Attorney General.~~

~~(11) Other: The NPM is directed to make quarterly or more frequent deposits by the Attorney General.~~

~~Note: Authority cited: Section 30165.1(h) and 30165.1(o), Revenue and Taxation Code.
Reference: Section 30165.1(g) and 30165.1(h), Revenue and Taxation Code.~~

§ 999.21. Notice of Appointment or Termination of Agent for Service of Process.

[No changes.]

§ 999.22. Duties and Defenses of California Distributors.

~~(a) Distributor Duties. Every Distributor shall complete and submit a DISTRIBUTOR ELECTRONIC MAIL REGISTRATION (JUS TOB8 Rev. 02/2004) for the purpose of receiving any notifications as may be required by Revenue and Taxation Code section 30165.1 and these regulations. Every Distributor shall also maintain, for a period of five (5) years, and make available to the Attorney General all invoices and documentation of sales and any other information relied upon in reporting to the Attorney General and as further specified in section 999.19.~~

~~(b) Distributor Defenses. In order to have the defense described in Revenue and Taxation Code section 30165.1, subdivision (i)(2), a Distributor shall, at the time of the violation;~~

~~(1) possess a copy of the Attorney General's Office most recent written acknowledgment of receipt of the Certification (JUS TOB1 Rev. 06/2012) certification required as a condition of including the Brand Family on the Directory; and~~

~~(2) have verified that the Brand Family was listed on the Directory; and~~

~~(3) have previously provided its electronic mail (“e-mail”) address to the Attorney General for the purpose of receiving notifications of exclusions or removals from the Directory as required by section 30165.1, subdivision (e)(4), of the Revenue and Taxation Code.~~

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1(e), 30165.1(g) and 30165.1(i), Revenue and Taxation Code.

§ 999.23. Applying for Relisting of Brand Families and Tobacco Product Manufacturers.

If a Tobacco Product Manufacturer ~~or and~~ its Brand Families have been removed from the Directory, the Tobacco Product Manufacturer may apply for relisting by:

(a) complying with all of the ~~Certification~~ certification requirements of 999.16, 999.17, 999.18, ~~999.20~~ and 999.21, and

(b) submitting the following documentation:

(1) Written confirmation from all Distributors to which the Tobacco Product Manufacturer's Cigarettes were sold that the Tobacco Product Manufacturer has reimbursed those Distributors for the cost to the Distributors of the Cigarettes or tobacco product to which the stamp or meter impression was affixed, or the tax paid, during the removal period;

(2) Written confirmation from the ~~escrow agent~~ Escrow Agent of the amounts held on deposit and any other account information required to enable the Attorney General to determine that all escrow deposits required pursuant to Health and Safety Code section 104557 for the Brand Family removed from the Directory have been deposited into a Qualified Escrow Fund; and

(3) Written confirmation that any outstanding final judgments, including interest thereon, for violations of Article 3 (commencing with section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code have been fully satisfied for the Non-Participating Manufacturer and Brand Family removed from the Directory.

Note: Authority cited: Section 30165.1(o), Revenue and Taxation Code. Reference: Section 30165.1~~(b), (c), (f), (g), (h) and (j)~~, Revenue and Taxation Code.

§ 999.24. Waiver of Sovereign Immunity by Manufacturers and Importers.

(a) Every manufacturer and every importer of ~~cigarettes~~ Cigarettes for sale in California must either waive any sovereign immunity defense to enforcement by the Attorney General or ~~the Board of Equalization~~ CDTFA of Division 8.6 (commencing with section 22970) of the Business and Professions Code, sections 104555 to 104557, inclusive, of the Health and Safety Code, Part 13 (commencing with section 30001) of Division 2 of the Revenue and Taxation Code, and regulations adopted to implement those statutes, or file a surety bond conditioned upon the performance by the manufacturer or importer of all its duties and obligations under those laws and regulations. The form and manner of any such waiver of sovereign immunity and surety

bond must be acceptable to the Attorney General. If directed by the Attorney General, the manufacturer or importer shall include with its fully executed waiver a legal opinion from an attorney confirming that the person or persons executing the waiver have the requisite authority to waive the manufacturer's or importer's sovereign immunity defenses and that the waiver is effective and valid under all applicable federal, state, tribal and foreign laws.

(b) Every manufacturer and importer that may potentially assert tribal sovereign immunity defenses, or that is so directed by the Attorney General, shall complete a ~~State of California WAIVER OF TRIBAL SOVEREIGN IMMUNITY BY NATIVE AMERICAN TRIBE (JUS-TOB9 Rev. 10/2011), hereby incorporated by reference,~~ JUS-TOB9 in order to waive sovereign immunity defenses. Manufacturers and importers that may potentially assert tribal sovereign immunity defenses include companies where any of the following is true:

- (1) the business is owned by a Native American tribe;
- (2) the business is chartered by a Native American tribe;
- (3) the business is operated for the benefit of a Native American tribe; or
- (4) the business is an “arm” of a Native American tribe.

(c) Every manufacturer and importer that is directly owned, in whole or majority part, by a state, federal, or any other foreign or domestic governmental organization, or that is so directed by the Attorney General, shall have their government's ambassador to the United States complete a ~~State of California WAIVER OF SOVEREIGN IMMUNITY BY GOVERNMENT OWNED TOBACCO COMPANY (JUS-TOB10 Rev. 10/2011), hereby incorporated by reference~~ JUS-TOB10.

(d) Every manufacturer and importer not described in (b) or (c) above shall complete ~~California's STANDARD WAIVER OF SOVEREIGN IMMUNITY BY TOBACCO MANUFACTURER OR IMPORTER (JUS-TOB11 Rev. 08/2011), hereby incorporated by reference~~ a JUS-TOB11. This includes, but is not limited to, manufacturers and importers that:

- (1) are owned by a member or members of an Indian or native American tribe;
- (2) were formed by one or more members of a tribe;
- (3) were formed under an Indian tribal code; or
- (4) whose premises, including but not limited to, any manufacturing or storage facility of the manufacturer or its affiliate, including any importers, distributors, wholesalers, or retailers who distribute or sell cigarettes made by the manufacturer, are located on an Indian reservation or other Indian country.

(e) ~~Every manufacturer and importer shall complete and attach a CIGARETTE BRAND STYLE AUTHENTICATION INFORMATION (JUS-TOB15 Orig. 02/2011), hereby incorporated by~~

~~reference, as required in section 999.29 to identify precisely the cigarettes or roll-your-own tobacco manufactured or imported and to enable the Attorney General and the Board of Equalization to verify the authenticity of the cigarettes or roll-your-own tobacco.~~
Every Tobacco Product Manufacturer shall complete and attach a JUS-TOB8, as required in section 999.29, to identify all the Cigarettes manufactured in or imported into the United States.

Note: Authority cited: Sections 30165.1(h) and 30165.1(e), Revenue and Taxation Code.
Reference: Sections 22979(a)(3) and 22979(a)(4), Business and Professions Code; and Sections 30165.1(e)(4) and 30165.1(f)(4), Revenue and Taxation Code.

§ 999.25. Declaration of Importer Accepting Strict, Joint and Several Liability.

(a) As a condition for listing on the California ~~tobacco directory~~ Tobacco Directory, every ~~non-participating manufacturer~~ Non-Participating Manufacturer located outside the United States must submit a notarized declaration from each of its importers into the United States of any of its ~~brands~~ Brand Families that the importer accepts joint and several liability with the ~~non-participating manufacturer~~ Non-Participating Manufacturer for all escrow deposits due and for all penalties assessed in accordance with Article 3 (commencing with section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and for payment of all fees, costs, attorney's fees, penalties, and refunds imposed or required under section 30165.1 of the Revenue and Taxation Code, including, but not limited to, all refunds resulting from the removal of the manufacturer or any of its ~~brand families~~ Brand Families from the ~~directory~~ Directory. In the declaration, the importer shall appoint a ~~resident~~ registered agent for service of process in California. Finally, the ~~manufacturer~~ Non-Participating Manufacturer must affirm that it has caused every importer that will sell its cigarettes and tobacco products in this state to obtain and maintain a license as an importer pursuant to Division 8.6 (commencing with section 22970) of the Business and Professions Code.

(b) Every ~~non-participating manufacturer~~ Non-Participating Manufacturer must submit a notarized ~~UNITED STATES IMPORTER DECLARATION ACCEPTING JOINT AND SEVERAL LIABILITY (JUS-TOB12 Rev. 02/2011)~~, hereby ~~incorporated by reference~~, JUS-TOB12, completed and signed by each of its U.S. importers that will sell the manufacturer's ~~cigarettes and tobacco products~~ Cigarettes in California.

(c) Every ~~non-participating manufacturer~~ Non-Participating Manufacturer must submit a notarized ~~NOTICE OF APPOINTMENT OF REGISTERED AGENT AND REGISTERED AGENT'S STATEMENT FORM FOR IMPORTER (JUS-TOB13 Rev. 02/2011)~~ hereby ~~incorporated by reference~~ JUS-TOB13, completed and signed by each of its U.S. ~~importer~~ importers that will sell its ~~cigarettes~~ Cigarettes in California.

(d) Every ~~non-participating manufacturer~~ Non-Participating Manufacturer must submit copies of all current licenses issued by the ~~Board of Equalization~~ CDTFA pursuant to Division 8.6 (commencing with section 22970) of the Business and Professions Code to each of its U.S. importers that sell or will sell its ~~cigarettes and tobacco products~~ Cigarettes in California.

Note: Authority cited: Sections 30165.1(h) and 30165.1(e), Revenue and Taxation Code.
Reference: Sections 30165.1(b)(3)(E) and 30165.1(f)(4), Revenue and Taxation Code.

§ 999.26. Surety Bonds.

(a) ~~Newly qualified NPMs and NPMs that are elevated-risk, as set forth below, must post surety bonds pursuant to Revenue and Taxation Code section 30165.1(c)(4).~~ Surety bonds executed by manufacturers and importers pursuant to Business and Professions Code section 22979 or Revenue and Taxation Code section 30165.1 must be issued by a surety corporation that is authorized to conduct business in this state. Business and Professions Code section 22979 requires manufacturers and importers that chose not to waive sovereign immunity defenses to post a surety bond in lieu of a waiver. ~~Newly qualified and elevated-risk non-participating manufacturers must post surety bonds pursuant to Revenue and Taxation Code section 30165.1(c)(4).~~

(b) A ~~non-participating manufacturer~~ Non-Participating Manufacturer may be deemed to pose an elevated risk of non-compliance if:

(1) The ~~non-participating manufacturer~~ Non-Participating Manufacturer or any affiliate has failed to deposit the full amount due on a tobacco escrow obligation with respect to any state at any time within the past three (3) calendar years unless either of the following occur:

(A) The manufacturer did not underdeposit knowingly or recklessly and the manufacturer promptly cured the underdeposit within 180 days of notice of it; or

(B) The underdeposit or lack of deposit is the subject of a good faith dispute as documented to the satisfaction of the Attorney General and the underdeposit is cured within 180 days of entry of a final order establishing the amount of the required escrow deposit.

(2) Any state has removed the ~~non-participating manufacturer~~ Non-Participating Manufacturer or its brands or ~~brand families~~ Brand Families or brands or ~~brand families~~ Brand Families of an affiliate from the state's tobacco directory for noncompliance with a state tobacco escrow deposit or tobacco tax law within the past three (3) calendar years;

(3) Any state has litigation pending against, or an unsatisfied final judgment against, the ~~non-participating manufacturer~~ Non-Participating Manufacturer or any affiliate for escrow due or for penalties, fees, costs, refunds, or attorney's fees related to noncompliance with state tobacco escrow laws;

(4) The ~~non-participating manufacturer~~ Non-Participating Manufacturer sells its cigarettes or tobacco products directly to consumers via remote or other non-face-to-face means;

(5) A state or federal court has determined that the ~~non-participating manufacturer~~ Non-Participating Manufacturer has violated any tobacco tax or tobacco control law or engaged in unfair business practice or unfair competition;

(6) Any state has suspended or revoked the ~~non-participating manufacturer's~~ Non-Participating Manufacturer's license to engage in any aspect of tobacco business;

(7) Any state or federal court has determined that the ~~non-participating manufacturer~~ Non-Participating Manufacturer has failed to comply with state or federal law imposing marking, labeling, and stamping requirements or requiring information to be affixed to, or contained in, the labels, markings, or packaging; or

(8) The ~~non-participating manufacturer~~ Non-Participating Manufacturer fails to submit or complete any required forms, documents, certification, or notices, in a timely manner or, to the satisfaction of the Attorney General or ~~the State Board of Equalization~~ CDTFA.

(c) Manufacturers and importers shall post the required surety bond by using the ~~CALIFORNIA TOBACCO MANUFACTURER AND IMPORTER SURETY BOND (JUS-TOB14 Rev. 10/2011)~~, hereby incorporated by reference JUS-TOB14. Surety bond forms must also be signed by an attorney-in-fact or by a representative of the bonding company.

(d) Surety bonds must indicate the name of the manufacturer or importer as shown on the license issued by ~~the Board of Equalization~~ CDTFA. For a limited partnership, the names of the general partners and the name of the limited partnership must also be shown. For partnerships, the names of the partners must be shown.

(e) Surety bonds shall be posted by a corporate surety in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of the largest of its most recent five (5) calendar years' sales in California. The bond shall be written in favor of the State of California. The bond may be drawn upon by the Attorney General to cover unsatisfied escrow obligations, tax obligations, claims for penalties, claims for monetary damages, and any other liabilities that are subject to the licensee's claim of sovereign immunity against enforcement of the laws specified above.

Note: Authority cited: Sections 30165.1(h) and 30165.1(e), Revenue and Taxation Code; Section 11110, Government Code. Reference: Section 22979(a)(4), Business and Professions Code; and Sections 30165.1(e)(4)(B) and 30165.1(e)(4)(C)(iv), Revenue and Taxation Code.

§ 999.29. Cigarette Brand Styles Authentication Information for New Brand Styles and As Directed by the Attorney General.

(a) ~~As a condition for listing on the California tobacco directory, a tobacco product manufacturer shall complete and submit a CIGARETTE BRAND STYLE AUTHENTICATION (JUS-TOB15 Orig.02/2011) along with samples of the packaging for any new or revised, updated, or changed brand style the tobacco product manufacturer intends to be sold in California and whenever the manufacturer is directed by the Attorney General to do so. A revised, updated, or changed brand style includes, but is not limited to, any changes to the packaging, labeling, carton UPC Codes, pack UPC Codes or markings. A tobacco product manufacturer and its brand families will be~~

~~removed from the California tobacco directory if the manufacturer fails to complete and submit, as ordered by the Attorney General, a CIGARETTE BRAND STYLE AUTHENTICATION INFORMATION (JUS-TOB15 Orig. 02/2011), to the satisfaction of the Attorney General within 30 days of the request.~~ As a condition for listing on the California Tobacco Directory, a Tobacco Product Manufacturer shall complete and submit a JUS-TOB8. Tobacco Product Manufacturers shall also complete and submit a supplemental JUS-TOB8 when any of the information in a previously submitted JUS-TOB8 is no longer accurate or complete. The supplemental JUS-TOB8 must be submitted no later than thirty (30) days after the information became inaccurate or incomplete. The failure to complete and submit the form as directed by the Attorney General shall constitute a refusal to produce a document or other evidence, without good cause, under Revenue and Taxation Code section 30165.1(q)(2).

(b) A ~~manufacturer submitting a CIGARETTE BRAND STYLE AUTHENTICATION (JUS-TOB15 Orig. 02/2011)~~ Tobacco Product Manufacturer submitting a JUS-TOB8 pursuant to this rule shall also file a supplemental certification pursuant to section 999.17.

Note: Authority cited: Sections 30165.1(h) and 30165.1(e), Revenue and Taxation Code.
Reference: Sections 30165.1(g)(4) and 30165.1(q)(2), Revenue and Taxation Code.