ATTORNEY GENERAL REGULATIONS
NON-PARTICIPATING TOBACCO MANUFACTURER'S RESERVE FUND FOR SMOKING-RELATED ILLNESS AND OTHER LIABILITIES

Chapter 16 is added to Title 11 of the California Code of Regulations

Chapter 16.

Attorney General Regulations Under Master Settlement Agreement with Tobacco Product Manufacturers and Non-Participating Tobacco Product Manufacturer Law (Health and Safety Code sections 104555 - 104557)

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 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 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 999.23 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 his 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 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 999.23 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).

(3) "Cigarette" shall have the same meaning as in Health and Safety Code section 104556 (d).

(4) "Distributor" shall have the same meaning as in Revenue and Taxation Code section 30011.

(5) "Non-participating tobacco product manufacturer (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 as that term is defined in Section II(jj) of the Master Settlement Agreement (MSA) or has become a participating manufacturer but does not generally perform its financial obligations under the MSA.

(6) "Original Participating Manufacturer (OPM)" mean the companies specified in section II(hh) of the MSA which are generally performing their obligations under the MSA.

(7) "Qualified Escrow Fund" shall have the same meaning as in Health and Safety Code section 104556(f).

(8) "Reserve Fund Statute" means Chapter 1 of Part 3 of Division 103 of the Health and Safety Code (sections 104555-104557).

(9) "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.

(10) "Tobacco Product Manufacturer" shall have the same meaning as in Health & Safety Code section 104556(i).

(11) "Units sold" means the number of individual Cigarettes, including the amount of "Roll-your-own" tobacco (.09 ounces of "roll-your own" constitutes one Cigarette) sold in California by a Non-Participating 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 State Board of Equalization on Cigarette packs or "Roll-your-own" tobacco containers.

(12) "Wholesaler" shall have the same meaning as in Revenue and Taxation Code section 30016.

(c) Confirmation of Compliance with Reserve Fund Requirements

(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. 3/04) 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.

(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. 4/04), 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. 4/04) 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. 3/04). The filed Acknowledgment of Receipt & Review (JUS-TOB5 rev. 4/04) 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.

(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 deemed appropriate 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.

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

999.11 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. 3/04). 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. 3/04) 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 (JUS-TOB4 rev. 2/04, or "Schedule 1") must be completed and attached to the completed Certificate of Compliance.

Authority: Revenue and Taxation Code Section 30165.1(o), Government Code sections 11110 - 11113, Health and Safety Code Section 104557(c) and Article 5, Section 13 of the California Constitution

Reference: Revenue and Taxation Code Section 30165.1(a), Health and Safety Code section 104557(c)

999.12 Escrow Agreement for Non-Participating Manufacturer

(a) Health and Safety Code section 104556(f) establishes the following conditions for the escrow accounts to be established by a NPM:

(1) The financial institution may not be affiliated with any Tobacco Product Manufacturer and must have assets of at least $1,000,000,000.

(2) The escrow agreement must require that the financial institution hold the escrowed funds' principal for the benefit of the State of California and other releasing parties under the MSA; and,

(3) The escrow agreement must also state that the company is prohibited from accessing or directing the use of the funds' principal inconsistent with Health and Safety Code section 104557.

(b) These provisions shall be included in the escrow agreement even when the Attorney General approves an escrow agreement that deviates the ESCROW AGREEMENT (JUS-TOB6 rev. 2/04.)

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

999.13. Escrow Agreement Form

(a) All NPMs with Cigarette or Roll-your-own sales in the State must make deposits into a Qualified Escrow Fund. California's ESCROW AGREEMENT (Form JUS-TOB6 rev. 2/04) must be used in connection with establishing a Qualified Escrow Fund. After January 1, 2004, all NPMs, including those NPMs who have already established an escrow agreement, must execute an ESCROW AGREEMENT (JUS-TOB6 rev. 2/04.) No deviation from the Escrow Agreement (JUS-TOB6 rev. 2/04) shall be permitted without the prior written approval of the Attorney General. In the event that a deviation is approved, the proposed escrow agreement shall include each of the following provisions:

(1) The escrow agent shall provide 30 days' written notice to the Attorney General prior to any release of funds from the escrow to pay a judgment or settlement and allow the Attorney General or the Board to object to the release.

(2) The objection of the Attorney General or the Board must be resolved under applicable state law, procedures, and remedies before any funds are released.

(3) Requests for refund of "excess" deposits by the NPMs pursuant to Health and Safety Code section 104557(b)(2), if disputed by the State, are to be determined by a court of competent jurisdiction. Section 104557(b)(2) allows a refund if the NPM demonstrates that the escrow deposits exceed what the manufacturer would have been required to make had it been a participating manufacturer under the MSA.

(4) The escrow agent shall notify the Attorney General of the first deposit, provide a copy of the escrow agreement, all relevant instructions from the NPM and the amount of deposit made.

(5) Except when more frequent escrow deposits and certifications are required by 999.20 or directed by the Attorney General, each year after the initial year, the escrow agent shall notify the Attorney General of the amount of deposit made by the NPM.

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

999.14 Escrow Adjustments and Release Requests

(a) Introduction; grounds

The Reserve Fund Statute authorizes the release of funds from escrow only under certain circumstances. Section 104557(b)(2) 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 paid pursuant to Health & Safety Code sections 104555-104557, including balances due for payment, 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. (See Code Civ. Proc., §338(a)(c).)

(c) Form and contents of request

To be eligible for consideration, a request for an adjustment by an NPM 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. 3/04) or timely filed Acknowledgment of Receipt & Review (JUS-TOB5 rev.4/04), a timely filed Schedule 1 (JUS-TOB4 rev. 2/04), an Escrow Agreement (JUS-TOB6 rev. 2/04) 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.

(2) An affidavit, signed by the executive officer of the manufacturer responsible for escrow compliance, setting forth the officer's authority to bind and act on behalf of the manufacturer 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,

(4) 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 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 payment 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.

(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.

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

999.15 Notice of Decision on Requests for Release

(a) Except as provided in subsection (f) of 999.14, 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 and, if the release request has been allowed in whole or in part, to the financial institution holding the funds in escrow.

(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.

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

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

(a) Certification Process A Tobacco Product Manufacturer shall apply for listing on the Directory established by the Attorney General by submitting a complete, timely and accurate 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.3/04, 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.

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

(A) CERTIFICATION OF COMPLIANCE AND AFFIDAVIT BY NON-PARTICIPATING MANUFACUTURER REGARDING DEPOSIT OF RESERVE FUNDS INTO ESCROW (JUS-TOB3 rev. 3/04, or "Certification of Compliance"): This form is required to comply with California's Reserve Fund Statute (Health and Saf. Code, §§ 104555-104557). The Certification (JUS-TOB1 rev. 3/04) required by Revenue and Taxation Code section 30165.1 does not replace this form (JUS-TOB3 rev. 3/04). 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. 3/04) more frequently.

(B) BRAND FAMILIES UNIT SALES SCHEDULE 1 (JUS-TOB4 rev. 2/04, 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 (JUS-TOB2 rev. 2/04): 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 (JUS-TOB2 rev. 2/04). (See 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. 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. 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.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. 1681a.

2. the importer's certificate(s) under penalty of perjury as required by 19 U.S.C. 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. 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. 1681a.

(c) Changes in Ownership or Control Requiring New Certification An NPM must submit a new Certification (JUS-TOB1 rev. 3/04) 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.
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> **(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.
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> **(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.

Authority: Revenue and Taxation Code Section 30165.1(o).
Reference: Revenue and Taxation Code Section 30165.1, subdivisions (b), (c), (f) and (g).)

999.17. Supplemental Certifications

(a) In those instances in which a supplemental Certification is required by Revenue and Taxation Code section 30165.1(b)(1) or section 30165.1(b)(2)(D), a Tobacco Product Manufacturer shall submit a supplemental Certification (JUS-TOB1 rev. 3/04) 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 information in a previously submitted Certification is no longer accurate and complete. The supplemental Certification (JUS-TOB1 rev. 3/04) must be submitted no later than thirty (30) days after the information has become inaccurate or incomplete.

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

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

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

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 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) 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.

(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.

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

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. 3/04), stamped Certifications of Compliance (JUS-TOB3 rev. 3/04) or Acknowledgments of Receipt & Review (JUS-TOB5 rev. 4/04) 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. 3/04), stamped Certifications of Compliance (JUS-TOB3 rev. 3/04), or Acknowledgments of Receipt & Review (JUS-TOB5 rev. 4/04) 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. 3/04), stamped Certification of Compliance (JUS-TOB3 rev. 3/04) or Acknowledgment of Receipt & Review (JUS-TOB5 rev. 4/04);

(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 years and shall make such documents available for review, inspection and copying upon request of the Attorney General's Office or the Board. 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.

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

999.20 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. 3/04) and Schedule 1 (JUS-TOB4 rev. 2/04) 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.

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

999.21 Notices of Appointment or Termination of Agent for Service of Process

(a) Every non-resident or foreign NPM that has not registered to do business in California must appoint and continuously engage the services of a California registered agent to receive service of process on behalf of the NPM and submit proof of the appointment and availability of the agent to the Attorney General by completing and filing a NOTICE OF APPOINTMENT OF REGISTERED AGENT AND REGISTERED AGENT'S STATEMENT (JUS-TOB2 rev. 2/04).

(b) A non-resident or foreign NPM shall provide at least thirty (30) days notice prior to termination of the appointment *by the NPM* of its resident agent for service of process in California by completing and filing with the Attorney General a notice of the termination of the agent (JUS-TOB2 rev. 2/04). The NPM shall further provide proof of the appointment of a new agent at least 5 days before termination by the NPM of the existing appointment (JUS-TOB2 rev. 2/04).

(c) In the event the designated agent for service terminates its agency relationship with the NPM, the non-resident NPM shall provide notice to the Attorney General of the termination within five days of receiving notice of the termination and shall ~~also provide~~ *include with such notice* proof of the appointment of a new service agent by completing and filing a notice of the termination for service of process and appointment of new service agent (JUS-TOB2 rev. 2/04).

Authority: Revenue and Taxation Code Section 30165.1(o). Reference: Revenue and Taxation Code Section 30165.1(f).

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. 2/04) 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 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 999.19.

(b) Distributor Defenses. In order to have the defense described in Revenue and Taxation Code section 30165.1(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. 3/04) required as a condition of including the Brand Family on the Directory;
>
> (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(c)(4).

Authority: Revenue and Taxation Code Section 30165.1(o).
Reference: Revenue and Taxation Code Section 30165.1, subdivisions (c), (g), and (i).

999.23 Applying for Relisting of Brand Families and Tobacco Product Manufacturers

If a Tobacco Product Manufacturer 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 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 *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.

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