

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 16. MASTER SETTLEMENT AGREEMENT, TOBACCO
CHAPTER 16.5 FIRE STANDARD COMPLIANT CIGARETTES**

TEXT OF PROPOSED REGULATIONS

§ 999.10. Compliance with Reserve Fund Requirements by Non-Participating Tobacco Product Manufacturers.

... (Omitting subsection (a))

(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) “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.
- (6) “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.
- (8) “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. 02/2023), 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. 02/2023), 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” 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 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.

(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.

(31) “Participating Manufacturer” or “PM” has the same meaning as in Revenue and Taxation Code section 30165.1(a)(7) and section II(ii) of the MSA.

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

(33) “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).

(36) “Reserve Fund Statute” means Chapter 1 of Part 3 of Division 103 of the Health and

Safety Code (sections 104555-104557).

(37) “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.

(38) “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.

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

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

... (Omitting subsection (c))

Note: Authority cited: Section 30165.1, Revenue and Taxation Code; Sections 11110, [11111](#), [11112](#), and- 11113, Government Code; Section 104557, Health and Safety Code; and Article V, Section 13 of the California Constitution. Reference: Section 30165.1, Revenue and Taxation Code; and Sections 104555, 104556 and 104557, Health and Safety Code.

§ 999.12. Escrow Agreement for Non-Participating Manufacturer.

(a) This regulation applies to Non-Participating Manufacturers (NPMs) whose cigarettes or roll-your-own tobacco (“RYO”) are sold to consumers within the State, NPMs that previously sold cigarettes or RYO to consumers within the State and must maintain escrow principal for the benefit of the State of California and other releasing parties under the MSA pursuant to Health and Safety Code sections 104555-104557, and the financial institutions that serve as escrow agents for NPMs with tobacco escrow accounts for the benefit of the State. The capitalized terms in this section have the same meaning as defined in Approved Tobacco Escrow Agreement, JUS-TOB6 Rev. 02/2023, which is incorporated by reference.

(b) Pursuant to Health and Safety Code section 104557, any NPM that has sold cigarettes or RYO to consumers within the State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall establish, fund, and continue to maintain a qualified escrow account with a qualified escrow agent in full compliance with Health and Safety Code sections 104555-104557, Revenue and Taxation Code section 30165.1, Approved Tobacco Escrow Agreement, JUS-TOB6 Rev. 02/2023, and all other applicable state and federal laws and regulations.

(c) All NPMs that sell cigarettes or RYO to consumers within the State, NPMs that previously sold cigarettes or RYO to consumers in the State and must maintain escrow principal for the benefit of the State and other releasing parties under the MSA pursuant to Health and Safety

Code sections 104555-104557, and their escrow agents shall execute and fully comply with the terms and conditions of Approved Tobacco Escrow Agreement, JUS-TOB6 Rev. 02/2023. Other than filling blank spaces and checking boxes, no deviation, amendments, or other changes to the agreement shall be permitted without the prior written approval of the Attorney General.

If the escrow agent: (1) establishes to the Attorney General's satisfaction that the NPM abandoned its escrow account (factors that the Attorney General will consider in determining whether the escrow account has been abandoned include, but are not limited to: (A) the duration of time without communication from the NPM, (B) whether the NPM has unpaid fees or costs, (C) the amount of unpaid fees or costs, and/or (D) the escrow agent's effort to communicate with the NPM); and (2) resigns as the escrow agent, the escrow agent may continue to service the escrow account under a tobacco escrow agreement previously approved by the Department prior to the NPM's abandonment of the escrow account.

(d) Any NPM with less than one million dollars (\$1,000,000) of Qualified Escrow Fund Principal on deposit for the benefit of the State shall execute Attachment C to Approved Tobacco Escrow Agreement, JUS-TOB6 Rev. 02/2023.

... (Omitting subsection (e))

Note: Authority cited: Section 30165.1, Revenue and Taxation Code; Sections 11110, [11111](#), [11112](#), and- 11113, Government Code; Section 104557, Health and Safety Code; and Article V, Section 13 of the California Constitution. Reference: Section 30165.1, Revenue and Taxation Code; and Sections 104556 and 104557, Health and Safety Code.

CHAPTER 16.5 FIRE STANDARD COMPLIANT CIGARETTES

999.30 Fire Standard Compliant Act

(a) Definitions

The following definitions apply to this section.

(1) "FSC Cigarette(s)" shall have the same meaning as cigarette in Health and Safety Code section 14950(b)(1). FSC Cigarettes do not include Roll-Your-Own tobacco as defined in section 999.10, subdivision (b)(37).

(2) "FSC Manufacturer" shall have the same meaning as manufacturer in Health and Safety Code section 14950(b)(4).

(3) "FSC Mark(ed)" and "FSC Marking" shall mean FSC Cigarettes marked in accordance with section 14954 of the Health and Safety Code.

(4) "FSC Test(ed)" and "FSC Testing" shall mean FSC Cigarettes that satisfy the testing requirements of section 14952 of the Health and Safety Code.

(5) “JUS-TOB8” means the Brand List form (JUS-TOB8, Rev. 02/2023), which is hereby incorporated by reference.

(6) “JUS-TOB15” means the California Fire Standard Compliant Certification (JUS-TOB15, Orig. 02/2023) form, which is hereby incorporated by reference.

(b) FSC Act Certification

(1) FSC Manufacturers shall submit their FSC Act certifications to the Department using the JUS-TOB15 and JUS-TOB8 forms. On the JUS-TOB15 form, FSC Manufacturers shall accurately attest whether the FSC Cigarettes they are certifying are fabricated, FSC Tested, and FSC Marked in accordance with the FSC Act. FSC Manufacturers shall attach a JUS-TOB8 form that identifies the FSC Cigarette brand styles certified by populating columns E, F, and P through V of the JUS-TOB8.

(2) JUS-TOB8 forms submitted to the Department for California Tobacco Directory certifications shall also populate columns P through V of form JUS-TOB8 to confirm FSC Act Compliance.

(3) Designation of off-Directory brands certified under the FSC Act: In Part IV.A of the JUS-TOB15 form, the FSC Manufacturer’s FSC Act certifications shall designate whether they are currently listed on the California Tobacco Directory, as defined by section 999.10(b)(3). In Parts IV.B and IV.C of the JUS-TOB15 form, FSC Manufacturers shall identify any off-Directory FSC Cigarettes being certified under the FSC Act by marking both the JUS-TOB15 form and identifying all of the off-Directory brand styles being FSC Certified to the Department with an “X” in column D of the attached JUS-TOB8.

(4) FSC Manufacturers may email their FSC certifications to tobacco@doj.ca.gov or mail them to the Tobacco Unit, Office of the Attorney General, P. O. Box 944255, Sacramento, CA 94244-2550.

(5) Record retention: FSC Manufacturers shall keep, maintain, and send to the Department upon request all FSC Testing reports and data in support of their FSC certifications for three years after each certification to the Department.

(c) FSC Certification Timing

(1) Before FSC Cigarettes are sold, possessed for sale, or offered for sale in California, FSC Manufactures shall certify to the Department attesting that each brand style of FSC Cigarette sold in California has been FSC Tested, FSC Marked, and meets the performance standard set forth in Health and Safety Code section 14952(b).

(2) FSC Certifications expire after three years and must be recertified to the Department.

(3) FSC Test results expire after four years and must be resubmitted to the Department.

Note: Authority cited: Sections 14950, 14951, 14952, 14953, 14954, 14955, 14956, 14957, 14958, and 14959, Health and Safety Code; Section 30165.1, Revenue and Taxation Code.
Reference: Sections 14950, 14951, 14952, 14953, 14954, 14955, 14956, 14957, 14958, and 14959, Health and Safety Code; Section 30165.1, Revenue and Taxation Code.