

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 11. LAW**  
**DIVISION 1. ATTORNEY GENERAL**  
**CHAPTER 16. ATTORNEY GENERAL REGULATIONS UNDER**  
**MASTER SETTLEMENT AGREEMENT**  
**WITH TOBACCO PRODUCT MANUFACTURERS**  
**AND NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER LAW**  
**(HEALTH & 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**

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(c) Confirmation of Compliance with Reserve Fund Requirements

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- (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.

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## 999.14 Escrow Adjustments and Release Requests

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### (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. 02/2011) or timely filed Acknowledgment of Receipt & Review (JUS-TOB5 Rev. 02/2011), a timely filed Schedule 1 (JUS-TOB4 Rev. 02/2011), an Escrow Agreement (JUS-TOB6 ~~R~~ 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.

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

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### (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, any documents providing reasonable assurances pursuant to Section 999.27 if the manufacturer or its importers engage in delivery sales, and their completed Cigarette Brand Styles Authentication form pursuant to Section 999.29.
- (2) Non-Participating Manufacturers (NPMs) must also submit:

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

1. ~~T~~he 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. ~~T~~he 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. ~~T~~he 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.

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### **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. 09/2010), stamped Certifications of Compliance (JUS-TOB3 Rev. 02/2011) or Acknowledgments of Receipt & Review (JUS-TOB5 ~~f~~[Rev. 04/2004](#)) 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. 09/2010), stamped Certifications of Compliance (JUS-TOB3 ~~f~~[Rev. 03/2004](#)), or Acknowledgments of Receipt & Review (JUS-TOB5 ~~f~~[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. 09/2010), stamped Certification of Compliance (JUS-TOB3 Rev. 02/2011) or Acknowledgment of Receipt & Review (JUS-TOB5 ~~f~~[Rev. 04/2004](#));

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### **999.22 Duties and Defenses of California Distributors**

- (a) Distributor Duties. Every Distributor shall complete and submit a DISTRIBUTOR ELECTRONIC MAIL REGISTRATION (JUS-TOB8 ~~f~~[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 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. ~~029/2014~~<sup>0</sup>) required as a condition of including the Brand Family on the Directory;

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#### 999.24 Waiver of Sovereign Immunity by Manufacturers and Importers

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- (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. ~~0210/2011~~), hereby incorporated by reference, 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~~ [the owner or operator is a native](#) [Native](#) American tribe;
  - (2) the ~~business is chartered by a Native~~ [owner or operator is a business enterprise of a native](#) American tribe;
  - (3) the business ~~is operated for the benefit of a Native American tribe~~ [was formed by a tribe pursuant to its constitution or laws; or](#)
  - (4) the business ~~or any of its owners have asserted tribal sovereign immunity defenses in any other court or administrative actions brought by private individuals, state or federal officers or agencies, or any other foreign or domestic governmental entities~~ [is an "arm" of a Native American tribe.](#)
- (c) Every manufacturer ~~located outside of the United States and every manufacturer~~ and importer that is [directly](#) owned, [in whole or majority](#) ~~in any~~ 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 ~~OrigRev.~~ 0210/2011), hereby incorporated by reference.

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### **999.26 Surety Bonds**

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(c) Manufacturers and importers shall post the required surety bond by using the CALIFORNIA TOBACCO MANUFACTURER AND IMPORTER SURETY BOND (JUS-TOB14 Rev. 0210/2011), hereby incorporated by reference. Surety bond forms must also be signed by an attorney-in-fact or by a representative of the bonding company.

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(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 ~~and shall be conditioned on the performance by the non-participating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance, in accordance with subparagraph (E) of paragraph (3) of subdivision (b) of section 30165.1 of the Revenue and Taxation Code, of all its duties and obligations under this section and Article 3 (commencing with section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and payment of all state taxes for the sale or distribution of cigarettes and tobacco products in this state during the year in which the certification is filed in the next succeeding calendar year.~~ 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.

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### **999.27 Reasonable Assurances of Compliance & Compliance by Delivery Sellers**

(a) Reasonable Assurances of Compliance by Manufacturers and Importers:

Pursuant to Revenue and Taxation Code section 30165.1(c)(2)(E), neither a manufacturer nor a brand family will be included or retained on the California tobacco directory if the manufacturer or its importer engages in delivery sales and fails to provide reasonable assurances to the Attorney General that the delivery seller has complied with all the federal and state laws specified in (b), below, including all tax-stamping, marking and labeling requirements and any other state laws applicable to the sale and distribution of tobacco products. Reasonable assurances include, but are not limited to:

- (1) voluntarily providing a surety bond that guarantees compliance with all the federal and state laws specified in subdivision (b), below ~~meets or exceeds the terms of the surety bond specified in 999.26, above~~;

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