

Title 11, Division 1, Chapter 16

Proposed Text

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.)~~

(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. 5/2019), 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. 5/2019), 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. 5/2019). 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. 5/2019).

(e) All disputes regarding Health and Safety Code sections 104555-104557 or compliance with any tobacco escrow agreement approved by the Department, including but not limited to a request for a release pursuant to Health and Safety Code section 104557(b)(2) that is disputed by the State, shall be determined by a court of competent jurisdiction.

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(f) and 104557, Health and Safety Code.

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.~~

~~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(o), Revenue and Taxation Code; and Sections 104556 and 104557, Health and Safety Code.~~