

**DEPARTMENT OF JUSTICE  
REGULATIONS TO IMPLEMENT  
BUSINESS AND PROFESSIONS CODE SECTION 22979,  
HEALTH AND SAFETY CODE SECTIONS 104555-104557, AND  
REVENUE AND TAXATION CODE SECTION 30165.1  
INITIAL STATEMENT OF REASONS**

Pursuant to section 11349.1(a)(1) of the Government Code, the Department of Justice (Department) provides this initial statement of reasons for regulations amending section 22979 of the Business and Professions Code (licensing act), sections 104555-104557 of the Health and Safety Code (reserve fund statute), and section 30165.1 of the Revenue and Taxation Code (tobacco directory law), as added by Assembly Bill AB 2496 (Statutes 2010 Chapter 265, effective January 1, 2011.)

AB 2496 (Stats. 2010, ch. 265) enhances and cleans up the reserve fund statute and the tobacco directory law to provide additional enforcement tools to the state of California by, among other things, requiring manufacturers and importers to consent to the jurisdiction of the California courts for the purpose of enforcement of the reserve fund statute and the tobacco directory law. AB 2496 also provides that all manufacturers and importers shall obtain and maintain a license to engage in the sale of cigarettes in California, and that manufacturers must be licensed in order to be listed on the California Tobacco Directory.

AB 2496 amended section 22979 of the Business and Professions Code to provide that to be eligible for obtaining and maintaining a license, manufacturers and importers must waive any sovereign immunity defense that may apply to any enforcement of the licensing act, the reserve fund statute, and the tobacco directory law. In lieu of waiving sovereign immunity, a manufacturer or importer may post a surety bond. Section 22979, as amended, provides that waivers of sovereign immunity and surety bonds must be in a form and manner acceptable to the Attorney General.

The Legislature determined in enacting AB 2496 that “it is the policy of the state to require that cigarettes and tobacco products be sold at prices that reflect the payment of all state taxes, fees, payments, and deposits required by law on sales of cigarettes and tobacco products in this state in order to prevent the public health hazard posed by cheap cigarettes and tobacco products, especially to our youth.” The regulations are necessary to effectuate these public health purposes. The regulations are also necessary because they establish the form and manner for compliance with the requirements of AB 2496. The Department cannot require manufacturers on, or applying to be on, the California Tobacco Directory to fill-out and submit the required forms unless these regulations are implemented.

**SECTION BY SECTION EXPLANATION**

Sections 999.10, 999.11, 999.14, 999.19, 999.20, 999.21 and 999.22 were added to this action solely for the purpose of updating the date of revision and/or title of the incorporation by reference forms contained therein.

Section 999.16, which lists required documentation as part of the certification process for listing on the California Tobacco Directory, was updated to provide that every manufacturer waive sovereign immunity as set forth in Section 999.24 pursuant to Business and Professions Code section 22979, subdivision (a)(4), provide reasonable assurance of compliance with specified state and federal law documents if the manufacturer or any of its importers engages in delivery sales as set forth in Section 999.27 pursuant to Revenue and Taxation Code section 30165.1, subdivision (c)(2)(E), and complete a Cigarette Brand Styles Authentication form as set forth in Section 999.29 pursuant to Revenue and Taxation Code section 30165.1, subdivision (g)(4). Section 999.16 was also updated to provide that every importer for a non-participating manufacturer located outside the United States must accept joint and several liability with the non-participating manufacturer, appoint a resident agent for service of process in California pursuant to Revenue and Taxation Code section 30165.1, subdivisions (b)(3)(E) and (f), and obtain and maintain a license to engage in the sale of cigarettes pursuant to Business and Professions Code section 22970 et seq. In addition, this section was updated pursuant to provide that a non-participating manufacturer may be required to post a surety bond as specified in Section 999.26 pursuant to Business and Professions Code section 22979, subdivision (a)(4) and Revenue and Taxation Code section 30165.1, subdivisions (c)(2)(E) and (c)(4)(B), and provide reasonable assurances as specified in Section 999.28 pursuant to Revenue and Taxation Code section 30165.1, subdivision (c)(2)(C). Additional non-substantive edits were made to this section solely for the purpose of updating the title and date of revision of the additional incorporation by reference forms contained therein.

Section 999.17, which lists the conditions under which a tobacco product manufacturer must provide supplemental certifications to the Department, is amended to require manufacturers to submit a supplemental certification when documents submitted along with a previously submitted certification are no longer accurate and complete pursuant to Revenue and Taxation Code section 30165.1, subdivision (b)(1). Additional non-substantive edits were made to this section solely for the purpose of updating the date of revision of the incorporation by reference forms contained therein.

Section 999.24 establishes the form and manner for manufacturers and importers to waive sovereign immunity and consent to the jurisdiction of the California courts for purposes of licensure by the Board of Equalization, as required by subdivision (a)(4) of section 22979 of the Business and Professions Code. The form and manner of waiver of sovereign immunity, as set forth in the incorporation by reference forms contained therein, were established after review of California and federal statutes and case law regarding the scope of foreign government and tribal sovereign immunity, including the Foreign Sovereign Immunities Act, 28 U.S.C. sections 1602 et seq., and *Dole Food Company v. Patrickson*, 538 U.S. 468 (2003). The Attorney General determined that three sovereign immunity forms, incorporated therein by reference, were reasonable and necessary to accommodate the unique scope of tribal sovereign immunity,

foreign government sovereign immunity, and any other form of sovereign immunity. This section was also established pursuant to Revenue and Taxation Code section 30165.1, subdivision (g)(4), to require manufacturers or importers to complete a Cigarette Brand Styles Authentication form as set forth in Section 999.29.

Section 999.25 establishes the forms and manner for complying with subdivision (b)(3)(E) of section 30165.1 of the Revenue and Taxation Code, as amended by AB 2496, as a condition for listing on the California Tobacco Directory. The statute requires that every non-participating manufacturer located outside the United States provide a declaration in the form prescribed by the Attorney General from each of its importers into the United States of any of its brand families to be sold in California, that the importer accepts joint and several liability with the non-participating manufacturer for all required escrow deposits due in accordance with the reserve fund statute, and for payment of all fees, costs, attorney's fees, penalties, and refunds imposed or required under the tobacco directory law, including but not limited to all refunds resulting from the removal of the manufacturer or any of its brand families from the Directory. The importer must also appoint an agent for the service of process in California in accordance with subdivision (f) of section 30165.1 of the Revenue and Taxation Code. In addition, pursuant to Revenue and Taxation Code section 30165.1, subdivision (b)(3)(E), the non-participating manufacturer must affirm that it has caused every importer that will sell its tobacco products in this State to obtain and maintain a license as an importer pursuant to the licensing act. The forms incorporated by reference therein establish the form and manner for complying with subdivision (b)(3)(E) of section 30165.1 of the Revenue and Taxation Code.

Section 999.26, in addition to establishing the form and manner for manufacturers and importers to post a surety bond in lieu of waiving sovereign immunity pursuant to section 22979, subdivision (a)(4), of the Business and Professions Code, provides the form and manner by which newly qualified and elevated risk non-participating manufacturers must post a bond pursuant to section 30165.1, subdivision (c)(4), of the Revenue and Taxation Code, and provides the form and manner by which tobacco product manufacturers engaging in delivery sales may post a bond as a form of reasonable assurances pursuant to section 30165.1, subdivision (c)(2)(E), of the Revenue and Taxation Code. This section also describes when a non-participating manufacture may be deemed to pose an elevated risk of non-compliance pursuant to section 30165.1, subdivision (c)(4)(A), of the Revenue and Taxation Code. This section incorporates by reference the surety bond form approved by the Attorney General, established in accordance with section 22979, subdivision (a)(4), of the Business and Professions Code and section 30165.1, subdivisions (c)(2)(E) and (c)(4) of the Revenue and Taxation Code, and upon a review of California surety bond requirements.

Section 999.27 establishes the forms and manner for manufacturers and importers that engage in delivery sales to provide reasonable assurances to the Attorney General of compliance with all the federal and state laws governing delivery sellers, as required by subdivision (c)(2)(E) of section 30165.1 of the Revenue and Taxation Code, as amended by AB 2496.

Section 999.28 establishes the forms and manner for non-participating manufacturers to provide reasonable assurances of compliance with the tobacco directory law, new section 30165.2 of the

Revenue and Taxation Code, and the reserve fund law, as required by subdivision (c)(2)(C) of section 30165.1 of the Revenue and Taxation Code, as amended by AB 2496.

Section 999.29 establishes the forms and manner for tobacco product manufacturers to complete and submit a Cigarette Brand Styles Authentication form, incorporated therein by reference, as a condition for listing on the California Tobacco Directory, as authorized by subdivision (g)(4) of section 30165.1 of the Revenue and Taxation Code. The Attorney General determined that a Cigarette Brand Styles Authentication form listing the tobacco product brand family style name, size, pack content, pack type, pack UPC, and carton UPC information was reasonable and appropriate and would provide a consolidated source of information contained in the packaging and labeling samples required under subdivision (g)(4) of section 30165.1 of the Revenue and Taxation Code.

#### **DETERMINATION REGARDING REASONABLE ALTERNATIVES**

The Attorney General has determined that there is no reasonable alternative to adopting these regulations, and they are the least burdensome and most fair and equitable way to implement the provisions of Business and Professions Code section 22979, Health and Safety Code sections 104555 to 104557, and Revenue and Taxation Code section 30165.1. Requiring by formal rule that standardized forms and procedures must be used will ensure that all manufacturers, importers, wholesalers, distributors, retailers, delivery sellers and others covered by the regulations are provided uniform and clear guidance for successful compliance with the law.