

Department of Justice

Emergency Regulations to Implement Revenue & Taxation Code Section 30165.1

FINDING OF EMERGENCY

The California Legislature declares in subdivision (o) of Revenue and Taxation Code section 30165.1 that the regulations adopted by the Attorney General to effect the purposes of that section are emergency regulations in accordance with Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of chapter 3.5, including 11349.6 of the Government Code, the Legislature further declares that the adoption of regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, and general welfare. The Attorney General for the State of California finds also that these regulations to implement Revenue and Taxation Code section 30165.1 are immediately necessary to preserve the public peace, health and safety, or general welfare.

SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION

On January 1, 2004, Revenue and Taxation Code section 30165.1 took effect. Added by A.B. 71 (Stats. 2003, ch. 890. Sec. 7) section 30165.1 requires the Attorney General to establish and maintain on his Internet website a directory of compliant tobacco product manufacturers and brand families which may be sold in California. (Section 30165.1(c).) This section requires all manufacturers who wish to sell their cigarettes or roll-your-own (“RYO”) tobacco in California to certify, on forms and in the manner specified by the Attorney General, either full compliance with the state’s reserve fund statute (Health & Safety Code §§ 104555-104557) or certain aspects of the Master Settlement Agreement (MSA). (Section 30165.1(b).) Section 30165.1(e) prohibits the sale of cigarettes and RYO tobacco that are not listed, along with the manufacturer, on the directory. Specifically, no person may sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes or RYO tobacco that the person knows or should know are not included on the directory. A distributor which violates those prohibitions commits a criminal offense (section 30165.1(i)(4)), as well as a violation of California’s Unfair Competition Law (section 30165.1(l)) and is subject to civil penalties (section 30165.1(i)(B)) and license suspension and revocation (section 30165.1(i)(A)). The directory will be published, on or before June 30, 2004, at the Attorney General’s website: <http://ag.ca.gov/tobacco>.

Timely implementation of section 30165.1 will protect law-abiding consumers, tobacco product manufacturers and distributors from seizure, forfeiture and destruction of their cigarettes and RYO tobacco and prevent unfair competition by manufacturers which do not comply with the new law. These regulations implement Revenue and Taxation Code section 30165.1 by

prescribing the procedures and forms to comply with the new law.

These regulations must be in effect prior to April 30th, the statutory deadline, for the required certifications by tobacco product manufacturers. Unless these regulations are in effect by the statutory deadline, some manufacturers may fail to certify compliance with the MSA or the reserve fund statute and expose California consumers, distributors, wholesalers and retailers to seizure, forfeiture and destruction of their otherwise lawfully purchased cigarettes. The manufacturer, distributor, wholesaler, and retailer could also become liable for unfair competition.

Finally, these regulations must be in effect prior to April 30th to fulfill the intent of the Legislature that manufacturers which sign the MSA certify their participation in the agreement and affirm a complete list of their brand families for the purpose of calculating their payments under the MSA. In addition, the Legislature intended that manufacturers who sell cigarettes to Californians without agreeing to reimburse the state for smoking-related health care costs by signing the MSA, certify they will continue to create a source of recovery for the people of the State of California for the inevitable healthcare costs through annual deposits based upon California sales in the preceding year, as required by the reserve fund statute.

For the foregoing reasons, the Attorney General finds that these regulations, which implement Revenue and Taxation Code section 30165.1, are necessary for the immediate preservation of the public peace, health and safety, and general welfare of the people of the State.

AUTHORITY AND REFERENCE CITATIONS

Authority to adopt these regulations is set forth in section 30165.1, subdivision (o). Additional authority for regulation section 999.20 is set forth in section 30165.1, subdivision (h). References for these regulations include subdivisions (a), (b), (c), (f), (g), (h) and (i). Specific authority and reference citations are included in parentheses after the text of each regulation.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Revenue and Taxation Code section 30165.1 complements California's reserve fund statute (Health & Saf. Code, §§ 104555-104557) and provides additional enforcement tools to the state. The reserve fund statute requires every tobacco product manufacturer whose cigarettes or roll-your-own ("RYO") tobacco is sold in California either to become a party to the Tobacco Master Settlement Agreement (MSA) and comply with the terms of that agreement or to establish a qualified escrow account and make annual deposits based on the manufacturer's California sales, as provided by law.

Section 30165.1 requires the Attorney General to establish and maintain on his Internet website a directory of compliant tobacco product manufacturers and brand families which may be sold in California. Section 30165.1 prohibits the sale of cigarettes and RYO tobacco that are not listed in the directory. Any person who sells, distributes, acquires, holds, owns, possesses, transports, imports, or causes to be imported cigarettes or RYO tobacco that the person knows or should

know are not included in the directory commits a misdemeanor, as well as a violation of California's Unfair Competition Law, and is subject to civil penalties. A tobacco product distributor that violates this law is also subject to license suspension and revocation.

The proposed regulations prescribe procedures to be followed by all tobacco product manufacturers that wish to sell cigarettes or RYO tobacco in California. Section 999.15 provides definitions of terms used in the regulations. Section 999.16 sets forth the certification process for inclusion on California's directory of compliant tobacco product manufacturers and their cigarettes or RYO tobacco. Section 999.17 lists the conditions under which a tobacco product manufacturer must provide supplemental certifications to the DOJ. Sections 999.18 and 999.19 state the requirements for records retention and production of documents by tobacco product manufacturers, distributors and wholesalers. Section 999.20 specifies the circumstances under which tobacco product manufacturers must certify and make escrow deposits more frequently than on an annual basis. Section 999.21 sets forth additional requirements on nonparticipating manufacturers that do not reside in California and that are not registered to do business in California. Section 999.22 clarifies certain duties of California distributors and the conditions for claiming certain protections provided under section 30165.1. Section 999.23 delineates the conditions a tobacco product manufacturer that has been removed from the directory must satisfy if it seeks to be relisted with its brand families.

LOCAL MANDATE DETERMINATION

These regulations do not impose a mandate on any local agency.

COMPLIANCE WITH ADMINISTRATIVE PROCEDURES ACT STANDARDS

See Informative Digest/Policy Statement Overview, above.