

## Title 11, Division 1, Chapter 16

### **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. 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 [Repealed]**