

# CALIFORNIA DEPARTMENT OF JUSTICE

## TITLE 11. LAW

### DIVISION 1. ATTORNEY GENERAL

#### CHAPTER 16. Master Settlement Agreement, Tobacco

#### NOTICE OF PROPOSED RULEMAKING

Notice published December 18, 2020

The Department of Justice (Department) proposes to amend sections 999.10, 999.14, 999.15, 999.16, 999.17, 999.18, 999.19, 999.22, 999.23, 999.24, 999.25, 999.26, and 999.29 of Title 11, Division 1, Chapter 16 of the California Code of Regulations, including amending forms JUS-TOB1, JUS-TOB3, JUS-TOB4, JUS-TOB5, JUS-TOB7, JUS-TOB8, and JUS-TOB15, which are incorporated by reference, regarding the California Tobacco Directory. Moreover, the Department proposes to repeal sections 999.11 and 999.20 of Title 11, Division 1, Chapter 16 of the California Code of Regulations.

#### **PUBLIC HEARING**

The Department has not scheduled a public hearing for the proposed regulatory action. The Department will hold a virtual public hearing, however, if it receives a written request for a public hearing from any interested person, or an authorized representative, no later than 15 days before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on February 9, 2021 at 5:00 p.m. Only written comments received by that time will be considered. Submit written comments to:

Barry Alves  
Department of Justice  
Tobacco Unit  
1300 I Street Sacramento, Suite 125  
Sacramento, CA 95814  
(916) 210-7838  
[Barry.Alves@doj.ca.gov](mailto:Barry.Alves@doj.ca.gov)

Please note that written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

## **AUTHORITY and REFERENCE**

Authority: Section 30165.1, Revenue and Taxation Code; Section 104555 through 104557, Health and Safety Code.

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## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Summary of Existing Laws and Regulations:**

In 1998, 46 states entered into a Tobacco Master Settlement Agreement (“MSA”) with the largest tobacco manufacturing companies in the United States to settle certain claims against manufacturers arising out of the sale, advertising, and consumption of certain tobacco products. (Health & Saf. Code, § 104555, subd. (e).)

Health and Safety Code sections 104555 through 104557 (the “Reserve Fund Statute”) impose escrow deposit and reserve fund requirements on tobacco product manufacturers that elect not to enter the MSA. The reserve fund provides a source of compensation for the financial burdens imposed on the State by cigarette-related illnesses and other health conditions. Existing regulations implement the Reserve Fund Statute.

Revenue and Taxation Code section 30165.1 (“Directory Statute”) requires the Department to publish and maintain a list of all tobacco product manufacturers and their cigarette and roll-your-own tobacco (“RYO”) brand styles (both cigarettes and RYO are hereafter together “Cigarettes”) that are eligible to be included on the California tobacco directory (“California Tobacco Directory.”) The Directory Statute prohibits California sales of Cigarettes that are not listed on the California Tobacco Directory. In order to have their eligibility for listing on the California Tobacco Directory evaluated, tobacco product manufacturers have been obligated since approximately 2004 to provide the Department with annual certifications, quarterly reports, and other information regarding compliance with the Directory Statute, the Reserve Fund Statute, and the MSA.

Sections 999.10-999.29, Title 11, Division 1, Chapter 16 of the California Code of Regulations implement the Directory Statute, Reserve Fund Statute, and MSA. Currently, the Department has fourteen forms, JUS-TOB1 through JUS-TOB6 and JUS-TOB8 through JUS-TOB15 (with JUS-TOB7 currently unused) to implement the Directory Statute, Reserve Fund Statute, and MSA.

### **Effect of the Proposed Rulemaking:**

The Department proposes to amend, repeal, or consolidate sections 999.10 through 999.29, which implement the Directory Statute, the Reserve Fund Statute, and the MSA. The Department also proposes to amend seven of its 14 tobacco forms, which are incorporated in existing regulations, by repealing existing forms and replacing them with newly adopted forms. The effect of the proposed amendments include: adding definitions for commonly used terms;

updating references to the Board of Equalization to the California Department of Tax and Fee Administration; reducing and eliminating duplicative language appearing in both the regulations and the forms; eliminating outdated or unused processes; and streamlining the process for Tobacco Product Manufacturers seeking listing on California's Tobacco Directory by replacing hard-copy paper forms with electronic forms, to the extent possible.

#### **Anticipated Benefits of the Proposed Regulations:**

The Directory Statute, the Reserve Fund Statute, and the MSA protect the health and safety of the public by ensuring that tobacco product manufacturers comply with their fiscal obligations to the state associated with cigarette smoking. Existing regulations protect the health and safety of the public and promote fairness by implementing the Directory Statute, the Reserve Fund Statute, and the MSA.

This action to update existing regulations and program forms promote the same public benefits as the existing regulations. In addition, the Department anticipates that this action will streamline the process for a tobacco product manufacturer seeking listing on the California Tobacco Directory, and reduce the workload of the Department and the tobacco product manufacturer.

#### **Comparable Federal Regulations:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

#### **Determination of Inconsistency/Incompatibility with Existing State Regulations:**

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review of regulations affecting tobacco product manufacturers, the Department has concluded that these are the only regulations that concern implementation of the Directory Statute, the Reserve Fund Statute, and the MSA.

#### **Forms Incorporated by Reference:**

Form number JUS-TOB1 was revised in September 2020, will now be titled "PARTICIPATING TOBACCO PRODUCT MANUFACTURER ('PM') CERTIFICATION SEEKING LISTING ON THE CALIFORNIA TOBACCO DIRECTORY," and is referenced in sections 999.16 and 999.17.

Form number JUS-TOB3 was revised in September 2020, will now be titled "CERTIFICATION OF COMPLIANCE AND AFFIDAVIT BY NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER," and is referenced in sections 999.10 and 999.16.

Form number JUS-TOB4 was revised in September 2020, will now be titled "CIG-SALES," and is referenced in sections 999.10, 999.14, and 999.16.

Form number JUS-TOB5 was revised in September 2020, will now be titled "NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER ('NPM') CERTIFICATION

SEEKING LISTING ON THE CALIFORNIA TOBACCO DIRECTORY," and is referenced in sections 999.16 and 999.17.

Form number JUS-TOB7 was revised in September 2020, will now be titled "CIG-MAP," and is referenced in section 999.16.

Form number JUS-TOB8 was revised in September 2020, will now be titled "DEFINITIONS," and is referenced in section 999.16.

Form number JUS-TOB15 was revised in September 2020, will now be titled "BRAND LIST," and is referenced in section 999.16, 999.24, and 999.29.

**Materials Relied Upon:** None.

**Other Statutory Requirements:** None.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None. This action will not affect funding to the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business:

The proposed action will affect tobacco product manufacturers seeking to be listed on the California Tobacco Directory. Since approximately 2004, tobacco product manufacturers have been obligated to prepare certifications and other reports to the Department. In order to ensure compliance with the Directory Statute, the Reserve Fund Statute, and the MSA, the Department's forms must be revised to gather relevant information, collect data electronically, and make the forms easier to use and understand. The proposed action will require tobacco product manufacturers to review the new forms and prepare some new responses. The Department anticipates it will cost each of approximately thirty tobacco product manufacturers approximately \$1,000 to implement the changes in 2021. Because many of the tobacco product manufacturers' 2021 revised responses are unlikely to change in subsequent years and the revised forms are much easier to use and understand than the prior versions, the proposed action is unlikely to have a net fiscal impact beyond 2021.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is unlikely that the proposed regulations: (1) will create or eliminate jobs within the state; (2) will create new businesses or eliminate existing businesses within the state; or (3) will result in the expansion of businesses currently doing business within the state.

Benefits of the Proposed Action: The Directory Statute, the Reserve Fund Statute, and the MSA protect the health and safety of the public by ensuring that tobacco product manufacturers comply with their fiscal obligations to the state associated with cigarette smoking. Existing regulations protect the health and safety of the public and promote fairness by implementing the Directory Statute, the Reserve Fund Statute, and the MSA.

This action to update existing regulations and program promote the same public benefits as the existing regulations. In addition, the Department anticipates that this action will streamline the process for a tobacco product manufacturer seeking listing on the California Tobacco Directory, and reduce the workload for both the Department and the tobacco product manufacturer.

Business Report Requirement:

Since approximately 2004, tobacco product manufacturers have been obligated to report their compliance with the Directory Statute, the Reserve Fund Statute, and the MSA to the Department. As explained above, this action to update existing regulations and program forms promote the same public benefits as the existing regulations. In addition, the Department anticipates that this action will streamline the process for a tobacco product manufacturer seeking listing on the California Tobacco Directory, and reduce the workload for both the Department and the tobacco product manufacturer. It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

Small Business Determination:

The Department has determined that the proposed action affects small businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed revisions to forms and regulations are the most effective way to ensure compliance with the Directory Statute, Reserve Fund Statute, and MSA. The forms and sections of the Code of Regulations addressed by the notice were modified so California gathers only the information needed from tobacco product manufacturers, and does so as clearly and efficiently as possible.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Barry Alves  
Department of Justice  
Tobacco Unit  
1300 I Street Sacramento, Suite 125  
Sacramento, CA 95814  
(916) 210-7838  
[Barry.Alves@doj.ca.gov](mailto:Barry.Alves@doj.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Debra Berry  
Department of Justice  
Tobacco Unit  
1300 I Street Sacramento, Suite 125  
Sacramento, CA 95814  
(916) 210-7799  
[Debra.Berry@doj.ca.gov](mailto:Debra.Berry@doj.ca.gov)

### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the text of the proposed regulations (the “express terms” of the regulations), amended forms incorporated by reference, the Initial Statement of Reasons, and any information upon which the proposed

rulemaking is based. The text of the Notice, the express terms, the forms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available at the Department's website at <https://oag.ca.gov/tobacco/directory/regulations>. Copies may be obtained from Barry Alves at the above address.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt the regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained from Barry Alves at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, amended forms incorporated by reference and the text of the regulations in underline and strikeout can be accessed through the Department's website at <https://oag.ca.gov/tobacco/directory/regulations>.