

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1223-01EE
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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2011 DEC 23 AM 8:55
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California Department of Justice	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Implement regulations needed by the enactment of AB2496	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2011-0330-02 and 2011-0927-01EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND §§ 999.10, 999.14, 999.16, 999.19, 999.22, 999.24, 999.26, and 999.27
TITLE(S) Title 11	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) none
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>01/05/2012</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Erica Goerzen	TELEPHONE NUMBER (916) 322-0908	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Erica.Goerzen@doj.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Rochelle East</i>	DATE 5 Dec 2011
TYPED NAME AND TITLE OF SIGNATORY ROCHELLE C. EAST, Chief Deputy Attorney General, Legal Affairs	

**CALIFORNIA CODE OF REGULATIONS
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 16. ATTORNEY GENERAL REGULATIONS UNDER
MASTER SETTLEMENT AGREEMENT
WITH TOBACCO PRODUCT MANUFACTURERS
AND NON-PARTICIPATING TOBACCO PRODUCT MANUFACTURER LAW
(HEALTH & SAFETY CODE SECTIONS 104555-104557)**

999.10 Scope and Purpose, Definitions, and Written Confirmation of Compliance with Reserve Fund Requirements by Non-Participating Tobacco Product Manufacturers

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(c) Confirmation of Compliance with Reserve Fund Requirements

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- (2) An NPM which has not sold tobacco products in California before these regulations become effective shall not sell or ship Cigarettes or Roll-your-own tobacco to a Distributor or Wholesaler purchasing or accepting orders for any Cigarettes or Roll-your-own tobacco for sale in California, unless the NPM has provided written confirmation to the Distributor or Wholesaler that the NPM has received and reviewed a copy of Health and Safety Code sections 104555-104557 and these implementing regulations. During the first quarter year of sales in California, an NPM must provide written confirmation of compliance either by producing a copy of the ACKNOWLEDGMENT OF RECEIPT & REVIEW OF NPM RESERVE FUND STATUTE, IMPLEMENTING REGULATIONS & FORMS ("Acknowledgment of Receipt & Review" form - JUS-TOB5 ¶Rev. 04/2004), or an equivalent notarized statement which has been approved by the Attorney General, filed with the Attorney General.

An NPM shall complete and file the Acknowledgment of Receipt & Review (JUS-TOB5 ¶Rev. 04/2004) with the Attorney General within thirty (30) days of receipt. Thereafter, the NPM shall provide copies of the form, as filed with the Attorney General, to Wholesalers and Distributors before the NPM sells or ships its tobacco products to a Wholesaler or Distributor until the end of the first quarter year in which the NPM began selling in California, when it must file its first Certificate of Compliance (JUS-TOB3 Rev. 02/2011). The filed Acknowledgment of Receipt & Review (JUS-TOB5 ¶Rev. 04/2004) shall constitute adequate written confirmation of compliance only until the end of the first quarter year in which the NPM began selling tobacco products in California. No deviation from the Acknowledgment of Receipt & Review shall be permitted without the prior written approval of the Attorney General.

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999.14 Escrow Adjustments and Release Requests

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(c) Form and contents of request

To be eligible for consideration, a request for an adjustment by an NPM must be made in writing and must be accompanied by supporting documentation which establishes compliance with all other aspects of the reserve fund requirements and the basis for the escrow release request. The supporting documentation, at a minimum, must include:

- (1) A timely filed Certification of Compliance (JUS-TOB3 Rev. 02/2011) or timely filed Acknowledgment of Receipt & Review (JUS-TOB5 Rev. 02/2011), a timely filed Schedule 1 (JUS-TOB4 Rev. 02/2011), an Escrow Agreement (JUS-TOB6 ~~Rev.~~ Rev. 02/2004) and an affidavit identifying all current officers, owners and agents for service of process for the manufacturer and all cigarette brands owned or made by the manufacturer. When a manufacturer does not own the trademark(s) for the cigarette brand(s) that it makes, or imports or sells, the affidavit shall identify the trademark owner(s) of the cigarette brand(s) sufficiently to enable regular contact and communication with the brand owner(s) by the State. These forms must be completed and timely filed in compliance with Health & Safety Code sections 104555-104557.

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999.16 Certifying for Listing on Directory of Tobacco Product Manufacturers and Brand Families

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(b) Required Documentation: Tobacco Product Manufacturers must complete and submit the following documents with their annual Certification:

- (1) All Tobacco Product Manufacturers must submit samples of packaging and labeling for all Brand Families and styles, their signed waiver of sovereign immunity pursuant to Section 999.24, any documents providing reasonable assurances pursuant to Section 999.27 if the manufacturer or its importers engage in delivery sales, and their completed Cigarette Brand Styles Authentication form pursuant to Section 999.29.
- (2) Non-Participating Manufacturers (NPMs) must also submit:

...

(K) For each Brand Family that is imported into the United States, copies of the following documents:

1. The sworn statement(s) of the original manufacturer that it will timely submit ingredients to the Secretary of Health and Human Services as required by 19 U.S.C. section 1681a.

2. The importer's certificate(s) under penalty of perjury as required by 19 U.S.C. section 1681a regarding the precise format of warnings and the rotation plan for health warnings.
3. The trademark holder's certificate(s) under penalty of perjury that it has not withdrawn consent to import into the United States as required by 19 U.S.C. section 1681a OR the importer's certificate(s) under penalty of perjury that the trademark owner has not withdrawn consent to import into the United States as required by 19 U.S.C. section 1681a.

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999.19 Records Retention by Distributors and Wholesalers and Availability for Review, Inspection, and Copying.

(a) Records Retention

A Wholesaler or Distributor of Cigarettes or tobacco products shall maintain in one designated location the following documents:

- (1) Copies of all written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS-TOB1 Rev. 09/2010), stamped Certifications of Compliance (JUS-TOB3 Rev. 02/2011) or Acknowledgments of Receipt & Review (JUS-TOB5 Rev. 04/2004) provided to the Distributor or Wholesaler by a Tobacco Product Manufacturer;
- (2) Copies of all requests by the Distributor or Wholesaler for a copy of written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS-TOB1 Rev. 09/2010), stamped Certifications of Compliance (JUS-TOB3 Rev. 03/2004), or Acknowledgments of Receipt & Review (JUS-TOB5 Rev. 04/2004) when not provided by the Tobacco Product Manufacturer;
- (3) Copies of all reports by the distributor or wholesaler to the Attorney General of the failure of a Tobacco Product Manufacturer to provide copies of written acknowledgments of receipt by the Attorney General's Office of a Tobacco Product Manufacturer's Certification (JUS-TOB1 Rev. 09/2010), stamped Certification of Compliance (JUS-TOB3 Rev. 02/2011) or Acknowledgment of Receipt & Review (JUS-TOB5 Rev. 04/2004);

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999.22 Duties and Defenses of California Distributors

- (a) **Distributor Duties.** Every Distributor shall complete and submit a DISTRIBUTOR ELECTRONIC MAIL REGISTRATION (JUS-TOB8 Rev. 02/2004) for the purpose of

receiving any notifications as may be required by Revenue and Taxation Code section 30165.1 and these regulations.

Every Distributor shall also maintain, for a period of five years, and make available to the Attorney General all invoices and documentation of sales and any other information relied upon in reporting to the Attorney General and as further specified in section 999.19.

- (b) Distributor Defenses. In order to have the defense described in Revenue and Taxation Code section 30165.1, subdivision (i)(2), a Distributor shall, at the time of the violation:
- (1) possess a copy of the Attorney General's Office most recent written acknowledgment of receipt of the Certification (JUS-TOB1 Rev. 029/201+0) required as a condition of including the Brand Family on the Directory;

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999.24 Waiver of Sovereign Immunity by Manufacturers and Importers

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- (b) Every manufacturer and importer that may potentially assert tribal sovereign immunity defenses, or that is so directed by the Attorney General, shall complete a State of California WAIVER OF TRIBAL SOVEREIGN IMMUNITY BY NATIVE AMERICAN TRIBE (JUS-TOB9 Rev. 0210/2011), hereby incorporated by reference, in order to waive sovereign immunity defenses. Manufacturers and importers that may potentially assert tribal sovereign immunity defenses include companies where any of the following is true:
- (1) the business is owned by a the owner or operator is a nativeNative American tribe;
 - (2) the business is chartered by a Nativeowner or operator is a business enterprise of a native American tribe;
 - (3) the business is operated for the benefit of a Native American tribewas formed by a tribe pursuant to its constitution or laws; or
 - (4) the business or any of its owners have asserted tribal sovereign immunity defenses in any other court or administrative actions brought by private individuals, state or federal officers or agencies, or any other foreign or domestic governmental entitiesis an "arm" of a Native American tribe.
- (c) Every manufacturer ~~located outside of the United States and every manufacturer and importer that is directly owned, in whole or majority in any part,~~ by a state, federal, or any other foreign or domestic governmental organization or that is so directed by the Attorney General shall have their government's ambassador to the United States complete a State of California;

WAIVER OF SOVEREIGN IMMUNITY BY GOVERNMENT-OWNED TOBACCO COMPANY (JUS-TOB10 Orig Rev. 02/10/2011), hereby incorporated by reference.

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999.26 Surety Bonds

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(c) Manufacturers and importers shall post the required surety bond by using the CALIFORNIA TOBACCO MANUFACTURER AND IMPORTER SURETY BOND (JUS-TOB14 Rev. 02/10/2011), hereby incorporated by reference. Surety bond forms must also be signed by an attorney-in-fact or by a representative of the bonding company.

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(e) Surety bonds shall be posted by a corporate surety in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of the largest of its most recent five (5) calendar years' sales in California. The bond shall be written in favor of the State of California and shall be conditioned on the performance by the non-participating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance, in accordance with subparagraph (E) of paragraph (3) of subdivision (b) of section 30165.1 of the Revenue and Taxation Code, of all its duties and obligations under this section and Article 3 (commencing with section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and payment of all state taxes for the sale or distribution of cigarettes and tobacco products in this state during the year in which the certification is filed in the next succeeding calendar year. The bond may be drawn upon by the Attorney General to cover unsatisfied escrow obligations, tax obligations, claims for penalties, claims for monetary damages, and any other liabilities that are subject to the licensee's claim of sovereign immunity against enforcement of the laws specified above.

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999.27 Reasonable Assurances of Compliance & Compliance by Delivery Sellers

(a) Reasonable Assurances of Compliance by Manufacturers and Importers:

Pursuant to Revenue and Taxation Code section 30165.1(c)(2)(E), neither a manufacturer nor a brand family will be included or retained on the California tobacco directory if the manufacturer or its importer engages in delivery sales and fails to provide reasonable assurances to the Attorney General that the delivery seller has complied with all the federal and state laws specified in (b), below, including all tax-stamping, marking and labeling requirements and any other state laws applicable to the sale and distribution of tobacco products. Reasonable assurances include, but are not limited to:

- (1) voluntarily providing a surety bond that guarantees compliance with all the federal and state laws specified in subdivision (b), below-meets or exceeds the terms of the surety bond specified in 999.26, above;

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Title 11 – Department of Justice

**Notice of Finding of Emergency
(Second Re-Adoption)**

**Second Re-Adoption of Emergency Regulations to Implement 2010
Amendments to
Business and Professions Code section 22979(a), Revenue and Taxation Code
section 30165.1, and Health and Safety Code sections 104555-104557**

Finding of Emergency

The emergency conditions still exist and the emergency regulations must be re-adopted a second time so that manufacturers can comply with the recently amended statutes. Pursuant to Revenue and Taxation Code section 30165.1, subdivision (b), on or before April 30th of each year, all tobacco product manufacturers whose cigarettes are sold in California must submit a completed Certification For Listing On California Directory (JUS-TOB1) with supporting documentation as specified. A tobacco product manufacturer and its brand families will not be listed on the directory, or will be removed from the directory, if the tobacco product manufacturer or any of its brand families are not in full compliance with the terms and requirements of the reserve fund statute (Health & Saf. Code, §§ 104555-104557), the tobacco directory statute (Rev. & Tax. Code, § 30165.1), and any implementing regulations.

The California Department of Justice (Department) approved emergency regulations and forms to implement certain enhancements and clean-up made to Revenue and Taxation Code section 30165.1, Business and Professions Code section 22979, and Health and Safety Code sections 104555-104557, pursuant to the enactment of AB 2496 (Stats. 2010, ch. 265, effective January 1, 2011). The Department subsequently approved a re-adoption of those regulations, which included certain changes to Form JUS-TOB11, in response to comments and questions from several participating manufacturers. While the first re-adoption was already in process, after receiving the comments from the participating manufacturers and conducting additional legal research, the Department undertook a closer review of, and made changes to, the text of regulations and to three additional forms, JUS-TOB9, JUS-TOB10, and JUS-TOB14. In order to implement these changes, the Department approved a second re-adoption of the emergency forms and regulations. The changes that the Department has made to the regulations and the four forms in response to comments from participating manufacturers and internal legal research demonstrate that the Department has made substantial progress and proceeded with diligence on these regulations, as required by Government Code section 11346.1, subdivision(h). The Department's substantial progress regarding changes made to the regulations and forms is described in greater detail in its Chronology of Changes Made to Regulations and Forms in the *Informative Digest/Policy Statement Overview, Infra*.

The Attorney General may adopt rules and regulations to implement these legislative amendments pursuant to express authority provided in subdivision (o) of section 30165.1 of the

Revenue and Taxation Code. Furthermore, the Department has the authority to adopt these rules as emergency regulations based on the Legislature's declaration that:

The regulations adopted to effect the purposes of this section [30165.1] 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 that chapter, including section 11349.6 of the Government Code, the adoption of the 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. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that chapter, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(Rev. & Tax. Code, § 30165.1, subd. (o).)

Government Code section 11346.1, subdivision (a)(2)

Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations, as set forth in the Government Code section 11349.6. Pursuant to section 11346.1(a)(2), upon approval of the notice of proposed emergency action, specific language of the revised regulations and all revised forms proposed to be adopted, and the Notice of Finding of the Emergency (collectively, "Second Re-Adoption"), the Department will promptly send these documents to Alexander Shaknes, an attorney representing Philip Morris USA Inc., and Elizabeth McCallum, an attorney requesting information on behalf of Commonwealth Brands, Inc., Japan Tobacco International USA, Inc., King Maker Marketing, Inc., Liggett Group LLC, Lignum-2, Inc., Top Tobacco, LP, Sherman's 1400 Broadway N.Y.C. Inc., and Vectro Tobacco Inc. The Department will send the above-described documents to these individuals at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law.

The proposed emergency regulations of the Department will be posted on the Department of Justice website at <http://caag.state.ca.us/tobacco/directory.htm>.

If you should have any questions regarding this Notice of Finding of Emergency or the attached regulations, please submit them to:

Deputy Attorney General Laura W. Kaplan
Office of the Attorney General
Tobacco Litigation and Enforcement Section
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
(916)323-3822
or Laura.Kaplan@doj.ca.gov

Authority and Reference

Authority to adopt these regulations is set forth in Revenue and Taxation Code section 30165.1, subdivision (o). Reference: Section 104557, subdivision (c), Health and Safety Code; Section 30165.1, subdivision (b), Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws Related to the Proposed Action

The California Cigarette and Tobacco Products Licensing Act of 2003 (Bus. & Prof. Code, § 22970 et seq., hereafter the licensing act) provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California. The act prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling cigarettes and tobacco products unless they are in compliance with those licensure requirements. The licensing act requires a manufacturer or importer to comply with specified requirements in order to be eligible for obtaining and maintaining a license under that act, including consenting to jurisdiction of the California courts for the purpose of enforcement of that act and appointment of a registered agent for service of process in this state.

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

The tobacco directory law (Rev. & Tax. Code, § 30165.1) requires the Attorney General to establish and maintain on its Internet web site a directory of compliant tobacco product manufacturers and brand families that may be sold in California. Section 30165.1 prohibits the sale of cigarettes and RYO tobacco that are not listed on the directory.

Effect of the Emergency Regulations in the Legal Context

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 in order 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. New regulation 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. New regulation section 999.26 prescribes the form and manner for manufacturers and importers to post surety bonds.

Changes were made to Section 999.24 regarding 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 modified 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.

Changes were made to Section 999.26 regarding 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, 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 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 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.

The Department also made non-substantive changes to sections 999.10, 999.14, 999.16, 999.19, and 999.22.

Chronology of Changes Made to Regulations and Forms

First Re-adoption

After implementing the emergency regulations and forms, the Department received several comments and questions from participating manufacturers regarding Form JUS-TOB11, then titled "Standard Waiver of Sovereign Immunity by Tobacco Company." As a result of the comments, the Department made changes to Form JUS-TOB11 to more closely conform to federal statutes and case law governing the scope of sovereign immunity and to respond to the companies' concerns. Because the Department revised the title and body of Form JUS-TOB11, the Department made corresponding changes in California Code of Regulations section 999.24(d) that referred to the version and title of Form JUS-TOB11.

Second Re-adoption

While the first round of re-adoption was in progress, the Department undertook a closer review of the AB 2496 statutes and regulations, particularly Business and Professions Code section 22979, subdivision (a), and Revenue and Taxation Code section 30165.1, subdivision (c). The Department also reviewed various surety bond forms used by State agencies for guidance. As a result, the Department determined that edits to "California Tobacco Manufacturer and Importer Surety Bond," Form JUS-TOB14, were necessary to encompass all situations under the AB2496 regulations in which a tobacco manufacturer or importer could be required to post a surety bond. The Department edited Form JUS-TOB14 to encompass the different situations in which a tobacco manufacturer or importer could be required to post a surety bond, and added clarifying language regarding the terms of the bond and obligations of the surety. The Department made corresponding changes in California Code of Regulations section 999.26 that referred to the version of Form JUS-TOB14.

In addition, after editing Form JUS-TOB11 in the first round of re-adoption, the Department determined that the same edits regarding the scope of sovereign immunity were necessary for "Waiver of Tribal Sovereign Immunity by Native American Tribe," Form JUS-TOB9, and "Waiver of Sovereign Immunity by Government-Owned Tobacco Company," Form JUS-TOB10. The Department made these changes, and eliminated unnecessary provisions. The Department made corresponding changes in California Code of Regulations sections 999.24(b)-(c), which referred to the provisions of Form JUS-TOB9 and Form JUS-TOB10.

The forms incorporated by reference herein are:

State of California, JUS-TOB1, (Rev. 09/2010), Certification For Listing On California Directory;

State of California, JUS-TOB2, (Rev. 02/2011), Notice Of Appointment Of Registered Agent And Registered Agent's Statement For Non-Participating Manufacturer;

State of California, JUS-TOB3, (Rev. 02/2011), Certification Of Compliance And Affidavit By Non-Participating Tobacco Product Manufacturer Regarding Deposit Of Reserve Funds Into Escrow,

