

## Title 11 - Department of Justice

### Notice of Proposed Action

Notice is hereby given that the Department of Justice (DOJ) has approved regulations to implement Revenue and Taxation Code section 30165.1, which was added by A.B. 71 (Stats. 2003, ch. 890. sec. 7), effective January 1, 2004. Pursuant to express authority, provided in subdivision (o) of section 30165.1, DOJ has adopted these regulations on an emergency basis and hereby gives notice of its intent to adopt these regulations on a permanent basis.

#### **OPPORTUNITY TO SUBMIT COMMENTS AND TO REQUEST A PUBLIC HEARING**

DOJ will accept written comments, statements, arguments, or contentions relevant to this regulatory action until June 15, 2004. No public hearing will be held unless an interested person requests a hearing in writing on or before June 1, 2004. Requests for a public hearing should be addressed to

Nancy Wagner  
Office of the Attorney General  
Tobacco Litigation & Enforcement Section  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244-2550

e-mail: [tobacco@doj.ca.gov](mailto:tobacco@doj.ca.gov)

#### **AUTHORITY AND REFERENCE**

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.

## **DISCLOSURES/DETERMINATIONS REGARDING THE REGULATIONS**

- Cost or savings to State Agencies: None  
Cost to any local agency or school district where must be reimbursed in accordance with Government Code sections 17500 through 17630: None
- Mandate and cost to any local agency or school district: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the state: None
- Cost impacts on representative private persons or businesses: The DOJ is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action beyond those already imposed by the section 30165.1
- Significant statewide adverse economic impact: None. The DOJ has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States.
- Effect on small business: The DOJ has made an initial determination that compliance with the regulations will not impose significant costs beyond those that are already required by section 30165.1.
- Significant effect on housing costs: None

In accordance with Government Code section 11346.3, the following are required responses of state agencies proposing to adopt or amend any administrative regulations to assess whether and to what extent it will affect the following:

- The creation or elimination of jobs within the State of California: None
- The creation of new businesses or the elimination of existing businesses within the State of California: None
- The expansion of businesses currently doing business within the State of California: None

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Attorney General's Office has prepared an initial statement of reasons for the proposed regulatory action and has available all the information upon which the proposal is based (rulemaking file).

### **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS**

Copies of the regulations and of the initial statement of reasons and all the information upon which the proposal is based (rulemaking file) may be obtained upon request from the Tobacco Litigation & Enforcement Section, Office of the Attorney General, 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, or by telephoning the contact person listed below. In addition, the above-cited materials may be accessed on DOJ's website at <http://ag.ca.gov/tobacco>.

### **CONTACT PERSON**

Non-substantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations, may be directed to Nancy Wagner at (916) 323-3724. The back-up contact person is Cassandra Pitts, (916) 323-3762. Inquiries regarding the substance of the proposed regulations may be directed to Senior Assistant Attorney General Dennis Eckhart at the above address or at (916) 323-3770 or Deputy Attorney General Michele DeCristoforo at the above address, (916) 323-3795.

### **PRESENTATION OF WRITTEN COMMENTS**

Interested persons are invited to submit written comments on the adoption of the regulations. A public comment period is provided through June 15, 2004. Filing of written statements will be accepted at the Office of the Attorney General, Tobacco Litigation & Enforcement Section, Attention: Nancy Wagner, 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, through close of business 5:00 p.m. on Tuesday, June 15, 2004. The Attorney General's Office will not consider written comments received after June 15, 2004, unless that deadline is extended to provide additional public participation or a public hearing has been requested.

## **PROPOSED REVISIONS, FINAL ADOPTION OF REGULATIONS**

Following the public hearing, the DOJ may adopt, as final, the regulations described in this Notice and Informative Digest. Copies of the Regulations, as finally adopted, will be sent to all persons requesting copies. If, as a result of public comment, changes to regulations are deemed appropriate, copies of the proposed changes will be sent to all persons who previously requested copies, all persons who testified at the public hearing, if any, or submitted written comments during the comment period or at the public hearing, if any, and to those who have requested copies of information regarding the regulations for at least 15 days before the Department accepts the regulations as revised.

Thereafter, the DOJ will accept written comments, arguments, evidence and the like for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulations will appear in the California Code of Regulations, Title 11, Division 1, Chapter 16, Sections 999.15 – 999.23.

The Attorney General's Office has made an initial determination that no reasonable alternative considered or that has otherwise been identified and brought to the attention of this office, would be more effective in carrying out the purpose for which this regulatory action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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

Upon its completion, the Final State of Reasons will be available and copies may be requested from the contact person named in this notice.