

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

§ 50166. Miscellaneous Provisions.

(a) *Notice and Review of Determination.* A determination of the Director or Attorney General to not include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by the Administrative Procedure Act, 1 CMC §§ 9108-9115.

(b) *Applicants for Licenses.* No person shall be issued a license or granted a renewal of a license to act as a wholesale agent unless such person has certified in writing, under penalty of perjury, that such person will comply fully with this section, and any regulations promulgated pursuant to the Model Escrow Statute.

(c) *Dates.* The certifications by a tobacco product manufacturer described in 4 CMC § 50162(a) shall be due 45 calendar days after such effective date; and the directory described in 4 CMC § 50162(b) shall be published or made available within 90 calendar days after such effective date.

(d) *Promulgation of Regulations.* The Department of Finance and Attorney General may promulgate regulations necessary to effect the purposes of this Act.

(e) *Recovery of Costs and Fees By Attorney General.* In any action brought by the Commonwealth to enforce this Act, the Commonwealth shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees.

(f) *Disgorgement of Profits for Violations of Act.* If a court determines that a person has violated this Act, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Commonwealth Treasurer for deposit in the Tobacco Control Fund established pursuant to 3 CMC § 2177. Unless otherwise expressly provided the remedies or penalties provided by this Act are cumulative to each other and to the remedies or penalties available under all other laws of this Commonwealth.

(g) *Construction and Severability.* If a court of competent jurisdiction finds that the provisions of this Act and of the Model Escrow Statute conflict and cannot be harmonized, then such provisions of the Model Escrow Statute shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act causes the Model Escrow Statute to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Act shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act or any part thereof. Nothing in this Act shall be construed as affecting the validity of Department of Finance, Revenue and Taxation Regulations, Part XIX, Section 2700 et seq. [published in] Commonwealth Register, Volume 25, Number 10, Page 21455 through 21459, November 17, 2003, as adopted, with any modifications or amendments thereto. If this Act, or any portion of the amendments to Public Law 13-15 made by this Act, is held to be invalid, unlawful or unconstitutional, then such portion contained in this Act shall be repealed, and the original language

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from Public Law 13-15 shall be restored as if no such amendment(s) had been made.

Source: PL 14-10, § 7, modified.

Commission Comment: PL 13-15, referred to as the “Model Escrow Statute” by PL 14-10, is codified at 3 CMC §§ 2171 and 2172. The Commission changed the capitalization of words throughout the section above, corrected the reference to the Administrative Procedure Act in subsection (a), and substituted the proper section numbers in place of general references in subsections (c) and (f) pursuant to its authority by 1 CMC § 3806(f), (g), and (d), respectively, and inserted the bracketed text subsection (g) above. The words “section” and “subsection” were used loosely throughout PL 14-10 and the Commission made its best effort to discern and substitute the correct sections being referenced.

The Department of Finance emergency regulations referenced to in subsection (g) above were permanently adopted on March 23, 2004 and are codified at NMIAC 70-40.6-1601 through 1635 (Cigarette Wholesaler Reporting Requirements).