

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



Office of Consumer Protection
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UPDATED NOTICE

**To All Active Non-Participating Manufacturers Certified in Montana
And Their Escrow Agents**

March 30, 2016

REVISION OF THE MODEL ESCROW AGREEMENT

In January 2016, Montana posted on its website and served notice that it would require execution of a revised Model Escrow Agreement for 2016 Certification as a Non-Participating tobacco product Manufacturer (NPM). Montana has determined that for the 2016 Certification it will not require the revised Model Escrow Agreement but will continue to accept the Model Escrow Agreement previously accepted in prior years. A copy of the previous Model Escrow Agreement is re-posted on our website at [Tobacco Sales and Directory & Tobacco Settlement - » Attorney General Tim Fox](#). Montana is in the process of revising the Model Escrow Agreement, and NPMs can anticipate that execution of a revised Model Escrow Agreement will be required in the upcoming year.

The qualified escrow fund established by an NPM is governed by state law. The Tobacco Products Reserve Fund (Mont. Code Ann. §§ 16-11-401 - 512, *et seq.*) statutes requires the principal funds deposited in a qualified escrow fund for units sold within the State to be maintained for the benefit of releasing parties and prohibits the NPM from “*using, assessing, or directing the use of the funds’ principal*” except as consistent with the statutes. Montana statutes also require that an NPM “*has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.*” Mont. Code Ann. § 16-11-503(5)(b)(ii).

Non-Participating Manufacturers and their Escrow Agents are reminded that investment activity that results in a deficiency in the principal escrow funds is a violation of the Escrow Agreement and Montana law. Pursuant to the terms of the Escrow Agreement, Non-Participating Manufacturers and their Escrow Agents are to ensure that interest sweeps and investments are done in a manner that ensures the principal balance remains in the account at all times. The Escrow Agent fees and expenses may only be paid using interest. The principal balance must not be reduced for such fees and expenses. Escrow Agents are required to provide a bank statement to the Montana Attorney General for its sub-account annually, at a minimum.

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Montana may consider acceptance of an escrow agreement executed for another state on a case by case basis for the purposes of 2016 Certification.

If there are any questions, please contact the following individuals for assistance:

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