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DEPARTMENT OF JUSTICE

DIVISION 106

SMOKELESS TOBACCO PRODUCTS

137-106-0001

Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in division 106 unless the context requires otherwise:

- (1) "Distributor" has the meaning given that term in ORS 180.468.
- (2) "Distributor report" means the information required to be provided to the Attorney General under ORS 180.483.
- (3) "Nonparticipating manufacturer" has the meaning given that term in ORS 180.468.
- (4) "Participating manufacturer" has the meaning given that term in ORS 180.468.
- (5) "Smokeless Master Settlement Agreement" has the meaning given that term in ORS 323.810.
- (6) "Smokeless Tobacco Products" has the meaning given that term in ORS 323.810.
- (7) "Tobacco product manufacturer" has the meaning given that term in ORS 323.810.

Stat. Auth.: ORS 180.477, 180.483

Stats. Implemented: ORS 180.477, 180.483

Hist.: DOJ 14-2016, f. & cert. ef. 11-17-16

137-106-0010

Tobacco Product Manufacturers Directory

- (1) In exercising the discretion granted by ORS 180.477(2), the Attorney General will consider the following:
 - (a) Whether the entity tendering a certification is a tobacco product manufacturer;
 - (b) Timeliness of the certification made by the tobacco product manufacturer;
 - (c) Completeness, or lack thereof, of the certification made by the tobacco product manufacturer;
 - (d) Whether the tobacco product manufacturer has provided all requested documents supporting its certification;
 - (e) Whether the certification is based on misrepresentation, false information, nondisclosure or concealment of facts;
 - (f) Whether the tobacco product manufacturer is in full compliance with all provisions of Local, State and Federal Law, including but not limited to the provisions of ORS 180.471, 180.474, and 323.810 to 323.816.
 - (g) Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand is the subject of an injunction obtained by the State of Oregon for previous failure to comply with the nonparticipating manufacturer statutes;
 - (h) Whether the tobacco product manufacturer has failed to fully or timely fund a qualified escrow fund approved by the Attorney General;
 - (i) Whether all final judgments and penalties, including interest, costs and attorney fees thereon, in favor of the State of Oregon, or any political subdivision thereof, for violation of any Oregon

statute, administrative rule or other law, including but not limited to violations of ORS 323.810 to 323.816, have been fully satisfied for the name, brand family, or tobacco product manufacturer;

(j) Whether the tobacco product manufacturer has corrected deficiencies in its certification or criteria set forth in this section in a timely and thorough manner;

(k) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the Attorney General pursuant to ORS 180.483 for additional information or documentation or the criteria set forth in this section; and

(l) Any other facts or circumstances the Attorney General determines are relevant.

(2) In a manner provided in subsection (5) of this rule, the Attorney General shall remove a tobacco product manufacturer or brand family from the directory if the Attorney General determines that the tobacco product manufacturer or the brand family no longer meets the requirements of ORS 180.471 and 180.474.

(3) In the manner provided in subsection (5) of this rule, the Attorney General shall reject the application of a tobacco product manufacturer or brand family to be listed in the directory if the Attorney General determines that the tobacco product manufacturer or the brand family does not meet the requirements of ORS 180.471 and 180.474.

(4) The Attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) if the manufacturer has met the requirements of ORS 180.471 and 180.474 and will be included in the directory. The notice shall include each brand family that the Attorney General determines will be included in the directory.

(5) If, on or after the effective date of these rules, the Attorney General intends to deny a tobacco product manufacturer or brand family a place in the directory, to remove a manufacturer or brand family from the directory, or to exclude an entity because the entity is not a tobacco product manufacturer, the Attorney General shall mail a written Notice of Intended Action to the manufacturer or entity. The Notice of Intended Action shall specify:

(a) The factual and legal basis upon which the Attorney General's intended action rests;

(b) The actions that the tobacco product manufacturer or entity must complete to cure the factual or legal deficiencies upon which the intended action is based; and,

(c) The date upon which attempts to cure the deficiencies must be completed and documentation of completion must be submitted to the Attorney General. In no event shall the Attorney General allow the tobacco product manufacturer or entity less than 15 days within which to cure the deficiencies upon which the Attorney General's intended action is based.

(6) On or before the deadline set in the Notice of Intended Action, the tobacco product manufacturer or entity shall provide documentation to the Attorney General detailing the actions, if any, that the tobacco product manufacturer or entity has taken to cure the deficiencies identified by the Attorney General in the Notice of Intended Action.

(7) Within 45 days of the date on which a certification that is the subject of a Notice of Intent is received, the Attorney General shall determine whether the deficiencies have been cured.

(a) If the deficiencies have been cured to the satisfaction of the Attorney General, the attorney General shall promptly notify a tobacco product manufacturer in writing (via email or regular mail) that the manufacturer or brand name family will be included in the directory.

(b) If any of the deficiencies have not been cured to the satisfaction of the Attorney General, the Attorney General shall promptly issue an order in Other than Contested Case denying a manufacturer, brand name family, or entity a place in the directory.

(8) A tobacco product manufacturer or entity that has complied with subsection (6) of this rule and is aggrieved by an Order denying the manufacturer or brand name family a place in the directory may file a petition for judicial review of the Attorney General's order as provided in ORS 183.484.

(9) The Attorney General may, for any reason and at the Attorney General's discretion, extend any period allowed by these rules.

Stat. Auth.: ORS 180.477, 180.483

Stats. Implemented: ORS 180.477, 180.483

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137-106-0030

Distributor Reports

(1) No later than the 20th day following the end of each calendar quarter, each distributor shall report to the Attorney General the total number of smokeless tobacco products sold on which the distributor paid the tax due during the reporting month.

(2) Reports under section 1 of this rule should not include smokeless tobacco products that were tax paid at the time the distributor acquired them.

(3) In making the reports required by section 1 of this rule, the distributor shall certify that the information provided is true and accurate.

(4) The Department of Justice shall promulgate a form entitled Quarterly Brand Specific Report for Smokeless Tobacco Products with Oregon Tax Paid for All Manufacturers. Distributors shall use the Quarterly Brand Specific Report for Smokeless Tobacco Products with Oregon Tax Paid for All Manufacturers form for reports required by section 1 of this rule. Quarterly Brand Specific Report for Smokeless Tobacco Products with Oregon Tax Paid for All Manufacturers forms shall be mailed to Department of Justice, Civil Enforcement, 1162 Court Street NE, Salem, Oregon 97301.

Stat. Auth.: ORS 180.477, 180.483

Stats. Implemented: ORS 180.477, 180.483

Hist.: DOJ 14-2016, f. & cert. ef. 11-17-16

137-106-0040

Calculation of Time for Purposes of These Rules

In computing any period of time prescribed or allowed by these rules, the period shall be calculated as provided in Oregon Rule of Civil Procedure 10A.

Stat. Auth.: ORS 180.477, 180.483

Stats. Implemented: ORS 180.477, 180.483

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