

109:8-1-02

Tobacco product manufacturers directory.

(A) In ~~exercising the discretion granted by~~ carrying out the requirements of division (A)(4) ~~(b) of section 1346.05 and division (B)(2) of section 1346.05 of the Revised Code to determine whether a certification is current and accurate or to update the directory to correct mistakes or otherwise keep the directory in conformity with section 1346.05,~~ the attorney general may consider the following:

- (1) Whether the entity ~~tendering~~ submitting a certification ~~request~~ is a tobacco product manufacturer;
- (2) Completeness, or lack thereof, of the certification ~~request~~ made by ~~the~~ a tobacco product manufacturer; including whether the tobacco manufacturer has provided all requested documents supporting its certification;
- (3) Whether the tobacco product manufacturer has corrected deficiencies in its certification in a timely and thorough manner ~~provided all requested documents supporting its certification request;~~
- (4) Whether ~~the~~ a certification ~~request~~ is based on misrepresentation, false information, nondisclosure, or concealment of facts;
- (5) 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 section 5743.21 and section 2927.02 of the Revised Code;
- (6) Whether the tobacco product manufacturer, predecessor of the tobacco product manufacturer, or previous manufacturer of the brand family is the subject of an injunction obtained by the state of Ohio for previous failure to comply with sections 1346.01 to 1346.10 of the Revised Code;
- (7) ~~Whether the tobacco product~~ For a nonparticipating manufacturer, whether the manufacturer has failed to establish or fully fund a qualified escrow fund governed by a qualified escrow agreement approved by the attorney general;
- (8) Whether all final judgments and penalties, including interest, costs and attorney fees ~~thereon,~~ in favor of the state of Ohio, for violation of any Ohio statute, administrative rule or other law, including but not limited to violations of sections 1346.01 to 1346.10 of the Revised Code, have been fully satisfied for the brand family; or tobacco product manufacturer;
- (9) ~~Whether the tobacco product manufacturer has corrected deficiencies in its certification request or criteria set forth in this section in a timely and thorough manner;~~

- ~~(10) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the attorney general for additional information or documentation supporting its certification request or the criteria set forth in this section;~~
- ~~(11)(9)~~ (9) Whether the tobacco product manufacturer is owned, either all or in part, by a person or entity with a current or prior interest in any other tobacco product manufacturer that is, or has been, not in compliance with sections 1346.01 to 1346.10 of the Revised Code or is the subject of an injunction obtained by the state of Ohio for failure to comply with sections 1346.01 to 1346.10 of the Revised Code;
- ~~(12)(10)~~ (10) Whether the tobacco product manufacturer is managed or operated by a person with a current or prior interest in any other tobacco product manufacturer that is, or has been, not in compliance with sections 1346.01 to 1346.10 of the Revised Code or is the subject of an injunction obtained by the state of Ohio for failure to comply with sections 1346.01 to 1346.10 of the Revised Code; and
- ~~(13)(11)~~ (11) Whether the tobacco product manufacturer has complied in a timely and thorough manner with any request by the attorney general for other information or documentation pursuant to division 1346.01 to 1346.10 of the Revised Code. Any other facts or circumstances the attorney general determines are relevant.
- ~~(B) In a manner provided in division (B)(2) of section 1346.05 of the Revised Code, 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 sections 1346.01 to 1346.10 of the Revised Code.~~
- ~~(C) In the manner provided in division (B)(2) of section 1346.05 of the Revised Code, 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 sections 1346.01 to 1346.10 of the Revised Code.~~
- ~~(D)(B)~~ (B) The attorney general shall promptly notify a tobacco product manufacturer in writing ~~at the address supplied in the certification form prescribed by the attorney general pursuant to division (A)(1) of section 1346.05 of the Revised Code by facsimile or regular mail~~ if the manufacturer's certification has met the requirements ~~of been verified as compliant with~~ section 1346.05 of the Revised Code ~~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.

(C) The attorney general shall reject the certification of a tobacco product manufacturer if the attorney general determines that the tobacco product manufacturer or the brand family that is the subject of the certification does not meet the requirements of sections 1346.01 to 1346.10 of the Revised Code.

(D) In the manner provided in division (B)(2) of section 1346.05 of the Revised Code, the attorney general shall remove a tobacco product manufacturer or brand family from the directory if:

(1) The tobacco product manufacturer requests to remove the brand family from the directory or indicates on its annual certification that the brand family is no longer being sold in the state; or

(2) The attorney general determines that the tobacco product manufacturer or the brand family is no longer in compliance with sections 1346.01 to 1346.10 of the Revised Code.

(E) 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~~send a written "Notice of Intended Action" to the manufacturer or entity. The "Notice of Intended Action" shall specify:

(1) The factual and legal basis upon which the attorney general's intended action rests;

(2) The actions that the tobacco product manufacturer or entity must ~~undertake~~take to cure the factual or legal deficiencies, if any, upon which the intended action is based, ~~if any~~; and,

(3) The date upon which attempts to cure the deficiencies, if any, 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 seven days within which to cure the deficiencies, if any, upon which the attorney general's intended action is based.

(F) If the deficiencies specified in a Notice of Intended Action ~~have been~~are cured to the satisfaction of the attorney general, the attorney general shall notify ~~at the~~ tobacco product manufacturer in writing ~~by facsimile or regular mail~~ that the manufacturer or brand ~~name~~-family will be included in the directory in accordance with division (B) of section 1346.05 of the Revised Code.

(G) If any of the deficiencies specified in a Notice of Intended Action ~~have~~are not ~~been~~ cured to the satisfaction of the attorney general, the attorney general shall deny

~~the manufacturer, brand family, or entity a place in the directory or take action in accordance with division (B) of section 1346.05 of the Revised Code removing the manufacturer, brand family, or entity from the directory denying or removing a manufacturer, brand family, or entity a place in the directory.~~

(H) The attorney general may, for any reason and at the attorney general's discretion, extend any time period ~~allowed~~ established by this chapter.

(I) When this chapter requires the attorney general to provide a written notice, the notice may be sent by email, regular mail, facsimile, or other commonly used method of communication. The attorney general shall use the contact information provided by the intended recipient in its most recent certification or other communication in which it provided contact information.

Effective:

Five Year Review (FYR) Dates: 9/27/2024

Certification

Date

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|------------------------|-----------------|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 1346.08 |
| Rule Amplifies: | 1346.01-1346.10 |
| Prior Effective Dates: | 11/04/2004 |