

701—85.22 (80GA,SF375) Directory of tobacco product manufacturers.

85.22(1) *Directory of cigarettes approved for stamping and sale in Iowa.* A tobacco product manufacturer and a brand family shall not be included in the directory authorized by 2003 Iowa Acts, Senate File 375, section 3, after April 30 each year until and unless the tobacco product manufacturer has provided current and accurate certification conforming to the requirements of 2003 Iowa Acts, Senate File 375, section 3. Nonparticipating manufacturers and their brand families shall not be included in the directory after April 30 each year until and unless the attorney general has determined that the nonparticipating tobacco product manufacturer is in full compliance with 2003 Iowa Acts, Senate File 375, section 3, and that neither subsection (2)“b”(1) nor (2)“b”(2) of section 3 applies to the nonparticipating tobacco product manufacturer or a brand family it seeks to have included in the directory. A tobacco product manufacturer or brand family shall be deleted from the directory if a determination is made by the attorney general that the tobacco product manufacturer no longer meets the requirements of 2003 Iowa Acts, Senate File 375, section 3, or that either subsection (2)“b”(1) or (2)“b”(2) of section 3 applies.

85.22(2) *Notice of inclusion in directory.* The attorney general shall notify a tobacco product manufacturer by mail that it has met the requirements of 2003 Iowa Acts, Senate File 375, section 3, and will be included in the directory. This notice shall include each brand family that the attorney general determines will be included in the directory.

85.22(3) *Notice of noninclusion in or deletion from the directory.* Tobacco product manufacturers that have applied for inclusion in the directory shall be notified in writing of a decision made by the attorney general not to include in or to delete from the directory the tobacco product manufacturer or a brand family. Such notice shall be served on the tobacco product manufacturer’s agent for service of process by certified mail.

85.22(4) *Procedure for contesting notice of noninclusion or deletion.*

a. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.8(17A). The protest shall conform generally to the requirements of 701—subrules 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.17(8), and rules 701—7.19(17A) to 701—7.22(17A), to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

b. The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.17(8), except that no appeal to or on motion of any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

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