

Chattopadhyay, Kajal K. (DOR)

From: Chattopadhyay, Kajal K. (DOR)
Sent: Monday, April 30, 2018 4:32 PM
To: 'Althouse, Heather Rubino'
Cc: 'Kabaria, Swati'; 'Ibarra-Pratt, Ele'; 'AskCTP'
Subject: RE: Massachusetts Illegal Tobacco Task Force

Heather/Swati/Ele,

I hope you are all well. I wanted to thank you for your responses to the Massachusetts Illegal Tobacco Task Force's (Task Force) questions relating to its proposal to apply Massachusetts tax stamps to smokeless tobacco products sold in our Commonwealth. Your responses have been instructive and helpful to our consideration of the stamping proposal.

The Task Force has discussed your responses and wishes to submit two follow-up questions for your consideration. These questions relate to the definition of "package" under the FD&C Act.

In response to our previously submitted Question 2, you stated:

Under chapter IX of the FD&C Act, the term "package" means "a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers." [Bold added]

As a follow-up to this response, we have two further questions (which we'll label A & B to distinguish them from our previous set of questions).

A. Are we correct in our understanding of the definition of "package" under the FD&C Act that if the container that a tobacco product is placed in for transit is not the container in which the "tobacco product is offered for sale, sold, or otherwise distributed to consumers[,] it is not a "package" for purposes of the statute?

B. If the answer to A is yes, is it an accurate reading of the FD&C Act and its related regulations that a tobacco distributor does not become a manufacturer by opening a five-pack sleeve (also called a log in industry parlance) of smokeless tobacco – which appears to be common practice for retailers who offer single hockey puck shaped tins for sale to consumers – and then placing the individual puck-shaped tins in a container (such as a clear plastic bag) that is solely for transport and will not be used for the sale or other distribution to end-use consumers?

Responses to the above questions should be directed to Kajal K. Chattopadhyay, Co-Chair, Massachusetts Illegal Tobacco Task Force, by email to chattopadk@dor.state.ma.us or by regular mail to my attention at the address below:

Massachusetts Department of Revenue
100 Cambridge St.
7th Floor
P.O. Box 9550
Boston, MA 02114

Thank you in advance for your consideration of these additional questions. We look forward to hearing from you.

Best,

Kajal K. Chattopadhyay