

## NOTICE

### DIRECTORY FOR CIGARETTES AND RYO TOBACCO Chapter 486P, Hawaii Revised Statutes Directory of Approved Tobacco Product Manufacturers and Brands

Legislation known as "Complementary Legislation" was passed in the 2003 Regular Legislative Session and signed by Governor Lingle. Effective date is May 20, 2003.

This law requires the attorney general to develop and make available a directory that includes a list of all approved tobacco product manufacturers that have provided information conforming to the requirements of section 486P-5, and a list of all approved brand families.

#### §486P-1 DEFINITIONS.

As used in this chapter:

"Attorney general" means the attorney general of the State of Hawaii.

"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including but not limited to "menthol", "lights", "kings", and "100s", and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
- (3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in [paragraph] (1) of this definition.

The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

"Master Settlement Agreement" shall have the same meaning as in section 675-2.

"Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

"Participating manufacturer" has the meaning given that term in section II(jj) of the Master Settlement Agreement and all amendments thereto.

"Qualified escrow fund" shall have the same meaning as in section 675-2.

"Tobacco product manufacturer" means any person that is a "tobacco product manufacturer" as defined in section 675-2.

"Units sold" shall have the same meaning as in section 675-2.

§486P-5 CERTIFICATION; PARTICIPATING MANUFACTURERS; NONPARTICIPATING MANUFACTURERS.

(a) Every tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general, a certification to the attorney general no later than September 30, 2003, and no later than the thirtieth day of April each year thereafter, certifying that as of the date of the certification the tobacco product manufacturer is either a participating manufacturer or is in full compliance with section 675-3(b).

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) A nonparticipating manufacturer shall include in its certification:

- (1) A complete list of all of its brand families that identifies by name and address any other manufacturer of the brand families, and that includes:
  - (A) A list of all of its brand families of cigarettes and of the number of units sold for each brand family that was sold in the State during the preceding calendar year, indicating by an asterisk any brand family that is no longer being sold in the State as of the date of the certification; and
  - (B) A list of its brand families that have been sold in the State at any time during the current calendar year.

The nonparticipating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general;

- (2) A statement that such nonparticipating manufacturer is registered to do business in the State, or that such nonparticipating manufacturer is a nonresident or foreign nonparticipating manufacturer that has not registered to do business in this State as a foreign corporation or business entity and has appointed an agent for service of process and provided notice thereof pursuant to section 486P-4;
  - (3) A statement that the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund required pursuant to section 675-3(b)(1), including:
    - (A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund;
    - (B) The account number of the qualified escrow fund or any sub-account number for the State;
    - (C) The amount the nonparticipating manufacturer placed in such fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and
    - (D) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments pursuant to section 675-3(b)(1);
  - (4) A statement that the nonparticipating manufacturer has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund; and
  - (5) A statement that the nonparticipating manufacturer is in full compliance with this chapter, chapter 675, and any rules adopted to implement this chapter or chapter 675.
- (d) A tobacco product manufacturer may not include a brand family in its certification unless:
- (1) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments

- under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and
- (2) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of chapter 675. Nothing in this section shall be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of chapter 675.
- (e) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which a tobacco product manufacturer has established a qualified escrow fund for the purpose of compliance with section 675-3(b)(1), of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.
- (f) A tobacco product manufacturer shall maintain and make available to the attorney general, pursuant to this chapter, all invoices and documentation of sale and other such information relied upon for certification for a period of five years unless otherwise required by law.

§486P-6      DIRECTORY; UPDATES; INFORMATION TO BE MAINTAINED AND PROVIDE.

- (a) Not later than November 1, 2003, the attorney general shall develop and make available for public inspection, a directory that includes a list of all tobacco product manufacturers that have provided a current and accurate certification conforming to the requirements of section 486P-5, and a list of all brand families that are listed in the certification; provided that:
- (1) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with section 486P-5 unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general;
- (2) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that:
- (A) Any escrow payment required pursuant to section 675-3(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or
- (B) Any outstanding final judgment, including interest thereon, for a violation of section 675-3(b) has not been fully satisfied by the manufacturer or brand family.
- (b) The attorney general shall update the directory as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.
- (c) Every entity licensed under chapter 245 shall:
- (1) Provide to the attorney general and update as necessary an electronic mail address for the purpose of receiving any notifications hereunder; and
- (2) Not later than thirty days after the end of each month, and more frequently if so directed by the attorney general, submit to the attorney general such information as the attorney general requires to facilitate compliance with this chapter, including but not limited to:
- (A) A list by brand family of the total number of cigarettes, or in the case of roll-your-own, the equivalent stick count for which the licensee affixed stamps during the previous calendar month or otherwise paid the tax due for such cigarettes; and
- (B) Samples of each brand family, as may be necessary to enable the attorney general to determine whether a tobacco product manufacturer or licensed entity is in compliance with this chapter.

- (3) Maintain, and make available to the attorney general, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five years.

Questions concerning this law should be directed to:

State of Hawaii  
Department of the Attorney General  
Criminal Justice Division - Tobacco Enforcement Unit  
425 Queen Street  
Honolulu, Hawaii 96813  
(808) 586-1203