

STATE OF HAWAII
Department of the Attorney General
Tobacco Enforcement Unit

**Certification for Hawai'i Tobacco Directory
Pursuant to Chapters 245 and 486P, Hawaii Revised Statutes (HRS)
For Cigarettes and Roll-Your-Own (RYO) Tobacco**

GENERAL INFORMATION

PART I: CERTIFICATION

Pursuant to HRS §486P-5(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 to the Hawai'i Attorney General **no later than April 30th each year**, a certification certifying that as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer, or a non-participating manufacturer in full compliance with HRS §675-3(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, deletion, or modification of its brand families by executing and delivering a supplemental certification to the Hawai'i Attorney General. HRS §486P-5(b).

A non-participating manufacturer shall include in its certification a list of all 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. HRS §486P-5(c).

The non-participating manufacturer shall update the list thirty days prior to any addition, deletion, or modification of its brand families by executing and delivering a supplemental certification to the Hawai'i Attorney General. HRS §486P-5(c)(1).

This certification is in addition to any certificate of compliance that may be required of a non-participating manufacturer pursuant to HRS §675-3(b)(3).

IMPORTANT DATES TO REMEMBER

The certification must be executed and delivered to the Hawai'i Attorney General **no later than April 30th of each year**. HRS §486P-5(a).

Supplemental certifications must be executed and delivered to the Hawai'i Attorney General **thirty calendar days before any addition, deletion, or modification** of a tobacco product manufacturer's brand families. HRS §486P-5(b).

PART II: DEFINITIONS

"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. HRS §486P-1.

"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; or
- (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” shall constitute one individual “cigarette.” HRS §§486P-1 and 675-2(d).

“Directory” means the Hawai‘i Directory for Cigarettes and Roll-Your-Own Tobacco established pursuant to HRS §486P-6. HRS §245-22.5.

“Entity” means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity. HRS §245-1.

“Master Settlement Agreement” (“MSA”) means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers. HRS §675-2(e).

“Non-Participating Manufacturer” means any tobacco product manufacturer that is not a participating manufacturer. See MSA §II(cc) at 9, and HRS §486P-1.

“Participating Manufacturer” means a tobacco product manufacturer that is or becomes a signatory to the MSA, provided that (1) in the case of a tobacco product manufacturer that is not an original participating manufacturer, such tobacco product manufacturer is bound by the MSA and the Consent Decree (or, in any settling state that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree) in all settling states in which the MSA and the Consent Decree binds original participating manufacturers (provided, however, that such tobacco product manufacturer need only become bound by the Consent Decree in those settling states in which the settling state has filed a released claim against it), and (2) in the case of a tobacco product manufacturer that signs the MSA after the MSA execution date, such tobacco product manufacturer, within a reasonable period of time after signing the MSA, makes any payments (including interest thereon at the Prime Rate) that it would have been obligated to make in the intervening period had it been a signatory as of the MSA execution date. “Participating Manufacturer” shall also include the successor of a participating manufacturer. Except as expressly provided in the MSA, once an entity becomes a participating manufacturer, such entity shall permanently retain the status of participating manufacturer. Each participating manufacturer shall regularly report its shipments of cigarettes in or to the fifty United States, the District of Columbia and Puerto

Rico to Management Science Associates, Inc. (or a successor entity as set forth in subsection (mm)). Solely for purposes of calculations pursuant to subsection IX(d), a tobacco product manufacturer that is not a signatory to the MSA shall be deemed to be a “Participating Manufacturer” if the original participating manufacturers unanimously consent in writing. See MSA §II(jj) at 11, and HRS §486P-1.

“Qualified Escrow Fund” means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with HRS §675-3(b). HRS §675-2(f).

“Stamping Agent” means any person or entity licensed to affix tax stamps to packages or other containers of cigarettes under HRS chapter 245.

“Tobacco Product Manufacturer” means an entity that after July 2, 1999 directly (and not exclusively through any affiliate):

- (1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the MSA) that will be responsible for the payments under the MSA with respect to such cigarettes as a result of the provisions of subsection II(mm) of the MSA and that pays the taxes specified in subsection II(z) of the MSA, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);
- (2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
- (3) becomes a successor of an entity described in paragraph (1) or (2).

The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1) to (3) above. HRS §675-2(i).

“Units Sold” means the number of individual cigarettes sold in the State by the applicable tobacco product

manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or RYO tobacco containers) bearing the excise tax stamp of the State. The Hawai'i Attorney General shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. HRS §675-2(j).

PART III: HAWAI'I DIRECTORY FOR CIGARETTES AND ROLL-YOUR-OWN TOBACCO ("Directory")

Pursuant to HRS §486P-6(a), the Hawai'i 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 HRS §486P-5, and a list of all brand families that are listed in the certification. The attorney general shall not include or retain in the Directory the name or brand families of any non-participating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with HRS §486P-5, unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general. 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 non-participating manufacturer, that: (A) Any escrow payment required pursuant to HRS §675-3(b)(1), for any period for any brand family, whether or not listed by the non-participating 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 HRS §675-3(b), has not been fully satisfied by the tobacco product manufacturer or brand family.

Pursuant to HRS §486P-6(b), the Hawai'i 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 HRS chapter 486P.

PART IV: PROHIBITION AGAINST STAMPING OR SALE OF CIGARETTES NOT LISTED IN THE DIRECTORY

Pursuant to HRS §245-22.5(a), it is unlawful for an entity to (1) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand

family not included in the Directory; and (2) Import, sell, offer, keep, store, acquire, transport, distribute, receive, or possess for sale or distribution cigarettes of a tobacco product manufacturer or brand family not included in the Directory.

PART V: USE AND DISCLOSURE OF INFORMATION

Pursuant to HRS §486P-7, the information received by the Hawai'i Attorney General under HRS chapter 486P, shall be used only for purposes of enforcement of HRS chapters 245, 486P, and 675, provided that the attorney general may share any information with authorities of other states or the federal government for the purpose of enforcement of similar state statutes upon receipt of adequate assurance from those authorities that the information will be used only for that purpose. Information received by the attorney general under HRS chapter 486P, that tends to identify customers of tobacco product manufacturers, terms of sale, including price, and nonaggregated sales volume data, shall be exempt from disclosure under HRS §92F-11.

PART VI: PENALTIES

Pursuant to HRS §486P-3, the Hawai'i Attorney General may bring a civil action against any entity that fails to file the reports required under HRS chapter 486P. The attorney general may bring a civil action against any entity engaged in the business of manufacturing, wholesaling, distributing, importing, or dealing in cigarettes or tobacco products that fail to provide information the attorney general deems necessary for the proper administration of HRS chapters 486P or 675. Notwithstanding the existence of other remedies at law, the attorney general may apply for a temporary or permanent injunction restraining any entity from the sale, use, possession, acquisition, receipt, transportation, or distribution of cigarettes manufactured by a tobacco product manufacturer who knowingly fails to report, provide information, or meet the certification requirements of HRS chapter 486P. The injunction shall be issued without bond. The State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of HRS chapter 486P.

PART VII: RECORD RETENTION REQUIREMENTS

Pursuant to HRS §486P-6(c)(3), every entity licensed under HRS chapter 245, shall maintain and make available to the Hawai'i Attorney General all invoices and documentation of sales of all non-participating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five years.

SPECIFIC INSTRUCTIONS FOR COMPLETING THE NON-PARTICIPATING MANUFACTURER'S CERTIFICATION FOR THE HAWAI'I TOBACCO DIRECTORY

PART I: TOBACCO PRODUCT MANUFACTURER IDENTIFICATION

Provide the tobacco product manufacturer's name, address, telephone number, facsimile number, any website address, name of contact person, and the contact person's electronic mail address;

Provide the tobacco product manufacturer's mailing address if different from the address listed above;

Provide the name and address of the manufacturing plant, if different from the address listed above;

Indicate whether the tobacco product manufacturer is a participating manufacturer under the MSA, or a non-participating manufacturer in full compliance with HRS §675-3(b) by checking the appropriate box; and

Indicate whether the tobacco product manufacturer has complied with its reporting requirements pursuant to HRS §486P-2. Certification will be denied if the tobacco product manufacturer has failed or fails to comply with reporting requirements.

PART II: CALENDAR YEAR

Designate the calendar year for which certification is being sought. Complete a separate certification for each year.

PART III: BRAND FAMILY IDENTIFICATION

List by brand family all of the cigarettes that the tobacco product manufacturer intends to sell (whether directly or through a distributor, retailer or similar intermediary or intermediaries) to consumers in this State, and seeks to have included in the Directory. A brand family will be assumed to be cigarettes unless designated as RYO. Only the brand families identified in the certification will be included in the Directory.

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 MSA for the relevant year, in the volume and shares determined pursuant to the MSA; and (2) in the case of a non-participating manufacturer, the non-participating manufacturer affirms that the brand

family is to be deemed to be its cigarettes for purposes of HRS chapter 675.

Nothing in HRS chapter 486P 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 MSA or for purposes of HRS chapter 675.

NON-PARTICIPATING MANUFACTURER'S CERTIFICATION

A Non-Participating Manufacturer shall include in its certification a complete list of all of its brand families that identifies by name and address any other manufacturer of the brand families; a complete list of all of its brand families of cigarettes; and a complete list of the number of units sold in the State during the preceding calendar year for each brand family. Indicate by an asterisk any brand family that will no longer be sold in the State as of the date of certification. The Non-Participating Manufacturer shall update its list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Hawai'i Attorney General. HRS §486P-5(c).

PART IV: NON-PARTICIPATING MANUFACTURER'S ADDITIONAL INFORMATION

1. COMPANY OFFICERS AND OWNER(S) IDENTIFICATION

List all company officers and owners (all persons with an equity interest of 10% or more in the applicant company).

2. APPLICANT INFORMATION:

Answer each question by checking the appropriate box.

3. REGISTERED AGENT FOR SERVICE OF PROCESS

A non-participating manufacturer shall additionally include in its certification a statement that the non-participating manufacturer is: (1) registered to do business in the State; or (2) is a non-resident or foreign non-participating manufacturer that has registered to do

business in the State; or (2) is a non-resident or foreign non-participating manufacturer that has registered to do business in this State as a foreign corporation or business entity; or (3) has appointed an agent for service of process and provided notice thereof.

Check the appropriate box.

As a condition precedent to having its brand families listed or retained in the Directory established pursuant to HRS §486P-6, a non-resident or foreign non-participating manufacturer that has not registered to do business in this State as a foreign corporation or business entity, shall appoint and continually engage without interruption the services of an agent in the United States to act as an agent for the service of process on whom all process, and any action or proceeding against the tobacco product manufacturer concerning or arising out of the enforcement of HRS chapters 486P and 675, may be served in any manner authorized by law. Service pursuant to HRS §486P-4 shall constitute legal and valid service of process on the non-participating manufacturer.

If the non-participating manufacturer engages an agent for service of process, provide the agent's name, address, telephone number, facsimile number, e-mail address, and proof of the appointment and availability of the agent. Proof of appointment and availability for service on behalf of the non-participating manufacturer must be submitted **directly from the agent**. HRS §486P-4(a).

In addition to the contact information requested above, the non-participating manufacturer shall provide to the satisfaction of the Hawai'i Attorney General: notice of the termination of the authority of its agent thirty calendar days prior to termination; proof of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent; notice of the termination of the authority of an agent by the agent, within five calendar days of the termination; and at the same time, proof of the appointment of a new agent to the satisfaction of the Hawai'i Attorney General. HRS §486P-4(b)(1)-(3).

4. QUALIFIED ESCROW FUND - FINANCIAL INSTITUTION

A non-participating manufacturer shall include in its certification a statement that the non-participating manufacturer has established and continues to maintain a qualified escrow fund as required by HRS §675-3(b)(1), which includes the name, address, telephone

number, and facsimile number of the financial institution where the non-participating manufacturer has established such qualified escrow fund and the account number of the qualified escrow fund or any sub-account number for the State. HRS §486P-5(c)(3)(A)-(B).

A copy of the executed qualified escrow agreement that has been reviewed and approved by the Hawai'i Attorney General and that governs the qualified escrow fund shall be submitted with the certification along with Attachment A listing Hawai'i.

5. ESCROW DEPOSIT/WITHDRAWAL HISTORY FOR HAWAII

Provide the amount the non-participating manufacturer placed in such fund for cigarettes sold in the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the preceding calendar year, the date and amount of each such deposit, and the date and amount of any withdrawal or transfer of funds the non-participating manufacturer made at any time from the fund or from any other qualified escrow fund into which the non-participating manufacturer made escrow payments pursuant to HRS §675-3(b)(1). HRS §486P-5(c)(3)(C)-(D). The Hawai'i Attorney General may require the non-participating manufacturer to submit proof from the financial institution as needed to confirm the provided escrow fund deposit/withdrawal/balance information. HRS §486P-5(e).

6. HEALTH WARNING ROTATION PLAN

For each brand family, list the name and address of the entity that filed a Cigarette Health Warning Rotation Plan with the Federal Trade Commission (FTC) before the cigarettes were distributed into the United States. For each brand family, attach a copy of the FTC's written approval of applicant's annual Cigarette Health Warning Rotation Plan.

7. TOBACCO INGREDIENT REPORTING

For each brand family, list the name and address of the entity that submitted the Tobacco Ingredient Reporting information to the Secretary of the United States Department of Health and Human Services as required by the Federal Cigarette Labeling and Advertising Act (FCLAA) (Title 15, §1335a(a), United States Code (USC)). For each brand family, attach copies of all Certificates of Compliance received from the Center for Disease Control and Prevention for applicant's annual Tobacco Ingredient Reporting required by the FCLAA.

**8. IMPORTED CIGARETTES:
DOCUMENTATION/VERIFICATION**

If the cigarettes that applicant sells or intends to sell (whether directly or through a distributor, retailer or similar intermediary or intermediaries) are not manufactured in the United States, applicant shall provide copies of the documentation issued pursuant to 26 USC §5713, and required by 19 USC §1681a(c) to show that the cigarettes have been imported pursuant to federal law.

9. TRADEMARK OWNER; ALL CIGARETTE & RYO BRANDS

Submit a list of trademark owners for all brands of cigarettes and RYO listed in Part III, paragraph 2. For those brands that the trademark owner is other than the applicant, provide documentation that shows the trademark owner authorizes applicant to manufacture subject tobacco product(s).

PART V: ALL TOBACCO PRODUCT MANUFACTURERS

1. FIRE STANDARD COMPLIANT CERTIFICATION

Pursuant to HRS chapter 132C, effective September 30, 2009, only reduced ignition propensity (fire standard compliant or “FSC”) cigarettes may be sold in the State. Written certifications must be submitted to the State Fire Council in accordance with HRS chapter 132C. The applicant shall indicate whether requested brand styles are currently FSC-certified by the Hawai’i State Fire Council. The Hawai’i State Fire Council may be reached at:

State Fire Council
636 South Street
Honolulu, HI 96813
808-723-7173
808-723-7179 facsimile
Email: hawaiiipc@honolulu.gov

2. PACT ACT REGISTRATION AND REPORTING

On March 31, 2010, the federal Prevent All Cigarettes Trafficking Act (PACT Act), 15 USC §375 et seq., was signed into law. The PACT Act amended provisions of the Jenkins Act, 15 USC §§375-378, which now requires Tobacco Product Manufacturers that deal in interstate commerce to: (1) Register with the tobacco tax administrator of each state into which shipments are made; and (2) File monthly reports with the state tobacco tax administrator, no later than the 10th of each month.

PART VI: NOTARIZED SIGNATURE

For tobacco product manufacturers that are sole proprietorships or partnerships, the person executing the certification must be either an owner or partner.

For tobacco product manufacturers that are corporations, the person executing the certification must be an officer of the corporation.

Documentation pertaining to the signatory’s status as an owner, partner, or officer must be attached.

The person executing the certification must certify that the information and documentation submitted are true and complete, and do so before an authorized Notary Public.

PART VII: DELIVERY TO THE ATTORNEY GENERAL

The certification must be fully executed, notarized, and delivered to the Hawai’i Attorney General **no later than April 30th of each year.**

Supplemental certifications must be fully executed, notarized, and delivered to the Hawai’i Attorney General thirty calendar days before any addition, deletion, or modification of a Tobacco Product Manufacturer’s brand families.

Deliver executed certification to:

Department of the Attorney General
Tobacco Enforcement Unit
425 Queen Street
Honolulu, Hawai’i 96813

Should you have any questions, the Tobacco Enforcement Unit may be reached via telephone at 808-586-1203 or via e-mail at atg.tobacco@hawaii.gov.

Text of the Hawaii Revised Statutes is available for review by visiting www.capitol.hawaii.gov.