

CHAPTER 486H
GASOLINE DEALERS

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Cross References

Environmental response tax, see §243-3.5.

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" **§486H-1 Definitions.** As used in this chapter:

"Commission" means the public utilities commission.

"Company retail station" means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

"Conventional gasoline" means a gasoline formulation with properties having the closest similarities to the gasoline then sold in the State.

"Dealer retail station" means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer other than a manufacturer or a jobber under a franchise.

"Franchise" means:

- (1) Any agreement or related agreements between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor; or
- (2) Any agreement or related agreements described in paragraph (1) and any agreement between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy the premises owned, leased, or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products supplied by the distributor.

"Gasoline" includes gasoline, benzol, benzine, naphtha, and any other liquid prepared, advertised, offered for sale, sold for use as, or used for, the generation of power for the propulsion of motor vehicles, including any product obtained by blending together any one or more petroleum products with or without other products, if the resultant product is capable of the same use.

"Gasoline dealer" means any person engaged in the retail sale of petroleum products in the United States under a franchise agreement entered into with a petroleum distributor.

"Good faith" means the duty of a gasoline dealer and a petroleum distributor to act in a fair and equitable manner in the performance and in the demanding of performance of the terms

and provisions of the franchise. The petroleum distributor shall not impose on a gasoline dealer by contract, rule, or regulation, whether written or oral, any standard of conduct that is not reasonable and of material significance to the franchise relationship.

"Independent retail station" means a retail service station not owned by a manufacturer or jobber and operated by a qualified gasoline dealer.

"Inventory" means any product sold to a gasoline dealer for resale purposes by a petroleum distributor.

"Jobber" means every wholesaler of petroleum products.

"Major brand" means the primary trade name or trademark most commonly associated and identified with a manufacturer's retail service station.

"Manufacturer" means every producer or refiner of petroleum products on January 1, 1992, or any subsidiary of that producer or refiner.

"Motor vehicle fuel" means gasoline, diesel fuel, alcohol, and any mixture of those fuels suitable for use in vehicles registered under chapter 286.

"Non-refiner marketer" means any person who acquires gasoline for sale in the State and who is not a refiner located and operating in the State, nor an importer owned by or affiliated with, directly or indirectly, a refiner located and operating in the State.

"Operate" means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

"Other areas" means the second congressional district of the State.

"Petroleum distributor" means any person engaged in the sale, consignment, or distribution of petroleum products to retail outlets that it owns, leases, or otherwise controls.

"Petroleum products" includes motor vehicle fuel, residual oils number 4, 5, and 6, and all grades of jet (turbo) fuel.

"Pre-tax" when used in reference to a price means such price net of the fuel-related or other taxes assessed when the gasoline is sold.

"Purchase" means any acquisition of ownership.

"Retail" means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.

"Retail service station" or "retail station" means a place of business where motor vehicle fuel is sold and delivered into the tanks of motor vehicles and includes a company retail

station, a dealer retail station, and an independent retail station.

"Sale" means any exchange, gift, or other disposition.

"Secondary brand" means a trade name or trademark, other than a major brand, used to identify a company retail station.

"Unbranded" means an independent retail service station dealer, jobber, heating oil distributor, motor fuel wholesaler, or peddler marketing gasoline or special fuels under its own brand, trade name, or trademark, other than those of a manufacturer, or any subsidiary thereof.

"Urban" means the first congressional district of the State. [L 1975, c 133, pt of §1; am L 1976, c 213, §3; am L 1983, c 268, §1; am L 1993, c 329, §2; am L 2002, c 77, §2(2); am L 2006, c 78, §16; am L 2008, c 19, §57]

" **[§486H-2] Wrongful or illegal termination; unreasonable nonrenewal; damages; defenses.** (a) Except as provided in section 486H-3, a petroleum distributor shall be liable to a gasoline dealer who sells the products of the petroleum distributor under a franchise from the distributor for damages and such equitable relief as the court deems proper resulting from the wrongful or illegal termination or cancellation of the franchise during its term or the petroleum distributor's unreasonable refusal to renew the franchise.

(b) A gasoline dealer suffering damages as a result of the termination or cancellation of, or failure to renew, the dealer's franchise may bring an action under this section against the petroleum distributor who wrongfully or illegally terminated, canceled, or unreasonably refused to renew the dealer's franchise in the court of general jurisdiction in which such petroleum distributor has the distributor's principal place of business, is found, or has an agent. The action may be brought without regard to the amount in controversy. If the gasoline dealer prevails in the action, the dealer may recover actual damages sustained, the costs of the suit, including reasonable attorneys' fees, and such equitable relief as the court deems proper.

The court may also grant such temporary relief as it may deem necessary and proper.

(c) It shall be a defense to any action brought under this section that the franchise was terminated, canceled, or not renewed because:

- (1) The gasoline dealer failed to comply substantially with essential and reasonable requirements of the franchise agreement;

- (2) The gasoline dealer failed to act in good faith in carrying out the terms and provisions of the franchise; or
- (3) Of any of the reasons enumerated in section 486H-3; or
- (4) Of other legitimate business reasons; provided that a termination, cancellation, or failure to renew a franchise for the purpose of enabling the petroleum distributor to assume operation of the gasoline dealer's business shall not be considered to be a legitimate business reason unless the gasoline dealer is paid reasonable compensation for the value of the dealer's franchise, including goodwill.

(d) No action may be brought under this section for a cause of action which arose more than two years prior to the date on which the action is brought. [L 1975, c 133, pt of §1; gen ch 1985]

" **§486H-3 Notice of termination, cancellation, or nonrenewal.** A petroleum distributor shall not terminate, cancel, or refuse to renew a franchise with a gasoline dealer without first giving the dealer written notice by certified mail at least ninety days in advance of the effective date of such action as set forth in the notice. Notwithstanding any provision to the contrary contained in this section, a petroleum distributor may terminate, cancel, or refuse to renew a franchise with a gasoline dealer effective five days after the posting of written notice by certified mail to the gasoline dealer at the dealer's last known address, if such action is based on any of the following reasons:

- (1) Citation of the gasoline dealer by the measurement standards branch for adulteration, substitution, contamination, or other degradation of petroleum products sold under the trademark of the petroleum distributor; provided such adulteration, substitution, contamination, or other degradation is caused by the wilful or negligent act of the gasoline dealer;
- (2) Voluntary abandonment of the franchise relationship by the gasoline dealer;
- (3) Conviction of the gasoline dealer of a crime involving the business conducted pursuant to the franchise; or
- (4) Adjudication of bankruptcy of the gasoline dealer, or the dealer's becoming insolvent in the sense that the dealer cannot meet the dealer's financial obligations when due. [L 1975, c 133, pt of §1; gen ch 1985; am L 1986, c 339, §78; am L 1998, c 192, §5]

" **§486H-4 Wrongful termination, cancellation, or nonrenewal; exception to actions.** No action may be brought under section 486H-2 in connection with the termination, cancellation, or nonrenewal of a franchise if the franchise agreement provides for the binding arbitration of disputes arising under the agreement, including disputes related to the termination, cancellation, or nonrenewal of the franchise, in accordance with chapter 658A and the rules of the American Arbitration Association. [L 1975, c 133, pt of §1; am L 2008, c 19, §58]

" **§486H-5 Gasoline dealer's rights.** (a) A petroleum distributor shall not in any way dictate, force, or attempt to set the retail price of any product sold by the gasoline dealer.

(b) After June 7, 1976, it shall be illegal for any petroleum distributor by any action to require a gasoline dealer to purchase only those tires, batteries, and other automotive accessories sold by the distributor. A gasoline dealer may sell any tires, batteries, and other automotive accessories as may be available to the dealer for retail sale.

(c) The petroleum distributor shall at all times act in good faith in carrying out the terms and provisions of the franchise. [L 1976, c 213, pt of §2; am L 1983, c 268, §2; gen ch 1985]

" **§486H-6 Petroleum distributor's penalty; collection.** The petroleum distributor's executive officer, representative, or agent who negotiates any contract in violation of section 486H-5(a) and section 486H-5(b), or who otherwise coerces a gasoline dealer in violation of section 486H-5(a) and section 486H-5(b), shall in addition to other penalties provided by this chapter be subject to a civil penalty of up to \$50,000 for each offense.

The penalty shall be assessed and recovered in a civil action brought by the attorney general or by any county attorney or prosecuting attorney in any court of competent jurisdiction. If brought by a county attorney or prosecuting attorney, the entire amount of the penalty shall be paid to the general fund of the county in which the judgment was entered. If brought by the attorney general, one-half of the penalty shall be paid to the county general fund where the action was brought and one-half shall be paid to the state general fund. [L 1976, c 213, pt of §2; am L 1983, c 268, §3]

" **[§486H-7] Right to sue.** Any person who is injured in the person's business or property by reason of a violation of section 486H-5 may sue in any court having jurisdiction in the county where the defendant resides or is found, or where any agent of the defendant resides or is found, or where service may

be obtained, without respect to the amount in controversy, to recover the damages sustained by the person, and the person shall be awarded, if judgment is rendered in the person's favor, attorney's fees together with the costs of the suit. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued. [L 1976, c 213, pt of §2; gen ch 1985]

" **[\$486H-8] Disposition of inventory.** Upon termination of a franchise by either the petroleum distributor or the gasoline dealer, whether or not for cause, the distributor shall at the request of the dealer, take back any inventory from the dealer which was supplied by it and which has not diminished substantially in value and is of similar quality as when originally supplied. The petroleum distributor shall reimburse the gasoline dealer for not less than ninety per cent of the cost paid by the gasoline dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory. [L 1976, c 213, pt of §2]

" **[\$486H-9] Rights of dealer family member.** (a) Upon the death of a gasoline dealer, the franchise of said dealer and any leases or other agreements in connection therewith may be assumed by any dealer family member, who has actively participated in the franchise during the twelve-month period immediately preceding the dealer's death (but not necessarily continuously throughout such period), who meets the qualifications necessary to operate the station which would be customarily required by the petroleum distributor in question, and who gives written notice of the dealer family member's election to assume the franchise, and any leases or other agreements in connection therewith, to the petroleum distributor and any lessors of the premises within thirty days of the death of the gasoline dealer and affirms the same in writing within fifteen days after such thirty-day period.

(b) Any dealer family member who is entitled to give the notice under subsection (a) shall have the right to operate the franchise during the forty-five-day period provided for in subsection (a).

(c) "Dealer family member" shall mean that person from the group consisting of the surviving spouse and surviving adult children of the dealer designated by the dealer in a written designation received by the petroleum distributor prior to the dealer's death, provided that in the absence of any written designation, the dealer family member shall be that one of the dealer's surviving spouse and the dealer's surviving adult children who is entitled to give and gives the notice provided

for in subsection (a) and who is chosen by said group. If said group does not choose the dealer family member within forty-five days after the dealer's death, then the petroleum distributor shall have the option of choosing the dealer family member from among those who were entitled to give and give notice of their election to assume the franchise, any leases or other agreements in accordance with subsection (a). [L 1978, c 232, §1; gen ch 1985]

" **§486H-10 REPEALED.** L 1997, c 257, §6.

" **§486H-10.4 Restrictions on manufacturers or jobbers in operating service stations; lease rent controls.** (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer retail station to a company retail station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company retail station legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service station as a company retail station constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer retail station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the retail station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company retail station shall be located within one-eighth mile of a dealer retail station in an urban area, and within one-quarter mile in other areas.

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer retail station as defined in section 486H-1 plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase that the manufacturer or jobber is required to pay the lessor under the ground lease for the service station.

The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a gasoline dealer from selling a retail service station in any manner. [L 1997, c 257, §3; am L 2002, c 77, §2(3); am L 2008, c 19, §59]

Law Journals and Reviews

Price Controls in Paradise: Foreshadowing the Legal and Economic Consequences of Hawai'i's Gasoline Price Cap Law. 27 UH L. Rev. 549.

Case Notes

The "substantially advances" formula announced in *Agins v. City of Tiburon* is not a valid method of identifying regulatory takings for which the Fifth Amendment requires just compensation. Since oil company claiming that the rent cap provision of Act 257 [L 1997 (§486H-10.4(c))], on its face, effected a taking of its property argued only a "substantially advances" theory in support of its takings claim, it was not entitled to summary judgment on that claim. 544 U.S. 528.

In an action to recover payments which plaintiffs claimed exceeded the amount permissible under this section, defendants' motion for summary judgment granted, as there was no lease renewal. 460 F. Supp. 2d 1215.

" **§486H-10.5 Violation; penalties.** Any person who violates section 486H-10.4 shall be assessed a civil penalty of \$1,000 per day for each violation. [L 1995, c 238, §1; am L 2008, c 19, §60]

" **§486H-11 Enforcement of prohibition.** (a) The attorney general shall commence a civil action to enforce section 486H-10.4 by seeking injunctive or any other appropriate relief. The civil action shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

(b) Any person who is injured in that person's business or property by the violation of section 486H-10.4 may bring a civil action for damages or injunctive relief, or both, against the person violating section 486H-10.4. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorneys' and expert witness fees; provided that if a court awards only nominal damages to the plaintiff, those fees, in the court's discretion, need not be awarded to the plaintiff. Any action brought under this subsection shall be brought in the circuit court of the

circuit where the alleged violation occurred, or where the defendant resides or is doing business. [L 1993, c 329, pt of §1; am L 2008, c 19, §61]

Rules of Court

Injunctions, see HRCF rule 65.

" **[§486H-12] Preemption by federal law.** This chapter shall not be applied in a manner that would render its application preempted by the "Petroleum Marketing Practices Act", 15 U.S.C. [section] 2801, et seq., or other applicable federal law. [L 1993, c 329, pt of §1]

" **§486H-13 Maximum pre-tax wholesale price for the sale of gasoline; civil actions.** (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax wholesale prices by means that shall include the internet website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded, mid-grade, and premium gasoline as follows: the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus the marketing margin factor and the zone price adjustment, and for mid-grade and premium gasoline, the applicable mid-grade and premium adjustment factor, such that the maximum pre-tax wholesale gasoline prices reflect and correlate with competitive market conditions.

(c) The baseline price for regular unleaded gasoline referred to in subsection (b) shall be determined on a weekly basis and shall be equal to the average of the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:

- (1) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
- (2) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor;

- (3) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast; and
- (4) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore, as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, then the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service or use multiple price information reporting services.

(d) The marketing margin factor referred to in subsection (b) shall be 14 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(e) The mid-grade adjustment factor shall be 5 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(f) The premium adjustment factor shall be 9 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(g) For purposes of this chapter, the State shall be divided into the following zones:

- (1) Zone 1 shall include the island of Oahu;
- (2) Zone 2 shall include the island of Kauai;
- (3) Zone 3 shall include the island of Maui, except the district of Hana;
- (4) Zone 4 shall include the district of Hana on the island of Maui;
- (5) Zone 5 shall include the island of Molokai;
- (6) Zone 6 shall include the island of Lanai;
- (7) Zone 7 shall include the districts of Puna, south Hilo, north Hilo, and Hamakua on the island of Hawaii; and
- (8) Zone 8 shall include the districts of north Kohala, south Kohala, north Kona, south Kona, and Kau on the island of Hawaii.

(h) The commission shall establish zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices on a zone by zone basis.

(i) The zone price adjustments for zones 2 through 8, set forth in subsection (g), shall be divided as follows:

- (1) Thirty per cent of the zone price adjustment shall be allocated to the shipper of the gasoline from zone to zone;
- (2) Twenty per cent of the zone price adjustment shall be allocated to the terminal holding the gasoline in zones 2 through 8; and
- (3) Fifty per cent of the zone price adjustments shall be allocated to the person or entity that delivers the gasoline to the retail station in zones 2 through 8.

(j) Every manufacturer, wholesaler, or jobber, upon the request of the commission, shall furnish to the commission, in the form requested, all documents, data, and information the commission may require to make its determination on zone price adjustments. Any person who refuses or fails to comply with a request for information by the commission shall be subject to a fine of up to \$50,000 per day. Each day a violation continues shall constitute a separate offense.

(k) The maximum pre-tax wholesale gasoline price imposed by this section shall take effect on September 1, 2005, notwithstanding the lack of the adoption of rules pursuant to this section; provided that notwithstanding any law to the contrary, the maximum pre-tax wholesale price under this section shall be suspended indefinitely upon the effective date of Act 78, Session Laws of Hawaii 2006, and shall not thereafter become effective until and unless the governor publishes a notice statewide in accordance with section 1-28.5 that the reinstatement of the maximum pre-tax wholesale price under this section is beneficial to the economic well-being, health, and safety of the people of the State. The maximum pre-tax wholesale price shall become effective five days after the publication of the notice by the governor unless otherwise specified by the governor, and shall remain in effect for thirty days, after which time it shall be automatically suspended. Thereafter, the governor may reinstate the maximum pre-tax wholesale price for thirty-day periods on the same conditions as set forth above. Upon a finding that the maximum pre-tax wholesale price would impose a financial hardship upon a distributor within a zone, the governor, in the governor's discretion, may increase the maximum pre-tax wholesale price for the zone in an amount determined necessary to eliminate the financial hardship on any affected distributor who does not operate a refinery within the State. Any increase in the maximum pre-tax wholesale price shall be included in the notice published by the governor.

(l) The suspension of the maximum pre-tax wholesale gasoline price shall suspend the commission's duty to calculate and publish the maximum pre-tax wholesale gasoline price that

would have been in effect but for the suspension, but shall not suspend or affect:

(1) Any duty to register, timely provide information, make a report, or file a statement under chapter 486J; or

(2) Any duty of the commission to enforce chapter 486B.

(m) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section, except for subsection (j), shall be subject to a civil penalty, for each violation, equal to three times the amount of the overcharge or \$250,000, whichever is greater, and shall be liable for the costs of the action and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or another jobber or wholesaler, less taxes assessed, less the maximum pre-tax wholesale gasoline price established pursuant to subsection (b).

(n) The department of business, economic development, and tourism shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, wholesaler, or jobber to submit documents, data, and information necessary and appropriate for the department of business, economic development, and tourism to determine compliance.

(o) The commission shall report to the governor and the legislature, in a timely manner, on any significant aberrations, trends, or conditions that may adversely impact the gasoline consumers in the State.

(p) The commission may adopt rules pursuant to chapter 91 as may be necessary to implement this section and section 486H-16. [L 2002, c 77, pt of §2(1); am L 2004, c 242, §3; am L 2006, c 78, §17; am L 2010, c 152, §1]

Note

The effective date of Act 78, Session Laws of Hawaii 2006 is May 5, 2006.

Law Journals and Reviews

Price Controls in Paradise: Foreshadowing the Legal and Economic Consequences of Hawai'i's Gasoline Price Cap Law. 27 UH L. Rev. 549.

" **§486H-14 REPEALED.** L 2004, c 242, §4.

" **§486H-15 REPEALED.** L 2006, c 78, §19.

" **§486H-16 Adjustments.** (a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded, mid-grade, or premium gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the marketing margin factor, the mid-grade adjustment factor, the premium adjustment factor, a zone price adjustment on a zone by zone basis, or an allocation of a zone price adjustment on a zone by zone basis. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:
 - (A) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
 - (B) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor;
 - (C) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast; and
 - (D) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service or use multiple price information reporting services;

- (2) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to the value the difference between:
 - (A) The average of the difference over the prior twelve-month period between:
 - (i) The dealer tank wagon price for sales for resale for "regular" gasoline; and
 - (ii) The bulk price for sales for resale for "regular" gasoline, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
 - (B) The average of the difference over the period from 1994 until the most current year between:
 - (i) The dealer tank wagon price for sales for resale for "regular" gasoline; and
 - (ii) The bulk price for sales for resale for "regular" gasoline, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;
- (3) The value of the mid-grade and premium adjustment factors in effect at the time the petition is filed shall be adjusted by any material change in the mid-grade and premium adjustment factor as published by an appropriate price information reporting service; and
- (4) The value of any zone price adjustment on a zone by zone basis or zone price adjustment allocation, pursuant to section 486H-13(i), on a zone by zone basis, in effect at the time the petition is filed, shall be adjusted based upon material changes in the operating costs for a zone, such as terminaling, storage, or distribution costs, and other empirical data the commission deems appropriate.

(b) If the commission adjusts the maximum pre-tax wholesale gasoline prices, the commission shall publish its findings and the adjusted prices by means that shall include the internet website for the State of Hawaii.

(c) Regardless of whether a petition has been filed and notwithstanding a determination of the adjustments made pursuant

to subsection (a), the commission, in its discretion, may make such other and further adjustments deemed necessary and appropriate to establish maximum pre-tax wholesale gasoline prices that reflect and correlate with competitive market conditions. [L 2002, c 77, pt of §2(1); am L 2004, c 242, §6; am L 2006, c 78, §18]

" **[\$486H-17] Restricting supply of petroleum products.** The attorney general shall immediately investigate any shortage or condition affecting the supply of any petroleum products or other matters relating to the requirements of this chapter and shall institute all appropriate criminal and civil actions and pursue all legal and equitable remedies that may be available to the State. The attorney general shall submit a report to the legislature regarding any shortage or condition affecting the supply of petroleum products. [L 2004, c 242, §2]