

**[CHAPTER 486P
TOBACCO PRODUCTS REPORTING]**

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" **§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. [L 2000, c 170, pt of §1; am L 2003, c 77, §3]

" **§486P-2 Reports to attorney general.** (a) Except as provided in subsection (b), any tobacco product manufacturer selling cigarettes to consumers within this State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) shall file a report with the attorney general setting forth:

- (1) Its name and trade name (if any);
- (2) The address of its principal place of business;
- (3) A memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar quarter into this State; and
- (4) Other information as may be required by the attorney general.

The memorandum or copy of the invoice shall include the name and address of the person to whom the shipment was made, the brand, and the quantity of cigarettes shipped. The attorney general may prescribe the format the report shall take. The report shall be filed with the attorney general not later than the thirtieth day of each calendar quarter covering the previous calendar quarter.

(b) In lieu of the reports required to be provided in subsection (a), any tobacco product manufacturer that is a signatory to the Master Settlement Agreement, as defined in section 675-2, and whose cigarettes are sold to consumers within this State (whether directly by the manufacturer or through a distributor, retailer, or similar intermediary or intermediaries), may file with the attorney general copies of reports that the tobacco product manufacturer submits to the department of taxation regarding its sales activities in this State.

(c) Information provided to the attorney general pursuant to this section that tends to identify customers of tobacco product manufacturers, terms of sale (including price), and non-aggregated sales volume data shall be exempt from disclosure under section 92F-11.

(d) Notwithstanding any law to the contrary, the department of taxation shall provide to the attorney general any information necessary for the proper administration and enforcement of this chapter and chapter 675, including: access to inspect, examine, and use the tax returns and records that are required to be filed pursuant to this chapter, chapter 245, chapter 675, or Title 15 United States Code section 376 by any entity engaged in the business of manufacturing, wholesaling, distributing, or dealing in cigarettes or tobacco products on file with the department of taxation. For purposes of this chapter "entity" means one or more individuals, a company,

corporation, a partnership, an association, or any other type of legal entity.

(e) Any entity that is required to file a return or report pursuant to this chapter, chapter 245, chapter 675, or Title 15 United States Code section 376 shall also provide any information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675. [L 2000, c 170, pt of §1; am L 2001, c 270, §12]

" **§486P-3 Penalties.** (a) The attorney general may bring a civil action against any entity that fails to file the reports required under this chapter.

(b) 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 who fails to provide the information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675.

(c) 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 this chapter. The injunction shall be issued without bond.

(d) The State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of this chapter. [L 2000, c 170, pt of §1; am L 2001, c 270, §13; am L 2003, c 77, §8]

" **[§486P-4] Unregistered nonresident or foreign nonparticipating manufacturers; agent; notice.** (a) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in this State as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory established under [section] 486P-6, 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 manufacturer concerning or arising out of the enforcement of this chapter or chapter 675, may be served in any manner authorized by law. Service pursuant to this section shall constitute legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide to the satisfaction of the attorney general, notice of:

- (1) The name, address, phone number, and proof of the appointment and availability of the manufacturer's agent;
 - (2) Termination of the authority of an agent by the manufacturer, thirty calendar days prior to termination, and proof of the appointment of a new agent to the satisfaction of the attorney general no less than five calendar days prior to the termination of an existing agent appointment; and
 - (3) 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 attorney general.
- [L 2003, c 77, pt of §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. [L 2003, c 77, pt of §2]

" **[\$486P-6] Directory; updates; information to be maintained and provided.**

(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. [L 2003, c 77, pt of §2]

" **[\$486P-7] Use and disclosure of information.** The information received by the attorney general under this chapter shall be used only for purposes of enforcement of this chapter, chapter 245, and chapter 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 this chapter 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 section 92F-11. [L 2003, c 77, pt of §2]