STATE OF HAWAI'I
Department of the Attorney General
Tobacco Enforcement Unit

Certification For Hawai'i Tobacco Directory Pursuant to Haw. Rev. Stat., Chapters 245 and 486P For Cigarettes and Roll-Your-Own (RYO) Tobacco

GENERAL INSTRUCTIONS

Part I **Haw. Rev. Stat. §245-22.5, Prohibition**
Haw. Rev. Stat. §486P-5, Certification
Haw. Rev. Stat. §486P-6, Directory

Haw. Rev. Stat. §§245-22.5, 486P-5, and 486P-6 in summary require the following: (1) prohibition against stamping or sale of Cigarettes not listed in the Directory, (2) certification to the attorney general from every Tobacco Product Manufacturer whose Cigarettes are sold (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) in this State, and (3) a Directory listing the Cigarette brands of every Tobacco Product Manufacturer that complies with certification.

Part II **Filing Certification**

Every Tobacco Product Manufacturer whose Cigarettes are sold (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) in this State, 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 Haw. Rev. Stat., §675-3(b).

This certification is in addition to any certificate of compliance that may be required pursuant to Haw. Rev. Stat., §675-3(b)(3).

Part III **Definitions**

1. "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. (See Haw. Rev. Stat. §486P-1.)

2. "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 clause (1) of this definition. The term "Cigarette" includes "roll-your-own" (RYO) (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 RYO shall constitute one individual "Cigarette." (See Haw. Rev. Stat. §486P-1 or §675-2(d).)

3. "Directory" means the Cigarette and RYO Directory established pursuant to Haw. Rev. Stat. §486P-6.

4. "Entity" means one or more individuals, a company, corporation, a partnership, an

association, licensee, or any other type of legal entity. (See Haw. Rev. Stat. §245-1.)

5. "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 Manufactures. (See Haw. Rev. Stat. §675-2(e).)

6. "Non-Participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer. (See §II(cc), page 9 of the MSA, and Haw. Rev. Stat. §486P-1.)

7. "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 §II(jj), page 11 of the MSA, and Haw. Rev. Stat. §486P-1.)

8. "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 Haw. Rev. Stat. §675-3(b). (See Haw. Rev. Stat. §675-2(f).)

9. "Stamping Agent" means any person or entity licensed to affix tax stamps to packages or other containers of Cigarettes under Haw. Rev. Stat., Chapter 245.

10. "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) - (3) above. (See Haw. Rev. Stat. §675-2(i).)

11. "Units Sold" means the number of individual Cigarettes sold (whether directly or through a distributor, retailer or similar intermediary or intermediaries) in the State by the applicable

Tobacco Product Manufacturer during the year in question, as measured by excise taxes collected by the State on packs (or RYO containers) bearing the excise tax stamp of the State. The Department of the 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. (See Haw. Rev. Stat. §675-2(j).)

Part IV Directory, Updates; Information to be Maintained and Provided

Haw. Rev. Stat. §486P-6 provides: (1) 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 Haw. Rev. Stat. §486P-5, and a list of all Brand Families that are listed in the certification, provided that (a) 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 Haw. Rev. Stat. §486P-5 unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general, and (b) 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 an Non-Participating Manufacturer, that (i) any escrow payment required pursuant to Haw. Rev. Stat. §675-3(b)(1) for any period for any Brand Family, whether 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 (ii) any outstanding final judgment, including interest thereon, for a violation of Haw. Rev. Stat. §675-3(b) has not been fully satisfied by the Tobacco Product Manufacturer, and (2) 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 Haw. Rev. Stat., Chapter 486P.

Part V Prohibition Against Stamping or Sale of Cigarettes; Directory

Haw. Rev. Stat. §245-22.5 provides: (a) Beginning December 1, 2003, it shall be 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; or (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. (b) Any entity that knowingly violates subsection (a) shall be guilty of a class C felony. (c) Any Cigarettes that are unlawfully imported, possessed, offered, kept, stored, acquired, transported, stamped, distributed, received, or sold in violation of this section may be seized and forfeited as contraband pursuant to Chapter 712A and all such Cigarettes seized and forfeited shall be destroyed. (d) This section shall not apply to Cigarettes that are exempt from taxes as provided by §245-3(b).

Part VI Use and Disclosure of Information

Haw. Rev. Stat. §486P-7 provides: (1) the information received by the attorney general under Haw. Rev. Stat. §486P shall be used only for purposes of enforcement of Haw. Rev. Stat., 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, and (2) information received by the attorney general under Haw. Rev. Stat., Chapter 486P 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 Haw. Rev. Stat. §92F-11.

Part VII Penalties

Haw. Rev. Stat. §486P-3 provides: (1) the attorney general may bring a civil action against any entity that fails to file the reports required under Haw. Rev. Stat., Chapter 486P, (2) 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 Haw. Rev. Stat., Chapters 486P or 675, (3) 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 Haw. Rev. Stat., Chapter 486P, the injunction shall be issued without bond, and (4) the State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of Haw. Rev. Stat., Chapter 486P.

Part VIII **Date by Which to File Certification**

Haw. Rev. Stat. §486P-5 states that the certification must be executed and delivered to the attorney general no later than April 30th of each year. Supplemental certifications must be executed and delivered to the attorney general thirty calendar days before any addition to or modification of a Tobacco Product Manufacturer's Brand Families.

Part IX **Records Retention Requirement**

Haw. Rev. Stat. §486P-6(c)(3) states that every entity licensed under Chapter 245 shall maintain and make available to the 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

Part I **Tobacco Product Manufacturer Identification**

First, provide the Tobacco Product Manufacturer's name, address, telephone and facsimile numbers, electronic mail address, and any website address; second, provide the name and address of the manufacturing plant, if different from above; third, indicate whether the Tobacco Product Manufacturer is either a Participating Manufacturer under the MSA, or a Non-Participating Manufacturer in full compliance with Haw. Rev. Stat. §675-3(b); and fourth, indicate whether the Tobacco Product Manufacturer has complied with its quarterly reporting requirements pursuant to Haw. Rev. Stat. §486P-2(a).

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. Only the Brand Families listed may 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 Haw. Rev. Stat., Chapter 675.

Nothing in Haw. Rev. Stat., 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 Haw. Rev. Stat., Chapter 675.

1. Participating Manufacturer's Certification

   A Participating Manufacturer shall include in its certification a list of its Brand Families. The 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 attorney general.

2. 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, and that includes 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 will not be sold in 2011. 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 attorney general.

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: Check appropriate box.

3. Registered Agent for Service of Process

A Non-Participating Manufacturer shall additionally include in its certification a statement that such Non-Participating Manufacturer is registered to do business in the State, or that such Non-Participating Manufacturer is 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 and has appointed an agent for service of process and provided notice thereof pursuant to Haw. Rev. Stat. §486P-A. Pursuant to Haw. Rev. Stat. §486P-A, (1) 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, as a condition precedent to having its Brand Families listed or retained in the Directory established under Haw. Rev. Stat. §486P-C, 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 Haw. Rev. Stat., Chapters 486P and 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 Non-Participating Manufacturer, and (2) the Non-Participating Manufacturer shall provide to the satisfaction of the attorney general, notice of: (a) the name, address, telephone number, and proof of the appointment and availability of its agent, (b) notice of any termination of the authority of its agent 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, and (c) 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.

4. Qualified Escrow Fund - Financial Institution

A Non-Participating Manufacturer shall additionally include in its certification: (1) a statement that the Non-Participating Manufacturer has established and continues to maintain a Qualified Escrow Fund required pursuant to Haw. Rev. Stat. §675-3(b)(1), including (a) the name, address, and telephone number of the financial institution where the Non-Participating Manufacturer has established such Qualified Escrow Fund, (b) the account number of the Qualified Escrow Fund or any sub-account number for the State, (2) a statement that the Non-Participating Manufacturer has executed an escrow agreement that has been reviewed and approved by the attorney general and that governs the Qualified Escrow Fund, and (3) a statement that the Non-Participating Manufacturer is in full compliance with Haw. Rev. Stat., Chapters 486P and 675, and any regulations adopted to implement Haw. Rev. Stat., Chapters 486P or 675.

5. Escrow Deposit/Withdrawal History for Hawai'i

A Non-Participating Manufacturer shall additionally include in its certification: (1) the amount the Non-Participating Manufacturer placed in such Qualified Escrow Fund for its Cigarettes sold (whether directly or through a distributor, retailer or similar intermediary or intermediaries) in the State during preceding calendar years, 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 (2) the amount and date 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 Haw. Rev. Stat. §675-3(b)(1).

The attorney general may require at any time from the Non-Participating Manufacturer proof, from the financial institution in which a Tobacco Product Manufacturer has established a Qualified Escrow Fund for the purposes of compliance with Haw. Rev. Stat. §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.

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 U.S. Department of Health and Human Services as required by the Federal Cigarette Labeling and Advertising Act (FCLAA) (15 U.S.C. §1335a(a)). 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 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 must provide copies of the documentation issued pursuant to 26 U.S.C. §5713, and required by 19 U.S.C. §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(2). Those brands for which the trademark owner is other than the applicant, documentation that shows the trademark owner authorizes applicant to manufacture subject tobacco product(s) must be provided.

Part V All Tobacco Product Manufacturers

1. Fire Safe Cigarette Certification

Pursuant to Haw. Rev. Stat. Chapter 132C (Supp.), effective September 30, 2009, only reduced ignition propensity cigarettes (fire safe cigarettes or "FSC") may be sold in the State. Written certifications must be submitted to the State Fire Council in accordance with HRS, Chapter 132C; contact information is provided.

The text of the law may be reviewed at www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0132C/

The applicant is asked to indicate whether requested brand styles are currently FSC certified by the Hawaii State Fire Council.

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 state 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

The person executing the certification must be either an owner or partner (for Tobacco Product Manufacturers that are sole proprietorships or partnerships), or an officer of the corporation (for Tobacco Product Manufacturers that are corporations). In either case 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 executed and delivered to the attorney general no later than **April 30th** of each year. Supplemental certifications must be executed and delivered to the attorney general thirty calendar days before any addition to or modification of a Tobacco Product Manufacturer's Brand Families.

Deliver to:

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

Contact:

Alex R. Barrett
Deputy Attorney General
808-586-1203
alex.r.barrett@hawaii.gov