

COMMONWEALTH OF MASSACHUSETTS
TOBACCO PRODUCT MANUFACTURER (TPM) CERTIFICATION ([M.G.L. c. 94F](#))
March 2021)
NEW FOR 2021 CERTIFICATION

1. **Filing** – Every Tobacco Product Manufacturer (TPM) must file their completed TPM Certifications and all supporting documentation (attachments, exhibits, packaging samples, etc.) digitally. Digital filing may be accomplished in the following ways:
 - a. email files to msa@mass.gov;
 - b. emailing a “link” to a “share folder” from which the Attorney General’s Office may download the files. Please email the link to msa@mass.gov and include any passcodes or other instructions needed to access the share folder; or
 - c. if your files are too big to email **and** you do not have a “share folder” to grant our office access, please email the Attorney General’s Office at msa@mass.gov and we will set up a share folder for you to upload your files to our office.
2. **Menthol Brand Styles** – Pursuant to G.L. 270, § 28, as of June 1, 2020 “no person, retailer or manufacturer shall sell, distribute, cause to be sold or distributed, offer for sale any [menthol Cigarettes] in any retail establishment, online or through any other means to any consumer in the commonwealth; provided, however, that this subsection shall not apply to the sale or distribution by a smoking bar, as defined in [G.L. 270, §] 22, of [menthol Cigarettes] for on-site consumption.” Given this limited ability to sell menthol Cigarettes in Massachusetts, all TPMs’ menthol Brand Styles will be marked for deletion on their Brand Style Excel Spreadsheets described in Part III(A)(1) of the TPM Certification. Those menthol Brand Styles marked for deletion, will be deleted from the TPM Directory on June 1, 2021 **unless** a TPM notifies the Attorney General’s Office by **May 28, 2021** that it will retain their menthol Brand Styles on the TPM Directory.

GENERAL INSTRUCTIONS

Who is required to file the TPM Certification:

Every TPM whose Cigarettes are sold in Massachusetts, whether directly or through a distributor, retailer, or similar intermediary, is required to complete and file this TPM Certification. Cigarettes cannot be stamped for sale in Massachusetts or sold in Massachusetts unless the Cigarette is included on the TPM Directory.

For Non-Participating Manufacturers (NPMs), the TPM Certification supersedes the Massachusetts Certificate of Compliance by Non-Participating Manufacturer, and satisfies the filing requirements of both [Chapter 94E](#) and [Chapter 94F](#) of the Massachusetts General Laws. **NOTE: ANY NPM THAT SOLD CIGARETTES AND/OR ROLL-YOU-OWN TOBACCO IN MASSACHUSETTS IN 2018 MUST COMPLETE AN ANNUAL TPM CERTIFICATION DOCUMENTING SALES OF THE NPM’S PRODUCTS IN MASSACHUSETTS FOR THE YEAR 2018 REGARDLESS OF WHETHER IT CONTINUES TO SELL TOBACCO PRODUCTS IN MASSACHUSETTS.**

When the TPM Certification is due:

Initial TPM Certification:

A TPM that seeks to sell Cigarettes in Massachusetts, but which is not currently on the TPM Directory, must file an Initial TPM Certification and obtain approval from the Attorney General and Department of Revenue before its Cigarettes can be sold in Massachusetts.

Annual TPM Certification:

A TPM that is currently on the TPM Directory, and seeks to continue to sell Cigarettes in Massachusetts, must file an Annual TPM Certification on or before April 30 of each year. The NPM escrow deposit is due on April 15 for sales made during the preceding calendar year.

Supplemental TPM Certification:

A TPM that is currently on the TPM Directory must file a Supplemental TPM Certification no later than 30 days prior to any change regarding its Brand Families. In all other circumstances, a Supplemental TPM Certification must be filed immediately upon receipt of new information that makes the current TPM Certification incorrect. In completing a Supplemental TPM Certification, the TPM should indicate that the certification is a Supplemental TPM Certification on Page 1, enter only the new or changed information, and sign and date the Supplemental TPM Certification.

Language:

The TPM Certification and all other required forms must be completed in English. For all attachments required by the Certification, if the original document is in a language other than English, a true and correct translation into English must be attached in addition to the original.

Complete Certification:

Except as specified for a Supplemental TPM Certification (see above), a TPM Certification may be denied if information appears to be missing. Do not leave any fields blank. If a field is not applicable, indicate "N/A." Attach additional sheets if necessary, indicating the field to which they apply.

Additional Information and Documents:

The Attorney General may request additional information and documents in considering the TPM Certification. A failure or refusal to provide such information or documents may be grounds for disapproval and exclusion from the TPM Directory.

Statements under Penalties of Perjury:

Statements made in the TPM Certification are made under penalties of perjury. Any misrepresentation in the TPM Certification also may be grounds for disapproval and exclusion from the TPM Directory.

Who Must Sign the TPM Certification:

The TPM Certification must be signed by an authorized officer of the Company.

Record Retention:

The TPM must maintain all invoices and documentation of sales and other such information it relied on in preparing its TPM Certification for a period of five years, unless otherwise required by law to maintain them for a longer period.

Regulations:

[Chapter 94F](#) of the General Laws authorizes the Commissioner of Revenue and the Attorney General to promulgate regulations to effectuate its purposes. The Commissioner of Revenue has promulgated a

regulation at [830 CMR 94E.00](#). The Attorney General has promulgated a regulation at [940 CMR 24.00](#). TPMs must comply with the applicable provisions of the regulations.

Other Laws:

Approval of the TPM Certification and listing on the TPM Directory indicates only that the TPM has satisfied the requirements of [M.G.L. c. 94F](#), and does not necessarily mean that other applicable laws have been satisfied.

DEFINITIONS

- (a) **“Affiliate”** means a person who directly or indirectly owns or controls the Company, a person who directly or indirectly is owned or controlled by the Company, or a person who directly or indirectly is under common ownership or control with the Company. For purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent, of 10 percent or more.
- (b) **“Brand Family”** means all Cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, “menthol,” “kings,” and “100s,” and includes any use of a 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.
- (c) **“Brand Style”** means each identifiable variant within a Brand Family.
- (d) **“Cigarette”** has the same meaning as in [M.G.L. c. 94E](#) and [M.G.L. c. 94F](#), and includes “roll-your-own” or “RYO” (0.09 ounces of RYO constituting one individual cigarette).
- (e) **“Company”** means the Tobacco Product Manufacturer that is submitting the TPM Certification.
- (f) **“Master Settlement Agreement,”** or **“MSA,”** is defined in [M.G.L. c. 94E](#).
- (g) **“Nonparticipating Manufacturer,”** or **“NPM,”** means a Tobacco Product Manufacturer that is not a Participating Manufacturer.
- (h) **“Participating Manufacturer,”** or **“PM,”** is defined in the MSA, including any amendments to the MSA.
- (i) **“Person”** means an individual, partnership, committee, association, corporation, or any other organization, or any other organization or group of persons.
- (j) **“Qualified Escrow Fund”** is defined in [M.G.L. c. 94E](#).
- (k) **“Tobacco Product Manufacturer,”** or **“TPM,”** is defined in [M.G.L. c. 94E](#).
- (l) **“TPM Directory”** means the public directory of Tobacco Product Manufacturers, published by the Commissioner of Revenue, that have provided TPM Certifications conforming to the requirements of [M.G.L. c. 94F](#) and approved by the Attorney General, and the Brand Families listed in such TPM Certifications.
- (m) **“Units Sold”** is defined in [M.G.L. c. 94E](#).

SPECIFIC INSTRUCTIONS

PART I: MANUFACTURER INFORMATION

All TPMs complete this Part.

PART II: PM/NPM STATUS

All TPMs complete this Part.

PART III: BRAND FAMILY and BRAND STYLE IDENTIFICATION

SUBPART A

All TPMs complete this Part.

Each TPM must list all Cigarette Brand Styles and all RYO Brands it manufactures, regardless of whether there were any sales in Massachusetts during the previous year. Indicate RYO brands by including “RYO” after the brand name. If there are brands which you manufacture, but do not seek to sell in Massachusetts or otherwise list on the Massachusetts TPM Directory, please so indicate.

The TPM must update the list at least 30 days before any addition to or modification of its Brand Families (including removal), by executing and filing a Supplemental TPM Certification.

List only those Brands and Brand Styles that the Company directly and physically manufactures.

SUBPART B

Only NPMs must complete this Part.

Non-Participating Manufacturers must list all Brand Families and, for each Brand Family, state the number of Units Sold in Massachusetts during the preceding calendar year (including RYO at the rate of 0.09 ounces per Unit Sold). Complete the calculation of the escrow amount.

NPM Supplemental Documentation

Label all attachments with a clear and conspicuous designation of the Part and Subpart to which it pertains.

For any and all RYO units sold, an NPM must submit documentation substantiating all of the reported sales, whether made by direct sale or through a distributor (regardless of whether the distributor is located in Massachusetts or not). Invoices must clearly indicate the relevant brand names and quantities. On a separate sheet of paper, for each Brand Family: (1) provide the address(es) where the Cigarettes were manufactured, if different from the addresses provided in Part I; (2) state the name and address of any other manufacturer, and the applicable time period(s). Check where indicated if the item does not apply. Each manufacturer of a Brand Family must file a TPM Certification.

By listing a Brand Family, the NPM affirms that the Brand Family is deemed to be its Cigarettes for the purpose of calculating its escrow deposit pursuant to [M.G.L. c. 94E](#).

PART IV: SUPPLEMENTAL DOCUMENTATION

All TPMs complete this Part.

PART V: ESCROW ACCOUNT INFORMATION

Only NPMs must complete this Part.

If the Financial Institution, Account, or Sub-Account has changed, include Deposit/Withdrawal History for each.

File with the TPM Certification copies of the executed escrow agreement and all amendments, a receipt for each deposit made since the filing of the previous TPM Certification (or if no previous TPM Certification was filed, a receipt for each deposit made since the opening of the Massachusetts Sub-Account), and a receipt or statement showing the current balance of the Massachusetts Sub-Account.

PART VI: AGENT FOR SERVICE OF PROCESS

Only NPMs must complete this Part.

If the Company is registered to do business in Massachusetts, a copy of the registration filing must be attached. If the Company is not registered to do business in Massachusetts, then it must appoint and continuously engage an agent in Massachusetts for service of process. If an agent is engaged, the Company shall complete and attach a Notice of Appointment of Registered Agent (form) or certify that a previously filed Notice remains in effect.

In the event that the NPM terminates the authority of the agent, the NPM must provide notice to the Attorney General 30 calendar days before the termination, and must provide satisfactory proof to the Attorney General of the appointment of a new agent not less than five calendar days before the termination of the existing agent appointment.

In the event that an agent terminates an agency appointment, the NPM must notify the Attorney General of the termination within five calendar days and provide satisfactory proof of the appointment of a new agent.

PART VII: NPM COMPANY AND COMPLIANCE INFORMATION

Only NPMs must complete this Part.

PART VIII: DECLARATION, ACKNOWLEDGMENT, AND SIGNATURE

All TPMs must complete this Part.

The TPM Certification must be signed by an **authorized officer of the TPM**, before a notary public.

ADDITIONAL INFORMATION AND DOCUMENTATION

Additional information and documentation may be requested, including documentation relating to the Company's consent to the jurisdiction of the Superior Court of Massachusetts and the Company's waiver of any sovereign immunity defense for purposes of enforcement actions that the Attorney General may bring under [M.G.L. c. 94E](#) and [M.G.L. c. 94F](#).