

830 CMR 94E.00: PROVISIONS CONCERNING CERTAIN TOBACCO PRODUCT MANUFACTURERS

Section

94E.1.1: Provisions Concerning Tobacco Product Manufacturers

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(1) Purpose. The purpose of 830 CMR 94E.1.1 is to explain the obligations of those persons and entities appointed under M.G.L. c. 64C, § 30 as Cigarette Stampers; and the obligations of Participating and Non-participating Manufacturers, under the provisions of M.G.L. c. 94E: *Provisions Concerning Certain Tobacco Manufacturers* and M.G.L. c. 94F: *Complementary Provisions Concerning Tobacco Product Manufacturers*.

(2) Definitions. For the purpose of 830 CMR 94E.1.1, the following terms have the following meanings, unless the context requires otherwise:

Brand Family. All styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, "menthol", "lights", "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.

Cigarette. As that term is defined in M.G.L. chs. 94E and 94F and any regulations promulgated thereunder.

Cigarette Stamper. Any person or entity duly appointed and authorized by the Commissioner to affix Massachusetts cigarette excise stamps to any package or container of cigarettes requiring such a stamp under the provisions of M.G.L. c. 64C.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Master Settlement Agreement. The Agreement dated November 23, 1998, between the Commonwealth of Massachusetts and Participating Manufacturers.

Non-participating Manufacturer (NPM). Any Tobacco Product Manufacturer who is not a Participating Manufacturer, as both terms are defined in the Master Settlement Agreement.

Participating Manufacturer (PM). As that term is defined in the Master Settlement Agreement and M.G.L. chs. 94E and 94F and any regulations promulgated thereunder.

Qualified Escrow Fund. As the term is defined in M.G.L. c. 94E.

Tobacco Product Manufacturer. Participating or Non-Participating Manufacturers as both are defined in the Master Settlement Agreement and M.G.L. chs. 94E and 94F.

Units Sold. As defined in M.G.L. c. 94E.

(3) Directory. The Commissioner shall publish a directory listing all Tobacco Product Manufacturers who have provided certifications conforming to the requirements of M.G.L. chs. 94E and 94F. The directory will provide a complete listing of the brand families of each Tobacco Product Manufacturer. The Commissioner shall update the directory as necessary. No person shall stamp, sell, offer for sale or possess for sale in the Commonwealth, any cigarettes of a Tobacco Product Manufacturer or brand family that is not certified pursuant to M.G.L. chs. 94E and 94F and listed in the directory.

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(4) General Rules for Cigarette Stampers.

- (a) Every Cigarette Stamper (“stamper”) stamping cigarettes for sale in Massachusetts must report information as required by the Commissioner in a form and manner prescribed by the Commissioner.
- (b) A stamper must certify in a form and manner prescribed by the Commissioner that it is knowledgeable of the requirements of M.G.L. c. 94F and will comply with its terms before the Commissioner shall issue or renew a stamper’s authority.
- (c) A stamper may not affix an excise stamp to a package or other container of cigarettes of a Tobacco Product Manufacturer or brand family unless that product is listed in the directory.
- (d) Nothing herein shall be construed to require a stamper to affix an excise stamp to any product not requiring such a stamp under the provisions of M.G.L. c. 64C.
- (e) A stamper must provide the Commissioner a valid electronic mail address for the purpose of receiving any notices required under M.G.L. chs. 94E and 94F.

(5) General Rules for Participating Manufacturers.

- (a) A PM that sells cigarettes in the Commonwealth either directly or through a wholesaler, retailer or similar intermediary, shall file an annual certification of its status as a participant in the master settlement agreement with the Commissioner by April 30 in a form and manner prescribed by the Commissioner.
- (b) A PM shall include in its certification a complete list of its brand families. The PM shall update such list 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Commissioner.

(6) General Rules for Non-participating Manufacturers.

- (a) Every NPM that sells cigarettes in the Commonwealth, either directly or through a wholesaler, retailer or similar intermediary, shall file an annual certification with the Commissioner by April 30, that states the NPM is in full compliance with the provisions of M.G.L. chs. 94E and 94F and any regulations promulgated thereunder.
- (b) A NPM shall include in its certification a complete list of all of its brand families, with:
 - 1. for each brand family, the number of units sold in the Commonwealth during the preceding calendar year;
 - 2. a designation of all of the brand families that have been sold in the Commonwealth at any time during the current calendar year;
 - 3. a designation of all of the brand families sold in the Commonwealth during the preceding calendar year that no longer are being sold in the Commonwealth as of the date of the certification; and
 - 4. the identification, by name and address, of any other tobacco product manufacturer of such brand families in the preceding calendar year or current calendar year.
- (c) A NPM shall update its list of brand families 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Commissioner.
- (d) The Commissioner may require a Tobacco Product Manufacturer subject to the requirements of M.G.L. c. 94F, to make its qualified escrow deposit in quarterly installments. The Commissioner may require production of additional information as necessary to determine the adequacy of the amount of an escrow installment deposit.

(7) Failure to Make Escrow Payments. Any NPM that fails in any year to place the required funds in a qualified escrow fund shall be liable to such enforcement actions and civil penalties as are authorized by the provisions of M.G.L. chs. 94E and 94F.

(8) Enforcement.

- (a) The Commissioner shall have the authority to use any one or more administrative or judicial remedies available under the provisions of M.G.L. chs. 62C, 64C, 94E or 94F to compel compliance with the statutes and 830 CMR 94E.1.1.

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(b) The Commissioner may require a stamper or Tobacco Product Manufacturer to submit additional information including, but not limited to, samples of the packaging and labeling of each brand family, as may be necessary to enable the Commissioner to determine whether a stamper or a Tobacco Product Manufacturer is in compliance with M.G.L. chs. 94E and 94F.

(c) Remedies the Commissioner may exercise, without limitation, include the Commissioner's authority:

1. to compel the production of books and records and to take testimony and proofs under M.G.L. c. 62C, § 70;
2. to lien under M.G.L. c. 62C, § 50 and levy under M.G.L. c. 62C, § 53;
3. to discontinue the sale of cigarette excise stamps to a stamper under M.G.L. c. 64C, § 30;
4. to revoke or suspend the stamping authority of a stamper in the manner provided in M.G.L. chs. 62C or 64C, in addition to or in *lieu* of any other civil or criminal remedy provided by law, upon a determination that the stamper violated M.G.L. c. 94F or 830 CMR 94E.1.1. Each stamp affixed and each sale or offer to sell cigarettes in violation of M.G.L. c. 94F, § 2(h) shall constitute a separate violation. The Commissioner may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes sold or \$5,000 for each violation;
5. to seek criminal penalties if any person sells or distributes cigarettes in violation of M.G.L. c. 94F, § 2(h) or acquires, holds, owns, possesses, transports, imports or causes to be imported cigarettes that the person knows or should know are intended for distribution or sale in the Commonwealth in violation of M.G.L. c. 94F, § 2(h). A violation of 830 CMR 94E.1.1(8)(c)5. may result in a fine of not more than \$1,000 or by imprisonment for not more than one year, or both; and
6. to destroy as contraband and not resell any cigarettes seized as a result of a violation of M.G.L. c. 94F, § 2(h).

(9) Record Retention. Every person subject to the requirements of 830 CMR 94E.1.1 is required to maintain a complete and accurate set of records of all invoices and other documentation of sales of tobacco products, as well as any other information relied upon in reporting to the Commissioner pursuant to M.G.L. chs. 94E and 94F, for a period of five years.

(10) Disclosure. Information supplied to the Commissioner under M.G.L. chs. 94E, 94F and 830 CMR 94E.1.1 may be shared with the Massachusetts Attorney General for the purposes of enforcing M.G.L. chs. 94E or 94F and 830 CMR 94E.1.1.

REGULATORY AUTHORITY

830 CMR 94E.1.1: M.G.L. c. 14, § 6(1); c. 62C, § 3; c. 94E and c. 94F.

NON-TEXT PAGE