

940 CMR 24.00: TOBACCO PRODUCT MANUFACTURER CERTIFICATIONS

Section

- 24.01: Purpose
- 24.02: Scope
- 24.03: Definitions
- 24.04: General Rules for Tobacco Product Manufacturers
- 24.05: TPM Certification
- 24.06: TPM Directory
- 24.07: Non-compliant TPM Certifications
- 24.08: Quarterly Escrow Deposits

24.01: Purpose

The Attorney General promulgates 940 CMR 24.00, relating to Tobacco Product Manufacturer Certifications, pursuant to his authority in M.G.L. c. 94F, §6(c). The purpose of 940 CMR 24.00 is to further effectuate the purposes of M.G.L. c. 94F.

24.02: Scope

940 CMR 24.00 explains certain obligations of Tobacco Product Manufacturers under M.G.L. c. 94F. 940 CMR 24.00 is not intended to be all-inclusive as to the obligations of Tobacco Product Manufacturers, and is to be read in conjunction with regulations promulgated by the Commissioner of Revenue relating to M.G.L. c. 94E and M.G.L. c. 94F, at 830 CMR 94E.00.

940 CMR 24.00 applies to all Tobacco Product Manufacturers whose Cigarettes are sold or offered for sale in Massachusetts, or whose Cigarettes are stamped for sale in Massachusetts.

24.03: Definitions

For purposes of 940 CMR 24.00, the following terms have the following meanings, unless the context requires otherwise:

Brand Family means 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 means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (b) 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
- (c) 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 940 CMR 24.03. The term "Cigarette" includes "roll-your-own," so-called, which is any tobacco that, 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 940 CMR 24.03, 0.09 ounces of "roll-your-own" tobacco constitutes one individual Cigarette.

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

Master Settlement Agreement is defined in M.G.L. c. 94E.

Non-participating Manufacturer (NPM) means a Tobacco Product Manufacturer that is not a Participating Manufacturer.

24.03: continued

Participating Manufacturer (PM) is defined in the Master Settlement Agreement, including any amendments thereto.

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

Stamper means a person authorized by the Commissioner to affix the excise stamp on packages or other containers of cigarettes pursuant to M.G.L. c. 64C.

Tobacco Product Manufacturer (TPM) is defined in M.G.L. c. 94E.

TPM Certification means the certification prescribed by the Attorney General for purposes of M.G.L. 94F.

TPM Directory means the public directory of TPMs and Brand Families developed by the Commissioner in consultation with the Attorney General pursuant to M.G.L. c. 94F, § 2(g).

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

24.04: General Rules for Tobacco Product Manufacturers

(1) Every TPM whose Cigarettes are sold, stamped for sale, or intended to be sold in Massachusetts, whether directly or through a wholesaler, retailer, or similar intermediary, shall complete and file a TPM Certification annually on or before April 30th. The TPM Certification must be filed separately with both the Attorney General and the Commissioner. The TPM Certification will be reviewed to determine whether the TPM has satisfied M.G.L. c. 94F and the regulations at 830 CMR 94E.00 and 940 CMR 24.00, for purposes of listing the TPM and its Brand Families in the TPM Directory. Cigarettes cannot be sold, offered for sale, or possessed for sale in Massachusetts, or stamped for sale in Massachusetts, unless the TPM and Brand Family are listed in the current TPM Directory.

(2) For NPMs, the TPM Certification supersedes the Massachusetts Certificate of Compliance by Non-participating Manufacturer. An NPM may file a TPM Certification for all of the purposes required under M.G.L. chs. 94E and 94F.

24.05: TPM Certification

- (1) The following requirements apply to all TPM Certifications:
- (a) The TPM shall utilize the TPM Certification form prescribed and made available by the Attorney General for purposes of M.G.L. c. 94F, § 2.
 - (b) The TPM Certification must be complete, accurate, and otherwise in compliance with M.G.L. c. 94F, § 2. The Attorney General in his discretion may require the submission of additional information and documents, including Cigarette packaging, in order to verify compliance with M.G.L. c. 94E and M.G. L. c. 94F, and the regulations at 830 CMR 94E.00 and 940 CMR 24.00.
 - (c) The TPM Certification and all other requested forms shall be completed in English. For any attachments not originally in English, a true and correct translation into English shall be attached to the original, with a certificate by the translator and by the TPM as to the accuracy of the translation.
 - (d) The TPM Certification shall be signed by an authorized officer of the TPM. All statements made in the TPM Certification are made under the penalty of perjury.
 - (e) The TPM shall maintain all invoices and documentation of sales and other information relied upon in preparing its TPM Certification for a period of five years from the date of the TPM Certification filing, unless otherwise required by law to maintain them for a longer period.
 - (f) The TPM shall list all of its Brand Families, regardless of whether there have been any sales of those brands in Massachusetts.
 - (g) The TPM shall provide an electronic mail (e-mail) address for electronic notifications.

24.05: continued

- (h) The TPM shall consent to the jurisdiction of the Superior Court of Massachusetts, and shall waive any objection to such jurisdiction for purposes of enforcement actions that may be brought by the Attorney General under M.G.L. c. 94E or M.G.L. c. 94F with respect to the TPM Certification or any Cigarettes sold in Massachusetts. Such consent and waiver must be effective and binding, and made in a form and manner acceptable to the Attorney General.
- (i) The TPM shall waive any sovereign immunity defense that may apply to enforcement actions that may be brought by the Attorney General under M.G.L. c. 94E or M.G.L. c. 94F with respect to the TPM Certification or any Cigarettes sold in Massachusetts. Such waiver must be effective and binding, and made in a form and manner acceptable to the Attorney General.
- (2) A TPM shall file a Supplemental TPM Certification immediately upon receipt of information that would make its previously filed TPM Certification incomplete or incorrect. In the event of a proposed change regarding the Brand Families of a TPM, the TPM shall submit a Supplemental TPM Certification no later than 30 days prior to the proposed change.
- (a) A Supplemental TPM Certification shall indicate that it is supplemental to a previously filed TPM Certification. The TPM shall include only new or changed information in the Supplemental TPM Certification, and shall sign and date the Supplemental TPM Certification.
- (b) Except where otherwise indicated in this subsection, the Supplemental TPM Certification shall satisfy all of the requirements applicable to TPM Certifications.
- (3) The following additional requirements apply to TPM Certifications filed by NPMs:
- (a) The NPM shall list only those Brand Families that it directly and physically manufactures. The NPM shall affirm that all Cigarettes in its listed Brand Families are deemed to be its Cigarettes for purposes of M.G.L. c. 94E.
- (b) For each Brand Family, the NPM shall identify any other TPM that has manufactured any Cigarettes within the Brand Family, and shall provide such additional information as the Attorney General may request. For purposes of this requirement, "identify" means to provide the full name, address, and telephone number of the other TPM, and the name and telephone number of a contact person for the other TPM.
- (c) The NPM shall state for each Brand Family the number of Units Sold in Massachusetts in the preceding calendar year.
- (d) The NPM shall provide complete and accurate information regarding its Qualified Escrow Fund.
- (e) The NPM shall register to do business in Massachusetts or appoint an agent for service of process pursuant to M.G.L. c. 94F, § 3, and provide notice of such registration or appointment. If the NPM appoints an agent for service of process, it shall execute the form prescribed by the Attorney General for this purpose.
- (f) If an NPM not registered to do business in Massachusetts intends to terminate an agent for service of process, it shall notify the Attorney General by filing a Supplemental TPM Certification to that effect not less than 30 days prior to the termination. In addition, the NPM shall provide proof of the appointment of a new agent by filing a Supplemental TPM Certification and a new agent appointment form not less than five days before the termination.
- (g) The NPM shall provide information regarding its Stampers (or other intermediaries for "roll-your-own" tobacco) and previous compliance history as requested.

24.06: TPM Directory

With respect to his review of TPM Certifications and his consultation with the Commissioner pursuant to M.G.L. c. 94F, §2(g), regarding the TPM Directory, the Attorney General may consider the following factors, any of which may be sufficient ground for exclusion from the TPM Directory:

- ~~(a) Whether the TPM timely filed its TPM Certification, including any necessary Supplemental TPM Certification;~~
- (b) Whether the TPM Certification is accurate, complete, and in conformance with 940 CMR 24.00, and whether the TPM has provided all required information and documents, including any additional information and documents requested by the Attorney General;

24.06: continued

- (c) Whether the TPM Certification contains misrepresentations or fails to disclose material facts;
- (d) Whether the TPM has fully and timely funded a Qualified Escrow Fund that is subject to an escrow agreement that has been approved by the Attorney General;
- (e) Whether each TPM of a given Brand Family has submitted a TPM Certification that is in compliance with M.G.L. c. 94F;
- (f) Whether the TPM or its Brand Family is, or has been, the subject of relevant legal action brought by the Commonwealth or by another government entity;
- (g) Whether the TPM or its Brand Family is subject to any judgment or court order, including, but not limited to, an injunction prohibiting the sale of such Cigarettes;
- (h) Whether all final judgments relating to the TPM or its Brand Family under M.G.L. c. 94E, M.G.L. c. 94F, and other applicable statutes have been satisfied, including penalties, interest, costs, and attorney's fees; and
- (i) Any other facts or circumstances that the Attorney General determines are relevant and material to the purposes of the TPM Certification.

24.07: Non-compliant TPM Certifications

- (1) In the event that the Attorney General determines that a TPM Certification or Supplemental TPM Certification is not complete, accurate, and otherwise in compliance with M.G.L. c. 94E, M.G.L. c. 94F, and 940 CMR 24.00, either when originally filed or after subsequent events, he shall notify the TPM. At the discretion of the Attorney General, such notification may afford the TPM an opportunity to cure the deficiencies in its TPM Certification.
- (2) The Attorney General shall consult with the Commissioner regarding his determinations, for purposes of the TMP Directory.

24.08: Quarterly Escrow Deposits

- (1) The Attorney General shall consult with the Commissioner regarding whether an NPM must make its escrow deposits on a quarterly basis, pursuant to M.G.L. c. 94F, § 4(e), based on factors including the following:
 - (a) Whether the NPM previously has timely and fully complied with M.G.L. c. 94E and M.G.L. c. 94F, including the submission of TPM Certifications, the establishment of a Qualified Escrow Fund, and the deposit of amounts due;
 - (b) Whether the NPM has made any escrow deposit in the past year;
 - (c) Whether the NPM has had more than 500,000 Units Sold during a previous calendar quarter; and
 - (d) Whether the Attorney General has reason to believe that the NPM may not timely make its full required escrow deposit after the end of the calendar year.
- (2) The Attorney General may require the NPM to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of such installment deposits.

REGULATORY AUTHORITY

940 CMR 24.00: M.G.L. c. 94F.