

501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY & SECURITY

501 CMR 14:00: TESTING, CERTIFICATION, MARKING, AND ENFORCEMENT OF MASSACHUSETTS' FIRE STANDARD COMPLIANT CIGARETTES

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14.01 Purpose

(a) The purpose of 501 CMR 14.00 is to establish rules and regulations governing the testing, certification, marking, and enforcement of Massachusetts' fire standard compliant cigarettes.

(b) These regulations shall not prohibit wholesale dealers or retailers from selling existing inventory on or after January 1, 2008 pursuant to Section 2 of Chapter 140 of the Acts of 2006.

14.02 Statutory Authorization

501 CMR 14.00 is promulgated pursuant to G.L. c. 64C § 2A through 2F inclusive, authorizing the Secretary of Public Safety to promulgate regulations governing the testing, certification, marking, and enforcement of Massachusetts' fire standard compliant cigarettes.

14.03 Definitions

For purposes of 501 CMR 14.00, the following words shall have the meanings respectively assigned to them:

“Agent”, any person authorized by the commonwealth to purchase and affix tax stamps on packages of cigarettes.

“ASTM”, the American Society of Testing and Materials.

“Cigarette”, any roll for smoking whether made wholly or in part of tobacco or any other substance, regardless of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco, and that, because of its size, appearance, the type of tobacco used in its filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette or cigarette equivalent.

“Commissioner”, the Commissioner of the Department of Public Health.

“Secretary”, the secretary of the executive office of public safety and security.

“Manufacturer”:

(a) any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in the commonwealth, including cigarettes intended to be sold in the United States through an importer;

(b) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) any entity that becomes a successor of an entity described in clause (1) or clause (2) of this definition.

“Repeatability”, the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 per cent of the time.

“Retail dealer”, any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.

“Sale”, any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement thereof. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money shall be considered a sale.

“Sell”, to sell, or to offer or agree to sell.

“Quality control and quality assurance program”, the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors or equipment-related problems do not affect the results of testing and that the testing repeatability remains within the required repeatability values stated in M.G.L. c. 64C § 2B, clause (5)(a) for all test trials used to certify cigarettes in accordance with M.G.L. c. 64C, § 2C.

“Wholesale dealer”, any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains 1 or more

cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person or entity.

14.04 General Requirements

(1) Effective January 1, 2008, no person shall sell, offer for sale, or possess for sale in the Commonwealth, cigarettes that are not in compliance with the following requirements, as provided for in M.G.L. c. 64C § 2A through 2F:

- (a) Cigarettes shall be tested by the manufacturer in accordance with the method described in M.G.L. c. 64C, § 2B.
- (b) Cigarettes shall meet the performance standard specified M.G.L. c. 64C, § 2B.
- (c) A written certification shall be filed by the manufacturer with the Secretary in accordance with the requirements of M.G.L. c. 64C, § 2C.
- (d) Cigarettes shall meet the marking requirements of M.G.L. c. 64C, § 2D.

14.05 Testing

- (1) No cigarette may be sold or offered for sale in the Commonwealth or offered for sale or sold to persons located in the Commonwealth unless the cigarettes have been tested in accordance with, and meet the performance standard M.G.L. c. 64C, § 2B.
- (2) Each cigarette listed in a certification to the Secretary, which uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard shall have no less than 2 nominally identical bands on the paper surrounding the tobacco column. The position of these bands on said cigarettes shall conform to the requirements of M.G.L. c. 64C, § 2B.
- (3) If the Secretary shall determine, that a cigarette cannot be tested in accordance with the provisions of M.G.L. c. 64C, § 2B, the manufacturer shall propose a test method and performance standard for such cigarette to the Secretary who shall determine, in consultation with the Commissioner, whether said standard is equivalent to the prescribed standard. If the proposed standard is approved by the Secretary, the manufacturer may employ such method to certify its cigarettes in conformance with M.G.L. c. 64C § 2C. All other applicable requirements of sections M.G.L. c. 64C § 2A through 2F shall apply. All records of such test results and performance standards shall be kept by the manufacturer for 3 years and shall be sent upon request to the Secretary and the Attorney General of the Commonwealth.
- (4) The Secretary may adopt a subsequent ASTM standard or another state's cigarette test method, providing: The subsequent method does not result in a decrease in the

percentage of full-length burns when compared to the same cigarette tested in accordance with ASTM Standard E2187-04.

14.06 Certification

- (1) Each manufacturer shall submit to the secretary a written certification attesting that each cigarette listed in said certification has complied with the certification requirements of M.G.L. c. 64C, § 2C.
- (2) Each cigarette certified in accordance with the provisions of M.G.L. c. 64C, § 2C shall be recertified every 3 years.
- (3) A fee of \$3,000 shall be paid by the manufacturer to Secretary for each cigarette listed in the manufacturers certification. The Secretary may, as he determines, adjust the certification fee to provide for processing, testing, enforcement, and oversight of activities related to M.G.L. c. 64C, § 2B through 2F.

14.07 Marking

- (1) All cigarettes certified as in compliance with section M.G.L. c. 64C, § 2B, shall be marked in accordance with the provisions of M.G.L. c. 64C, § 2D.
- (2) The manufacturer shall use only 1 marking applied uniformly to all cigarette packages including but not limited to: packs, cartons, and cases of all brands marketed by the manufacturer.
- (3) Prior to the certification of any cigarette, the manufacturer shall present its proposed marking to the Secretary for approval. The Secretary shall approve or disapprove the marking offered within 10 days or said marking shall be deemed approved. Markings approved for use in New York State pursuant to New York fire safety standards for cigarettes shall be accepted. No manufacturer shall modify its mark without prior notice to the Secretary.

14.08 Certification Process

- (1) Each manufacturer shall submit to the Secretary's designee:

The Massachusetts Office of Cigarette Certification
c/o The Massachusetts Department of Fire Services
P.O. Box 1025 ~ State Road
Stow, Massachusetts 01775;

- (a) Written certification attesting that each cigarette listed has been tested in accordance with M.G.L. c. 64C § 2B and has complied with the performance standard as required;

- (b) All certification information required pursuant to M.G.L. c. 64C § 2C, and;
- (c) All proposed markings as required by M.G.L. c. 64C § 2D.

(2) A fee of \$3,000 per cigarette listed in the application, shall be submitted and made payable to: The Commonwealth of Massachusetts / Cigarette Fire Safety Fund.

(3) Each cigarette certified pursuant to M.G.L. c. 64C § 2C shall be re-certified every 3 years.

(4) A copy of such certification shall be kept by the manufacturer and upon request, be made available to the Secretary and Attorney General of the Commonwealth.

(5) Manufacturers certifying cigarettes in accordance with section 2C of Chapter 64C shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to section 2D of Chapter 64C for each retailer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the Secretary, the Commissioner of the Department of Revenue, the Attorney General, or employees thereof, to inspect markings of cigarette packaging marked in accordance with section 2D of Chapter 64C.

14.09 Penalties

Any manufacturer, wholesale dealer, agent, retail dealer or other person, who violates the applicable provisions of M.G.L. c. 64C, sections 2A through 2F shall be subject to the penalties provided in MGL c. 64C, section 2E.

14.10 Inspection Authority

(1) Inspections may be made of wholesale dealers, agents and retail dealers at any place where cigarettes are sold, offered for sale, stored or at any site where there is evidence of a violation of the requirements of M.G.L. c. 64C § 2A through 2F.

(2) Wholesale dealers, agents, and retail dealers shall permit an employee or agent of the Secretary, including compliance officers of the Department of Fire Services, upon presentation of appropriate identification and credentials, to enter, and to conduct an inspection of any building, facility, site or other place as described in 501 CMR 14.10(1).

14.11 Seizure Authority

Upon discovery by the Secretary, including compliance officers of the Department of Fire Services, or his employees including agents, or any law enforcement agency, that any

cigarettes have been sold or offered for sale which do not comply with the provisions of M.G.L. c. 64C, the Secretary, including compliance officers of the Department of Fire Services, his employees, agents or any law enforcement authority may seize such cigarettes and notify the Secretary forthwith. The Secretary may order such cigarettes to be disposed of as contraband.

14.12 Sale of Existing Inventory

(1) Sections 2B to 2E, inclusive, of Chapter 64C shall not prohibit wholesale dealers or retail dealers from selling their existing inventory of cigarettes on or after the effective date of January 1, 2008 if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2008, and if such wholesale dealer or retail dealer can establish that such inventory was purchased prior to January 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

REGULATORY AUTHORITY

501 CMR 14.00: M.G.L. c. 64C, § 2A through 2F.