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**Massachusetts Tobacco Cessation and Prevention Program (MTCP)
FY26 Retail Compliance Check Protocol**

This protocol serves as guidance for MTCP-funded tobacco control programs conducting retail compliance checks of licensed tobacco establishments for compliance with state and local tobacco regulations. MTCP funded municipalities should follow this protocol, which was developed to perform compliance activities in an acceptable and effective manner. **All funded programs, inspectors, and any employee deputized by BOH/municipality to conduct and record compliance checks, must be trained in this protocol.**

In addition to these protocols, our Technical Assistance partners have guidance documents for local boards of health available at www.mhoa.com. These guidance documents go into further detail on specific topics. You are also encouraged to reach out to one of our Technical Assistance providers for further guidance.

Definitions:

Adult Inspectors (AI)– Program staff hired to conduct compliance checks and inspections in specified areas. MUST be trained in protocols and Point-of-Sale Toolkit (POST). Responsible for the supervision of the compliance checks, inspections, outcomes and reporting.

Underage Purchaser (UP)– Young person between the ages of 16 and one month less than 21.

Adult Purchaser (AP)– Over age 21. Typically used in checks at Adult Only/Smoking bars to check compliance.

Before conducting compliance checks, the following must be addressed:

Adult Inspectors: All program staff, inspectors, and any POST user, must be trained and have their own unique login information. Adult Inspectors are also required to complete an MTCP compliance check training.

All programs are required to conduct a criminal offender record check (CORI) with the Criminal History Systems Board and a Sex Offender Registration Inquiry (SORI) with the Sex offender Registry board for all persons who are candidates to work with Underage Purchasers. Such check shall comply with the requirements of 101 CMR 15.00.

Underage Purchaser (UP): As of May 2020, UPs are those between the ages of 16 and one month less than 21. UPs may be recruited from places like schools, trade schools and local/community colleges, social media, job boards, and community groups. UPs age 16 and 17 must have written parent/guardian permission. UPs 18+ must have cleared a CORI check. UPs

must complete the current MTCP training prior to conducting compliance checks. UPs must be willing and able to ask for tobacco/nicotine products. UPs must be willing and able to provide descriptions of clerks who sell tobacco/nicotine. UPs must be willing and able to testify if necessary. Training must include all components of the training outline provided by MTCP. The UP cannot be related to the Adult Inspector and cannot have an affiliation with a tobacco retailer or distributor. Adult Inspector should remind UP about crucial takeaways of training including:

- Always tell the truth,
- Do not carry any tobacco/nicotine products with them at the time of check, and
- Only use the cash given as payment.

Adult Purchaser (AP): All Adult Purchasers hired to conduct compliance checks are required to pass a CORI check prior to working. APs must be willing and able to ask for tobacco/nicotine products. APs must be willing and able to provide descriptions of clerks who sell tobacco/nicotine. UPs must be willing and able to testify if necessary. The AP cannot be related to the Adult Inspector and cannot have an affiliation with another tobacco retailer or distributor. Adult Inspector should be consistently reminding AP about crucial takeaways of training including:

- Always tell the truth,
- Do not carry any tobacco/nicotine products with them at the time of check and
- Only use the cash given as payment

Questions regarding the UP/AP training should be sent to Molly.Butler@mass.gov

Identifying Tobacco Retailers: Each year, programs must obtain current lists of permitted tobacco retailers to update store lists in POST. Store lists must also be updated regularly by adding/deleting/editing new retailers found while in the field. **List of retailers should be obtained from each community BOH directly and/or Massachusetts Department of Revenue (DOR).**

Enrolling Underage Purchasers (UP) for Compliance Checks (including Synar):

- A. It is mandatory that programs have signed paperwork/documentation on file for each UP. These forms/documents should include:
- a. Application with basic contact information, race, ethnicity, date of birth, and gender.
 - b. Copy of a government issued form of identification confirming birthdate.
 - c. UP Agreement including permission and willingness for UP to testify if needed.
 - d. Parental/Guardian Agreement - Signature of parent/guardian giving permission for UP to participate (not required if UP is 18 or over but suggested if living at home)
 - e. Any documentation required from your agency for payment of UP.
 - f. Medical release form – original to stay with Adult Inspector.
 - g. UP “ID” information is entered in POST (last 4 of phone number, 2 digit DOB)

- B. Once UP has submitted all the required paperwork and has completed the training, the Adult Inspector should input their dedicated ID number, birth date and gender in POST.

Funded boards will be asked to submit copies of their hiring documents at the beginning of every fiscal year. Samples of all forms are available from MTCP.

Conducting Compliance Checks- Rules for Underage Purchaser (UP):

- A. Prior to conducting the compliance check:** UP should dress the way that they would normally. UP should not try to make themselves look older by wearing excessive makeup, dresses, suits, etc. UP should refrain from wearing school uniforms.
- B.** UP should empty their pockets to ensure that they do not possess any tobacco/nicotine products. The UP should place any money or any other items from their pockets in a separate Ziplock type bag and leave in vehicle. This ensures that the UP has only the money you gave them for the compliance check. The only other item allowed in the UP's pocket during a check is their personal cell phone. UP must be given money from your agency for all purchases. Cash must be kept in their pockets. If asked, UP can never lie about their age. If asked their age, UP must tell the truth. UP should not plead or pressure clerk during the conversation.

Please note - checks done for **Synar assignments must be done without the UP carrying any identification.** For all other checks we encourage UP NOT to carry identification for safety reasons.

Conducting the Compliance Check: Before conducting compliance checks, UPs will need to complete the “Underage Purchaser Tobacco Training”. When you arrive at the retail establishment, the driver should park out of the view of the clerk if possible. The UP should enter the establishment. The Adult Inspector must be able to see the UP enter and leave the establishment. If necessary, the Adult Inspector should leave the car and discreetly follow UP into the establishment. The Adult Inspector should not enter the establishment unless his/her anonymity can be assured.

Purchase steps for Underage Purchasers (UP):

1. UP stands in shortest line.
2. UP attempts the buy.
3. UP should ask for the product requested by adult supervisor. If UP is asked for age, always state correct age, give full birth date. Always tell the truth.
4. For the full round of FY26 compliance checks, you should ask for a variety of products at retailers. It would be best to attempt products that are popular in either the area you are conducting the inspection or popular brands/types with young people (i.e. Crave, Zyn, Game, Backwoods, JUUL).
5. Compliance checks that are conducted at vape shops should attempt to purchase e-cigs, e-hookah, or liquid nicotine. (refrain from products containing zero nicotine)
6. UP pays for the product and takes a receipt if given. UP should **never** ask for a receipt.
7. UP leaves the store and goes directly back to the car.
8. If UP is asked for ID, UP must tell the clerk that they do not have an ID on them.
9. If the clerk does not sell: UP must simply leave the store and go directly to the car. UP must not plead with or convince the clerk.

If there is NOT a sale, enter data on the POST “Enforcement Form” with input from UP. The Adult Inspector must enter all the required information into POST and that should be done **before** moving on to the next inspections. **Under no circumstance should the UP enter data on a handheld device or the paper forms.**

Purchase steps for Adult Purchasers (AP):

Smoking Bar: Compliance Check for selling flavor and consuming onsite.

1. AP "ID" information is entered in POST (last 4 of phone number, 2-digit DOB)
2. AP empties pockets and only has cash, cell phone and identification in pocket.
3. AP stands in shortest line.
4. AP attempts the buy.
5. AP should ask for the product requested by adult inspector. If AP is asked for age, always state correct age, give full birth date. Always tell the truth.
6. AP should only use cash given to them by Adult Inspector.
7. AP pays for the product and takes a receipt if given. AP should **never** ask for a receipt.
8. AP does not open product and leaves the store and goes directly back to the Adult Inspector. If AP was told they had to stay to consume, tell clerk they were unaware they had to consume at time of purchase and try to return product and get money back. Report conversation back to Adult Inspector.
9. If the clerk does not sell: AP must simply leave the store and go directly to the car. AP must not plead with or convince the clerk.

If there is NOT a sale, simply enter data on the POST "Enforcement Form" with input from AP. The Adult Inspector must enter all the required information into POST and that should be done **before** moving on to the next inspections. **Under no circumstance should the AP enter data on a handheld device or the paper forms.**

IF POTENTIAL VIOLATION IS FOUND:

If sale is made, please follow the following procedure:

- When UP/AP returns to the car, all items are to be given immediately to the Adult Inspector. This includes the tobacco/nicotine product, the receipt (if any), co-buys (if any) and change.
- Move car to safe, private location out of clerk's line of sight.
- Count the change to make sure sale price is correct.
- Label the front of the tobacco/nicotine product (or evidence bag) with store data and write time/date of purchase, UP/AP ID, and cost of product.
- *Best Practice – Upload photo of evidence and picture of establishment in the record in POST.*
- Time of purchase should be the when the UP/AP leaves the store.
- Evidence and any co-buy collected items should be placed in larger evidence bag.
- If your Board of Health or Clerk Magistrate requires a more detailed description of the clerk, make sure you have an accurate description of the clerk from the UP/AP.
- Evidence must remain in Adult Inspector's possession until returning to the office.
- Evidence should be placed in a locked area/cabinet and held at minimum until the fine and/or suspension has been paid. Check with your General Counsel's office for specific records retaining laws.
- All evidence collected should also be documented in separate database.

10. Continue with the same procedure for each store. The UP/AP should return to report to the Adult Inspector after **every attempt** so that an accurate entry can be filled out for each store.

Adult-Only Establishments: Performing Compliance Checks in an Adult-only Establishments.

Underage Purchasers in Adult Only It is recommended that Inspectors use confident UPs that are alert and aware of details for these types of Compliance Checks so they “blend in” with other customers who are Adults by definition.

- Safety first! If the UP does not feel comfortable conducting a check at an establishment, then consider using a different UP and/or conduct inspection on another day.
- Compliance checks should not be conducted at Gentlemen’s Clubs, stores with pornography, or at Smoking Bars. *Use Adult Purchasers for this. See below.
- Adult Inspector should share as much information about establishment and location of vending machine/self-service display as possible with UP before they attempt to enter establishment. If establishment has multiple doors, UP should attempt to enter the door which is in the “adult only area”.
- If the cigarettes are in a vending machine, the UP should enter the establishment with small bills and go directly to the vending machine to see if they can purchase the cigarettes. If a lock-out device prevents the sale from occurring, the UP should go to the cash register/bartender and request that the machine be unlocked.

Adult Inspector will let the UP know what type of tobacco product to attempt to purchase prior to the UP exiting the vehicle.

Adult Purchasers in Adult Only – in some circumstances you may have to have an Adult Purchaser check for compliance in Adult Only establishments. These establishments could be Gentlemen’s Clubs, stores with pornography or smoking bars. You must follow all the hiring practices stated at the beginning of these protocols. It is important to be very clear with the Adult Purchaser as to what they should ask for/do when in establishment. **Smoking bar protocols are listed previously on this document.*

Quality Assurance Issues:

Inspection patterns can be easily identified by retailers. The time and day of the week of the compliance checks must be rotated. Some checks must occur on weekends, evenings, holidays and during traditional school hours.

- Checks should be done throughout the fiscal year, except for seasonal establishments and seasonal areas.
- If possible, vehicles should be rotated. Do not use a marked municipal or police vehicle.
- If possible, hire an equal mixture of ages/genders of UPs.
- The UP should be trained to ask for products in a realistic manner.

- UP/AP should not attempt to purchase tobacco products if they know anyone inside the store. If UP/AP enters stores and recognizes someone, they should leave the store before the attempt. The Adult Inspector should send a different UP/AP in OR come back on another day. To minimize the chances of this occurring, have UP check stores outside of their hometowns.

Safety:

The safety of the UP/AP and Adult Inspectors is paramount. The UP/AP must feel safe entering an establishment. If they do not feel comfortable, they should leave the store. That store should not be checked at that time. Please note that UP/AP are trained to walk out of the store and directly into the Adult Inspectors car if they feel unsafe.

- If a clerk becomes verbally abusive, the UP/AP should leave the store immediately.
- UP/AP should be encouraged to bring their personal cell phone for safety reasons. If UP/AP needs the Adult Inspector to come into the establishment, they should call or text them.
- UP/AP must be picked up and dropped off for compliance checks at a location convenient to the UP. Please consider the time of day and location when dropping off UP to commute home.

MTCP Ticketing Protocol:

Notification immediately after the sale is NOT recommended. Nationwide, SAMHSA has found that issuing tickets immediately after the sale of tobacco has a strong potential of biasing subsequent compliance checks performed that same day. MTCP has adopted this protocol because of the strong recommendation of the federal government (SAMHSA), who oversees the Synar block grant.

If a local Board of Health requires that tickets be issued immediately after a sale, a letter from the Board of Health must be sent to the MTCP Contract Manager explaining the rationale. The Contract Manager must issue a waiver for this deviation from MTCP protocol.

It is MTCP's protocol to issue fines/tickets at the end of the day, the next day or to mail tickets/health orders within 24 hours of the sale. The UP/AP that was able to purchase the product should not be with you when you deliver the ticket. These protocols reduce the risk of "phone trees" that could potentially bias subsequent checks. These procedures also help to protect the safety and anonymity of the UP/AP.

Fiscal Expenditures:

Payment of Adult Inspectors of compliance checks

MTCP funded staff may be paid regular salary to conduct compliance checks. All job descriptions must clearly indicate that evening and weekend hours are expected. MTCP funds cannot be used to pay funded program staff or other municipal staff (inspectors, police, etc.) for overtime.

Independent contractors can be employed following municipal or agency procedures. MTCP funds may be used to pay independent contractors. Independent contractors may be paid in either of the following ways:

By the hour:

- Contractors may be paid an hourly rate for their services.
- MTCP recommends an hourly rate range for independent contractors starting between \$30 to \$40.
- Contractors may only be paid for actual hours worked, including time for preparation for a compliance check, time conducting compliance checks, MTCP required training, ticketing, and hearings (if applicable).
- Contractors may only be paid from the time that they arrive at their agency/health office to the time they return to the agency/health office after the check is complete. Contractors may not be paid from the time that they leave home to the time that they return home.
- Timesheets must be submitted to agency/health office for contractor payment. Timesheets must be available for MTCP audit.
- Hourly pay rates cannot include mileage.

Mileage reimbursement:

Staff and hourly independent contractors may also be reimbursed for mileage if using a personal vehicle. Mileage must be reimbursed following municipal or agency procedures and should take into consideration the “shortest point” rule.

- Mileage must be reimbursed separately.
- If there is no municipal or agency policy in place regarding the starting point for mileage reimbursement, mileage must be paid starting from the agency/health office until the return to the office immediately after the checks are completed.
- If there is no municipal or agency policy in place regarding the reimbursement rate, the current standard IRS mileage reimbursement rate should be used.
- It is not an appropriate use of MTCP funds to reimburse staff and contractors for mileage from their home to an agency/health office or from their home to perform a compliance check. Mileage must be based on the round-trip distance from the agency/health office to the location (s) of the compliance checks.

Reimbursement for business use insurance rider:

MTCP funds may be used to reimburse staff or independent contractors for the cost of adding a rider to their vehicle insurance policy to cover business use. The use of business insurance riders is strongly recommended.