

**Clarification of Fire Safety Provisions
for Sales of Cigarettes as of August 16, 2007**

This memorandum republishes and corrects TSB-M-06(8)M, *Enforcement Provisions Regarding Fire Safety Standards for Cigarettes*, to clarify that:

- effective August 16, 2007, cigarette manufacturers may not sell any cigarettes not marked **FSC** (fire standards compliant), and
- effective December 14, 2007, cigarette stamping agents may not stamp any cigarettes not marked **FSC**.

This memorandum also explains the conditions under which wholesale and retail dealers may continue to sell existing inventory.

Sale of existing inventory

In TSB-M-06(8)M, *Enforcement Provisions Regarding Fire Safety Standards for Cigarettes*, issued December 11, 2006, we stated

“Effective August 16, 2007: . . . Furthermore, no cigarettes may be distributed, sold, or offered for sale in New York State unless the manufacturer has marked each individual package with the letters FSC at or near the UPC Code, if present, to signify that they are fire standards compliant.” *Id.* at page 2

The statement is correct as to manufacturers, but is incorrect as to wholesale dealers and retail dealers, because, as stated in § 7 of the Act,

“Nothing in this act shall prohibit wholesale dealers or retail dealers from selling their inventory of cigarettes existing on the date [December 14, 2007] that is 12 months after this act takes effect; provided that . . .”

- the packages of cigarettes contain the required marking in compliance with OFPC regulations in effect as of August 16, 2006,
- New York State cigarette tax stamps were affixed to the packages prior to December 14, 2007, and
- the wholesale dealer or retail dealer can establish that the inventory was purchased prior to December 14, 2007 in comparable quantity to the inventory purchased during the same period in 2006.

(Ch. 583 of the Laws of 2006)

The corrections requiring the republication are set forth in *italics* on page 3.

Enforcement Provisions Regarding Fire Safety Standards for Cigarettes

On August 16, 2006, Governor George E. Pataki signed Chapter 583 of the Laws of 2006. Chapter 583, in part, amends the Executive Law and the Tax Law to authorize the Tax Department to enforce certain provisions regarding fire safety standards for cigarettes. Except as noted below, these amendments are effective December 14, 2006.

Tax Law amendment

Chapter 583 adds section 480-b(2-a) to the Tax Law to provide that a cigarette stamping agent may not affix, or cause to be affixed, a New York State cigarette tax stamp to a package of cigarettes unless the cigarettes have been certified and marked as fire standards compliant pursuant to section 156-c of the Executive Law.

Cigarette stamping agents who violate the provisions of section 480-b may be subject to a civil penalty and may have their licenses suspended or canceled. (See Tax Law, section 481(1)(c).) Thus, a cigarette stamping agent is now subject to civil penalty and to license suspension, or cancellation, for stamping any cigarettes that are not fire standards compliant in violation of section 480-b(2-a).

Executive Law amendments

General

Section 156-c of the Executive Law provides fire safety standards for cigarettes sold or offered for sale in New York State. These standards are administered by the Department of State's Office of Fire Prevention and Control (OFPC). The regulations promulgated under section 156-c provide that, on or after June 28, 2004, no cigarettes may be sold or offered for sale in New York State unless the manufacturer has filed a written certification with OFPC that the cigarettes have been tested according to required test methods and meet required performance standards for cigarette fire safety. Cigarettes that have been certified must be marked to indicate compliance with the fire safety standards. (This general information is provided to aid in the discussion presented in this memorandum. For complete details regarding the certification, testing, and standards for cigarette fire safety, refer to section 156-c and 19 NYCRR, Part 429.)

Effective December 14, 2006: Section 156-c is amended to require that certain information be included in manufacturers' certifications. When a manufacturer makes any change to the cigarette that is likely to alter its compliance with fire safety standards, the cigarette must be retested before it is sold or offered for sale. In addition to the current

procedure for notifying retail dealers, OFPC must prescribe procedures for notifying cigarette stamping agents and wholesale dealers as to which cigarettes have been certified. These notification procedures may include the maintenance of a Web site listing certified cigarette brands and styles.

Effective August 16, 2007: The certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to Standard ISO/IEC 17025 of the International Organization for Standardization, or another comparable accreditation standard as OFPC may require by regulation. Furthermore, no cigarettes may be distributed, sold, or offered for sale in New York State unless the manufacturer has marked each individual package with the letters FSC at or near the UPC code, if present, to signify that they are fire standards compliant. However, wholesale dealers and retail dealers may continue to sell their existing cigarette inventory after August 16, 2007, provided:

- the packages of cigarettes contain the previously required marking in compliance with OFPC regulations in effect as of August 16, 2006,*
- New York State cigarette tax stamps are affixed to the packages prior to December 14, 2007, and*
- the wholesale dealer or retail dealer can establish that the inventory was purchased prior to December 14, 2007 in comparable quantity to the inventory purchased during the same period in 2006.*

Enforcement provisions

As amended, section 156-c provides that the Tax Department and the Department of State are authorized to impose the following civil penalties and suspensions:

Penalties for sales of cigarettes that have not been certified and marked

Any **wholesale dealer, cigarette stamping agent, or other person or entity** who knowingly sells or offers to sell cigarettes that have not been certified and marked as required by section 156-c will be subject to a civil penalty not to exceed \$100 for each pack of such cigarettes sold or offered for sale. The penalty against any wholesale dealer **may not exceed \$100,000** for sales or offers to sell during any 30-day period.

Any **retail dealer** who knowingly sells or offers to sell cigarettes that have not been certified and marked as required by section 156-c will be subject to a civil penalty not to exceed \$100 for each pack of such cigarettes sold or offered for sale. The penalty against any retail dealer **may not exceed \$25,000** for sales or offers to sell during any 30-day period. (An enforcement officer for the Department of Health also is authorized to impose these penalties upon retail dealers of cigarettes.)

Any person engaged in the business of selling cigarettes in, or for shipment into, New York State who possesses cigarettes that have not been certified and marked as required by section 156-c is presumed to be offering the cigarettes for sale in New York State. A cigarette stamping agent licensed in more than one state may rebut this presumption by establishing 1) that the cigarettes have been physically segregated from other cigarettes offered for sale in New York State, and 2) no New York State tax stamps have been affixed on any cigarettes that have not been certified and marked as required by section 156-c.

Suspension of license or registration

If the provisions of section 156-c are violated on three or more separate dates within a three-year period, the Tax Department, after an opportunity for a hearing has been provided under the Tax Law, must suspend for six months the license of any wholesale dealer or cigarette stamping agent or the registration of any retail dealer of cigarettes.

Penalty for making a false certification

Any **cigarette manufacturer** that knowingly makes a false certification with respect to cigarettes meeting the fire safety standards is subject to a civil penalty of **at least \$75,000 and not more than \$250,000** for each false certification. If this penalty is not paid within 30 days after it is imposed, the cigarette manufacturer is barred from selling cigarettes covered by the false certification in New York State until full payment is made.

Seizure of cigarettes that are not marked *FSC*

Police officers designated under section 1.20 of the Criminal Procedure Law (which includes certain enforcement agents for the Tax Department) and OFPC peace officers can seize and take possession of cigarettes not marked *FSC* as required by section 156-c. Any seized cigarettes must be turned over to the Tax Department for destruction.

Examination of records

To enforce the provisions of section 156-c, the Tax Department and the Department of State are authorized and must be given the means to examine the stock of cigarettes, books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale.

NOTE: A TSB-M is an informational statement of changes to the law, regulations, or Department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in a TSB-M.