



Commonwealth of Massachusetts

Executive Office of Health and Human Services
Department of Public Health

Presentation to the Public Health Council

**Cigarette and Smokeless Tobacco Products: Reports of Added Constituents
and Nicotine Ratings**

105 CMR 660.000

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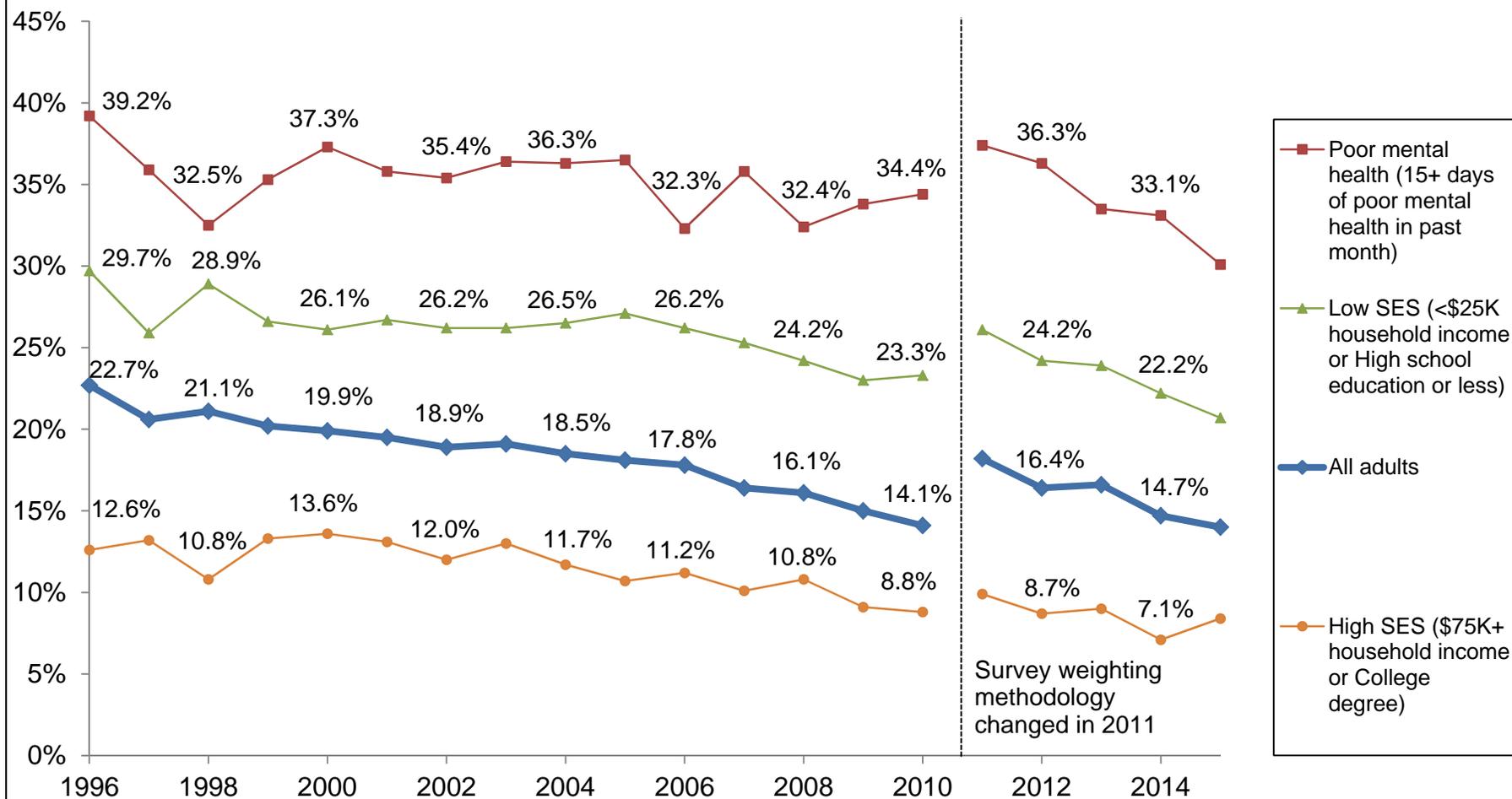
Overview

- **Program Update**
- **Background**
- **Proposed Amendment**
- **Next Steps**
- **Questions**



Program Update

Adult Smoking Rate Among Subgroups: Massachusetts, 1996-2015

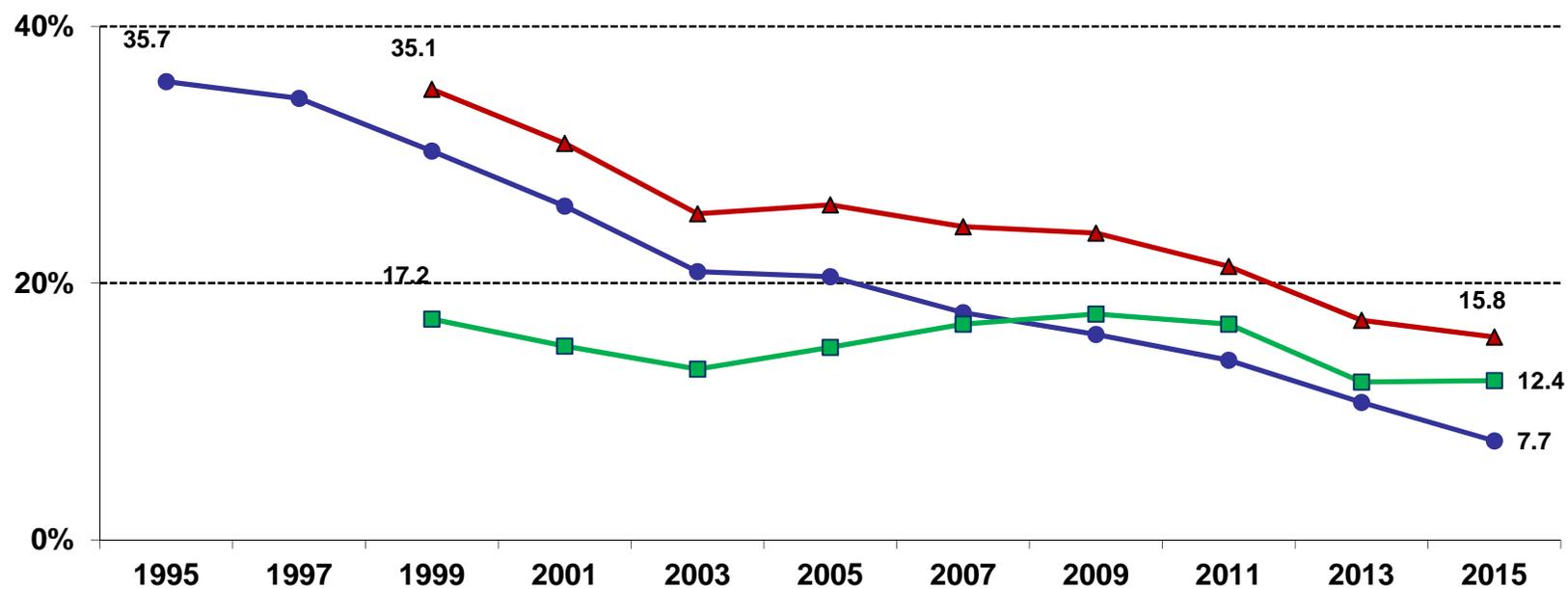


Source: Massachusetts BRFSS



Program Update

Current Use of Tobacco Products Among High School Students: Massachusetts, 1995-2015



* Current use is within the past 30 days

Source: MYRBS

● Cigarettes

■ Other Tobacco Products

▲ Any Tobacco Product



Background

105 CMR 660.00 is statutorily required by M.G.L. c. 94, § 307B, which mandates that cigarette manufacturers file an annual report to the Department of Public Health disclosing:

- Nicotine Yield Ratings for each brand of cigarettes they sell in the Commonwealth.
 - Nicotine yield ratings accurately predict nicotine intake for typical consumers, based on standards established by DPH.
- List of Constituents (ingredients) by weight for each brand of cigarettes they sell in the Commonwealth.



Background

- In 1997, the four major Tobacco Brands sued the Commonwealth and DPH, claiming that M.G.L. c. 94, § 307B was unconstitutional or otherwise prohibited by law.
- The U.S. District Court for the District of Massachusetts struck down one of the requirements in M.G.L. c. 94, § 307B that tobacco companies disclose all ingredient information, finding it to be a taking of trade secrets without just compensation in violation of the U.S. Constitution. The Court upheld the requirement that nicotine content be disclosed.
- DPH has since complied with this ruling, requiring only that tobacco manufacturers disclose nicotine yield rating.



Proposed Amendment to 105 CMR 660.000

Factors Informing Proposed Amendment:

- Executive Order 562 – Regulatory review required for all state agencies.
- The U.S. District Court for the District of Massachusetts struck down the constituent ingredient disclosure requirement.
- DPH has received nicotine yield information from the tobacco companies consistently since 1997.
- Data is shared with the public and numerous studies have been conducted using this data.



Proposed Amendment to 105 CMR 660.000

Amending 105 CMR 660.000 will:

- Bring the regulation into accordance with the US District Court ruling.
- Continue to allow MDPH to collect important data on nicotine yield ratings to inform public health efforts and publications.



Proposed Amendment to the Regulation

- **Existing:**

Definition of “added constituents” and references to “added constituents” are included in regulations

- **Proposed:**

Definition of “added constituents” and references to “added constituents” are eliminated from the regulations

- **Rationale:**

Compliance with U.S. District Court ruling and current DPH practice



Conclusion

The proposed amendment to 105 CMR 660.00 will:

- Bring the regulation into compliance with the U.S. District Court ruling and current DPH practice by removing the requirement that tobacco manufacturers disclose all added constituents in cigarettes and smokeless tobacco.
- Continue to require disclosure of nicotine yield for use by the Department to inform public health efforts and publications.



Next Steps

- DPH will hold a public hearing and a comment period.
- After the public comment period and hearing, DPH will review comments and draft additional appropriate amendments, as necessary.
- Approval of the proposed amendment, along with a review of public comments, will be requested at a subsequent meeting of the Public Health Council.
- Following final approval, this regulation will be amended.