

FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

NOTICE OF PROPOSED AND EMERGENCY RULEMAKING

The Chief of the Fire and Emergency Medical Services Department, pursuant to the authority set forth in § 8(a) of the Fire-Standard-Compliant Cigarettes Act of 2008, effective May 13, 2008 (D.C. Law 17-157; D.C. Official Code § 7-1757(a)), and Mayor's Order 2008-90, dated June 23, 2008, hereby gives notice of the adoption of the following amendments, on an emergency basis, to Title 20 of the District of Columbia Municipal Regulations, (DCMR). The Chief also gives notice of his intent to take final rulemaking action to adopt the amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Emergency action is necessary to prevent one of the most common sources of fires by requiring safer self-extinguishing fire-standard-compliant cigarettes in place of standard cigarettes that continue to smolder when left unattended.

The Emergency Rules were adopted and became effective on June 26, 2008, and shall expire on October 26, 2008, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever first occurs.

The proposed amendments would add a new Chapter 26 to Title 20 of the DCMR to establish standards for fire-standard-compliant cigarettes as well as testing standards for such cigarettes and penalties for failing to comply with the requirements of this new chapter.

Title 20 (Environment) (February 1997) of the District of Columbia Municipal Regulations is amended as follows:

A new Chapter 26 is added to read as follows:

CHAPTER 26 FIRE-STANDARD-COMPLIANT CIGARETTES

2600 GENERAL PROVISIONS

- 2600.1 This chapter shall apply to manufacturers and retail and wholesale dealers of cigarettes sold or offered for sale in the District of Columbia after July 1, 2008, except as provided in § 2600.3.
- 2600.2 This chapter governs the possession, manufacture, storage, handling, sale, and use of fire-standard-compliant cigarettes.
- 2600.3 A wholesale dealer or retail dealer may continue to sell after July 1, 2008, cigarettes that are not labeled as fire-standard-compliant cigarettes, provided that the cigarettes were part of its inventory on or before July 1, 2008, and the dealer can demonstrate each of the following:
- (a) Tax stamps were fixed to the cigarettes before July 1, 2008, and

- (b) The dealer purchased the inventory before July 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

2600.4 A manufacturer may continue to manufacture cigarettes that are not fire-standard-compliant, provided that the cigarettes will be stamped for sale outside of the District of Columbia and the manufacturer has taken reasonable steps to ensure that the cigarettes will not be sold in the District. A wholesale dealer may continue to sell cigarettes that are not fire-standard-compliant, provided that the dealer has taken reasonable steps to ensure that the cigarettes will be sold outside of the District.

2600.5 This chapter shall not apply to cigarettes distributed solely for the purpose of consumer product testing.

2601 FIRE-STANDARD-COMPLIANT CIGARETTES

2601.1 No person shall sell or offer for sale a cigarette unless:

- (a) The cigarette has been tested by a method approved under § 2602;
- (b) The cigarette satisfies the performance standards required by § 2602;
- (c) The cigarette manufacturer has filed a written certification with the Department as required by § 2603; and
- (d) The cigarette bears fire-standard-compliant markings as required by § 2603.

2602 TESTING AND PERFORMANCE STANDARDS

2602.1 The testing methods and performance standards for cigarettes to be sold or offered for sale in the District shall be as follows:

- (a) A laboratory that conducts a test under this section shall implement a quality control and quality assurance program;
- (b) Except as provide in § 2602.2, manufactures shall test cigarettes to determine compliance with this chapter in accordance with the American Society of Testing and Materials (ASTM) “Standard Test for Measuring the Ignition Strength of Cigarettes” (ASTM Standard E2187-04);
- (c) Cigarette testing shall be conducted on ten (10) layers of filter paper;

- (d) No more than twenty-five per cent (25%) of the cigarettes tested in a test trial shall exhibit fill-length burns;
- (e) The performance standard required by this section shall apply only to a complete test trial; and
- (f) A complete test trial shall consist of forty (40) replicate tests for each cigarette tested.

2602.2 If the Chief determines that a manufacturer's cigarettes cannot be tested according to the test method prescribed by § 2602.1, the Chief may approve a test method or performance standard the manufacturer, or another entity, proposes if the Chief determines that the alternative method is equivalent to and as effective as the test method or performance standard prescribed by § 2602.1.

2602.3 If the Chief approves an alternative test method or performance standard, the manufacturer may use that test method or performance standard as the test method or performance standard required by § 2602.1

2603 CERTIFICATION, PACKAGING, AND MARKING

2603.1 A manufacturer shall submit a written certificate to the Chief attesting that its cigarettes have been tested according to an approved method under § 2602 and has achieved the required performance standard for sale in the District. A cigarette certified under this subsection shall be recertified every 3 years.

2603.2 A cigarette that is listed for certification under § 2603.1 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards in § 2602 shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters (15 mm.) from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm.) from the lighting end and ten millimeters (10 mm.) from the filter end of the tobacco column, or ten millimeters (10 mm.) from the labeled end of the tobacco column for non-filtered cigarettes.

2603.3 A cigarette manufacturer shall submit a complete description of each cigarette being certified, including the:

- (a) Brand;
- (b) Style;
- (c) Length in millimeters;

- (d) Circumference in millimeters;
- (e) Flavor, if applicable;
- (f) Filter or non-filter;
- (g) Package description, such as a soft pack or box; and
- (h) Mark required pursuant to § 2603.5.

2603.4 Packaging for certified fire-standard-compliant-cigarettes shall be marked in eight (8) point type or larger to indicate that the cigarettes have been tested using the test method and meet the performance standard required by this chapter.

2603.5 A manufacturer shall use only one (1) mark and the mark shall consist of:

- (a) The letters “FSC,” which signify that the cigarette is fire-standard-compliant: or
- (b) Any mark approved for sale in New York State or another state that has enacted fire-standard-compliance standards for cigarettes that include the test method and performance standard specified in § 2602.

2604 DATA REQUIREMENTS

2604.1 A manufacturers shall retain and make data available as follows:

- (a) Retain data from tests conducted on cigarettes that are offered for sale in the District pursuant to this chapter for three (3) years; and
- 2. Make data available to the Chief and the Attorney General upon written request to verify compliance with the performance standard required under § 2602.

2605 PENALTIES

2605.1 A manufacturer or wholesale dealer who knowingly fails to comply with the provisions of the Act or of this chapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation and not to exceed one hundred thousand dollars (\$100,000) for all violations within a thirty (30) day period. Each day of violation shall constitute a separate offense. This penalty shall apply for a violation of D.C. Official Code § 7-1755(b) for each day after the sixtieth (60th) day of noncompliance.

2605.2 A retail dealer who knowingly fails to comply with the provisions of the Act or of this chapter shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation and not to exceed twenty-five thousand dollars (\$25,000) for all violations within a thirty (30) day period. Each day of violation shall constitute a separate offense.

2605.3 A manufacturer that knowingly makes a false certification under § 2603.1 shall be subject to a minimum civil penalty of seventy-five thousand dollars (\$75,000) and a maximum civil penalty of two hundred and fifty thousand dollars (\$250,000) for each knowing false certification.

2605.4 The Chief, law enforcement personnel, or other duly authorized representatives of the Mayor may seize and take possession of cigarettes that do not bear proper markings as required by § 2603. Cigarettes seized pursuant to this subsection shall be turned over to the Attorney General for forfeiture to the District and destruction. Before cigarettes seized under this section are destroyed, the true holder of the trademark rights in the cigarette brand may inspect the cigarettes.

2606 **INSPECTIONS**

2606.1 Inspections of wholesale and retail dealers shall be conducted on a random basis by the Chief or any other law enforcement or government entity authorized by the Chief.

2699 **DEFINITIONS**

2699.1 When used in this chapter, the following terms shall have the meanings ascribed:

Act—the Fire-Standard-Compliant Cigarettes Act of 2008, effective May 13, 2008 (D.C. Law 17-157; D.C. Official Code § 7-1751 *et seq.*).

Chief—the Chief of the Fire and Emergency Medical Services Department.

Cigarette—a product that contains any amount of nicotine, regardless of size, shape, or presence of other ingredients, that is intended to be burned or heated and consists of or contains any roll of tobacco wrapped in paper, or in any other substance other than tobacco, and because of its appearance, the type of tobacco used, and its packing or labeling is offered to or purchased by consumers for smoking.

Consumer testing—an assessment of cigarettes that a manufacture conducts or is under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of the cigarette, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

Fire-standard-compliant-cigarette—a cigarette that has been tested pursuant to, and has met the performance standards of, the Act and its implementing rules.

Manufacturer—a person or entity that manufactures or produces cigarettes or causes cigarettes to be manufactured or produced, whether in or outside the District, for sale in the District, directly or through an importer, wholesale dealer, or retailer dealer, including any first purchaser that intends to resell cigarettes.

Quality control and quality assurance program—Laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing and that maintain a repeatability value of no greater than nineteen hundredths (0.19).

Repeatability—a range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

Retail dealer—a person, other than a manufacturer or wholesale dealer, engaged in the sale of cigarettes.

Sale or selling—a transfer of title or possession, or both, exchange or barter, conditional or otherwise, including the giving of cigarettes as samples, prizes, or gifts and the exchange of cigarettes for any consideration.

Wholesale dealer—a person, including a wholesale dealer's agent that sells cigarettes to retail dealers or other persons for resale, including any person that owns, operates, or maintains a cigarette vending machine in the District of Columbia.

Persons desiring to comment on these proposed rules should submit comments in writing to the Fire and Emergency Medical Services Agency, Office of the General Counsel, 1923 Vermont Ave., NW, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.