

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To permit only fire-standard-compliant cigarettes to be sold in the District of Columbia to help reduce fires and related personal injury and property damage caused by cigarettes, to establish test methodology and performance standards for fire-standard-compliant cigarettes, to require manufacturers to certify that their cigarettes meet the requirements of this act, and to establish penalties for violations of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fire-Standard-Compliant Cigarettes Act of 2008".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Cigarette" means any 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 packaging or labeling is offered to or purchased by consumers for smoking.

(2) "Consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, 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.

(3) "Fire-standard-compliant cigarette" means a cigarette that:

(A) Has been tested pursuant to this act; and

(B) Has met the performance standard required by this act.

(4) "Manufacturer" means any 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 retail dealer, including any first purchaser that intends to resell cigarettes.

(5) "Quality control and quality assurance program" means 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 0.19.

(6) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

(7) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in the sale of cigarettes.

(8) "Sale" or "selling" means any 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.

(9) "Wholesale dealer" means any 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 one or more cigarette vending machines in the District of Columbia.

Sec. 3. Prohibition on sale of cigarettes that are not fire-standard-compliant.

No cigarette may be sold or offered for sale in the District of Columbia unless:

- (1) It has been tested in accordance with the test method specified in section 4(a)(2);
- (2) It meets the performance standard required by section 4(a)(4);
- (3) The manufacturer has filed a written certification with the Mayor, or the Mayor's delegate, in accordance with section 5; and
- (4) It has been marked in accordance with section 5(b).

Sec. 4. Test method and performance standard.

(a) The test method and performance standard for cigarettes sold or offered for sale in the District of Columbia shall include the following:

- (1) A laboratory that conducts a test in accordance with this subsection shall implement a quality control and quality assurance program.
- (2) Except as provided in subsection (b) of this section, the testing of cigarettes by manufacturers and the District of Columbia to determine compliance with this act shall be conducted in accordance with the American Society of Testing and Materials ("ASTM") "Standard Test Method for Measuring the Ignition Strength of Cigarettes" ("ASTM Standard E2187-04").
- (3) The testing of cigarettes shall be conducted on 10 layers of filter paper.
- (4) No more than 25% of the cigarettes tested in a test trial shall exhibit full-length burns.
- (5) The performance standard required by this section shall only be applied to a complete test trial.
- (6) Forty replicate tests shall comprise a complete test trial for each cigarette

tested.

(b)(1) If the Mayor determines that cigarettes of a manufacturer cannot be tested in accordance with the test method described in subsection (a) of this section, the Mayor may approve a test method and performance standard proposed by the manufacturer, or other entity, that the Mayor determines are equivalent to and as effective as the test method and performance standard described in subsection (a) of this section.

(2) Following approval by the Mayor of an alternate test method and a determination by the Mayor that the performance standard proposed by the manufacturer, or other entity, is equivalent to the performance standard described in subsection (a) of this section, the manufacturer may use that test method to meet the performance standard required by this act for certification pursuant to section 5.

(c) Each cigarette listed in a certification submitted pursuant to section 5 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least 2 bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

Sec. 5. Manufacturer's certification.

(a)(1) Each manufacturer shall submit written certification to the Mayor attesting that its cigarettes have been tested in accordance with this act and meet the performance standard required under section 4.

(2) The submission shall include a 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 subsection (b) of this section.

(3) Each cigarette certified under this subsection shall be recertified every 3 years.

(b)(1) Packaging for certified fire-standard-compliant cigarettes shall be marked in 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 act.

- (2) The manufacturer shall use only one mark and the mark used 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 or another state that has enacted fire-standard-compliance standards for cigarettes that include the test method and performance standard specified in section 4.

Sec. 6. Manufacturer's data retention and availability requirements.

- (a) A manufacturer shall:
- (1) Retain all data from testing conducted on cigarettes that are offered for sale in the District of Columbia pursuant to this act for 3 years; and
 - (2) Make the data available to the Mayor and the Attorney General for the District of Columbia upon written request to verify compliance with the performance standard required by this act.
- (b) Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a penalty pursuant to section 7 for each day after the 60th day that the manufacturer does not make the copies available.

Sec. 7. Penalties and remedies.

- (a)(1) A manufacturer or wholesale dealer who knowingly fails to comply with any of the provisions of this act, or regulations promulgated pursuant to this act, shall be subject to a civil penalty not to exceed \$10,000 for each violation and not to exceed \$100,000 for all such violations during any 30-day period.
- (2) A retail dealer who knowingly fails to comply with any of the provisions of this act, or regulations promulgated pursuant to this act, shall be subject to a civil penalty not to exceed \$5,000 for each violation and not to exceed \$25,000 for all such violations during any 30-day period.
- (3) Each day of violation shall constitute a separate violation and, unless provided otherwise by regulation, the prescribed penalty shall be applicable to each separate violation.
- (b) In addition to any penalty prescribed by subsection (a) of this section, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 5 shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.
- (c) In addition to any other remedy provided by law, the Attorney General for the District of Columbia may file a civil action in the Superior Court of the District of Columbia for a violation of this act, which may include a petition for injunctive relief and the recovery of costs or damages.

(d)(1) Law enforcement personnel or duly authorized representatives of the Mayor may seize and take possession of cigarettes that have not been marked in the manner required by section 5(b). The seized cigarettes shall be turned over to the Attorney General for the District of Columbia, and shall be forfeited to the District of Columbia.

(2) Cigarettes seized pursuant to this subsection shall be destroyed; provided, that before the destruction of any cigarette seized, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

Sec. 8. Rules; limitations.

(a) No later than July 1, 2008, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act, including regulations regarding the conduct of random inspections of wholesale and retail dealers to ensure compliance with this act.

(b) This act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

(c) Nothing in this act shall be construed to prohibit:

(1) Wholesale dealers or retail dealers from continuing to sell, on or after July 1, 2008, non-fire-standard-compliant cigarettes that were part of their inventories existing on or before July 1, 2008, if the wholesale dealer or retail dealer can establish that:

(A) Tax stamps were affixed to the cigarettes before July 1, 2008; and

(B) The inventory was purchased before July 1, 2008 in comparable quantity to the inventory purchased during the same period of the prior year;

(2) The sale of cigarettes solely for the purpose of consumer testing; or

(3) Any person or entity from manufacturing or selling cigarettes that are or will be stamped for sale in one of the various states or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in the District of Columbia.

Sec. 9. Applicability.

Sections 2 through 7 shall apply as of July 1, 2008.

Sec. 10. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 11. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the

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Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia