

Proposed Regulation on Fire Safety Standards for Cigarettes in Baltimore City

Baltimore City Health Department
October 10, 2007

I. BACKGROUND

A. Legal Authority

The Health Commissioner has the legal authority to regulate health nuisances under the Baltimore City Health Code. Section 2-104 of the Health Code provides that the Health Commissioner is responsible for preventing disease and nuisances affecting public health. The Health Commissioner also has the duty to “to remove and abate nuisances...” Health Code § 2-105(5). Section 5-101(b) inclusively defines nuisances as “any other health or safety hazard.” Under Section 5-102, the Commissioner “is responsible for ... requiring the removal of all nuisances...” Cigarettes and the fires that often result from smoking are clearly a health and safety hazard. Under § 2-106 of the Baltimore City Health Code, the Health Commissioner may adopt and enforce regulations to carry out his duties.

B. Cigarette-Induced Fires Are a Public Health Hazard

On May 22, 2007, an early-morning fire in a two-story row house on Cecil Avenue in Baltimore claimed eight lives, including five children. One 13-year old victim died trying to save his brother.¹ Investigators found that a cigarette caused the fire.

According to the Baltimore City Fire Department, since 2000, over 500 fires in Baltimore, Maryland have been related to smoking, resulting in the deaths of 49 people.

Nationally, cigarette-induced fires are the number one cause of home fire deaths. These fires often occur when lighted cigarettes are dropped onto combustible materials, such as a bed or upholstered furniture. Each year, cigarette-induced fires kill over 700 people in the United States and result in property losses exceeding hundreds of millions of dollars.²

C. Technical Modifications to Cigarettes Reduce the Risk of Fires

The Coalition for Fire Safe Cigarettes includes the National Fire Protection Association, the Metropolitan Fire Chiefs, the National Fallen Firefighters Foundation, the American Burn Association, the Burn Foundation, the American College of Emergency Physicians, the Harvard School of Public Health, and other professional associations.

According to the Coalition:

A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as “speed

¹ *Boy, 13, Died in Bid to Save His Brother*, Baltimore Sun (May 24, 2007).

² Fire Analysis and Research Division: National Fire Protection Association, *The Smoking-Material Fire Problem* (August 2006).

bumps” to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish.³

Fire safety of cigarettes is assessed by testing according to an international standard set by ASTM International. This standard is the product of decades of research and refinement by Congressional study groups, the tobacco industry, and fire-safety engineers. According to ASTM E-2187, *Standard Test Method for Measuring the Ignition Strength of Cigarettes*, this testing method “provides a standard measure of the capability of the cigarette...to generate sufficient heat to continue burning and thus potentially cause ignition of bedding or upholstered furniture.”⁴

New York was the first state to pass legislation requiring that cigarettes be tested pursuant to the ATSM testing protocol and not fully burn in more than 25% of the test results. The regulation created as a result of this legislation took effect in 2004. Reduced ignition cigarettes have not been found to be less palatable, more toxic or more risk-inducing. Initial evidence has found fewer cigarette-caused fires.⁵ New York City reports 27 deaths attributable to fires caused by cigarettes in 2003 and 14 such deaths in 2006.

Following New York’s lead, other states, including California, Illinois, Massachusetts, New Hampshire, and Vermont, passed similar laws. More than 800 brands of cigarettes have been certified as meeting the standards, including brands from small manufacturers.⁶ In 2007, the Maryland General Assembly passed and Governor Martin O’Malley signed legislation mandating that all cigarettes sold in Maryland are fire safe. This legislation begins to take effect until July 1, 2008. Existing supplies of cigarettes may continue to be sold, so that complete implementation may take several more months.

D. Cigarettes Sold Now in Baltimore City Are More Likely to Cause Fatal Fires than Cigarettes Sold in New York State

At the request of the Baltimore City Health Department, the Harvard School of Public Health tested five brands of cigarettes purchased in Baltimore City:⁷ Marlboro Lights Hard Pack, Marlboro Full Flavor Hard Pack, Camel Filters Hard Pack, Newport Menthol Kings Soft Pack, and Kool Filter Kings Soft Pack.

³ Coalition for Fire-Safe Cigarettes (2007) (Accessed August 23, 2007 at <http://www.firesafecigarettes.org>).

⁴ ASTM International, *Standard E2187: Standard Test Method for Measuring the Ignition Strength of Cigarettes* (August 2004).

⁵ Coalition for Fire-Safe Cigarettes (2007) (Accessed August 23, 2007 at <http://www.firesafecigarettes.org>).

⁶ See, e.g., Vermont’s listing at http://www.atg.state.vt.us/upload/1189091293_Cigarette_Brands_Certified_as_Fire-Safe_and_Legal_for_Sale_in_Vermont.pdf.

⁷ Harvard School of Public Health, *Determination of Ignition Strength of Five Cigarette Brand Types for Baltimore City Health Department* (Aug. 21, 2007).

The testing was according to the internationally recognized standard, ASTM E-2187.

The Harvard School of Public Health study found that 99.5% of the cigarettes sold in Baltimore burned all the way down by themselves, representing a significant fire risk. By comparison, similar testing has found that fewer than 5% of cigarettes sold in New York burn all the way down.

E. Proposed Regulation

To address the public health hazard of cigarette-caused fires, the proposed regulation would require the sale of cigarettes meeting fire safety standards in Baltimore City. Because such cigarettes are already the law in such large markets as New York and California, it is feasible for cigarette manufacturers to sell the cigarettes in Baltimore City sooner than July 1, 2008.

It is proposed that the regulation would take effect 30 days after adoption.

The Health Department is requesting public comment on this proposed regulation. Please send comments electronically to bchd@baltimorecity.gov or via mail to Baltimore City Health Department, 210 Guilford Avenue, Baltimore MD 21209 Attention: Rianna Brown.

The Health Department is interested in receiving comments on the recommended date of implementation and the length of a transition time for retailers once the regulation is effective.

The deadline for the submission of comments is 5 pm on Friday, November 9, 2007.

II. PROPOSED REGULATION

A. Definitions

1. “Accepted Performance Standard” means the cigarette fire safety standard accepted by the state of New York, California, Illinois, Massachusetts, New Hampshire, or Vermont under its cigarette fire safety law. See, e.g., CAL. HEALTH & SAFETY CODE § 14952 (Deering 2007), 425 ILL. COMP. STAT. 8/15 (2007), MASS. ANN. LAWS ch. 64C, § 2B (Law. Co-op. 2007), N.H. REV. STAT. ANN. § 339-F3 (2007), N.Y. Executive Law §156-c (McKinney 2007), VT. STAT. ANN. tit. 20, § 2757(b) (2007).
2. “Accepted Test Standard” means the American Society of Testing and Materials Standard E2187-04 accepted by the state of California, Illinois, Massachusetts, New Hampshire, New York, or Vermont under its cigarette fire safety law.

3. "Certification" and "Certification Mark" means a certification and certification mark accepted by the state of California, Illinois, Massachusetts, New Hampshire, New York, or Vermont under its cigarette fire safety law.
4. "Cigarette" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.
5. "Manufacturer" means:
 - a. A person that manufactures or otherwise produces, or causes to be manufactured or produced, cigarettes intended for sale in the United States through an importer;
 - b. The first purchaser anywhere that intends to resell in the United States cigarettes that the original manufacturer or maker does not intend for sale in the United States; or
 - c. A person that is a successor of a person listed in item a) or b) of this subsection

B. Prohibition.

No manufacturer or any other person may (i) ship for sale, offer for sale, or sell any cigarettes to any consumer in Baltimore City or (ii) ship for sale, offer for sale, or sell any cigarettes to any person with the expectation that the cigarettes will thereafter be offered for sale or sold in Baltimore City unless:

1. the cigarettes have been tested in accordance with the Accepted Test Standard and have met the Accepted Performance Standard;
2. the manufacturer has filed a written certification with the Health Commissioner in accordance with this regulation;
3. the manufacturer has provided the Health Commissioner with an illustration of its certification mark; and
4. the manufacturer has placed its certification mark on **all packages, including packs, cartons and cases**, of cigarettes to be sold in Baltimore City.

C. Test Method. Manufacturers shall test cigarettes in accordance with the Accepted Test Standard.

D. Performance Standard. Cigarettes shall meet the Accepted Performance Standard.

E. Copy of Certification and Mark to Wholesalers and Others

1. Each manufacturer shall provide a copy of its certification and an illustration of its certification mark to all wholesale dealers to whom it sells cigarettes.
2. The wholesaler shall provide a copy of the illustration of the certification mark to each retailer, subwholesaler, and vending

machine operator to which the wholesaler sells cigarettes.

F. Penalties and Right to a Hearing

1. A Health Department inspector or other authorized personnel may seize and destroy cigarettes in the possession of a retailer, wholesaler, or vending machine operator if the cigarettes do not have a certification mark.
2. Any manufacturer or other person who fails to comply with this regulation may be subject to one or more of the following penalties:
 - a) Any manufacturer or other person who knowingly fails to comply with this regulation is guilty of a misdemeanor and, if convicted, subject to a fine of not more than \$1,000 for each offense. Health Code § 5-210.
 - b) Any manufacturer or other person who “knowingly obstruct[s], resist[s], or interfere[s] with the Commissioner or any other officer or employee of the Department while carrying out their powers and duties” is guilty of a misdemeanor and, if convicted, subject to a fine up to \$500 for each offense. Health Code §§ 2-205, 2-212.
 - c) Any manufacturer or other person who “fail[s] to comply with any order or notice issued under this article or under the authority of the Health Commissioner” is guilty of a misdemeanor and, if convicted, subject to a fine of up to \$200 for each offense plus \$50 for each day that the offense continues. Health Code §§ 2-207, 2-213.
 - d) An Environmental Control Board citation with a penalty of \$100 can be issued for a violation of nuisance abatement notice issued under the Health Code. Baltimore City Code, Art. I, § 40-14(e)(7).
3. Right to a Hearing. Any person aggrieved by a notice, order, or decision of the Health Department may request a hearing as set forth in section 2-302(b) of the Baltimore City Health Code.