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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Joseph Underwood
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway Davy Crockett Tower, 5 th Floor Nashville, TN 37243
Phone:	615-741-0481
Email:	Don.coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway Davy Crockett Tower, 1 st Floor Room 160		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	08/18/09		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row.)

Chapter Number	Chapter Title
0780-02-22	Fire Standard Compliant Cigarettes
Rule Number	Rule Title
0780-02-22-.01	Definitions
0780-02-22-.02	Certification
0780-02-22-.03	Test Standards
0780-02-22-.04	Markings
0780-02-22-.05	Civil Penalties
0780-02-22-.06	Seizures of cigarettes

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0780-02-22
Fire Standard Compliant Cigarettes
New Rules

Table of Contents

0780-02-22-.01 Definitions
0780-02-22-.02 Certifications
0780-02-22-.03 Test Standards
0780-02-22-.04 Markings
0780-02-22-.05 Civil Penalties
0780-02-22-.06 Seizures of cigarettes

0780-02-22-.01 Definitions

- (1) As used in this chapter, unless the context otherwise requires, the definitions of terms contained in T.C.A. § 68-102-502 are applicable.
- (2) "Attorney general" means the attorney general and reporter or the attorney general's designee;
- (3) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;
- (4) "State fire marshal" means the commissioner of commerce and insurance or the commissioner's designee;

Authority: T.C.A. §§ 68-102-502 and 68-102-507

0780-02-22-.02 Certifications

- (1) Each manufacturer shall submit to the state fire marshal a written certification on a form provided by the state fire marshal containing the information required in T.C.A. § 68-102-504, along with the name and address of the true holder of the trademark rights.
- (2) Each written certification shall include a non-refundable fee as provided in T.C.A. § 68-102-504 payable to the Tennessee State Fire Marshal for each brand family of cigarettes listed in a certification.

- (3) A submittal for certification will be considered complete if all information required by T.C.A. § 68-102-504 and the name of the true holder of the trademark rights in a cigarette brand appears in the submittal form.
- (4) The manufacturer will be notified by the state fire marshal if a certification submittal is incomplete, and such submittal will remain invalid until properly completed.

Authority: T.C.A. §§ 68-102-504 and 68-102-507

0780-02-22-.03 Test Standards

- (1) Testing of cigarettes shall meet the requirements in T.C.A. § 68-102-503.
- (2) Alternative testing
 - (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in T.C.A. § 68-102-503(a)(1) shall propose a test method and performance standard for the cigarette to the state fire marshal.
 - (b) In proposing an alternative test method and performance standard, the manufacturer of the cigarette shall:
 - (i) describe why alternative test method is necessary;
 - (ii) describe the test method and performance standard requesting to be used;
 - (iii) specify if the test method and performance method is based on a recognized national standard;
 - (iv) describe how the test method and performance standard requesting is equivalent to the standards contained in T.C.A. § 68-102-503(a); and
 - (v) provide information as to whether another state has approved the alternative test method and performance standard for the cigarette or any other cigarette.
 - (c) Upon a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in T.C.A. § 68-102-503(a)(3) or a determination that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are substantially similar to those contained in T.C.A. § 68-102-503(a), the state fire marshal shall approve the proposed test method.
 - (d) If the state fire marshal approves the proposed test method, the manufacturer may employ such test method

Authority: T.C.A. §§ 68-102-503 and 68-102-507

0780-02-22-.04 Markings

Cigarettes that are certified by a manufacturer in accordance with T.C.A. § 68-102-504 and this chapter shall be marked as required by T.C.A. § 68-102-505.

Authority: T.C.A. §§ 68-102-505 and 68-102-507

0780-02-22-.05 Civil Penalties

The state fire marshal may assess a civil penalty for each separate violation of T.C.A. Title 68, Chapter 102, Part 5 pursuant to T.C.A. § 68-102-506.

- (1) In determining the amount of a civil penalty the state fire marshal may consider the following factors:
 - (a) whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and
 - (e) the interest of the public.

Authority: T.C.A. §§ 68-102-503, 68-102-506 and 68-102-507

0780-2-22-.06 Seizures of cigarettes

A notice of seizure of cigarettes, seized pursuant to T.C.A. § 68-102-506(e) and (g), will be mailed to the true holder of the trademark rights in the cigarette brand in order to afford the true holder an opportunity to inspect the cigarettes. Seized cigarettes may be destroyed sixty (60) days after the mailing of the notice of seizure.

Authority: T.C.A. §§ 68-102-506(e) and (g), and 68-102-507

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 6-19-09

Signature: *Joseph M. Underwood*

Name of Officer: Joseph M. Underwood

Title of Officer: Assistant General Counsel for Fire Prevention



Subscribed and sworn to before me on: 6/19/09

Notary Public Signature: *Kristina D. Rust*

My commission expires on: 3/10/12

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Filed with the Department of State on: 6/24/09

Tre Hargett by phone mail, POA
Tre Hargett
Secretary of State

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