

**BEFORE THE FIRE PREVENTION COMMISSION
FOR THE STATE OF DELAWARE**

Statutory Authority: 16 Delaware Code, Section 6603(a)

In Re:)
) **ORDER**
Rules and Regulations)

NATURE OF THE PROCEEDINGS

The State Fire Prevention Commission (“the Commission”) held a properly noticed, public hearing on August 18, 2009 to receive comment on proposed additions, revisions, deletions, modifications and reservations to the Commission Regulations. Pursuant to 29 Del. C. §10115, notice of the proposed amendments to the rules and regulations was published on July 1, 2009, in the Delaware Register of Regulations, Volume 13, Issue 12. In addition, the hearing notice was published in 2 newspapers of general circulation. The Commission deliberated on the public comment at its next regularly noticed and scheduled meeting on September 15, 2009.

SUMMARY OF THE EVIDENCE

1. The Commission received one written comment from Ron Gahagan, Assistant General Counsel, Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., suggesting multiple revisions to Chapter 1 under Section 704 of the proposed regulations related to Reduced Ignition Propensity Cigarettes. The submission included a marked up copy of the regulations with Mr. Gahagan’s proposed changes. Mr. Gahagan’s written submission was admitted as Commission **Public Hearing Exhibit 1**.

2. The Commission received a brief overview of the proposed updates to the Regulations from Fire Marshal Grover P. Ingle. The proposed amendments stem from the three

(3) year review cycle. The summary of the proposed recommendations for 2009 is as follows:

Part I

- Chapter 2: New Definitions and recommended changes from the High Rise Committee.
- Chapter 4: Revision on Limitations of Plan Review approvals and permits.
- ANNEX A: Recommendation to adopt the most recent editions of NFPA Codes and Standards that are presently adopted by the Regulation.
- ANNEX B: Recommendations to update the proper section and paragraph numbers from the adopted NFPA Codes and Standards that are presently amended by the Regulation, including NFPA 1; which is being moved from Annex C to Annex B.

Part II

- Chapter 3, 4, and 5: Proposed recommendations to the High Rise and Large Area building Chapters as proposed by the High Rise Committee.

Part III

- Chapter 3: Proposed recommendation to allow the use of reflective paint or reflective tape on hydrants.
- Chapters 4, 5, 6, 7: Proposed recommendation to allow a company, business, or person(s) exempt from Workers' Compensation laws of the State (19 Del. C. Ch. 23 – Workers' Compensation) be licensed by providing written documentation to the Office of the State Fire Marshal stating the exemption.
- Chapter 5 and 7: Proposed recommendation to reflect the requirement in 16 Del. C. § 6603(c) – to have a NICET – Level II – Inspection and Testing of Water-based Systems certification to be licensed to do testing and inspection on water based fire protection systems.

Part IV

- Chapter 1: Proposed Regulations addressing Fire Safe Cigarettes.

Part V

- Chapter 1: Proposed recommendations to the Gated Communities section.
- Chapter 5: Two public proposals submitted to revise the Fire Lane requirements.

Appendix E

- Defines the meaning of “apartment complex”

3. Gil Moniz offered public comment in support of accepting the Fire Marshal's recommendation to adopt the 2008 electrical code.

4. Ron Gahagan, Assistant General Counsel, Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., offered public comment consistent with his written

submission regarding proposed changes to Chapter 1 under Section 704 of the proposed regulations related to Reduced Ignition Propensity Cigarettes.

5. Michael Morton, a statistician with Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., offered public comment recommending that the Commission not put a specific testing and sampling protocol in the regulations.

6. Ed Osienski offered public comment on behalf of Local 669 in regard to the NICET II qualifications. Mr. Osienski stated that he represents 110 sprinkler installers in the State of Delaware. He would like to have seen the law worded differently to give employers more time for testing periods. The current compliance date was July 1, 2009. Mr. Osienski stated that he understood that issue would require a change to the law.

FINDINGS OF FACT

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. There was no public comment presented at the public hearing in opposition to any of the proposed regulations with the exception of the implementation of regulations governing Reduced Ignition Propensity Cigarettes, Chapter 1 under Section 704..

2. The Commission has no authority to extend by regulation the effective date for the NICET II requirements that became effective on July 1, 2009.

3. In written correspondence, and at the hearing, Ron Gahagan raised a number of suggestions to clarify the regulations governing Reduced Ignition Propensity Cigarettes as proposed in Chapter 1 under Section 704. The Commission also received statistical information from Mr. Morton as to why it should not establish testing and sampling protocols.

4. The Commission finds that the issues raised by Mr. Gahagan and Mr. Morton

on behalf of Altria Client Services Inc., on behalf of Phillip Morris USA, Inc., should be referred back to the Fire Marshal for further review using his expertise in the subject matter before implementing Reduced Ignition Propensity Cigarettes regulations. As a result, the Commission determined to delete the proposed regulations in Chapter 1 under Section 704 at this time. The Commission will reserve section and consider republishing Reduced Ignition Propensity Cigarette regulations at another public hearing to be held at a future date.

THE LAW

The State Fire Prevention Commission's rulemaking authority is provided by 16 **Del. C.** 6603 State Fire Commission Promulgation of Regulations:

“(a) The State Fire Prevention Commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion...”

DECISION AND EFFECTIVE DATE

The Commission hereby adopts the amendments to the regulations to be effective 10 days following publication of this Order in the Register of Regulations. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted.

TEXT AND CITATION

The Commission hereby adopts the Regulations as published in Register of Regulations, Vol. 13, Issue 12, July 1, 2009 with the alterations to Section 704 noted in this Order. A copy of the Regulations as adopted is attached to this Order as Exhibit A.

IT IS SO ORDERED this 20th day of October 2009.

STATE FIRE PREVENTION COMMISSION

/s/ Marvin C. Sharp, Chairman

/s/ Bob Ricker, Vice-Chairman

/s/ Willard (Bill) Betts

/s/ Ron Marvel

/s/ Kenneth H. McMahon

/s/ Douglas S. Murray, Sr.

/s/ David J. Roberts