

REGULATION IMPACT STATEMENT



THE REGULATION OF REDUCED FIRE RISK CIGARETTES UNDER THE TRADE PRACTICES ACT 1974

JUNE 2008

**Product Safety Policy Section
Australian Competition & Consumer
Commission**

OBPR Approval Number: 9394

INTRODUCTION

This regulation impact statement was developed by the Australian Competition and Consumer Commission (ACCC) to examine the need for government regulation of the supply of reduced fire risk (RFR) cigarettes. The decision maker is the Minister for Competition Policy and Consumer Affairs.

RFR cigarettes, which have been variously described under other names such as Reduced Ignition Propensity cigarettes, Lower Ignition Propensity cigarettes, Firesafe cigarettes, etc, are cigarettes which will not ordinarily exhibit a full length burn when left unattended.

Concerns have been raised over the past decade or more about the deaths and injuries resulting from fires caused by discarded cigarettes. In 2004, New York State enacted legislation to make RFR cigarettes compulsory, and its model has been adopted by a number of other US States [Firesafecigarettes.org reports that 36 US States have now enacted legislation requiring RFR cigarettes, with the requirements presently in effect in 14 States and taking effect in the other states at various times between now and 2010. As well as this coverage of approximately 77% of the US population, similar requirements have been in effect in Canada since late 2005¹.]

PROBLEM

What is the problem being addressed?

The problem to be addressed is the injuries, deaths and property damage which occur as a result of lit cigarettes inadvertently starting fires. While many of the deaths and injuries occur in a domestic setting, NSW Fire Brigades have also commissioned a study, indicating that discarded cigarettes can cause bushfires (<http://www.nswfb.nsw.gov.au/page.php?id=327>), and Victorian statistics suggest that approximately 7% of bushfires on public land are caused by cigarettes or matches.²

At present, cigarettes contain various burn additives to help ensure a consistent burn rate and to hold ash together and to prevent hot coal fall out from cigarette ends. RFR cigarettes are manufactured differently to 'ordinary' cigarettes, and use different paper, different additives, etc to achieve different burning characteristics. [Some of the technologies are patented or otherwise controlled, and in consequence RFR standards in place in foreign jurisdictions do not seek to prescribe how RFR requirements must be met.] The benefits of RFR cigarettes in reducing fires is graphically demonstrated in a video

¹<http://www.firesafecigarettes.org/categoryList.asp?categoryID=77&URL=Legislative%20updates/Adoptions>

² <http://www.dse.vic.gov.au/dse/nrenfoe.nsf/FID/-15D8B3C67813A6D94A25679300155AE1?OpenDocument>

which the NSW Fire Brigades have published on the Internet at <http://www.nswfb.nsw.gov.au/page.php?id=173> .

Cigarettes also rely, to an extent, on the ‘puffing’ action of smokers to keep them lit, but it is a matter of judgement as to how easily a cigarette should go out. Due to the concerns about fires caused by cigarettes, however, a number of jurisdictions overseas have now acted to make RFR cigarettes compulsory, on the basis that the savings to the community outweigh the costs and the disadvantages to smokers of such action.

The justification for this regulatory intervention in foreign jurisdictions has been documented elsewhere in Regulation Impact Statements prepared in accordance with the relevant regulatory practices in those jurisdictions. The Regulatory Impact Statement drafted when the requirements were first mandated in the State of New York can be found on the Internet at <http://www.dos.state.ny.us/fire/rriscig.htm> . Similarly the Canadian Regulatory Impact Analysis Statement is available on the Internet at http://hc-sc.gc.ca/hl-vs/pubs/tobac-tabac/rias-reir/index_e.html , including a full economic evaluation which is published separately at http://www.hc-sc.gc.ca/hl-vs/pubs/tobac-tabac/evaluation-risks-risques/index_e.html . The regulatory justification for this measure having already been provided in publicly available documentation, this document seeks merely to supplement the information and argument provided by other regulatory agencies, having regard to the Australian experience. It is considered unnecessary to ‘re-invent the wheel’ by re-publishing material and arguments which are common knowledge to all regulatory stakeholders. However, there is Australian data on the number of injuries, deaths and property damage that can be attributed to fires caused by cigarettes, and this paper draws upon such data to provide the basis for its conclusions. Ultimately, however, the justification provided by all jurisdictions (and accepted by the ACCC in this paper) is succinctly described by New York’s authority in the following terms: “Cigarettes with lower ignition strength are less likely to generate the heat energy necessary to bring upholstered furniture, mattresses, or other household furnishings up to the temperature required for ignition. **The ignition strength of a cigarette is not an absolute measure of the probability of ignition or risk in real circumstances, but is a strong indicator of a potential reduction in cigarette caused fires.** Significantly lowering the ignition strength of cigarettes could reduce deaths and injuries in fires caused by cigarettes.”³

Deaths and Injuries

An Australian study on deaths associated with fires caused by cigarettes, based on a search of the Australian National Coroners Information System (NCIS) has been carried out by the Victorian Institute of Forensic Medicine on behalf of NSW Fire Brigades. The report examined 846 deaths caused by fire

³ Estimates of costs and benefits of introducing RFR-compliant cigarettes are in essence conjectural, but the available research clearly indicates the general magnitude of the potential benefit, even if not its exact quantification. The magnitude of the quantification of the extent to which the benefits of proposed regulation exceed the costs should be assessed accordingly.

between 1 June 2000 and 30 June 2006 and identified 67 deaths nationally where the cause of death was related to the use of cigarettes. The full report is available on the Internet at

http://www.fire.nsw.gov.au/gallery/files/pdf/research/CigDeathsReport_NCIS_3Oct_2006.pdf.⁴

Additional Australian data on the incidence of cigarette-caused fires, mortality and community costs can be found in the report prepared by Simon Chapman and Antony Balmain for the Commonwealth Department of Health and Ageing [Reduced Ignition Propensity Cigarettes: A review of policy relevant information]⁵. The final report concluded that cigarette-caused fires cost Australia at least \$80 million in 1998⁶, in terms of property damage, health costs, fire service costs and other intangibles such as the value of lives lost. For public policy purposes, the statistical 'value' of a life has been put by one commentator as being in the vicinity of \$2.5 million⁷ (based on 2002 prices, for avoiding an immediate death of a healthy individual in middle age).

OBJECTIVES

What are the objectives of government action?

Ultimately, the objective of regulatory intervention in relation to this issue is to reduce the risk of fires while minimising any additional burden on business. In other words, the goal of government action is the protection of the community from the injuries and deaths associated with fires which are unnecessarily caused when lit cigarettes are carelessly discarded or left to burn in situations where material in close proximity ignites (eg smokers falling asleep in bed with lit cigarettes which ignites bedding)⁸.

⁴ In commenting on this RIS in draft form, NSW Fire Brigades noted that it is likely that the number of deaths and injuries due to fires caused by cigarettes is under-reported, not only because of the database issues, but due to difficulty in establishing the precise cause of some fires. The considerable risk of injury and death to firefighters at fires caused by cigarettes was also stressed.

⁵ Copies of the report are available upon request from the Tobacco and Drug Prevention Section of the Commonwealth Department of Health and Ageing.

⁶ This figure is based on an extrapolation of Queensland data to the remainder of Australia, but does not include valuation of public property damage such as national parks, loss of animals and amenity during bush regeneration. The figures assume that approx 1.9 percent of fires are caused by cigarettes, which is substantially lower than data from other jurisdictions might suggest. In 2008 figures, this total cost of fires equates to approximately \$108 million, but reference should be made to the details of the report before interpreting the information provided herein.

⁷ Abelson P., "The Value of Life and Health for Public Policy", The Economic Record, Vol 79, June 2003.

⁸ Estimates of the proportion of fires (other than bush-fires) which are attributable to cigarettes vary widely [from just over 1% up to nearly one quarter of such fires].

Is there a regulation currently in place? Who administers it?

There is no existing regulation in Australia. However, as previously indicated, regulatory provisions are now in place in a number of US States and in Canada. A report prepared for the European Commission's Directorate-General for Health and Consumer Protection has recommended that manufacturers should be required to produce and market only "fire-safe" (or "reduced-ignition propensity") cigarettes in the EU⁹, but the EU is still at an early stage of developing a regulatory response to the problem which has given rise to RFR legislation elsewhere. NSW Fire Brigades has advised that the UK is proposing to 'fast track' its regulatory approach, given concerns about the slowness of EU processes.

OPTIONS

The viable options available to achieve the product safety objective are:

1. Maintain the status quo, i.e. rely on the current industry practices and consumer education¹⁰;
2. Quasi-government regulation, being government endorsement of a voluntary industry program, such as a code of practice, that requires suppliers to adhere to a RFR standard for cigarettes they manufacture or import; and
3. Government regulation to require manufacturers and importers of cigarettes to comply with a mandatory RFR standard. The appropriate regulatory mechanism would be consistent with existing standards adopted in other overseas jurisdictions.

Consumer education about fire safety is currently provided by the fire authorities in each State and Territory. It is envisaged that consumer education would continue as an adjunct to each of these options, but on present experience it could not be considered an effective stand-alone option. This is because smokers have ingrained habits which have not proven to be responsive to general education in the past.

IMPACT ANALYSIS

Impact Groups (See table of costs and benefits at **Attachment A**)

The proposed viable options would affect cigarette smokers, businesses involved in the supply of cigarettes (manufacturers, importers, distributors and

⁹ The ASPECT Consortium, "Tobacco or Health in the European Union: past Present and Future" http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/Documents/tobacco_fr_en.pdf

¹⁰ This option does not seek to minimize the importance or relevance of other measures directed to harm minimization in this area, including those promoting use of smoke alarms, flammability standards, etc.

retailers), the insurance industry, and government (including fire authorities and consumer product regulators).

Option 1: Status Quo (voluntary compliance with standards)

Continuing the present arrangements whereby industry determines which products it will supply would permit the supply of any cigarettes regardless of compliance with RFR requirements.

Costs and benefits to consumers

The potential costs to consumers include:

- Continuing uncertainty that cigarettes on sale provide an adequate level of safety in relation to their risk of causing fires;
- A continuation of the risk to the community in consequence of cigarettes not providing the levels of safety in relation to fire risk that is consistent with reasonable consumer expectations; and
- Medical and other costs of injury/death where this occurs.

The potential benefits to consumers include:

- Unrestricted supply of cigarettes, providing consumers with a wide choice of products and competitive prices;
- Price competition in the market due to the lack of market restrictions.

Costs and benefits to industry

The costs to industry include:

- Continuing uncertainty about the need for safety requirements relating to the fire risks of cigarettes, given the unclear legal position concerning the liability of industry for fires caused by cigarettes;
- Continuing uncertainty about what safety standards are appropriate for the Australian market. There is a continuing debate about the relevance or otherwise of the ASTM standard which is used as the basis for the standard mandated by the State of New York and other US jurisdictions, as it cannot (nor does it purport to) predict the extent to which fire outbreaks will be reduced; and
- The potential for inconsistent regulatory responses to the problem being imposed by State/Territory governments if the Commonwealth fails to introduce a uniform standard.

The benefits to industry are cost savings where suppliers choose not to comply with RFR requirements, allowing unrestricted product selection and pricing competition.

Costs and benefits to government

The costs to Government are:

- The need for consumer safety agencies to react to increasing public demands for regulatory intervention to mandate RFR requirements on tobacco companies, and community criticism of the Government for failing to reduce the risk of fires caused by cigarettes¹¹; and
- Medical costs associated with the treatment of injuries associated with fires caused by discarded lit cigarettes¹².

Option 2: Quasi-Regulation

This option would comprise the development of a voluntary industry program for the supply of RFR cigarettes. The program would typically involve a Government endorsed industry code of practice whereby manufacturers and importers voluntarily adhere to an agreed RFR standard.

Costs and benefits to consumers

The costs to consumers could be

- A reduced choice in the market, as existing products would be phased out because either they do not comply with the voluntary standard or the importer would not be prepared to undertake testing of the product to confirm compliance;
- There is no industry association covering all market participants and accordingly not all importers would be captured by an agreed industry code, which would leave untested products in the market and require consumers to assess the safety of the product; and
- The cost of injuries associated with cigarettes that do not comply with industry-accepted RFR requirements.

The benefits to consumers would be an overall increase in the level of cigarette fire safety, and an expected corresponding reduction in injuries related to the use/disposal of cigarettes.

Costs and benefits to industry

- The cost of putting in place and maintaining the infrastructure to support quasi-regulation. Previous experience with industry codes of practice

¹¹ The costs involved in preparation of Ministerial responses to representations from MP's, researching and drafting briefing notes, etc, are not readily quantifiable but are nonetheless an additional impost upon the agencies concerned.

¹² The health costs involved in the treatment of injuries caused by cigarette-related fires are included in the figures detailed in the report to the Department of Health and Ageing, referred to at Page 4 herein.

suggests that these costs would amount to approximately \$30,000 per year;

- This would require an on-going cooperative commitment by all industry participants, involving some form of supplier registration, product testing, monitoring of the market and a system of review and redress for cases of non-compliance;
- The costs to individual suppliers of ensuring that products meet agreed safety standards; and
- Disproportionate costs borne by industry members which are party to quasi-regulation versus those which are not.

The benefit to industry would be improved consumer confidence that products on the market have a reduced risk of causing fires.

It is considered that a significant section of the market (independent importers of cigarettes) would need to be convinced of the benefits to their businesses of following a voluntary code of practice, and having regard to the compliance costs involved, this would be a difficult task.

Costs and benefits to government

- Where cigarettes lacking RFR features continue to be supplied, the Government may be criticised for failing to protect the public; and
- The cost of negotiating a suitable industry program, monitoring the program and monitoring the market to ensure that the initiative is effective. The estimated cost to government is \$40,000 per year.

The benefit to government would be an expected reduction in injuries related to RFR cigarettes due to improved levels of product safety, which would result in less demand on public hospital emergency departments.

Option 3: Introduce a Mandatory Minimum Standard

The safety of products in the Australian market might be controlled through a mandatory consumer product safety standard prescribed under the Trade Practices Act. A TPA mandatory standard would require all cigarettes supplied by incorporated bodies or through cross border trade to comply with a prescribed standard. It is common practice for State and Territory governments to adopt TPA mandatory requirements into their legislation, which allows enforcement by State jurisdictions and extends the application of the requirements to sole traders. While the primary relevance of an RFR standard lies with manufacturers, the obligations imposed by the TPA exist at all levels of the supply chain. The ACCC recognises, however, that entities responsible for retailing goods need only ensure that appropriate care is taken that their products are sourced from legitimate sources which comply with the mandatory standard, and in consequence there is arguably little need for complementary State / Territory regulation.

An appropriate mandatory safety standard for RFR cigarettes would be one which is based on the standard applicable elsewhere in the world, with testing protocols based on the recently introduced Australian Standard [AS4830 – 2007: – Determination of the Extinction Propensity of Cigarettes] as it specifies a test for compliance that has been developed through a comprehensive consultative process and is based on a standard which has general acceptance overseas [ASTM standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes].

The key features for an RFR standard for cigarettes considered justified for inclusion in a mandatory minimum standard are:

- A requirement that, when tested on 10 layers of filter paper in accordance with the Australian Standard, not more than 25% of the cigarettes tested in a test trial conducted in accordance with that standard shall exhibit full length burns;
- A test trial will comprise 40 replicate tests;
- Each cigarette that uses lowered permeability bands in the cigarette paper to achieve compliance with the standard shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimetres from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimetres from the lighting end and 10 millimetres from the filter end of the tobacco column, or 10 millimetres from the labelled end of the tobacco column for non-filtered cigarettes.
- Compliance with the requirement will be required for every kind of manufactured cigarette. Whether a cigarette is of a different 'kind' will be determined using the criteria specified in regulation 39 of the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* [the present Regulations]. The scope of the proposed RFR standard will be the same as that which is in place in overseas jurisdictions and will not apply to other manufactured tobacco products such as cigars, bidis, etc, as it is probable that the costs of compliance would far exceed the benefits to the community.
- A 'retail package' of cigarettes which comply with the standard shall carry a statement: Australian fire-risk standard compliant. Use care in disposal. A 'retail package' of cigarettes will have the same meaning as currently provided in reg.6 of the present Regulations;
- The statement required by the Regulations will need to be 'clearly legible' and not obscure any of the warnings required by the present Regulations. However, they may be printed on an adhesive label affixed to the retail package. Adhesive labels will be of a type that is consistent with Regulation 30 of the present Regulations. The purpose of the statement is (a) to indicate to consumers that the cigarettes are RFR cigarettes, and (b) to assist regulatory agencies with enforcement. It is

NOT considered that labelling requirements need to be unduly prescriptive, as there is no reason why tobacco companies should not retain labelling flexibility in relation to this issue

- The requirements will apply to all retail packages manufactured or imported on or after a date, being 18 months from the date on which the standard is registered on the Federal Register of Legislative Instruments; The regulations will also provide a 'backstop' of twelve months after this date, from which all cigarettes supplied will need to comply with the RFR standard. This will ensure that suppliers are unable to stockpile non-compliant stock.

It is NOT proposed that the new mandatory standard would include any requirement relating to the toxicity of RFR cigarettes as, if nothing else, any such requirement is likely to prove incapable of enforcement. The Department of Health and Ageing has expressed concerns about the potential changes to the toxicity of cigarettes which might result from the imposition of an RFR standard, but there is no obvious way to address this issue, as changes to the composition of a cigarette may have both negative and positive effects on toxicity. All cigarettes are toxic. While there is not yet any clear evidence on the outcomes overseas, it is not considered that toxicity implications are likely to be significant.¹³

A mandatory minimum standard incorporating the above specifications would:

- Eliminate from the market those cigarettes that do not meet the mandatory requirements, thereby reducing the level of risk to the community from fires caused by cigarettes ; and
- Give consumers confidence that cigarettes on the market provide a reasonable level of fire safety;
- Be consistent with the key requirements which have been adopted by overseas jurisdictions, thereby minimising compliance costs. Where a product is compliant with overseas RFR standards, it is intended that it will not need to meet any significant additional requirements to comply with the proposed Australian standard.¹⁴

¹³ Alpert, Carpenter & ors [Harvard School of Public Health], The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity, Smoke Toxicity, and the Consumer Market. Paper is available on the Internet at <http://repositories.cdlib.org/context/tc/article/1196/type/pdf/viewcontent/> A more recent study on toxicity issues can be found in Theophilus E, et al., *Toxicological Evaluation of Cigarettes with Two Banded Cigarette Paper Technologies*, Experimental and Toxicological Pathology 59 (2007) 17 – 27.

¹⁴ The standard proposed for implementation in Australia does not adopt the complex administrative structures used by overseas jurisdictions to evidence compliance with the requirements. The Trade Practices Act provides enforcement mechanisms for breaches of mandatory safety standards (including criminal sanctions) which are adequate and appropriate to ensure compliance, negating the need for such provisions.

Possible trade implications

The Commonwealth Government has obligations to ensure that its regulations do not impose unnecessary barriers to trade by setting standards that make compliance by overseas manufacturers difficult. However, under the terms of the Agreement on Technical Barriers to Trade, a Government is able to regulate to protect human life and health, especially where it can be shown to be necessary to achieve reasonable levels of consumer protection.

In relation to exports of goods, mandatory safety standards, unlike mandatory information standards, apply to exported goods unless the Minister has, by notice in writing given to the corporation, approved the export of those goods. If tobacco manufacturers in Australia consider that exported cigarettes should be exempted from any mandatory standard requiring RFR cigarettes, they should make representations to the relevant Minister. On the information currently available to it, however, the ACCC notes that there appear to be sound reasons why a Minister may wish to exempt export cigarettes from the proposed standard.

The European Product Safety Directive is considered to provide its 25 member countries with similar effective consumer protection from unsafe products. There is a high degree of conformity among standards in respect of the key safety requirements, and therefore Australia is not setting a significant precedent by establishing a mandatory minimum standard for RFR cigarettes. It is not unlikely that similar RFR requirements will eventually be adopted in the EU.

The proposed RFR standard is in essence the same as has been adopted in Canada and parts of the US, and it is considered that the requirements would not impose an unreasonable barrier to trade and are consistent with Australia's WTO commitments. Accordingly, it is proposed that a mandatory safety standard should be based on the key elements as described earlier herein.

The proposed mandatory minimum standard would facilitate compliance by overseas manufacturers by being compatible with major overseas standards.

Costs and benefits to consumers

The costs to consumers would be some reduction in the choice of cigarettes and a possible loss of access to some low volume brands where the importer would not be prepared to undertake testing of the product to confirm compliance.

The benefits to consumers would be a reduced cost of injury associated with fires caused by cigarettes due to the exclusion of non-RFR products from the market, and an assurance that cigarettes on the Australian market are no more likely to cause fires than those available overseas.

Costs and benefits to industry

The possible costs to industry will be the loss of opportunity to retail an unrestricted choice of cigarettes and the cost of ensuring that cigarettes comply with prescribed safety requirements [See Attachment B]. It should be noted, however, that the direct costs referred to in Attachment B are likely to be passed on to cigarette consumers in consequence of the inelastic demand for tobacco and tobacco products.

A mandatory minimum standard provides benefits to industry because it provides clarity as to what is required in providing a product, and the proposed labelling requirement should make it easier for suppliers to identify complying products.

This can reduce management and administrative effort to ensure compliance, provide a higher level of confidence in compliance and help avoid the potential cost and inconvenience of product recalls and possible litigation.

Costs and benefits to government

Enforcement costs are conservatively¹⁵ estimated at \$50,000 per annum, which would include the costs of market surveys to monitor the compliance of cigarettes with safety requirements under both the present Regulations and the new RFR standard and any associated enforcement action deemed necessary. To enforce the safety standard, the ACCC would continue monitoring of the market to identify any non-complying products and secure their prompt removal.

The benefits to government would be improved consumer safety due to the elimination from the market of less safe products, an associated reduction in personal and community trauma, reduced medical and hospitalisation costs and a stronger and more responsible market. The wellbeing of the community in general, and especially those most vulnerable, such as the elderly who may be more prone to smoke cigarettes in bed, is a keystone of government policy, and establishing product regulation will assure the community that product safety is being addressed.

Net impact or net benefit

Depending on the value attached to the loss of a human life, the validity of assumptions made concerning the likely costs to be borne by cigarette manufacturers and importers, etc, the net benefit to the community of implementing the proposed regulations could range from as little as, say, a few million dollars per annum to some tens of millions.

¹⁵ A number of stakeholders suggested in responses to the draft RIS that enforcement costs would be considerably higher; however, the experience of the ACCC in relation to the introduction of new regulation is a high level of compliance can ordinarily be anticipated and that expenditure of large amounts in relation to enforcement is usually not warranted.

Assuming BATA's estimated set-up costs of \$34 million and ongoing annual costs of in excess of \$14 million were extrapolated (having regard to its market share of around 46% but noting the different challenges facing other industry participants in consequence of their different situations), it is unlikely that total set-up costs to industry would be substantially more than \$70 – 80 million, or that on-going costs would be more than \$30 - \$40 million annually.

The benefits to the community of saving up to perhaps 20 deaths a year and numerous injuries is almost inestimable¹⁶, but savings in property damage alone are potentially in excess of up to \$100 million per annum (presuming substantial efficacy of the proposal in reducing cigarette caused fires). Based on the study by Chapman and Balmain¹⁷, we have primarily based our estimate of net benefit on the property damage (which was assessed in the paper as comprising about 5/8 of the total costs of cigarette-caused fires). If his figures are extrapolated to 2008 values, property damage alone would reach a tad short of \$70 million. But Chapman and Balmain state in their summary: "It is clear that cigarette-caused fires cost Australia at least \$80.6 m per annum ... The real figure is likely to be considerably higher, however, when taking into account up to 39.55 million in injury costs... There are also hundreds of cigarette-caused grass and bushfires, which provide an unquantified cost to Australia's flora and fauna every year."

CONSULTATION

This Regulation Impact Statement setting out the case for the mandating of RFR requirements for cigarettes was submitted for consideration by:

- consumer groups;
- the Consumer Products Advisory Committee (CPAC) to the Ministerial Council on Consumer Affairs (MCCA) (comprising Commonwealth, State, Territory and New Zealand Consumer Affairs/Fair Trading officers);
- industry representatives;
- the Department of Health and Ageing;
- tobacco and fire experts such as State Fire Authorities, Cancer councils, and the insurance industry; and

¹⁶ In 2005/6, the study by NSW Fire Brigades referred to earlier in this RIS found that no lives were lost due to fires caused by cigarettes. In previous years, up to 20 lives were lost. If such lives were simply valued at 2.5 million each, as suggested in the Abelson study referenced earlier in this RIS, the savings could be up to \$50 million per year. As pointed out by Abelson, however, the value of a human life is affected by many factors, including the age of the person who dies prematurely, their occupation, etc. Ultimately, the value of a loved one to relatives and friends cannot be assessed in monetary terms.

¹⁷ Op cit

- medical and health sector representatives.

The draft of this RIS was published on the ACCC website and on the business consultation website, with a period of 6 weeks being allowed for responses.

Comment received through consultation

There was broad support from all stakeholders for the introduction of a mandatory RFR standard. Industry stakeholders generally maintained their arguments that an 18 month lead-in period was necessary for implementation of the standard, whereas proponents of the standard generally argued that the lead-in period should be shorter. The major issues raised by various parties are noted at the end of this document.

Rationale for a minimum standard

The proposed minimum set of requirements for the mandatory standard has been determined through consideration of the objective to reduce the rate of injuries associated with fires caused by cigarettes and the Government objective not to impose unnecessary regulatory burdens on business.

Determination of the proposed set of minimum requirements takes account of the fact that in the event that the Commonwealth were to prescribe the manner of compliance, it would be at risk of assuming liability under the standard, pursuant to s. 75AL of the TPA. Accordingly, the mandatory standard has been formulated to address only the critical issues that are considered essential for the reduction of fires caused by cigarettes supplied in Australia.

CONCLUSION AND RECOMMENDED OPTION

Option 1 to maintain the status quo by continuing present industry practices and consumer awareness is not considered viable given the level of risk to community caused by bush fires and in domestic settings and the limited probability of change. It is reported that currently major retailers are driving product safety levels through their risk management policies which require products to comply with safety standards, but this mechanism does not apply to the entire market. Consumer education is considered a useful means of reaching product users generally, but has not proved effective in relation to having an impact on the market for tobacco products. There seems to be little connection between consumer education on the dangers of misuse and disposal of lighted cigarettes and fire outcomes achieved.

Option 2 to seek to ensure the provision of less dangerous cigarettes (in terms of fire risk) through quasi-regulation is not considered feasible because of the uncoordinated nature of the market. Product manufactured by the tobacco 'majors' might to an extent be controlled by voluntary compliance with safety standards, but cigarettes are also imported and supplied through numerous supply chains and retail outlets for which there is no effective means of coordination. There appears to be little industry support for option 2.

Option 3 establishing explicit government regulation by declaring a mandatory minimum standard for RFR cigarettes that include key requirements that are common to the those already in place in Canada and a number of US States is considered the only effective means of achieving an improved level of protection for consumers and the community at large. The proposed regulation would make compliance simple for industry and impose a minimum burden on consumers and industry. Overall, it is clear that the benefits flowing from the imposition of a mandatory standard will outweigh the costs, notwithstanding the difficulties in quantifying the extent of the net benefit with any exactitude. However, it is self-evident that the use of RFR cigarettes is likely to result in a significant reduction in the number of accidental fires caused by cigarettes, and it is known that such fires account for considerable property loss and, more significantly, the loss of human life. Depending on the value attached to the loss of a human life, the validity of assumptions made concerning the likely costs to be borne by cigarette manufacturers and importers, etc, the net benefit to the community of implementing the proposed regulations could range from as little as, say, a few million dollars per annum to some tens of millions. Having regard to this assessment, Option 3 is the preferred option.

Option 3 would comprise a mandatory product safety standard prescribed under the Trade Practices Act, supplemented by consumer and supplier awareness materials and programs describing the product safety hazards being addressed and the requirements of the safety standard. The product safety awareness campaign would cost an initial \$30,000 for the program and materials.

The program would aim to ensure consumers purchased only cigarettes which bear the labels evidencing that they meet the mandatory minimum standard and encourage smokers to take reasonable precautions when using or disposing of the products. A supplier's guide would raise awareness of a supplier's responsibility to ensure that, subsequent to the relevant time, only cigarettes meeting the prescribed standard are supplied in Australia.

The campaign would be ongoing with specific opportunities to target smokers being identified over the next 3-5 years and materials reprinted on a needs basis.

IMPLEMENTATION AND REVIEW

It is proposed that the new mandatory minimum standard for RFR cigarettes will be prescribed as soon as possible and apply to cigarettes manufactured or imported on or after a date 18 months from the date of registration on the Federal Register of Legislative Instruments. This course of action will immediately highlight concerns about the safety of the product to industry stakeholders and the community, while providing suppliers with a reasonable period to source complying products where necessary. While it appears that some manufacturers may be capable of complying with the proposed new Regulations within a shorter period, it is clear that other manufacturers /

importers would have considerable difficulty in complying in less than 18 months.

The new mandatory standard will be expected to be introduced early in the second half of 2008 and be subject to review after five years.

Compliance with the new mandatory standard will be facilitated via comprehensive supplier information and guidance, and the mandatory minimum standard will be enforced by regular market surveillance and selected product testing by the ACCC.

The effectiveness of the regulation will be assessed through analysis of market survey findings, recall action, and the incidence of cigarette-caused fire injuries that might be identified from injury data.

ATTACHMENT A

TABLE OF COSTS AND BENEFITS

		Option 1: Maintain Status Quo	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
COSTS	Consumers	<p>Continuing uncertainty that cigarettes on sale provide an adequate level of safety in relation to their risk of causing fires.</p> <p>Continuing risk to community in consequence of cigarettes not providing the level of safety in relation to fire risk that is consistent with reasonable consumer expectations</p> <p>Continuing incidence of injuries associated with fires caused by non-RFR cigarettes.</p>	<p>Reduced choice in the market.</p> <p>Cost of injuries that do not comply with industry-accepted RFR requirements.</p>	<p>Reduced choice in the market with the withdrawal of non-complying products.</p>
	Industry and Small Business	<p>Continuing uncertainty about appropriate fire-risk standards for cigarettes supplied in Australia.</p> <p>Continuing potential for inconsistent regulatory responses which might be imposed by State / Territory</p>	<p>Need to put in place and maintain the infrastructure to support quasi-regulation. Previous experience with industry codes of practice suggests that these costs would amount to approximately</p>	<p>Loss of opportunity to retail an unlimited choice of cigarettes.</p> <p>The cost of ensuring that products meet RFR standards. [See Attachment B. An extrapolation of these costs is included in the 'Net impact or</p>

		Option 1: Maintain Status Quo	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
		governments.	\$30,000 per year. The cost of ensuring that cigarettes meet relevant standards.	net benefit' section of the RIS.] Costs of consumers switching to illicit cigarettes not complying with Standard
	Government	The need for consumer safety agencies to react to increasing demands for regulatory intervention. Public health system costs related to the treatment of injuries associated with fires caused by cigarettes.	The investment of considerable effort consulting with industry to educate and encourage the development of arrangements for industry codes. Possible increase in health expenditure due to potential of increased cigarette toxicity. Estimated costs of \$40,000 per annum.	Enforcement costs of approximately \$50,000 per annum, to be supported by an ongoing safety awareness campaign costing an initial \$30,000 Possible increase in health expenditure due to potential of increased cigarette toxicity.
BENEFITS	Consumers	Unrestricted supply of cigarettes, providing consumers with a wide choice of product and competitive prices. Price competition in the market due to the lack of market restrictions	Some reduction in deaths/injuries associated with fires caused by cigarettes. Increased confidence that the cigarettes they buy are safer in terms of their propensity to	Minimised incidence of injuries associated with fires caused by non-RFR cigarettes. [An estimation of value of this benefit is included in the 'Net impact or net benefit' section of the RIS]

		Option 1: Maintain Status Quo	Option 2: Quasi-Regulation (Industry Code)	Option 3: Government Regulation (preferred option)
			cause fires.	An assurance that cigarettes on the Australian market are as safe (in terms of fire risk) as anywhere else in the world.
	Industry and Small Business	Freedom to supply an unrestricted range of cigarettes and to decide appropriate levels of safety for the products supplied.	Industry guidance on appropriate levels of product safety.	Access to clear specific requirements which offer the opportunity to reduce management and administrative effort to ensure compliance. Avoidance of the cost and inconvenience of litigation in relation to the issue.
	Government	The absence of any additional requirement to formally monitor the market for cigarettes. The introduction of RFR cigarettes could potentially lead to increased levels of fires, if consumers mistakenly think they are 'fire-safe' and dispose of them more carelessly. This would result in increased costs to government and the community.	A stronger and more responsible market. Some improvement in product safety.	Improved consumer safety. Minimised personal and community trauma. Reduced medical and hospitalisation costs.

ATTACHMENT B**PRELIMINARY COST ESTIMATES OF IMPLEMENTATION OF PROPOSAL****[INFORMATION PROVIDED COURTESY OF BRITISH AMERICAN TOBACCO AUSTRALIA]**

While costs cannot be calculated with any accuracy until the scope of the regulatory proposal is more clearly articulated (particularly the nature of the proposed labelling requirements), initial estimates based on the draft RIS indicate set-up costs of AUD34 million with ongoing additional costs to BATA of approximately AUD14.2mn per annum. BATA's market share is approximately 46%, but it would be potentially misleading to extrapolate whole-of-industry costs from this information. While total industry set-up costs may be in the vicinity of AUD70 million, they may also be significantly greater (or less), in consequence of the vastly different compliance and product costs facing different industry stakeholders, as a consequence of their different manufacturing processes, product sources and sometimes complex supply chains involving multiple overseas factories.

The list below, however, indicates potential key areas where costs will be incurred.

Set up of an Extinction Propensity Testing Laboratory

Construction

Ventilation

Test Chambers

Cigarette Ignition Tools

Filter Paper

Lab Calibration

Standard Reference Cigarette

Lab Technician (Recruitment, Training, Salary)

RFR Paper Procurement

Paper

Shipping

Materials Trials

Initial Trials

Full scale run-ability trials

Product Development (Design)

Product Developer

Product Quality Testing

RFR Compliance Testing

Packaging Development

Artwork Design

Cylinder/ Plate engraving

Printing

Manufacturing Costs

Stock Write Offs

Staff Training

Communications

Retailer Communications

Consumer Response

It is noteworthy also that unreasonable compliance timeframes will also increase costs significantly.

Furthermore, costs incurred by industry will not be consistent among manufacturers and importers as some may be more or less able to bear the costs of compliance either as a result of the size of their business, the size of their brand portfolio or their ability to procure the materials to comply (e.g. as a result of access to proprietary paper technologies).

The process of designing, manufacturing and testing cigarettes to pass an extinction propensity standard is complex and involves a number of steps which necessarily require significant lead-times. A general outline of those steps is set out in the following section. Timelines have not been included as timelines for bringing RFR cigarettes to market cannot be estimated with any accuracy until there is visibility on draft regulations which may mandate compliance with an Australian standard.

Steps in the Process**A. Set up of an extinction propensity testing laboratory**

Manufacturers of RFR products intended to be sold in Australia and enforcers of RFR regulation will need to access an extinction propensity testing laboratory in order to conduct testing in accordance with the regulation or will need to set up their own laboratory.

AS 4830 – 2007 is based on the *ASTM E2187-04 Standard Test Method for Measuring the Ignition Strength of Cigarettes* ('the ASTM Standard Test Method') which is in place in New York in Canada. It is estimated that a cigarette extinction propensity testing facility takes approximately 6-8 months to establish.

Staff will also have to be recruited and trained to conduct testing. Testing itself is time-consuming: experience in other countries demonstrates that even an experienced operator can only test approximately 2 brand variants per day.

B. Product development (design) & product testing

Product development refers to the design of cigarettes.

While BAT Group companies (and it is understood all other tobacco companies) are using modified cigarette paper to meet the RFR regulation elsewhere, manufacturing cigarettes to pass an extinction propensity test involves more than simply wrapping existing cigarette brands with this special paper.

RFR papers can affect the smoking characteristics and smoke chemistry of cigarettes as they are a different porosity to regular cigarette papers. This means all cigarettes have to be re-designed to ensure they smoke the same as non-RFR products and pass the test. Design changes may include changes to filter ventilation or tobacco blend. Other cigarette design features, such as tobacco density, can affect performance against the extinction propensity test. Therefore the level of development work required will vary depending on the current design features of the cigarette.

The key activities for product development are to make products that comply with any legislated Australian extinction propensity standard and which are consistent with current products. The main activities are:

1. Initial Design

Source RFR papers from global paper suppliers for sample manufacture

Blend development and design

Make samples

Conduct laboratory tests (ISO tar, nicotine, CO)

Conduct extinction propensity test

Evaluate and compare to current products

2. Review Designs

Fine tune/re-design

Conduct laboratory Test (ISO tar, nicotine, CO)

Conduct extinction propensity test

Evaluate and compare to current products

As a consequence of RFR papers having different physical and chemical properties to non-RFR papers, product developers will have to experiment with the various cigarette components such as filters, tobacco blend, tobacco density and different RFR papers to best match the properties of the existing brands in BATA's portfolio. The process will involve trial and error and several different designs may need to be evaluated. Therefore, for each cigarette brand variant steps 1 and 2 may have to be repeated a number of times to ensure the design is correct and as close as possible to current products.

C. Materials procurement

A number of steps are involved in relation to the manufacture and procurement of RFR paper. Some of the key steps are as follows:

1. Raw materials procurement
Source and order paper from global supplier
2. First paper manufacture by third party overseas supplier
Manufacture paper

Print bands on paper

Freight first paper delivery to Australia

It is understood that lead-times for procuring RFR papers are longer than for regular cigarette paper as there are more steps in the manufacturing process and there is an additional quality control requirement.

D. Materials trials

1. Initial run-ability trial for sample manufacture
2. Full scale run-ability trials

Materials trials are necessary to determine any issues relating to running the RFR paper through our cigarette-making machines. Materials trials can be broken into two stages, initial trials for sample manufacture and full scale run-ability trials.

Initial trials are used to give a preliminary indication of any manufacturing issues likely to be encountered running the new paper through our cigarette making machines. True results can only be obtained through manufacturing large quantities of cigarettes. Full scale trials however cannot be performed early in the process as there are limited materials to conduct the trials and it is not commercially feasible to manufacture large volumes of cigarettes which may not be able to be sold.

E. Packaging development

Should on-pack markings for retailer/wholesaler/ regulator identification of RFR products be required (similar to New York), this could add to implementation lead times. In particular, should pack changes be mandated this would require re-engraving of the gravure cylinders and litho plates used to print our packaging and therefore consultation with our design agencies and packaging suppliers to determine appropriate time-frames.

By way of example, the implementation of graphic health warning labeling changes in Australia took 18months.

F. Communication

It is our expectation that government would ensure smokers are made aware of any new regulation which may be implemented to mandate compliance with an extinction propensity standard and that cigarettes designed to meet that standard are not fire safe. That said tobacco companies will also need to develop communication plans to ensure

they can respond to enquiries from retailers and smokers about changes to their cigarettes.

The plan would include the development of messages and materials for use by our Contact Response Centre, and for dissemination to retailers, both of which are likely to be faced with complaints from smokers about product quality issues.

G. Distribution

Timelines need to account for distribution of RFR cigarettes to the trade and in the event that compliance falls on the date of sale, sell-through of remaining non-RFR compliant stock. Stock sell-through periods will vary depending on the brand and the outlet from which they are sold.

Legislated sell through periods can be avoided if the point of compliance is the point of manufacture as was the case in Canada and with the Australian graphic health warning regulations which took effect in March 2006. In any even, it is important to be mindful that it takes time for manufactured products to filter through the trade.

**ATTACHMENT C
CONSULTATION COMMENT**

A draft Regulation Impact Statement proposing the regulation of RFR cigarettes was circulated for consideration by interested parties. The comment received was analysed to help determine whether the proposed mandatory safety standard is appropriate and to determine the form of standard that should be implemented.

Respondents generally supported the proposed introduction of a mandatory safety standard as the most appropriate option for addressing injuries associated with fires caused by non-RFR cigarettes.

Comment was received on a number of aspects of the proposed standard, including the technical content. The recommendations were analysed and taken into account in the development of the final form of the proposed standard.

Below is a summary of significant comments on the proposed mandatory safety standard, together with the response determined after analysis:

- a) *Comment:* “The Insurance Council of Australia supports the introduction of reduced fire risk (RFR) cigarettes, noting that fires started by cigarettes represent a significant economic loss to the community through property damage, business interruption and in some instances loss of life.”

Response: No response necessary.

- b) *Comment:* Harvard School of Public Health: “...adoption of the regulation would be in the interest of the public health of Australians and reduce the likelihood of cigarettes causing fires and fire deaths...”.

Response: No response necessary.

- c) *Comment:* WA Department of Consumer and Employment Protection: “Western Australia wishes to advise that it supports the introduction of a minimum standard as detailed in the January 2008 paper.”

Response: No response necessary.

- d) *Comment:* Commonwealth Department of Health and Ageing: “The Department is concerned about the inclusion of an RFR statement on a retail package...If the standard is to apply to all cigarettes on the market there would be no additional advantage to a statement or mark being displayed on each and every cigarette pack.”

Response: In the absence of an identifier, there would be a significant period during which the Regulations would be

unenforceable to all intents and purposes, as both complying and non-complying product will be available¹⁸. Experience suggests that supply of non-complying stock manufactured prior to the commencement of the proposed Regulations will continue for a significant period. An identifier in the form of a positive statement may also have the effect of making suppliers of stock which purports to comply with the standard but fails to do so, liable to criminal prosecution for misrepresentation.

- e) *Comment:* Commonwealth Department of Health and Ageing: "...consideration should be given to the inclusion of a deadline by which retailers must only carry RFR cigarettes."

Response: Accepted. Introduction of such a requirement addressing timing concerns raised by a number of stakeholders. A further round of consultation with the major tobacco companies has confirmed the viability of incorporating such a provision in the proposed scheme.

- f) *Comment:* Joint submission by Cancer Council Australia, Action on Smoking and Health, and others: "...there should be a rigorous monitoring regime to enforce compliance with the legislation including (for example) regular random testing of products to verify compliance with the standards."

Response: The proposed Regulations will be enforced by the Australian Competition and Consumer Commission, which has a proven track record as a vigilant enforcement agency. From an enforcement perspective, the ACCC notes the difficulties in enforcing an RFR standard but believes that enforcement will be considerably assisted by labelling by the manufacturer which identifies its product as purporting to be RFR compliant.

- g) *Comment:* The Hon Nathan Rees MP, NSW Minister for Emergency Services: "...the NSW Government does not accept that the industry requires an 18 month to 2 year timeframe for implementation....the technology and know-how is already well established within the mainly multi-national corporations which market these dangerous products. [Concern about the 18 month lead time was also expressed by other parties such as New South Wales Fire Brigades, etc]

Response: On the information available to it, the ACCC is satisfied that 18 months is a reasonable lead-in time for commencement of

¹⁸ Canada has no regulatory requirement for manufacturers to put a reference to the ignition propensity statement on packs as all cigarettes on the market have to meet the standard. The level of non-compliance encountered in Canada was 31% in 2006, but in the absence of marking, enforcement would arguably have been problematic.

the proposed. While a shorter period would not cause problems for some manufacturers / importers, it clearly does for others. An 18-month lead-in period was provided for compliance with the *Trade Practices (Consumer Product Information Standards)(Tobacco) Regulations 2004*, and has been widely accepted as reasonable by many overseas jurisdictions. It is anticipated, however, that a speedy conversion to RFR-compliant stock will be encouraged by the deadline which is now proposed to apply in relation to supply of non-RFR-compliant stock {See comment e) above}

- h) *Comment:* New South Wales Fire Brigades: “The mandatory minimum standard for the Regulation should be based on the New York State Regulations. These have been used as the basis for the Canadian Regulations as well as more recent Regulations introduced in other US states.”. [Phillip Morris Ltd noted the following: “...if action is taken we would support a mandatory federal standard that requires all cigarettes made for sale in Australia to meet an RFR standard that is identical to those established in New York, other US states and Canada.”]

Response: Accepted. The need for consistency appears to be generally accepted by stakeholders. To ensure consistency, the proposed Regulations will also include the following additional requirement adopted from the overseas provisions. Each cigarette that uses lowered permeability bands in the cigarette paper to achieve compliance with the standard shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimetres from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimetres from the lighting end and 10 millimetres from the filter end of the tobacco column, or 10 millimetres from the labelled end of the tobacco column for non-filtered cigarettes.

- i) *Comment:* New South Wales Fire Brigades: “...all cigarettes manufactured in Australia (should) comply with the Regulation so that Australia is not seen as exporting a product that is less safe to other countries.”

Response: The decision as to whether goods which do not comply with a mandatory safety standard should be exported lies with the Minister (refer s. 65C(3) of the *Trade Practices Act 1974*. In making such a decision, the Minister can be expected to have regard to all relevant considerations.

- j) *Comment:* British American Tobacco Australia Ltd: “BATA believes that the message, format and placement of any on-pack messages should be articulated in regulation”. [The Commonwealth Department of Health and Ageing also called for prescriptive

requirements in terms of the content, colour, font, layout and/or placement of statements.]

Response: The flexible approach adopted by the proposal (including the permitted use of adhesive labels) will minimise costs by allowing manufacturers and importers to determine how best to implement mandatory labelling requirements.

- k) *Comment:* British American Tobacco Australia Ltd: “BATA recommends that the regulation specifically exempt testing of identical products”.

Response: While the proposed Regulations apply to ‘every kind’ of cigarettes, the manufacturer / importer will be able to determine the means by which it satisfies itself (and enforcement agencies, if necessary) that each kind of cigarette complies with the standard. Unlike the regulatory provisions in place overseas, the proposed standard does not impose cumbersome administrative requirements relating to certification. Where breaches of the standard are detected, however, penalties of up to \$1.1 million may be imposed for each contravention.

Enquiries concerning this Regulation Impact Statement should be directed to:

**Director
Product Safety Policy
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601**

Email: john.wunsch@accc.gov.au