

24-33.5-1214. Cigarettes - reduced ignition propensity standards – repeal

(1) Short title. This section shall be known and may be cited as the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act".

(2) Testing - performance standard. (a) (I) Except as otherwise provided in paragraph (g) of this subsection (2), no cigarettes shall be sold or offered for sale in this state, or offered for sale or sold to persons located in this state, after July 31, 2009, unless:

(A) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection (2);

(B) A written certification has been filed by the manufacturer with the director in accordance with subsection (3) of this section; and

(C) The cigarettes have been marked in accordance with subsection (4) of this section.

(II) The following conditions shall apply to testing and certification:

(A) Testing of cigarettes shall be conducted in accordance with ASTM international standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".

(B) Testing shall be conducted on ten layers of filter paper.

(C) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection (2) shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested.

(D) The performance standard required by this subsection (2) shall be applied only to a complete test trial.

(E) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard specified by the division.

(F) A laboratory conducting testing in accordance with this subsection (2) shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results and limit the repeatability value to no greater than nineteen percent.

(G) This subsection (2) shall not require additional testing of cigarettes that have been tested for other purposes in a manner consistent with this section.

(H) Testing performed or sponsored by the division in order to determine a cigarette's compliance with the performance standard required by this subsection (2) shall be conducted in accordance with this subsection (2).

(b) Each cigarette listed in a certification submitted pursuant to subsection (3) of this section that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this subsection (2) 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 fifteen millimeters 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 fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(c) A manufacturer of a cigarette that the division determines cannot be tested in accordance with the test method prescribed in paragraph (a) of this subsection (2) shall propose a test method and performance standard for the cigarette to the division. Upon approval of the proposed test method and a determination by the division that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subparagraph (II) of paragraph (a) of this subsection (2), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to this subsection (2). If the division determines 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 this subsection (2), and the division finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the reduced cigarette ignition propensity standards of such state's laws or rules under a legal provision comparable to this subsection (2), then the division shall authorize the manufacturer to employ the alternative test method and performance standard to certify such cigarette for sale in Colorado unless the division demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this subsection (2) shall apply to the manufacturer.

(d) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the division and the attorney general upon written request. Any manufacturer who fails to make copies of such reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make such copies available.

(e) The division may adopt a subsequent ASTM international standard test method for measuring the ignition strength of cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM international standard E2187-04 and the performance standard in subparagraph (II) of paragraph (a) of this subsection (2).

(f) On or before June 30, 2012, and on or before June 30 of every third year thereafter, the division shall review the effectiveness of this subsection (2) and report to the general assembly the division's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section.

(g) The requirements of paragraph (a) of this subsection (2) shall not be construed to prohibit:

(I) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 31, 2009, if a wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes before said date and that the inventory was purchased before said date in comparable quantity to the inventory purchased during the same period of the immediately preceding year; or

(II) The sale of cigarettes solely for the purpose of consumer testing. As used in this subparagraph (II), "consumer testing" means an assessment of cigarettes that is conducted by, or under the control and direction of, a manufacturer for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(h) The division shall implement this section in accordance with the implementation in New York of the New York fire safety standards for cigarettes.

(3) Certification. (a) Each manufacturer shall submit to the director a written certification attesting that each cigarette listed in the certification:

(I) Has been tested in accordance with subsection (2) of this section; and

(II) Meets the performance standard set forth in subsection (2) of this section.

(b) Each cigarette listed in the certification submitted pursuant to paragraph (a) of this subsection (3) shall be described with the following information:

(I) Brand or trade name on the package;

(II) Style, such as light or ultra light;

(III) Length in millimeters;

(IV) Circumference in millimeters;

- (V) Flavor, such as menthol or chocolate if applicable;
- (VI) Filter or nonfilter;
- (VII) Package description, such as soft pack or box;
- (VIII) Marking pursuant to subsection (4) of this section;
- (IX) The name, address, and telephone number of the laboratory that conducted the tests, if different from that of the manufacturer; and
- (X) The date that the testing occurred.

(c) Certifications under this subsection (3) shall be made available to the attorney general for purposes consistent with this section and to the department of revenue for the purpose of ensuring compliance with this subsection (3).

(d) Each cigarette certified under this subsection (3) shall be subject to recertification every three years.

(e) At the time it submits a written certification under this subsection (3), a manufacturer shall pay to the department of public safety a fee of one thousand dollars for each brand family of cigarettes listed in the certification. The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) There is hereby established, in the state treasury, the reduced cigarette ignition propensity standards and firefighter protection act enforcement fund, also referred to in this section as the "fund". The fund shall consist of all certification fees and civil penalties collected pursuant to this section and shall, in addition to any other moneys made available for such purpose, be available to the division to support processing, testing, enforcement, and oversight activities under this section. Any moneys in the fund in excess of the amounts needed for such purposes may be used by the division, subject to annual appropriation, for fire safety and prevention programs, including without limitation firefighter training and certification.

(g) If a manufacturer has certified a cigarette pursuant to this subsection (3), and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standard required by this section, such cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in subsection (2) of this section and maintains records of the retesting as required by said subsection (2). Any altered cigarette that does not meet the performance standard set forth in said subsection (2) may not be sold in this state.

(4) Labeling. (a) Effective July 31, 2009, cigarettes that are certified by a manufacturer in accordance with subsection (3) of this section shall be marked to indicate compliance with the requirements of this section. Such marking shall be in eight-point type or larger and shall consist of one or more of the following:

(I) Modification of the package's UPC symbol to include a visible mark printed at or around the area of the UPC symbol. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC symbol.

(II) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed on the cigarette package or cellophane wrap; or

(III) Stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards of this section.

(b) A manufacturer shall use only one marking and shall apply the marking uniformly to all brands and packages, including but not limited to packs, cartons, and cases, marketed by the manufacturer.

(c) The manufacturer shall notify the division as to the marking selected by the manufacturer.

(d) Prior to the certification of any cigarette, the manufacturer shall present its proposed marking to the division, which shall have discretion to approve or disapprove the marking; except that:

(I) The division shall approve:

(A) Any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes; or

(B) The letters "FSC", signifying "fire standards compliant", appearing in eight-point type or larger and permanently stamped, engraved, embossed, or printed on the package at or near the UPC symbol; and

(II) Proposed markings shall be deemed approved if the division fails to act within ten business days after receiving a request for approval.

(e) A manufacturer shall not modify its approved marking unless the modification has been approved by the division in accordance with this subsection (4).

(f) Manufacturers certifying cigarettes in accordance with subsection (3) of this section shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this subsection (4) for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide copies of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the director, the department of revenue, the attorney general, and employees thereof to inspect markings of cigarette packaging marked in accordance with this subsection (4).

(5) Penalties - forfeiture. Effective July 31, 2009:

(a) A manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes, other than at retail, in violation of subsection (2) of this section shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of subsection (2) of this section shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such retail dealer shall not exceed twenty-five thousand dollars for sales or offers to sell during any thirty-day period.

(c) In addition to any other penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subsection (3) of this section shall be subject to a civil penalty of at least seventy-five thousand dollars, not to exceed two hundred fifty thousand dollars for each such false certification.

(d) A person who violates any provision of this section for which a penalty is not specifically provided shall be subject to a civil penalty of up to one thousand dollars for a first violation and up to five thousand dollars for a second or subsequent violation.

(e) Cigarettes that have been sold or offered for sale and that do not comply with the performance standard required by subsection (2) of this section shall be subject to forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S. Cigarettes forfeited pursuant to this paragraph (e) shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.

(f) In addition to any other remedy provided by law, the director or the attorney general may file an action in district court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the state and enforcement costs, including attorney fees, relating to the specific violation. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the director or attorney general may obtain relief under this paragraph (f).

(g) Whenever a law enforcement officer or duly authorized agent of the director discovers cigarettes that have not been marked as required by subsection (4) of this section, such officer or agent is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the department of revenue and shall be forfeited to the state. Cigarettes seized pursuant to this paragraph (g) shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.

(6) Rules. (a) The director may promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title, as necessary to administer this section.

(b) The department of revenue, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers as authorized by law, may inspect cigarettes to determine whether the cigarettes are marked as required by subsection (4) of this section. If the cigarettes are not marked as required, the department of revenue shall notify the division.

(7) Enforcement. To enforce this section, the attorney general, the department of revenue, the division, all duly authorized employees and agents thereof, and all law enforcement personnel are hereby authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as any cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale is hereby directed and required to give the attorney general, the department of revenue, the division, all duly authorized employees and agents thereof, and all law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this subsection (7).

(8) Exceptions. Nothing in this section shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of subsection (2) of this section if:

(a) The cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and

(b) The person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in Colorado.

(9) Repeal. (a) The general assembly intends that this section shall cease to be effective upon the effective date of a federal reduced cigarette ignition propensity standard that preempts this section. The division, upon receiving notice of the effectiveness of such federal standard, shall forward such notice to the revisor of statutes.

(b) This section is repealed, effective 12:01 a.m. the day after the revisor of statutes receives notice from the division as described in paragraph (a) of this subsection (9).

(c) Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or rule conflicting with, or preempted by, any provision of this section or with any policy of this state expressed by this section.