

§1555-E. Reduced ignition propensity cigarettes

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agent" means any person licensed by the State Tax Assessor to purchase and affix stamps on packages of cigarettes. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. "ASTM" means the American Society of Testing and Materials or a successor organization. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains any roll of tobacco wrapped in paper or in any substance not containing tobacco or in any substance other than tobacco and, because of its appearance, the type of tobacco used or its packaging or labeling, is offered to or purchased by consumers as a cigarette. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. "Distributor" has the same meaning as in Title 36, section 4401, subsection 2. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

E. "Manufacturer" means:

(1) An entity that manufactures or otherwise produces cigarettes, or causes cigarettes to be manufactured or produced anywhere, that the entity intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) An entity that becomes a successor of an entity described in subparagraph (1) or (2). [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

F. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing under subsection 2. A quality control and quality assurance program ensures that the testing repeatability remains within the required repeatability values stated in subsection 2, paragraph A, subparagraph (6) for all test trials used to certify cigarettes in accordance with this section. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

G. "Repeatability" means the range of values within which the results of repeated cigarette test trials from a single laboratory will fall 95% of the time. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

H. "Sale" means any transfer of possession or exchange or barter, conditional or otherwise, of cigarettes in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money are considered sales. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

I. "Sell" includes offering to sell or agreeing to sell. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

J. "Tobacco retailer" has the same meaning as in section 1551, subsection 3-A. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]
[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

2. Test methods and performance standards. Cigarette test methods and performance standards are governed by the provisions of this subsection.

A. Unless federal law provides otherwise, cigarettes may not be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test methods and meet the performance standards specified in this subsection, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with subsection 3 and the cigarettes have been marked in accordance with subsection 4.

(1) Testing of cigarettes must be conducted in accordance with ASTM Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(2) Testing must be conducted on 10 layers of filter paper.

(3) No more than 25% of the cigarettes tested in a test trial in accordance with this subsection may exhibit full-length burns. Forty replicate tests constitutes a complete test trial for each cigarette tested.

(4) The performance standards required by this subsection may be applied only to a complete test trial.

(5) Written certifications must 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 other comparable accreditation standards required by the State Fire Marshal.

(6) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value must be no greater than 0.19.

(7) This subsection does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standards required by this subsection must be conducted in accordance with this subsection. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards set forth in this subsection must have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least 2 bands located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. The provisions of this paragraph apply to alternative test methods.

(1) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test methods prescribed in paragraph A shall propose test methods and performance standards for the cigarette to the State Fire Marshal. Upon approval of the proposed test methods and a determination by the State Fire Marshal that the performance standards proposed by the manufacturer are equivalent to the performance standards prescribed in paragraph A, the manufacturer may employ the test methods and performance standards to certify the cigarette pursuant to subsection 3.

(2) If a manufacturer has certified a cigarette pursuant to subsection 3 and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced ignition propensity standards required by this section, that cigarette may 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 this subsection and maintains records of that retesting as required by this subsection. Any altered cigarette that does not meet the performance standards set forth in this subsection may not be sold in this State.

(3) If the State Fire Marshal determines that another state has enacted reduced ignition propensity standards that include test methods and performance standards that are the same as those contained in this subsection and finds that the officials responsible for implementing those requirements have approved the proposed alternative test methods and performance standards for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test methods and performance standards to certify that cigarette for sale in this State, unless the State Fire Marshal finds a reasonable basis that the alternative test should not be accepted under this section. All other applicable requirements of this subsection apply to the manufacturer. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request commits a civil violation for which a fine not to exceed \$5,000 must be applied for each day after the 60th day that the manufacturer does not make such copies available. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

E. The State Fire Marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the 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 Standard E2187-04 and the performance standard in paragraph A, subparagraph (3). [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

3. Certification. This subsection governs the certification of cigarettes under this section.

A. Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

- (1) Each cigarette listed in the certification has been tested in accordance with subsection 2; and
- (2) Each cigarette listed in the certification meets the performance standards set forth in subsection 2. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. Information listed in the certification of each cigarette must include:

- (1) Brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as soft pack or box;
- (8) Marking approved in accordance with subsection 4;

(9) The name, address and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(10) The date that the testing occurred. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. The manufacturer must make a certification available to the Attorney General for purposes consistent with this section and the State Tax Assessor for the purposes of ensuring compliance with this section. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. Each cigarette certified under this subsection must be recertified every 3 years. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]
[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

4. Marking of cigarette packaging. The provisions of this subsection govern marking of cigarette packaging.

A. The packaging of cigarettes that are certified by a manufacturer in accordance with subsection 3 must be marked to indicate compliance with the requirements of subsection 2. The marking must be in 8-point or larger type and consist of:

(1) Modification of the universal product code to include a visible mark printed in the area of the universal product code. This mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed or printed in conjunction with the universal product code; or

(2) Any visible combination of alphanumeric or symbolic characters or text permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings are deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a request for approval. The State Fire Marshal shall notify the State Tax Assessor as to the marking that has been approved. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. A manufacturer may not modify its approved marking unless the modification has been approved by the State Fire Marshal in accordance with this subsection. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

E. A manufacturer certifying cigarettes in accordance with subsection 3 shall provide a copy of the certification to all distributors and agents to which the manufacturer sells cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each tobacco retailer to which the distributors or agents sell cigarettes. Distributors and agents shall provide copies of these illustrations to all tobacco retailers to which they sell cigarettes. Distributors, agents and tobacco retailers shall permit the State Fire Marshal, the State Tax Assessor, the Attorney General and their employees to inspect cigarette packaging marked in accordance with this subsection. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

5. Violations. Penalties for violating this section are as set out in this subsection.

A. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$10,000 per each sale of cigarettes must be imposed. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A and has previously been adjudicated of violating that subsection commits a civil violation for which a fine of not more than \$25,000 per each sale of cigarettes must be imposed, except that the fine against any one person or entity may not exceed \$100,000 during any 30-day period. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. A tobacco retailer who knowingly sells 1,000 cigarettes or less in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$500 per each sale or offer for sale of cigarettes must be imposed. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. A tobacco retailer who commits a violation as described in paragraph C and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$2,000 per each sale or offer for sale of cigarettes must be imposed. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

E. A tobacco retailer who knowingly sells more than 1,000 cigarettes in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$1,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

F. A tobacco retailer who commits a violation as described in paragraph E and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$5,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

G. 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 commits a civil violation for which a fine of not less than \$75,000 must be imposed for each false certification. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

H. A corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that commits a violation as described in paragraph G after having previously being adjudicated of committing that violation commits a civil violation for which a fine of at least \$75,000 and not more than \$250,000 must be imposed for each false certification. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

I. A person who commits a violation of a provision of this section other than those described in paragraphs A to H commits a civil violation for which a fine of not more than \$1,000 must be imposed for each violation. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

J. A person who commits a violation as described in paragraph I and has been previously adjudicated of committing a violation described in paragraph I commits a civil violation for which a fine of not more than \$5,000 must be imposed for each violation. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

6. Forfeiture. Any cigarettes that have been sold or offered for sale that do not comply with the performance standards required by this section are subject to forfeiture under Title 36, section 4372-A, as long as, prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

7. Injunctive relief. In addition to any other remedy provided by law, the Attorney General may file an action in District Court or Superior Court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

8. Implementation. This section must be implemented as set out in this subsection.

A. The State Fire Marshal may adopt routine technical rules, pursuant to Title 5, chapter 375, subchapter 2-A, necessary to effectuate the purposes of this section. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

B. The State Tax Assessor in the regular course of conducting inspections of distributors, agents and tobacco retailers, as authorized under Title 36, section 4373-A, may inspect cigarette packaging to determine if it is marked as required in subsection 4. If the packaging is not marked as required, the State Tax Assessor shall notify the State Fire Marshal. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

C. Beginning in 2009 and every 3 years thereafter, the State Fire Marshal shall review the effectiveness of this section and report to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of the implementation of the standards and certification of those standards in this section. The report and legislative recommendations must be submitted no later than March 1st of each year a report is required. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

D. This section must be implemented by the State Fire Marshal in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes or a comparable or successor standard. [PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]
[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

9. Inspection. To enforce the provisions of this section, the Attorney General and the State Fire Marshal may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are manufactured, tested, placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Such a person shall give the Attorney General and the State Fire Marshal the means, facilities and opportunity for the examinations authorized by this subsection.

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

10. Fire Prevention and Public Safety Fund. The Fire Prevention and Public Safety Fund is established as a nonlapsing fund. The fund must consist of all money recovered as penalties for violations of this section. The money must be deposited to the credit of the fund and, in addition to any other money made available for such purpose, must be made available to the State Fire Marshal to support fire safety and prevention programs.

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

11. Sale outside of State. Nothing in this section may be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of this section if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United

States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

[PL 2007, c. 253, §1 (NEW); PL 2007, c. 253, §3 (AFF).]

SECTION HISTORY

PL 2007, c. 253, §1 (NEW). PL 2007, c. 253, §3 (AFF).

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