

W.S. 35-9-803

Requirements for sale; test method; adoption of other state's testing method, if appropriate; performance standards; exceptions.

(a) Except as provided in this act, cigarettes may not be offered for sale or sold to persons located in this state unless the cigarettes have been tested and have met the required performance standard specified in this section, the manufacturer has filed a written certification with the department of revenue in accordance with W.S. 35-9-804 and the cigarettes have been marked in accordance with W.S. 35-9-805. The following testing requirements shall apply:

(i) Cigarette testing shall be conducted in accordance with the American society of testing and materials ("ASTM") standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes," in effect on February 1, 2010. The state fire marshal may adopt a subsequent ASTM standard upon a written 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 this section;

(ii) Testing shall be conducted on ten (10) layers of filter paper;

(iii) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested;

(iv) The performance standard required by this section shall be applied only to a complete test trial;

(v) 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 ("ISO"), or other comparable accreditation standard required by the state fire marshal;

(vi) Laboratories conducting testing in accordance with this section 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 shall not be greater than nineteen hundredths (0.19);

(vii) This section does not require additional testing if cigarettes are tested consistent with this act for any other purpose;

(viii) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to W.S. 35-9-804 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette. Cigarettes on which the bands are positioned by design shall have at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and at least ten (10) millimeters from the filter end of the tobacco column. For nonfiltered cigarettes the bands shall be at least ten (10) millimeters from the labeled end of the tobacco column.

(c) If the state fire marshal determines that a cigarette cannot be tested in accordance with paragraph (a)(i) of this section, the manufacturer shall propose a test method and performance standard. If the state fire marshal approves the proposed test method and determines that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (a)(iii) of this section, that test method and performance standard may be used to certify the cigarette pursuant to W.S. 35-9-804.

(d) The state fire marshal shall authorize a manufacturer to employ an alternative test method and performance standard to certify a cigarette for sale in this state if the fire marshal determines that:

(i) Another state has enacted reduced cigarette ignition propensity standards that include the proposed alternative test method and performance standard;

(ii) The other state's testing method and performance standard are the same as those adopted pursuant to paragraph (a)(i) of this section;

(iii) The officials responsible for implementing the other state's requirements have approved the proposed alternative test method and performance standard for a particular cigarette as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section; and

(iv) There is no reasonable basis to reject the alternative testing method.

(e) Manufacturers shall maintain copies of reports of all tests conducted on all cigarettes offered for sale for three (3) years and shall make copies available upon written request by the department of revenue or attorney general. Any manufacturer failing to make copies of the requested reports available within sixty (60) days of receipt of the request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000.00) for each day after the sixtieth day that the manufacturer fails to make copies available.

(f) Repealed by Laws 2015, ch. 55, § 2.

(g) The requirements of subsection (a) of this section shall not prohibit:

(i) Wholesale or retail dealers from selling after the effective date of this act the dealer's inventory of cigarettes existing on the effective date of this act if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retail dealer can establish that the inventory was purchased prior to the effective date of this act in a comparable quantity to the inventory purchase during the same period of the prior year; or

(ii) The sale of cigarettes solely for the purpose of consumer testing using only the quantity of cigarettes that is reasonably necessary for the testing. For purposes of this paragraph the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes.