

Chapter 19.305 RCW
CIGARETTE IGNITION PROPENSITY

Sections

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RCW 19.305.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means any person licensed by the department of revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, when the roll has a wrapper or cover made of paper or any material, except when the wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Manufacturer" means:

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

(b) 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

(c) Any entity that becomes a successor of an entity described in (a) or (b) of this subsection.

(4) "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 the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in RCW 19.305.020(1)(f) for all test trials used to certify cigarettes in accordance with this chapter.

(5) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(6) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) "Sale" or "sell" means any transfer of title of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(8) "Wholesale dealer" means any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person. [2008 c 239 § 1.]

RCW 19.305.020 Testing of cigarettes—Performance standard—

Records—Exceptions. (1) Except as provided in subsection (7) of this section, 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 method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the state director of fire protection in accordance with RCW 19.305.030, and the cigarettes have been marked in accordance with RCW 19.305.040.

(a) Testing of cigarettes 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."

(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 section may exhibit full-length burns. Forty replicate tests comprise a complete test trial for each cigarette tested.

(d) The performance standard required by (c) of this subsection may only be applied 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 (ISO), or other comparable accreditation standard required by the state director of fire protection.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that determines the repeatability of the testing results. The repeatability value may be no greater than 0.19.

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

(h) Testing performed or sponsored by the state director of fire protection to determine a cigarette's compliance with the performance standard required must be conducted in accordance with this section.

(2) Each cigarette listed in a certification submitted pursuant to RCW 19.305.030 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are

positioned by design, there must 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.

(3) A manufacturer of a cigarette that the state director of fire protection determines cannot be tested in accordance with the test method prescribed in subsection (1)(a) of this section shall propose a test method and performance standard for the cigarette to the state director of fire protection. Upon approval of the proposed test method and a determination by the state director of fire protection that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (1)(c) of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to RCW 19.305.030. If the state director of fire protection determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state director of fire protection 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 fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state director of fire protection shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the state director of fire protection demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section apply to the manufacturer.

(4) 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 state director of fire protection and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request is subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make the copies available.

(5) The state director of fire protection 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 subsection (1)(c) of this section.

(6) Beginning in 2012, the state director of fire protection shall review the effectiveness of this section and report every three years to the legislature the state director of fire protection's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than July 1st of each three-year reporting period.

(7) The requirements of subsection (1) of this section do not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after August 1, 2009, if the wholesale or retailer dealer can establish that state tax stamps were affixed to

the cigarettes prior to August 1, 2009, and if the wholesale or retail dealer can establish that the inventory was purchased prior to August 1, 2009, in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The implementation and substance of the New York fire safety standards for cigarettes, New York Executive Law section 156-c, Fire Safety Standards for Cigarettes, shall be persuasive authority in the implementation of this chapter. [2008 c 239 § 2.]

RCW 19.305.030 Certification—Fee. (1) Each manufacturer shall submit to the state director of fire protection a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with RCW 19.305.020; and

(b) Each cigarette listed in the certification meets the performance standard set forth in RCW 19.305.020(1)(c).

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand or trade name on the package;

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

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable;

(f) Filter or nonfilter;

(g) Package description, such as soft pack or box;

(h) Marking approved in accordance with RCW 19.305.040;

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

(j) The date the testing occurred.

(3) The certifications must be made available to the attorney general for purposes consistent with this chapter and the department of revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section must be recertified every three years.

(5) For each cigarette listed in a certification, a manufacturer shall pay to the state director of fire protection a fee of two hundred fifty dollars. The state director of fire protection is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

(6) If a manufacturer has certified a cigarette under this section, and thereafter makes any change to that cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, 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 RCW 19.305.020 and maintains records of that retesting as required by RCW 19.305.020. Any altered cigarette which does not meet the performance standard set forth in RCW 19.305.020 may not be sold in this state. [2008 c 239 § 3.]

RCW 19.305.040 Markings—Requirements. (1) Cigarettes that are certified by a manufacturer in accordance with RCW 19.305.030 must be

marked to indicate compliance with the requirements of RCW 19.305.020. The marking must be in eight-point type or larger and consist of:

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

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

(c) Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

(2) 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.

(3) The state director of fire protection must be notified as to the marking that is selected.

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the state director of fire protection for approval. Upon receipt of the request, the state director of fire protection shall approve or disapprove the marking offered, except that the state director of fire protection shall (a) approve the letters "FSC," which signify fire standards compliant; and (b) give preference to any packaging marking in use and approved for that cigarette in New York pursuant to New York Executive Law section 156-c, Fire Safety Standards for Cigarettes, unless the state director of fire protection demonstrates a reasonable basis why that marking should not be approved under this chapter. Proposed markings are deemed approved if the state director of fire protection fails to act within ten business days of receiving a request for approval.

(5) A manufacturer shall not modify its approved marking unless the modification has been approved by the state director of fire protection in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with RCW 19.305.030 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 under this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy 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 state director of fire protection, the department of revenue, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section. [2008 c 239 § 4.]

RCW 19.305.050 Violations—Civil penalties. (1) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of RCW 19.305.020, for a first offense is liable to a civil penalty not to exceed ten thousand dollars per each sale of the cigarettes, and for a subsequent offense is liable to a civil penalty not to exceed twenty-five thousand dollars per each sale of the cigarettes. However, in no case may the penalty against such a person

or entity exceed one hundred thousand dollars during any thirty-day period.

(2) (a) A retail dealer who knowingly sells cigarettes in violation of RCW 19.305.020 is:

(i) For a first offense liable to a civil penalty not to exceed five hundred dollars, and for a subsequent offense is liable to a civil penalty not to exceed two thousand dollars, per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale does not exceed one thousand cigarettes; or

(ii) For a first offense liable to a civil penalty not to exceed one thousand dollars, and for a subsequent offense is liable to a civil penalty not to exceed five thousand dollars, per each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale exceeds one thousand cigarettes.

(b) A penalty under this subsection may not exceed twenty-five thousand dollars during a thirty-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under RCW 19.305.030 is, for a first offense, liable to a civil penalty of at least seventy-five thousand dollars, and for a subsequent offense a civil penalty not to exceed two hundred fifty thousand dollars for each false certification.

(4) Any person violating any other provision in this chapter is liable to a civil penalty for a first offense not to exceed one thousand dollars, and for a subsequent offense is liable to a civil penalty not to exceed five thousand dollars, for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by RCW 19.305.020 are subject to forfeiture under RCW 82.24.130. However, prior to the destruction of any cigarette seized under this subsection, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the state director of fire protection or attorney general may initiate an appropriate civil action in superior court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorneys' fees. Each violation of this chapter or of rules adopted under this chapter constitutes a separate civil violation for which the state director of fire protection or attorney general may obtain relief. [2008 c 239 § 5.]

RCW 19.305.060 Rule making—Inspection of cigarettes. (1) The state director of fire protection may adopt rules necessary to implement this chapter.

(2) The department of revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under chapter 82.24 RCW, may inspect cigarettes to determine if the cigarettes are marked as required by RCW 19.305.040. If the cigarettes are not marked as required, the department of revenue shall notify the state director of fire protection. [2008 c 239 § 6.]

RCW 19.305.070 Enforcement of chapter—Authority. To enforce this chapter, the attorney general and the state director of fire protection are 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 the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is required to give the attorney general and the state director of fire protection the means, facilities, and opportunity for the examinations authorized by this section. [2008 c 239 § 7.]

RCW 19.305.080 Reduced cigarette ignition propensity account. The reduced cigarette ignition propensity account is created in the custody of the state treasurer. All receipts from the payment of certification fees under RCW 19.305.030 and from the imposition of civil penalties under RCW 19.305.050 must be deposited into the account. Expenditures from the account may be used only for fire safety, enforcement, and prevention programs. Only the state director of fire protection or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2008 c 239 § 8.]

RCW 19.305.090 Exemptions. This chapter does not prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of RCW 19.305.020 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 the cigarettes will not be sold or offered for sale to persons located in this state. [2008 c 239 § 10.]

RCW 19.305.100 Federal preemption. If a federal reduced cigarette ignition propensity standard that preempts chapter 239, Laws of 2008 is adopted and becomes effective, the state director of fire protection shall prepare and submit to the legislature the necessary legislation to repeal this chapter. [2008 c 239 § 11.]

RCW 19.305.110 Local conflicts or preemption prohibited. The local governmental units of this state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy is expressed by inclusion of a provision in this chapter or by exclusion of that subject from this chapter. [2008 c 239 § 12.]

RCW 19.305.900 Effective date—2008 c 239. This act takes effect August 1, 2009. [2008 c 239 § 14.]