

STATE FIRE MARSHAL; PROTECTION FROM FIRE

REDUCED IGNITION PROPENSITY CIGARETTES

**476.755 Definitions for ORS 476.755 to 476.790 and 476.995.** As used in ORS 476.755 to 476.790 and 476.995:

- (1) "Cigarette" means a roll for smoking:
  - (a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other nontobacco materials; and
  - (b) That, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.
- (2) "Distribute" means to do any of the following:
  - (a) Sell cigarettes or deliver cigarettes for sale by another person to consumers.
  - (b) Receive or retain more than 199 cigarettes at a place of business where the person receiving or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale to consumers.
  - (c) Place cigarettes in vending machines.
  - (d) Sell or accept orders for cigarettes that are to be transported from a point outside this state to a consumer within this state.
  - (e) Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this state.
  - (f) Give cigarettes as a sample, prize, gift or other promotion.
- (3) "Manufacturer" means:
  - (a) An entity that produces, or causes the production of, cigarettes for sale in this state;
  - (b) An importer or first purchaser of cigarettes that intends to resell within this state cigarettes that were produced for sale outside this state; or
  - (c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.
- (4) "Packaging" includes, but is not limited to, cigarette soft packs, boxes, cartons and cases.
- (5) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.
- (6) "Reduced ignition propensity" means meeting the fire safety performance standard described in ORS 476.770 (6).
- (7) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.
- (8) "Retail dealer" means a person, other than a manufacturer or wholesale dealer, that engages in distributing cigarettes.
- (9) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or nonmonetary consideration.
- (10) "Variety" means a type of cigarette marketed by the manufacturer as being distinct from other types of cigarettes on the basis of brand name, length, filter, wrapping, flavoring or other characteristics as the State Fire Marshal may provide by rule.

(11) "Wholesale dealer" means a person that distributes cigarettes to:

(a) A retail dealer or other person for resale; or

(b) A person that owns, operates or maintains cigarette vending machines on premises owned or operated by another person. [2007 c.34 §1]

**Note:** 476.755 to 476.806 and 476.995 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 476 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**476.760 Prohibition against distributing or offering certain cigarettes; improper packaging markings; seizure and forfeiture; interagency agreements; inspections; rules.** (1) A person may not distribute or offer to sell a cigarette within this state unless the cigarette is of a variety the State Fire Marshal has determined to have reduced ignition propensity.

(2) Cigarette packaging may not bear a marking or other device identifying the packaged cigarettes as having reduced ignition propensity other than a packaging marking approved for use with those cigarettes by the State Fire Marshal under ORS 476.785. This subsection does not apply if the cigarettes are in interstate commerce and not intended for distribution in this state.

(3) The State Fire Marshal, an authorized representative of the State Fire Marshal or any law enforcement agency may immediately seize and subject to forfeiture any cigarettes distributed or offered for sale in violation of subsection (1) of this section and any packaging, and cigarettes contained in that packaging, that violates subsection (2) of this section. The State Fire Marshal shall destroy cigarettes and packaging seized and forfeited under this subsection. However, prior to destroying cigarettes or packaging seized under this subsection, the State Fire Marshal shall allow the true holder of the trademark rights in the cigarette variety to inspect the cigarettes and packaging.

(4) The State Fire Marshal may enter into a cooperative agreement with any state or local agency that allows the agency to act as an authorized representative of the State Fire Marshal for enforcement purposes under this section.

(5)(a) The State Fire Marshal or an authorized representative, upon oral or written demand, may inspect the inventory of cigarette manufacturers, wholesale or retail dealers and transporters as the State Fire Marshal or an authorized representative deems necessary to ensure compliance with this section. The State Fire Marshal may adopt rules to require reports, in a form prescribed by the State Fire Marshal, by cigarette manufacturers, wholesale or retail dealers and transporters for the purpose of ensuring compliance with this section.

(b) As used in this subsection, "transporter" has the meaning given that term in ORS 323.010. [2007 c.34 §2]

**Note:** See note under 476.755.

**476.765 Imposition of civil penalties; bringing of actions.** (1) The State Fire Marshal shall impose civil penalties under ORS 476.995 in the manner provided by ORS 183.745.

(2) The Attorney General may bring an action at the request of the office of the State Fire Marshal, in the name of the state, seeking:

(a) Injunctive relief to prevent or end a violation of ORS 476.760;

(b) To recover civil penalties imposed under ORS 476.995; or

(c) To recover attorney fees and other enforcement costs and disbursements. [2007 c.34 §4]

**Note:** See note under 476.755.

**476.770 Determination of cigarette variety ignition propensity; reduced ignition propensity standard; listing; cigarette design; rules.** (1) For each variety of cigarette sold or proposed for sale in this state, the State Fire Marshal shall determine whether that variety of cigarette has reduced ignition propensity.

(2) Any cigarette variety certified by a manufacturer under ORS 476.780 shall be determined to have reduced ignition propensity.

(3) Except as provided in this section, ignition propensity testing certified, conducted or accepted by a manufacturer or the State Fire Marshal must be performed using ASTM International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes. The ignition propensity testing must be conducted on 10 layers of filter paper. Forty replicate tests shall constitute a complete test trial for each cigarette variety tested. The fire safety performance standard described in subsection (6) of this section applies only to a completed test trial.

(4) The State Fire Marshal may adopt an ignition propensity testing method developed by ASTM International as a modification or replacement of the method designated by subsection (3) of this section if the State Fire Marshal, by rule, deems the modified or replacement method acceptable for determining cigarette fire safety. However, the State Fire Marshal may not adopt a modified or replacement method that in repeated testing results in a change in the percentage of cigarettes exhibiting full-length burns from the percentage produced on the same variety of cigarettes by use of the ASTM E2187-04 method or that otherwise affects the ability of the cigarette to meet the fire safety performance standard described in subsection (6) of this section.

(5) If the State Fire Marshal determines that ignition propensity testing cannot be performed on a cigarette using a method described in subsection (3) or (4) of this section, the manufacturer may propose an alternative testing method and an alternative fire safety performance standard for the variety. If the State Fire Marshal approves the alternative testing method and determines that the alternative fire safety performance standard is equivalent to the fire safety performance standard described in subsection (6) of this section, the manufacturer may use the alternative testing method and the alternative fire safety performance standard for the purpose of certifying the variety of cigarette under ORS 476.780. Except as provided under the approved alternative testing method and the alternative fire safety performance standard, a cigarette variety described in this subsection remains subject to ORS 476.755 to 476.790 and 476.995.

(6) For a cigarette variety to be declared to have reduced ignition propensity, no more than 25 percent of the cigarettes in a complete test trial conducted in accordance with an ignition propensity testing method described in this section shall exhibit full-length burns.

(7) The State Fire Marshal shall issue, keep current and make available to the public a list of the cigarette varieties the State Fire Marshal has determined to have reduced ignition propensity.

(8) A cigarette listed in a certification under ORS 476.780 that uses lowered permeability bands in the cigarette paper to achieve compliance with the fire safety performance standard described in subsection (6) of this section must have at least two nominally identical bands on the paper surrounding the tobacco column. If the bands are not positioned on the cigarette by design, at least one complete band must be at least 15 millimeters from the lighting end of the cigarette. If the bands are positioned on the cigarette by design, the cigarette must have at least two bands that are entirely located at least 15 millimeters from the lighting end and:

(a) If the cigarette is filtered, that are located at least 10 millimeters from the filter end of the tobacco column; or

(b) If the cigarette is nonfiltered, that are located at least 10 millimeters from the labeled end of the tobacco column. [2007 c.34 §5]

**Note:** See note under 476.755.

**476.775 Laboratories; ignition propensity testing.** (1) A laboratory that conducts ignition propensity testing for purposes of ORS 476.770 must have a quality control and assurance program. The program shall be designed to ensure the testing repeatability value for all test trials used to certify a cigarette variety. The repeatability value of ignition propensity testing may not be greater than 0.19.

(2) Ignition propensity testing used in a manufacturer certification submitted under ORS 476.780 must be conducted in a laboratory that has been accredited under:

(a) The ISO/IEC 17025 standard of the International Organization for Standardization, as amended and in effect on April 17, 2007; or

(b) A standard recognized in State Fire Marshal rules as comparable to prevailing international accreditation standards. [2007 c.34 §6]

**Note:** See note under 476.755.

**476.780 Cigarette variety certification by manufacturer; retesting; record retention; unfavorable determination by State Fire Marshal.** (1) A manufacturer shall submit a written certification attesting that each variety of cigarette listed in the certification has been subjected to ignition propensity testing described in ORS 476.770 and meets the fire safety performance standard described in ORS 476.770 (6).

(2) The certification shall provide the following information for each variety of cigarette listed:

(a) The brand name shown on the cigarette packaging.

(b) The style, such as light or ultralight.

(c) The length in millimeters.

(d) The circumference in millimeters.

(e) The flavor, such as menthol or chocolate, if applicable.

(f) Whether the cigarette is filtered or nonfiltered.

(g) A packaging description, such as soft pack or box.

(h) A description of the packaging marking approved by the State Fire Marshal under ORS 476.785.

(i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the manufacturer.

(j) The date of the ignition propensity testing.

(3) The certification of a cigarette variety is valid for three years from the date of receipt by the State Fire Marshal.

(4) If the manufacturer certifies a cigarette variety and later makes any change that is likely to alter the cigarette variety's compliance with the fire safety performance standard described in ORS 476.770 (6), before distributing the changed cigarette variety in this state the manufacturer shall retest the ignition propensity of that variety. Notwithstanding subsection (3) of this section, a manufacturer may not sell a cigarette variety described in this subsection unless that variety continues to meet the fire safety performance standard described in ORS 476.770 (6).

(5) A manufacturer shall retain copies of all ignition propensity test data for cigarette varieties listed in the certification, including any retesting performed under subsection (4) of this section. The manufacturer shall retain the test data for not less than three years. The manufacturer shall provide copies of the test data upon request to the State Fire Marshal and to the Attorney General. Failure of a manufacturer to provide copies of ignition propensity test data requested by the State Fire Marshal or the Attorney General creates a rebuttable presumption that a cigarette variety does not meet the fire safety performance standard described in ORS 476.770 (6).

(6) The State Fire Marshal may determine that a cigarette variety certified under this section does not have reduced ignition propensity only if:

(a) The test data provided to the State Fire Marshal by the manufacturer demonstrate that the cigarette variety does not meet the fire safety performance standard described in ORS 476.770 (6); or

(b) The State Fire Marshal conducts ignition propensity testing on the cigarette variety and the test results demonstrate that the cigarette variety does not meet the fire safety performance standard described in ORS 476.770 (6).

(7) Ignition propensity testing by the State Fire Marshal under subsection (6) of this section shall be conducted in accordance with the testing requirements applicable to manufacturers by a laboratory meeting the requirements described under ORS 476.775.

(8) Upon a determination by the State Fire Marshal under subsection (6) of this section, the State Fire Marshal may seek the remedies described in ORS 476.765. [2007 c.34 §7]

**Note:** See note under 476.755.

**476.785 Cigarette packaging markings.** (1) A manufacturer shall place a single type of marking on all packaging for cigarettes of the manufacturer sold in this state to indicate that cigarettes of the manufacturer sold in this state meet the fire safety performance standard established in ORS 476.770 (6).

(2) A manufacturer shall submit to the State Fire Marshal a proposal for marking cigarette packaging. The proposed marking must be in an eight-point font or larger and consist of one of the following:

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

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the packaging or cellophane wrapping.

(c) Printed, stamped, engraved or embossed text indicating that the cigarettes meet the fire safety performance standard established in ORS 476.770 (6).

(3) The State Fire Marshal shall approve or disapprove the proposal for packaging marking. In determining whether to approve or disapprove a proposal for packaging marking, the State Fire Marshal:

(a) Shall give preference to packaging marking that is consistent with the packaging marking in use and approved for that cigarette variety in the State of New York; and

(b) Shall approve packaging marking that bears the letters "FSC."

(4) A proposal for packaging marking is approved unless the State Fire Marshal disapproves the proposal on or before the 10th day after receipt. The approved packaging marking may be used for the cigarette variety upon receipt by the State Fire Marshal of the manufacturer certification for that variety under ORS 476.780.

(5) A manufacturer may not modify the approved packaging marking unless the modification has been submitted to and approved by the State Fire Marshal. [2007 c.34 §8]

**Note:** See note under 476.755.

**476.790 Providing copies of cigarette certification and illustration of packaging markings.** (1) A manufacturer selling cigarettes to a wholesale dealer in this state shall provide the wholesale dealer with a copy of the certification for those cigarettes submitted to the State

Fire Marshal under ORS 476.780. The manufacturer shall also provide the wholesale dealer with copies of an illustration of the packaging marking required under ORS 476.785. The manufacturer shall supply copies of the illustration to the wholesale dealer in sufficient number to allow one copy for each retail dealer receiving the cigarettes from the wholesale dealer.

(2) A wholesale dealer shall provide a copy of the illustration described in subsection (1) of this section to each retail dealer that receives cigarettes of the manufacturer from the wholesale dealer. A wholesale dealer is not required to provide a retail dealer of the cigarettes of a manufacturer with more than one copy of the illustration for that manufacturer. [2007 c.34 §9]

**Note:** See note under 476.755.

**476.995 Penalty for violation of ORS 476.760.** The State Fire Marshal may impose a civil penalty for a violation of ORS 476.760 (1). The civil penalty may not exceed:

(1) For a person that distributes or offers to sell cigarettes to a wholesale or retail dealer, \$10,000 or five times the wholesale invoice cost of the cigarettes involved in the violation, whichever is greater.

(2) For a person that distributes or offers to sell cigarettes to consumers:

(a) For a distribution or offer of not more than 1,000 cigarettes, \$500.

(b) For a distribution or offer of more than 1,000 cigarettes, \$1,000 or five times the retail value of the cigarettes involved in the violation, whichever is greater.

(3) For a continuing violation of ORS 476.760 (1), each day that a person distributes or offers to sell cigarettes after being notified by the State Fire Marshal that the distribution or offer to sell cigarettes violates ORS 476.760 (1) is a separate violation subject to civil penalty. For purposes of this subsection, a person is notified by the State Fire Marshal that the distribution or offer to sell cigarettes violates ORS 476.760 (1) only after the person receives a notice, has been provided an opportunity for a hearing and has exhausted all opportunities for administrative or judicial review of the notice in the manner provided for contested cases under ORS chapter 183. [2007 c.34 §3]

**Note:** See note under 476.755.