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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

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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.

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(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.

476.800 [1973 c.667 §1; 1977 c.104 §3; renumbered 476.055]

476.801 Cigarette varieties not subject to ORS 476.755 to 476.790 and 476.995. ORS 476.755 to 476.790 and 476.995 do not apply to any cigarette variety that the State Fire Marshal determines is subject to a federal law that imposes a cigarette fire safety performance standard that is at least as strict as the standard imposed under ORS 476.770. [2007 c.34 §13]

Note: See note under 476.755.

476.805 [1973 c.667 §2; 1985 c.118 §5; repealed by 1993 c.185 §34]

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

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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.