

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507- 52

REDUCED IGNITION PROPENSITY CIGARETTE STANDARDS AND CERTIFICATION

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules as necessary to carry out the duties of the Division of Fire Prevention and Control. Section 24-33.5-1214, C.R.S. establishes the authority and duty of the Division of Fire Prevention & Control to ensure that cigarettes sold or offered for sale in Colorado meet the ignition strength standards specified in Section 24-33.5-1214, C.R.S. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

The purpose of this rule change is to provide clarification and written directions to the Certification Application and Recertification Procedures under section 3.4, as well as to provide Supplemental Application Procedures under the new section 3.5.

This rule change also allows for general clean-up of definitions, the removal or update of outdated provisions, as well as grammatical and formatting inconsistencies or errors.

Mike Morgan, Division Director
Colorado Department of Public Safety
Division of Fire Prevention and Control

Date of Adoption

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[Editor's Notes follow the text of the rules at the end of this CCR Document.]

SECTION 1 PURPOSE AND AUTHORITY TO PROMULGATE RULES

- 1.1. Section 24-33.5-1214, C.R.S. establishes the authority and duty of the Division of Fire **Prevention & Control Safety** (hereafter Division) to ensure that cigarettes sold or offered for sale in Colorado meet the ignition strength standards specified in Section 24-33.5-1214, C.R.S.
- 1.2. The Director of the Division is authorized by the provisions of Section 24-33.5-1214, C.R.S. to promulgate rules and regulations to administer the section. This regulation is adopted pursuant to that authority and is intended to be consistent with the requirements of the State Administrative Procedures Act (APA), Section 24-4-101 et seq., C.R.S.

SECTION 2 DEFINITIONS

- 2.1. "Administrator" means the state fire suppression administrator, who shall be the Director of the Division of Fire **Prevention & Control Safety**, under the Department of Public Safety, or the designee of such Director.
- 2.2. "Agent" means a person licensed by the Department of Revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.
- 2.3. "ASTM International" means the American Society for Testing and Materials or its successor organization.
- 2.4. "Brand Family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "kings", and "100s", and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- 2.5. "Cigarette" means any roll for smoking, whether made wholly or partly of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.
- 2.6. "Consumer testing" means an assessment of cigarettes that is conducted by, or under the control and direction of, a manufacturer for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.
- 2.7. "Manufacturer" means any one or more of the following:
 - 2.7.1. An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured with the intent that such cigarettes be sold in Colorado, regardless of where the cigarettes are manufactured or produced and regardless of whether they are imported from outside the United States;

- 2.7.2. The first purchaser anywhere that intends to resell, in the United States, cigarettes manufactured anywhere that the original manufacturer or producer does not intend to be sold in the United States; or
- 2.7.3. An entity that becomes a successor to an entity described in paragraph 2.7.1 or 2.7.2.
- 2.8. "Quality control and quality assurance program" means a set of laboratory procedures implemented to ensure that:
 - 2.8.1. Operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of cigarette testing; and
 - 2.8.2. The testing repeatability remains within the required repeatability values stated in Section 24-33.5-1214 (2) (a) (II) (F), C.R.S., for all test trials used to certify cigarettes in accordance with section 24-33.5-1214 (3), C.R.S.
- 2.9. "Repeatability", with respect to a cigarette test trial, refers to 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.
- 2.10. "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.
- 2.11. "Sale" means any transfer of title, possession, or both, or exchange or barter, conditional or otherwise, 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.
- 2.12. "Sell" means to sell or to offer or agree to sell.
- 2.13. "UPC Symbol" means the symbol signifying the Universal Product Code.
- 2.14. "Wholesale dealer" means:
 - 2.14.1. Any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale; and
 - 2.14.2. 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.

SECTION 3 ACCEPTANCE REQUIREMENTS

- 3.1. Except as otherwise provided in Section 10, no cigarettes shall be sold or offered for sale in this state, or offered for sale or sold to persons located in this state, after July 31, 2009, without a certification accepted by the Division. The Division will accept certifications based upon the submission of the information and fees required by this regulation. The Division will provide manufacturers a reasonable timeframe to provide missing information or to pay the required fee.
- 3.2. Acceptance requirements. In order to be accepted:
 - 3.2.1. The cigarettes must have been tested in accordance with the test method and meet the performance standard specified in Section 4 of this rule;

- 3.2.2. A written certification of the test and performance results required in Section 4 must have been filed by the manufacturer with the Administrator;
 - 3.2.3. An application for each brand family, which lists each cigarette within the brand family seeking acceptance, must be filed with the Administrator;
 - 3.2.4. The fees specified in 3.5 must be paid in full; and
 - 3.2.5. The cigarettes must be marked in accordance with Section 5 of this rule.
- 3.3. Certification of testing and test results by the manufacturer.
- 3.3.1. Each manufacturer shall submit to the Administrator a written certification attesting that each cigarette listed in the certification:
 - 3.3.1.1. Has been tested in accordance with Section 4 of this rule; and
 - 3.3.1.2. Meets the performance standard set forth in Section 4 of this rule.
 - 3.3.2. Each cigarette listed in the certification submitted pursuant to paragraph 3.2.3 shall be described with the following information:
 - 3.3.2.1. Brand or trade name on the package;
 - 3.3.2.2. Style, such as ~~full flavor or Blue light or ultra-light~~;
 - 3.3.2.3. Length in millimeters;
 - 3.3.2.4. Circumference in millimeters;
 - 3.3.2.5. Flavor, menthol or ~~non-menthol as chocolate if~~ applicable;
 - 3.3.2.6. Filter or no filter;
 - 3.3.2.7. Package description, such as soft pack or ~~hard pack box~~;
 - 3.3.2.8. Marking pursuant to subsection 5 of this section;
 - 3.3.2.9. The name, address, and telephone number of the laboratory that conducted the tests, if different from that of the manufacturer; and
 - 3.3.2.10. The date that the testing occurred.
 - 3.3.3. Certifications under this Subsection 3.3 shall be made available to the Attorney General for purposes consistent with Section 24-33.5-1214 (3), C.R.S. and to the Department of Revenue for the purpose of ensuring compliance with the Section 24-33.5-1214 (3), C.R.S.
- 3.4. ~~Certification Application and Recertification Procedures —Each cigarette certified under this rule shall be subject to recertification every three years.~~
- 3.4.1. ~~An applicant must apply for certification in a format provided by the Division. Application instructions are available on the Division's website (dfpc.colorado.gov/FLS).~~
 - 3.4.2. ~~The certification period will expire on June 30th every three years regardless of when the certification was issued during the 3-year timeframe, unless earlier suspended or revoked. There will be no pro-rating of certification fees,~~

3.4.2.1. Certification timeframe examples are as follows:

1. July 1st 2021 thru June 30th 2024
2. July 1st 2024 thru June 30th 2027
3. July 1st 2027 thru June 30th 2030

3.4.3. Applications for recertification shall be submitted no more than 30 days prior to expiration, subject to a 60-day grace period before being considered expired with a non-renewal status.

3.5. Supplemental Application Procedures

3.5.1. An applicant must apply for supplemental certification in a format provided by the Division. Application instructions are available on the Division's website (dfpc.colorado.gov/FLS).

3.5.1.1. Supplemental certification is an addition or significant change to an existing brand family such as adding styles.

3.5.2. The certification period for supplemental certification will expire on June 30th of the 3-year timeframe the original brand family was certified, unless earlier suspended or revoked.

3.6. Fees – At the time it submits a written certification under this rule, a manufacturer shall pay to the Department of Public Safety a fee of one thousand dollars (\$1,000.00) for each brand family of cigarettes listed in the certification. The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

3.7. Changes to Cigarettes – If a manufacturer has certified a cigarette pursuant to this rule, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced ignition propensity standard required by Section 24-33.5-1214, C.R.S., such cigarette shall 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 Section 4 of this rule and maintains records of the retesting as required by Section 7 of this rule. Any altered cigarette that does not meet the performance standard set forth in Section 4 may not be sold in this state.

3.8. Notification of acceptance of certification will be sent to the manufacturer. Notifications by the Division will be effective on the date indicated on the certificate e-mailed to the manufacturer.

3.9. Lists of certified cigarettes.

3.9.1. The Division will maintain a list of cigarettes certified under Section 24-33.5-1214, C.R.S. and this rule on its website.

3.9.2. The Division will provide the Department of Revenue and the Attorney General a current list of cigarettes certified under Section 24-33.5-1214, C.R.S. and this rule.

~~3.9 Certification Submissions – Applications for certification acceptance may be requested from and mailed to the Colorado Division of Fire Safety, 9195 East Mineral Ave., Suite 234, Centennial, Colorado 80012.~~

SECTION 4 TESTING AND PERFORMANCE STANDARDS

4.1. Except as provided in Section 10, no cigarettes shall be sold or offered for sale in this state, or offered for sale or sold to persons located in this state, after July 31, 2009, unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this Section 4.

4.2. Testing

4.2.1. Testing of cigarettes shall be conducted in accordance with ASTM international standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".

4.2.2. Testing shall be conducted on ten layers of filter paper.

4.2.3. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this Section 4 shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested.

4.2.4. The performance standard required by this Section 4 shall be applied only to a complete test trial.

4.2.5. 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.

4.2.6. A laboratory conducting testing in accordance with this Section 4 shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results and limit the repeatability value to no greater than nineteen percent.

4.2.7. This Section 4 shall not require additional testing of cigarettes that have been tested for other purposes in a manner consistent with this section.

4.3. Testing by the Division

4.3.1. Testing performed or sponsored by the Division in order to determine a cigarette's compliance with the performance standard shall be conducted in accordance with Subsection 4.2.

4.3.2. The Division may test cigarettes for compliance on a random basis.

4.3.3. The Division may test a particular cigarette brand for compliance based upon complaints or a history of a particular cigarette brand being involved in starting fires.

4.4. Lowered Permeability Bands

4.4.1. Each cigarette listed in a certification submitted pursuant to Section 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this Section 4 shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall 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 non-filtered cigarettes.

4.5. Alternative Testing

4.5.1. A manufacturer of a cigarette that the Division determines cannot be tested in

accordance with the test method prescribed in 4.2, shall propose a test method and performance standard for the cigarette to the Division.

- 4.5.2. Upon approval of the proposed test method and a determination by the Division that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in 4.2, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to this Section 4.
- 4.5.3. If the Division determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are substantially similar to those contained in 4.2, and the Division 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 reduced cigarette ignition propensity standards of such state's laws or rules under a legal provision comparable to this Section 4, then the Division shall authorize the manufacturer to employ the alternative test method and performance standard to certify such cigarette for sale in Colorado unless the Division demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this Rule shall apply to the manufacturer.

SECTION 5 LABELING

- 5.1. Except as otherwise provided Section 10, no cigarettes shall be sold or offered for sale in this state, or offered for sale or sold to persons located in this state, after July 31, 2009, unless the cigarettes have been marked in accordance with this Section 5.
- 5.2. Effective July 31, 2009, cigarettes that are certified by a manufacturer in accordance with Section 3 shall be marked to indicate compliance with the requirements of Section 24-33.5-1214 (4), C.R.S. Such marking shall be in eight-point type or larger and shall consist of one or more of the following:
 - 5.2.1. Modification of the package's UPC symbol to include a visible mark printed at or around the area of the UPC symbol. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC symbol.
 - 5.2.2. Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed on the cigarette package or cellophane wrap; or
 - 5.2.3. Stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards of Section 24-33.5-1214, C.R.S.
- 5.3. A manufacturer shall use only one marking and shall apply the marking uniformly to all brands and packages, including but not limited to packs, cartons, and cases, marketed by the manufacturer.
- 5.4. The manufacturer shall notify the Division as to the marking selected by the manufacturer.
- 5.5. A manufacturer shall not modify its approved marking unless the modification has been approved by the Division. This Subsection 5.5 shall not apply if the modified marking is a pre-approved marking pursuant to 5.7.
 - 5.5.1. If the manufacturer modifies its approved marking with a pre-approved marking pursuant to 5.7, the manufacturer will notify the Division of the modification.
- 5.6. Unless pre-approved pursuant to 5.7, prior to the certification of any cigarette, the manufacturer shall present its proposed marking to the Division, which shall have discretion to approve or disapprove the marking.

- 5.6.1. Proposed markings shall be deemed approved, unless the Division notifies the manufacturer of a disapproval within ten business days after the Division's receipt of a complete request for approval. Disapproval notifications by the Division will be effective on the date a notification letter is postmarked or a notification is e-mailed.

5.7. Pre-Approved Markings

- 5.7.1. The following markings are pre-approved by the Division and need not be submitted to the Division for approval prior to their use by a manufacturer:

- 5.7.1.1. Any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes; or

- 5.7.1.2. The letters "FSC", signifying "fire standards compliant", appearing in eight-point type or larger and permanently stamped, engraved, embossed, or printed on the package at or near the UPC symbol.

SECTION 6 COPIES OF CERTIFICATIONS AND MARKINGS

- 6.1. Manufacturers certifying cigarettes in accordance with Section 3 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 pursuant to Section 5 for each retail dealer to which the wholesale dealers or agents sell cigarettes.
- 6.2. Wholesale dealers and agents shall provide copies of these package markings received from manufacturers to all retail dealers to which they sell cigarettes.
- 6.3. Wholesale dealers, agents, and retail dealers shall permit the Administrator, the Department of Revenue, the Attorney General, and employees thereof to inspect markings of cigarette packaging marked in accordance with Section 5.

SECTION 7 RECORDKEEPING

- 7.1. Recordkeeping – 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 Division and the Attorney General upon written request. Any manufacturer who fails to make copies of such reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make such copies available.

SECTION 8 DEPARTMENT OF REVENUE TO INSPECT

- 8.1. The Department of Revenue, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers as authorized by law, may inspect cigarettes to determine whether the cigarettes are marked as required by Section 5.
- 8.2. If the cigarettes are not marked as required, the Department of Revenue shall notify the Division.

SECTION 9 ENFORCEMENT AND PENALTIES

- 9.1. To enforce this rule, the Attorney General, the Department of Revenue, the Division, all duly authorized employees and agents thereof, and all law enforcement personnel 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 any cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale are required to give the Attorney General, the Department of Revenue, the Division, all duly authorized employees

and agents thereof, and all law enforcement personnel the means, facilities, and opportunity for the examinations authorized by Section 24-33.5-1214 (7), C.R.S.

- 9.2. A manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes, other than at retail, in violation of Section 24-33.5-1214 (2), C.R.S. shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.
- 9.3. A retail dealer who knowingly sells or offers to sell cigarettes in violation of Section 24-33.5-1214 (2), C.R.S. shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such retail dealer shall not exceed twenty-five thousand dollars for sales or offers to sell during any thirty-day period.
- 9.4. 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 Section 3 of this rule shall be subject to a civil penalty of at least seventy-five thousand dollars, not to exceed two hundred fifty thousand dollars for each such false certification.
- 9.5. A person who violates any provision of Section 24-33.5-1214, C.R.S. for which a penalty is not specifically provided shall be subject to a civil penalty of up to one thousand dollars for a first violation and up to five thousand dollars for a second or subsequent violation.
- 9.6. Cigarettes that have been sold or offered for sale and that do not comply with the performance standard required by Section 4 of this rule shall be subject to forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S. Cigarettes forfeited pursuant to this subsection 9.6 shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.
- 9.7. Whenever a law enforcement officer or duly authorized agent of the Director discovers cigarettes that have not been marked as required by Section 5 of this rule, such officer or agent is authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Department of Revenue and shall be forfeited to the state.
Cigarettes forfeited pursuant to this subsection 9.7 shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.

SECTION 10: EXCEPTIONS TO APPROVAL OF CERTIFICATION REQUIREMENTS, TRANSITION PERIOD

10.1. The requirements of this rule shall not be construed to prohibit:

- 10.1.1. ~~Wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 31, 2009, if a wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes before said date and that the inventory was purchased before said date in comparable quantity to the inventory purchased during the same period of the immediately preceding year; or~~ Any person or entity from manufacturing or selling cigarettes that do not meet the requirements of this rule, if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States, where the person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in Colorado; or

~~10.1.2.—~~

10.2. The sale of cigarettes solely for the purpose of consumer testing.

- 10.2.1. For consumer testing of cigarettes that are not certified, the manufacturer must file written notice of the testing to be conducted within the state. The notice shall contain the quantity of cigarettes to be tested, the method of distribution and the duration of the consumer testing.

SECTION 11: TOBACCO PRODUCT MANUFACTURER CERTIFICATION

- 11.1. The certification required under this regulation is solely for the purpose of assuring that a manufacturer's cigarettes comply with the reduced ignition propensity cigarette standards in section 24-33.5-1214, C.R.S. and this regulation.
- 11.2. The certification required under this regulation does not replace or supersede the Tobacco Product Manufacturer Certification required under section 39-28-303, C.R.S.
- 11.3. All tobacco product manufacturers who want to sell their cigarettes in Colorado must continue to file a Tobacco Product Manufacturer Certification with the Department of Revenue and the Office of the Attorney General each year between April 16th and April 30th.

Editor's Notes

History

Entire rule eff. 01/30/2009.