WEST VIRGINIA CODE: §47-25-3

§47-25-3. Test method and performance standard.

(a) Except as provided in subsection (g) of this section and in section ten of this article, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state, unless: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section; (ii) a written certification has been filed by the manufacturer with the state Fire Marshal in accordance with section four of this article; and (iii) the cigarettes have been marked in accordance with section five of this article.

(1) 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.

(2) Testing shall be conducted on ten layers of filter paper.

(3) 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 shall comprise a complete test trial for each cigarette tested.

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

(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 (ISO) or other comparable accreditation standard.

(6) 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 be no greater than 0.19.

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

(8) Testing performed 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 section four of this article 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 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

WV Legislature

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.

(c) A manufacturer of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (1), subsection (a) of this section shall propose a test method and performance standard for the cigarette to the state Fire Marshal. If the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision (3) of said subsection, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to section four of this article. If 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 article and 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 manufacturer may employ the alternative test method and performance standard to certify cigarettes for sale in this state, unless the state Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this article. All other applicable requirements of this section apply to the manufacturer.

(d) 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 Fire Marshal 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 $10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(e) A subsequent ASTM standard test method for measuring the ignition propensity of cigarettes may be used, if 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 subdivision (3), subsection (a) of this section.

(f) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature, if appropriate, recommendations for legislation to improve the effectiveness of this article. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

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

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this article 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

WV Legislature

dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, 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 those cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment.

(h) This article shall be implemented and construed as to effectuate its general purpose to make uniform the law of those states that have enacted reduced cigarette ignition propensity laws.

WV Legislature