

TITLE 39
HEALTH AND SAFETY

CHAPTER 89
REDUCED CIGARETTE IGNITION PROPENSITY

39-8901. SHORT TITLE. This act may be known and cited as the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act."
[39-8901, added 2008, ch. 278, sec. 1, p. 792.]

39-8902. DEFINITIONS. As used in this chapter:

(1) "Agent" means any person authorized by the state tax commission to purchase and affix stamps on packages of cigarettes.

(2) "Cigarette" means any roll for smoking, whether made wholly or in part 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, other than tobacco.

(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; or

(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 paragraph (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. The program ensures that the testing repeatability remains within the required repeatability values stated in section 39-8903(1)(f), Idaho Code, 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 (95%) 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" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. 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.

(8) "Wholesale dealer" means any person other than a manufacturer 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 (1) or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

[39-8902, added 2008, ch. 278, sec. 1, p. 792.]

39-8903. TEST METHOD AND PERFORMANCE STANDARD. (1) Except as provided in subsection (7) of this section, 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 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 fire marshal in accordance with section 39-8904, Idaho Code, and the cigarettes have been marked in accordance with section 39-8905, Idaho Code.

(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 (10) layers of filter paper.

(c) No more than twenty-five percent (25%) of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty (40) replicate tests shall comprise a complete test trial for each cigarette tested.

(d) The performance standard required in this section shall 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 fire marshal.

(f) 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.

(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 fire marshal to determine a cigarette's compliance with the performance standard required in this section shall be conducted in accordance with this section.

(2) Each cigarette listed in a certification submitted pursuant to section 39-8904, Idaho Code, 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 (2) nominally identical bands on the paper surrounding the tobacco column. At least one (1) complete band shall be located at least fifteen (15) millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two (2) bands fully located at least fifteen (15) millimeters from the lighting end and ten (10) millimeters from the filter end of the tobacco column, or ten (10) millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in paragraph (1) (a) of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (1) (c) of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to section 39-8904, Idaho Code. If the state fire marshal 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 fire marshal 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 fire marshal 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 fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section shall 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 (3) years, and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

(5) The state fire marshal 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) The state fire marshal shall review the effectiveness of this section and report the state fire marshal's findings every three (3) years to the legislature and, if appropriate, make recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three (3) year period.

(7) The requirements of subsection (1) of this section shall not prohibit:

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

(b) 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, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

(8) This chapter shall be implemented in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

[39-8903, added 2008, ch. 278, sec. 1, p. 793.]

39-8904. CERTIFICATION AND PRODUCT CHANGE. (1) Each manufacturer shall submit to the state fire marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with section 39-8903, Idaho Code; and

(b) Each cigarette listed in the certification meets the performance standard set forth in section 39-8903, Idaho Code.

(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 pursuant to section 39-8905, Idaho Code;

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

(j) The date that the testing occurred.

(3) The certifications shall be made available to the attorney general for purposes consistent with this chapter and the state tax commission for purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every three (3) years.

(5) For each brand family listed in a certification, a manufacturer shall pay to the state fire marshal a one thousand dollar (\$1000) fee. 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 (3) year certification period.

(6) All moneys collected as certification fees submitted by manufacturers shall be deposited in the state treasury to the credit of a special account in the state operating fund hereby created to be known as the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund." The fund shall, in addition to any other moneys made available for that purpose, be available to the state fire marshal solely to support processing, testing, enforcement and oversight activities under this chapter.

(7) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required in this chapter, that 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 39-8903, Idaho Code, and maintains records of that retesting as required by section 39-8903, Idaho Code. Any altered cigarette which does not meet the performance standard set forth in section 39-8903, Idaho Code, may not be sold in this state.

[39-8904, added 2008, ch. 278, sec. 1, p. 795.]

39-8905. MARKING OF CIGARETTE PACKAGING. (1) Cigarettes that are certified by a manufacturer in accordance with section 39-8904, Idaho Code, shall be marked to indicate compliance with the requirements of section

39-8903, Idaho Code. The marking shall be in eight (8) point type or larger and consist of:

(a) Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC; 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 (1) 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 fire marshal shall 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 fire marshal for approval. Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve:

(a) Any marking in use and approved for sale in another state; or

(b) The letters "FSC," which signify fire standards compliant, appearing in eight (8) point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

Proposed markings shall be deemed approved if the state fire marshal fails to act within ten (10) business days of receiving a request for approval.

(5) No manufacturer shall modify its approved marking unless the modification has been approved by the state fire marshal in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with section 39-8904, Idaho Code, 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 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 fire marshal, the state tax commission, the attorney general, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

[39-8905, added 2008, ch. 278, sec. 1, p. 796.]

39-8906. 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 section 39-8903, Idaho Code, shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale; provided however, that in no case shall the penalty against that person or entity exceed one hundred thousand dollars (\$100,000) during any thirty (30) day period.

(2) A retail dealer who knowingly sells or offers to sell cigarettes in violation of section 39-8903, Idaho Code, shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold or offered for sale; provided however, that in no case shall the penalty

against that retail dealer exceed twenty-five thousand dollars (\$25,000) during any thirty (30) 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 pursuant to section 39-8904, Idaho Code, shall be subject to a civil penalty of at least seventy-five thousand dollars (\$75,000) and not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

(4) Any person violating any other provision in this chapter shall be subject to a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by section 39-8903, Idaho Code, shall be subject to forfeiture. Cigarettes forfeited pursuant to this subsection shall be destroyed; provided however, that prior to the destruction of any cigarettes forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(6) In addition to any other remedy provided by law, the state fire marshal or attorney general may file an action in district 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 attorney's fees. Each violation of this chapter or of rules adopted under this chapter constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief.

(7) Whenever any law enforcement personnel or duly authorized representative of the state fire marshal shall discover any cigarettes that have not been marked in the manner required in section 39-8905, Idaho Code, the personnel is hereby authorized and empowered to seize and take possession of the cigarettes. The cigarettes shall be turned over to the state tax commission, and shall be forfeited to the state. Cigarettes seized pursuant to this subsection shall be destroyed; provided however, that prior to the destruction of any cigarettes seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

[39-8906, added 2008, ch. 278, sec. 1, p. 797.]

39-8907. IMPLEMENTATION. (1) The state fire marshal may promulgate rules pursuant to the provisions of chapter 52, title 67, Idaho Code, the administrative procedure act, necessary to effectuate the purposes of this chapter.

(2) The state tax commission in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, as authorized under chapter 25, title 63, Idaho Code, may inspect the cigarettes to determine if the cigarettes are marked as required in section 39-8905, Idaho Code. If the cigarettes are not marked as required, the state tax commission shall notify the state fire marshal.

[39-8907, added 2008, ch. 278, sec. 1, p. 798.]

39-8908. INSPECTION. To enforce the provisions of this chapter, the attorney general, the state tax commission and the state fire marshal, their

duly authorized representatives and other law enforcement personnel are hereby 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 hereby directed and required to give the attorney general, the state tax commission and the state fire marshal, their duly authorized representatives and other law enforcement personnel the means, facilities and opportunity for the examinations authorized in this section.

[39-8908, added 2008, ch. 278, sec. 1, p. 798.]

39-8909. REDUCED CIGARETTE IGNITION PROPENSITY AND FIREFIGHTER PROTECTION ACT FUND. All moneys collected as civil penalties under section 39-8906, Idaho Code, shall be deposited in the state treasury to the credit of a special account in the state operating fund hereby created to be known as the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Fund." The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for that purpose, be made available to the state fire marshal to support fire safety and prevention programs.

[39-8909, added 2008, ch. 278, sec. 1, p. 798.]

39-8910. SALE OUTSIDE OF IDAHO. Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 39-8903, Idaho Code, 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.

[39-8910, added 2008, ch. 278, sec. 1, p. 798.]

39-8911. PREEMPTION. This chapter shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective.

[39-8911, added 2008, ch. 278, sec. 1, p. 798.]