

227.772 Reduced cigarette ignition propensity standards -- Test methods -- Certification -- Reports and recommendations.

- (1)
 - (a) Except as provided in subsection (7) of this section, no cigarettes shall 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 standards specified in this section, a written certification has been filed by the manufacturer with the state fire marshal in accordance with KRS 227.774, and the cigarettes have been marked in accordance with KRS 227.776.
 - (b) 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."
 - (c) Testing shall be conducted on ten (10) layers of filter paper.
 - (d) 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.
 - (e) The performance standard required by this section shall only be applied to a complete test trial.
 - (f) 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.
 - (g) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than nineteen one-hundredths (0.19).
 - (h) This section does not require additional testing if cigarettes are tested consistent with KRS 227.770 to 227.784 for any other purpose.
 - (i) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.
- (2)
 - (a) Each cigarette listed in a certification submitted pursuant to KRS 227.774 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.
 - (b) 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) A manufacturer of a cigarette that the state fire marshal determines cannot be

tested in accordance with the test method prescribed in subsection (1)(b) 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 subsection (1)(d) of this section, the manufacturer may employ a test method and performance standard to certify the cigarette pursuant to KRS 227.774.

- (b) If the state fire marshal determines the existence of other cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in KRS 227.770 to 227.784, then the state fire marshal may authorize the 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 KRS 227.770 to 227.784. All other applicable requirements of this section shall apply to the manufacturer.
- (4) (a) 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 the reports available to the state fire marshal and the Attorney General upon written request.
 - (b) Any manufacturer who fails to make copies of the 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 these 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)(d) of this section.
 - (6) The state fire marshal shall review the effectiveness of this section and shall report every three (3) years to the General Assembly the fire marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted no later than October 1 of each three (3) year period.
 - (7) The requirements of this section shall not prohibit a wholesale dealer or retailer from selling its existing inventory of cigarettes on or after April 1, 2008, if the wholesale dealer or retailer can establish that state tax stamps were affixed to the cigarettes prior to April 1, 2008, and if the wholesale dealer or retailer can establish that the inventory was purchased prior to April 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.
 - (8) The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be the persuasive authority in the implementation of KRS 227.770 to 227.784.

Effective: April 1, 2008

History: Created 2007 Ky. Acts ch. 70, sec. 2, effective April 1, 2008.

Legislative Research Commission Note (4/1/2008). Under the authority of KRS 7.136(1), the Reviser of Statutes in codification has changed the internal numbering system of subsection (1) of this statute. No word in the text was changed in the process.