

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

TITLE 41: FIRE PROTECTION
CHAPTER I: OFFICE OF THE STATE FIRE MARSHALPART 400
FIRE SAFETY STANDARDS FOR CIGARETTES

Section	
400.10	Scope
400.20	Definitions
400.30	Test Method
400.40	Performance Standard
400.50	Test Data
400.60	Certification
400.70	Notification of Certification
400.80	Marking of Cigarette Packaging
400.90	Penalties
400.100	Federal Fire Safety Standards
400.110	Notification to OSFM

AUTHORITY: Implementing and authorized by the Cigarette Fire Safety Standard Act [425 ILCS 8].

SOURCE: Adopted at 32 Ill. Reg. 7921, effective May 7, 2008.

Section 400.10 Scope

- a) On and after January 1, 2008, no cigarettes subject to the provisions of the Cigarette Fire Safety Standard Act or this Part shall be sold or offered for sale in this State unless:
 - 1) the cigarettes have been tested in accordance with the test method prescribed in Section 400.30;
 - 2) the cigarettes meet the performance standard specified in Section 400.40; and
 - 3) a written certification has been filed by the manufacturer with the Office of the State Fire Marshal, Division of Safety Compliance, 1035 Stevenson Drive, Springfield IL 62703 and the Office of the Attorney General,

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

Tobacco Enforcement Bureau, 500 S. Second Street, Springfield IL 62706, in accordance with Section 400.60.

- b) Nothing in this Part shall prohibit wholesale dealers or retail dealers from selling their inventory of cigarettes existing on January 1, 2008, provided that the wholesale dealer or retail dealer can establish that Illinois State tax stamps were affixed to these cigarettes prior to January 1, 2008, and provided further that the wholesale dealer or retail dealer can establish that the inventory was purchased prior to January 1, 2008 in comparable quantity to the inventory purchased during the same period in the prior year.
- c) Nothing in this Part shall be construed to prohibit cigarettes that have not been certified by the manufacturer in accordance with Section 30 of the Act if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States.

Section 400.20 Definitions

For the purposes of this Part:

"Act" means the Cigarette Fire Safety Standard Act [425 ILCS 8].

"Agent" means any person licensed by the Department of Revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

"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 except tobacco.

"Manufacturer" means:

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;

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

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

any entity that becomes a successor of an entity described above.

"OSFM" means the Office of the State Fire Marshal.

"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. This program ensures that the testing repeatability remains within the required repeatability values stated in Section 400.30(e) of this Part for all test trials used to certify cigarettes in accordance with the Act.

"Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

"Retail Dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

"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 therefore. 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.

"Sell" means to sell or to offer or agree to sell.

"Wholesale Dealer" means any person 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 or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person. [425 ILCS 8/5]

Section 400.30 Test Method

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

- a) *Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04 (2004) "Standard Test Method for Measuring the Ignition Strength of Cigarettes". [425 ILCS 8/15(a)] This standard may be obtained from the publisher at ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken PA 19428-2959. This material is available for public inspection and distribution at the Office of the State Fire Marshal, 1035 Stevenson Drive, Springfield IL 62703.*
- b) *Testing shall be conducted on 10 layers of filter paper. [425 ILCS 8/15(b)]*
- c) *Forty replicate tests shall comprise a complete test trial for each cigarette tested. [425 ILCS 8/15(c)]*
- d) *The performance standard required by Section 400.40 shall only be applied to a complete test trial. [425 ILCS 8/15(d)]*
- e) *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 pursuant to Section 400.40. [425 ILCS 8/15(e)]*
- f) *This Part does not require additional testing, in accordance with this Section, if cigarettes are tested consistently with the Act for any other purpose. [425 ILCS 8/15(f)] OSFM may, at its sole discretion, conduct random independent tests of certified brands to verify the accuracy of the information submitted to OSFM by the manufacturer. This testing shall be conducted in accordance with this Section.*

Section 400.40 Performance Standard

- a) *When tested in accordance with Section 400.30, no more than 25 percent of the cigarettes tested in a test trial shall exhibit full length burns. [425 ILCS 8/20(a)]*
- b) *Each cigarette listed in a certification submitted pursuant to Section 400.60 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subsection (a) shall have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least 2 bands fully located at least 15 millimeters from the lighting end*

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for a non-filtered cigarette. [425 ILCS 8/20(b)]

- c) *The manufacturer of a cigarette that OSFM determines cannot be tested in accordance with the test method prescribed in Section 400.30 shall propose a test method and performance standard for that cigarette to OSFM. Upon approval of the proposed test method and a determination by OSFM that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Section 400.40, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to Section 400.60. [425 ILCS 8/20(c)] All other applicable requirements of this Part shall apply to the manufacturer.*
- d) *If OSFM determines that another state, with reduced cigarette ignition propensity standards that are the same as those contained in the Act, has adopted an 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, 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 reasonable basis for not accepting the alternative test method and performance standard. [425 ILCS 8/20(c)]*

Section 400.50 Test Data

In order to ensure compliance with the performance standard specified in Section 400.40, data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by the manufacturers for a period of 3 years and shall be sent to OSFM upon its request, and to the Office of the Attorney General upon its request, at the addresses specified in Section 400.10(a)(3). [425 ILCS 8/25]

Section 400.60 Certification

- a) *Each manufacturer shall submit a written certification attesting that:*
- 1) *each cigarette listed in the certification has been tested in accordance with Section 400.30 prior to January 1, 2008 for the initial certification; and*

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

- 2) *each cigarette listed in the certification meets the performance standard set forth in Section 400.40 or meets the performance standard of any other state having equal or stricter performance standards. [425 ILCS 8/30(a)]*
- b) *Each cigarette listed in the certification shall be described with the following information:*
 - 1) *brand (i.e., the trade name on the package);*
 - 2) *style (e.g., light, ultra light);*
 - 3) *length in millimeters;*
 - 4) *circumference in millimeters;*
 - 5) *flavor (e.g., menthol, chocolate), if applicable;*
 - 6) *filter or non-filter;*
 - 7) *package description (e.g., soft pack, box); and*
 - 8) *marking approved in accordance with Section 400.80. [425 ILCS 8/30(b)]*
- c) *Each cigarette certified under this Section shall be re-certified every 3 years. [425 ILCS 8/30(c)] Recertification may be coordinated with recertification required by other states with the same standard.*
- d) In addition to the certification, each manufacturer shall provide identification of the wholesale dealers and agents that are provided markings by the manufacturer and the number of copies of the markings provided by the manufacturer to each wholesale dealer and agent. Notice of electronic transmission of the marking to a wholesale dealer or agent shall satisfy the requirement to identify the number of copies of the markings. Each manufacturer shall also provide such additional information as may be required by OSFM, upon request of OSFM.

Section 400.70 Notification of Certification

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

- a) After the acceptance of the manufacturer's certification by OSFM, *manufacturers certifying cigarettes in accordance with Section 400.60 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes. Manufacturers shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to Section 400.80 for each retailer to which the wholesale dealers and agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these cigarette packaging markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit OSFM, Department of Revenue, and the Office of the Attorney General to inspect cigarette packaging to ensure it is marked in accordance with Section 400.80.* [425 ILCS 8/35]
- b) OSFM and the Office of the Attorney General will cooperate to produce a list of cigarette brands and styles that are legal for sale under any and all of the laws of the State of Illinois.
- c) If OSFM intends to remove a brand from the certified list, it will send a notice of intent to remove to the manufacturer. The notice of intent to remove shall include:
- 1) the factual and legal deficiencies upon which OSFM's intended action rests;
 - 2) the actions that the manufacturer must undertake to cure the factual or legal deficiencies upon which the intended action is based; and
 - 3) a notification that the manufacturer shall have 30 calendar days to cure deficiencies and submit documentation or other information of its attempt to cure to OSFM. OSFM may extend the time period for a manufacturer to cure its deficiencies.

Section 400.80 Marking of Cigarette Packaging

- a) *Cigarettes that have been certified by a manufacturer in accordance with Section 400.60 shall be marked to indicate compliance with the requirements of this Part. Marking shall be in 8 point type or larger and consist of:*

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

- 1) *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, or a combination of alphanumeric and symbolic characters, permanently stamped, engraved, embossed or printed in conjunction with the UPC [425 ILCS 8/40(a)]; or*
- 2) *A manufacturer's marking that is approved for use in the State of New York. [425 ILCS 8/40(d)]*
- b) *A manufacturer must use only one marking, and must apply this marking uniformly for all packages (including but not limited to packs, cartons and cases) and brands marketed by that manufacturer. [425 ILCS 8/40(b)]*
- c) *The OSFM must be notified at the address specified in Section 400.10(a)(3) as to the marking that is selected [425 ILCS 8/40(c)].*
- d) *Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to OSFM for approval. Upon receipt of the request, OSFM will approve or disapprove the marking offered. Proposed markings shall be deemed approved if OSFM fails to act within 10 business days after receiving a request for approval. [425 ILCS 8/40(d)]*
- e) *No manufacturer shall modify its approved marking unless the modification has been approved by OSFM in accordance with this Section. [425 ILCS 8/40(e)]*

Section 400.90 Penalties

- a) *Any manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells cigarettes wholesale in violation of Section 400.10(a)(3) shall be subject to a civil penalty not to exceed \$10,000 for each sale of the cigarettes.*
- b) *Any retail dealer who knowingly sells cigarettes in violation of Section 10 of the Act shall be subject to the following:*
 - 1) *a civil penalty not to exceed \$500 for each sale or offer for sale of cigarettes, provided that the total number of cigarettes sold or offered for sale in that sale does not exceed 1,000 cigarettes;*

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF ADOPTED RULES

- 2) *a civil penalty not to exceed \$1,000 for each sale or offer for sale of the cigarettes, provided that the total number of cigarettes sold or offered for sale in that sale exceeds 1,000 cigarettes.*
- c) *In addition to any penalty prescribed by law, any corporation, partnership, sole proprietorship, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 30 of this Act shall be subject to a civil penalty not to exceed \$10,000 for each false certification.*
- d) *Upon discovery by OSFM, the Department of Revenue, the Office of the Attorney General, or a law enforcement agency that any person offers, possesses for sale, or has made a sale of cigarettes in violation of Section 10 of the Act, OSFM, the Department of Revenue, the Office of the Attorney General, or the law enforcement agency may seize those cigarettes possessed in violation of the Act. [425 ILCS 8/45]*
- e) *To enforce the provisions of the Act, the Attorney General may bring an action on behalf of the people of this State to enjoin acts in violation of the Act and to recover civil penalties authorized under Section 45 of the Act and this Part. [425 ILCS 8/50]*

Section 400.100 Federal Fire Safety Standards

If federal fire safety standards for cigarettes preempt the Act or this Part, the OSFM will repeal this Part.

Section 400.110 Notification to the OSFM

All required notices, test results and documents shall be sent to:

Office of the State Fire Marshal
Division of Safety Compliance
1035 Stevenson Drive
Springfield IL 62703