

The Oregon Administrative Rules contain OARs filed through February 15, 2008

DEPARTMENT OF OREGON STATE POLICE, OFFICE OF STATE FIRE MARSHAL

**DIVISION 35**

**Fire Standard Compliant (Reduced Ignition Propensity) Cigarettes**

**837-035-0000**

**Purpose and Scope**

(1) The purpose of these rules is to implement the standards, policies and procedures for *fire standard compliant (reduced ignition propensity)* cigarettes.

(2) The scope of these rules applies to the implementation of the statutes of 2007 House Bill 2163, relating to *fire standard compliant (reduced ignition propensity)* cigarettes.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

**837-035-0020**

**Effective Dates**

OAR 837-035-0000 through 837-035-0340 are effective upon date of filing.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

**837-035-0040**

**Definitions**

For the purpose of these rules, the following definitions apply to OAR 837-035-0000 through 837-035-0340:

(1) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(2) "Cigarette" means a roll for smoking:

(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other non tobacco materials; and

(b) That, because of its appearance, the type of tobacco used in the filler or its *packaging* and labeling, is likely to be offered to or purchased by consumers as a *cigarette*.

(3) "Distribute" means to do any of the following:

(a) *Sell cigarettes* or deliver *cigarettes* for sale by another person to consumers;

(b) Receive or retain more than 199 *cigarettes* at a place of business where the person receiving or retaining the cigarettes customarily *sells cigarettes* or offers *cigarettes* for sale to consumers;

(c) Place *cigarettes* in vending machines;

(d) *Sell* or accept orders for *cigarettes* to be transported from a point outside this state to a consumer within this state;

(e) Buy *cigarettes* directly from a *manufacturer* or *wholesale dealer* for resale in this state;

(f) Give *cigarettes* as a sample, prize, gift or other promotion.

(4) "Fire standard compliant" (FSC) *cigarette* means a *cigarette* that has been tested and meets the fire safety performance standard described in 2007 House Bill 2163.

(5) "Manufacturer" means:

(a) Any entity that produces, or causes the production of, *cigarettes* for sale in this state;

(b) An importer or first purchaser of *cigarettes* that intends to resell within this state *cigarettes* that were produced for sale outside this state; or

(c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.

(6) "Packaging" means, but is not limited to, *cigarette* soft packs, boxes, cartons and cases.

(7) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.

- (8) "Reduced ignition propensity" means meeting the fire safety performance standard described in 2007 House Bill 2163, when tested as described in 2007 House Bill 2163.
- (9) "Reduced ignition propensity cigarette" means a *cigarette* that has been tested as described in 2007 House Bill 2163, and meets the fire safety performance standard described in 2007 House Bill 2163.
- (10) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.
- (11) "Retail dealer" means a person, other than a *manufacturer* or *wholesale dealer* that engages in distributing *cigarettes*.
- (12) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-monetary consideration.
- (13) "Transporter" means any person importing or transporting into this state, or transporting in this state, *cigarettes* obtained from a source located outside this state, or from any person not licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Surface Transportation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free *cigarettes* in bond, or any person transporting no more than 199 *cigarettes* at any one time.
- (14) "Variety" means a type of *cigarette* marketed by the *manufacturer* as being distinct from other types of *cigarettes* on the basis of brand name, length, filter, wrapping, flavoring or other characteristics.
- (15) "Wholesale dealer" means a person that *distributes cigarettes* to:
- (a) A retail dealer or other person for resale; or
  - (b) A person that owns, operates or maintains *cigarette* vending machines on premises owned or operated by another person.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0060**

##### **General**

- (1) All *cigarettes* sold or offered for sale in Oregon on or after January 1, 2008, must be *fire standard compliant* (*reduced ignition propensity*) as required by 2007 House Bill 2163.
- (2) Initial written certification attesting the *cigarette variety* has been subjected to ignition propensity testing under 2007 House Bill 2163 and meets the fire safety performance standard under 2007 House Bill 2163, must be provided to the Oregon State Fire Marshal (OSFM) prior to selling *cigarettes*, unless the *cigarettes* were included on certification submitted to the State of New York before April 17, 2007. Refer to OAR 837-035-0080 for certification requirements.
- (3) Re-certification of *cigarettes* is required after three years. Refer to OAR 837-035-0100 for re-certification requirements.
- (4) In addition to the above listed requirements, *cigarette manufacturers*, wholesaler dealers and retailers who sell *cigarettes* in Oregon must also comply with:
- (a) 2007 House Bill 2163;
  - (b) OAR 837-035-0000 through 837-035-0340;
  - (c) All applicable federal, state and local laws, rules and regulations pertaining to cigarettes.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0080**

##### **Certification Requirements**

- (1) *Cigarette manufacturers* must submit written certification to the OSFM attesting the *cigarette variety* has been subjected to ignition propensity testing under 2007 House Bill 2163, and meets the fire safety performance standard under 2007 House Bill 2163 as proof that *cigarette varieties* have *reduced ignition propensity*, if the *cigarette varieties* were not included on a certification submitted to the State of New York before April 17, 2007.
- (2) Certifications are valid for three years from the date of receipt by the OSFM.
- (3) Written certifications must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*. In particular, certifications must contain the following information for each *variety* of *cigarette* listed:
- (a) The brand name shown on the *cigarette* packaging;
  - (b) The style, such as light or ultralight;
  - (c) The length in millimeters;
  - (d) The circumference in millimeters;
  - (e) The flavor, such as menthol or chocolate, if applicable;
  - (f) Whether the *cigarette* is filtered or nonfiltered;
  - (g) A *packaging* description, such as soft pack or box;
  - (h) A description of the *packaging* marking approved by the OSFM under 2007 House Bill 2163;
  - (i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the *manufacturer*;
  - (j) The date of the ignition propensity testing.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0100**

##### **Recertification Requirements**

(1) *Manufacturers* must provide written re-certification to the OSFM by either April 17, 2010, (if the OSFM accepted the *cigarette variety as fire standard compliant (reduced ignition propensity)* because the *variety* was certified to the State of New York before April 17, 2007) or three years after the certification was received by the OSFM, and each three year period afterward.

(2) The re-certification must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0120**

##### **Test Method**

(1) *Cigarette varieties* must be tested using the American Society for Testing & Materials (ASTM) International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of *Cigarettes* or another test method approved by the OSFM consistent with 2007 House Bill 2163.

(2) The laboratory conducting ignition propensity testing must have a *quality control and assurance program*. The program must ensure the testing *repeatability* value for all test trials used to certify a *cigarette variety*. The repeatability value of ignition propensity testing may not be greater than 0.19.

(3) Ignition propensity testing used in a *manufacturer* certification submitted to the OSFM must be conducted in a laboratory accredited under:

(a) The International Organization for Standardization/International Electrotechnical Commission ISO/IEC 17025 Standard of International Organization for Standardization, or

(b) A standard recognized by the OSFM consistent with 2007 House Bill 2163.

(4) Refer to 2007 House Bill 2163 for all testing and quality control requirements.

(5) A *cigarette manufacturer* may propose a test method and performance standard if OSFM determines that a *variety* of *cigarettes* cannot be tested as described in OAR 837-035-0120(1). Upon approval by the OSFM, the *manufacturer* may use the test method and performance standard to certify the *cigarette*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0140**

##### **Performance Standard**

(1) As required by 2007 House Bill 2163, no more than 25 percent of the *cigarettes* tested in a complete test trial conducted in accordance with an ignition propensity testing method described in 2007 House Bill 2163, may exhibit full length burns.

(2) Each *cigarette* listed in a certification using lowered permeability bands in the *cigarette* paper to achieve compliance must have (for *cigarettes* on which the bands are not positioned by design):

(a) At least two nominally identical bands on the paper surrounding the tobacco column; and

(b) At least one complete band must be located at least 15 millimeters from the lighting end of the *cigarette*.

(3) For *cigarettes* on which the bands are positioned by design, there must be:

(a) At least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column; or

(b) 10 millimeters from the labeled end of the tobacco column for a non-filtered *cigarette*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0160**

##### **Packaging Marking**

(1) *Manufacturers* must mark all *packaging* for *cigarettes* to indicate that *cigarettes* sold in this state are *fire standard compliant (reduced ignition propensity)*. A *manufacturer* must submit to the State Fire Marshal a proposal for marking *cigarette packaging*. Proposed *packaging* marking must be in eight-point font or larger and consist of one of the following:

(a) Modification of the universal product code to indicate a visible mark printed at or around the universal product code. The mark may consist of alphanumeric or symbolic characters permanently printed, stamped, engraved or embossed in conjunction with the universal product code;

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the *packaging* or cellophane wrapping;

(c) Printed, stamped, engraved or embossed test indicating the *cigarettes* meet the fire safety performance standard established in 2007 House Bill 2163.

(2) The OSFM will approve or disapprove the proposal for *packaging* marking, and *packaging* marking proposals not approved or denied by the OSFM within 10 days of receipt are deemed approved. In determining whether to approve or disapprove a proposal for *packaging* marking, the OSFM must:

(a) Give preference to *packaging* marking that is consistent with the *packaging* marking in use and approved for that *cigarette variety* in the State of New York; and

(b) Approve *packaging* marking with the letters "FSC" (signifying *fire standard compliant*).

(3) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0180**

##### **Modification of Packaging Markings**

(1) Any proposed modifications to *packaging* markings must be submitted to the OSFM for approval before use.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0200**

##### **Manufacturer Requirements**

(1) In addition to the requirements of this division, effective July 1, 2007, *manufacturers* may *sell* only *cigarettes* that are *fire standard compliant (reduced ignition propensity)* to Oregon wholesaler and retailer dealers.

(2) *Manufacturers* of any *cigarette varieties* not on a certification submitted to the State of New York before April 17, 2007, must submit written certification to the OSFM and their *wholesale dealers* ensuring their *cigarettes* are *fire standard compliant (reduced ignition propensity)*.

(3) If a *manufacturer* makes any changes to a *cigarette* that are likely to alter the *cigarette's* compliance with the fire safety performance standard described in 2007 House Bill 2163, the *manufacturer* must retest to ensure the *cigarette* still is *fire standard compliant (reduced ignition propensity)* before distributing.

(4) *Manufacturers* must retain copies of all test data for at least three years, and provide test data to the OSFM or Attorney General upon request.

(5) *Manufacturers* must submit proposals for *packaging* marking to the OSFM for approval. Refer to OAR 837-035-0160 for *packaging* marking requirements.

(6) *Manufacturers* must provide enough copies of the *packaging* marking illustration to *wholesale dealers* to allow them to provide one copy to each *retail dealer*.

(7) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0220**

##### **Wholesale Dealer Requirements**

(1) *Wholesale dealers* must provide one copy of the *manufacturer's cigarette packaging* marking illustration to each *retail dealer*.

(2) Effective January 1, 2008, *wholesale dealers* may *sell* only *fire standard compliant/reduced ignition propensity cigarettes*.

(3) *Wholesale dealers* may house non-compliant *cigarettes* in Oregon, provided they are not to be sold in Oregon.

(4) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0240**

##### **Retail Dealer Requirements**

(1) Effective January 1, 2008, *retail dealers* may *sell* only *fire standard compliant/reduced ignition propensity cigarettes*.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0260**

##### **Inspections**

The OSFM or an *authorized representative* may inspect Oregon *wholesale dealers, agents, and retailers* for compliance with 2007 House Bill 2163, and this division. Inspections include *packaging, certification, cigarettes,* and any other documents to determine compliance with 2007 House Bill 2163.

Stat. Auth.: Ch. 34, 2007 OL \

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0280**

##### **Cooperative Agreements**

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an *authorized representative* of the OSFM for enforcement purposes of this division.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0300**

##### **Seizure of Non-Compliant Product**

(1) The OSFM, or an *authorized representative*, may seize and make subject to forfeiture any *cigarette* that:

(a) Is not *fire standard compliant/reduced ignition propensity*;

(b) Bears a *packaging* marking not approved by the OSFM.

(2) If seized *cigarettes* are determined to be non-compliant, the *manufacturer* will be given the opportunity to inspect the *cigarettes* and *packaging*.

(3) Non-compliant *cigarettes* that have been forfeited must be destroyed by the OSFM only after allowing the *manufacturer* to inspect the *cigarettes* and *packaging*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0320**

##### **Civil Penalties**

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2007 House Bill 2163, or OAR 837-035-0000 through 837-035-0340. Refer to the following penalty matrix for penalties established by 2007 House Bill 2163:

(a) Distributing or offering to *sell* non-compliant *cigarettes* to a wholesale or *retail dealer*: \$10,000 or five times the wholesale invoice cost of the *cigarettes* involved in the violation, whichever is greater;

(b) Distributing or offering to *sell* not more than 1,000 non-compliant *cigarettes* to consumers: \$500;

(c) Distributing or offering to *sell* more than 1,000 non-compliant *cigarettes* to consumers: \$1,000 or five times the retail value of the *cigarettes* involved in the violation, whichever is greater.

(2) Each day a person *distributes* or offers to *sell* *cigarettes* after being notified by the OSFM that the distribution or offer to *sell* *cigarettes* is in violation of 2007 House Bill 2163, constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the Cigarette Fire Safety Fund of the OSFM.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

#### **837-035-0340**

##### **Procedures, Hearings and Judicial Review**

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violatio;

(b) Recover civil penaltie;

(c) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07