

CHAPTER 61
FIRE SAFE CIGARETTE CERTIFICATION PROGRAM

661—61.1(101B) Certification program established. A fire safe cigarette certification program is hereby established in the state fire marshal division. The program shall issue certifications as provided in this chapter.

61.1(1) The fire safe cigarette certification program is located at the following address:

State Fire Marshal Division
Attn: SFM Licensing Administration
215 East 7th Street
Des Moines, Iowa 50319

61.1(2) The program may be contacted by electronic mail at sfmlicense@dps.state.ia.us or by the United States Postal Service.

NOTE: The website for the fire safe cigarette certification program is dps.iowa.gov/divisions/state-fire-marshal/fire-safe-cigarettes.
[ARC 5527C, IAB 3/24/21, effective 4/28/21]

661—61.2(101B) Definitions. The following definitions apply to rules 661—61.1(101B) through 661—61.21(101B):

“*Agent*” means a distributor as defined in Iowa Code section 453A.1 authorized by the department of revenue to purchase and affix stamps pursuant to Iowa Code section 453A.10.

“*Certified fire safe cigarette*” means a unique cigarette brand style that meets the following criteria:

1. The unique cigarette brand style has been tested in accordance with the test method prescribed in rule 661—61.3(101B) or has been approved pursuant to rule 661—61.4(101B).
2. The unique cigarette brand style meets the performance standard specified in rule 661—61.3(101B) or has been approved pursuant to rule 661—61.4(101B).
3. A written certification for the unique cigarette brand style has been filed by the manufacturer with the department and in accordance with rule 661—61.10(101B).
4. Packaging for the unique cigarette brand style has been marked in accordance with rule 661—61.13(101B).

“*Cigarette*” means a cigarette as defined in Iowa Code section 453A.1, but shall not mean a tobacco product as defined in Iowa Code section 453A.1.

“*Department*” means the department of public safety.

“*Fire safe cigarette*” means a cigarette certified pursuant to this chapter.

“*Manufacturer*” means any of the following:

1. An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced, anywhere, which cigarettes the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer.
2. The first purchaser of cigarettes anywhere, that intends to resell in the United States, cigarettes manufactured or produced anywhere, that the original manufacturer did not intend to be sold in the United States.
3. An entity that becomes a successor of an entity described in numbered paragraph “1” or “2” of this definition.

“*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 repeatability testing, and which program ensures that the testing repeatability remains within the required repeatability values specified in rule 661—61.3(101B).

“*Repeatability*” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

“*Retailer*” means retailer as defined in Iowa Code section 453A.1.

“*Sale*” means any transfer of title or possession, exchange or barter, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as a sample, prize, or gift or the exchanging of cigarettes for any consideration other than money is considered a sale.

“*Sell*” means to sell, or to offer or agree to sell.

“*Unique cigarette brand style*” means a cigarette with a unique combination of the following:

1. Brand or trade name.
2. Style, such as light or ultra light.
3. Length.
4. Circumference.
5. Flavor, such as menthol or chocolate, if applicable.
6. Presence or absence of a filter.
7. Type of package, such as soft pack or box.

“*Wholesaler*” means wholesaler as defined in Iowa Code section 453A.1.

[ARC 5527C, IAB 3/24/21, effective 4/28/21]

661—61.3(101B) Test method, performance standard, test report. Except as provided in rule 661—61.4(101B), each unique cigarette brand style submitted for certification under this chapter shall meet all of the following criteria:

61.3(1) Testing shall be conducted in accordance with ASTM (American Society for Testing and Materials) international standard E2187-04, standard test method for measuring the ignition strength of cigarettes.

61.3(2) Testing shall be conducted on ten layers of filter paper.

61.3(3) The performance standard shall require that no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

61.3(4) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

61.3(5) The performance standard required by this rule shall only be applied to a complete test trial.

61.3(6) Testing shall be conducted by a laboratory that has been accredited pursuant to International Organization for Standardization/International Electrotechnical Commission Standard 17025.

61.3(7) Laboratories conducting testing in accordance with subrule 61.3(6) shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The testing repeatability shall be no greater than nineteen one-hundredths.

61.3(8) This rule shall not be construed to require additional testing if cigarettes are tested in a manner consistent with this chapter for any other purpose.

61.3(9) Each cigarette listed in a certification submitted in accordance with Iowa Code Supplement section 101B.5 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard pursuant to this rule 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 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 bands fully located at least 15 millimeters from the lighting end and either 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

661—61.4(101B) Alternate test method.

61.4(1) The manufacturer of a cigarette that the department determines cannot be tested in accordance with the test method prescribed in rule 661—61.3(101B) shall propose an alternate test method and performance standard for the cigarette.

61.4(2) A manufacturer proposing an alternate test method and performance standard pursuant to this rule shall submit such proposal on a form provided by the department and shall send such form by certified mail, return receipt requested at the address specified in subrule 61.1(1).

61.4(3) The department shall approve or deny the proposed alternate test method and performance standard within 60 days of receipt of such proposal and shall send notification of such approval or denial by certified mail, return receipt requested, to the address provided by the manufacturer.

61.4(4) The department may approve an alternate test method and performance standard if the alternate test method and performance standard are determined to be equivalent to the test method and performance standard prescribed in rule 661—61.3(101B). If an alternate test method and performance standard are approved pursuant to this rule, the manufacturer may employ the alternate test method and performance standard to certify the cigarette in accordance with rule 661—61.3(101B).
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661—61.5(101B) Acceptance of alternate test method approved by another state.

61.5(1) If the department 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 department finds that the officials responsible for implementing those requirements have approved the proposed alternate test method and performance standard for a unique cigarette brand style proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to rule 661—61.4(101B), the department shall authorize that manufacturer to employ the alternate test method and performance standard to certify that cigarette for sale in this state, unless the department demonstrates a reasonable basis why the alternate test method and performance standard should not be accepted under this chapter. All other applicable requirements of this chapter shall apply to the manufacturer.

61.5(2) A manufacturer proposing an alternate test method and performance standard under this rule shall use the procedure for submitting an alternate test method and performance standard specified in rule 661—61.4(101B) and shall provide documentation verifying that the alternate test method and performance standard have been approved by another state as provided in subrule 61.5(1).

661—61.6(101B) Retention of reports of testing. A manufacturer shall maintain for a period of three years copies of the reports of all tests conducted on all certified fire safe cigarettes offered for sale and shall make copies of the reports available to the department and the office of the attorney general upon written request.

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661—61.7(101B) Testing performed or sponsored by the department. Testing performed or sponsored by the department to determine a cigarette's compliance with the performance standard required by this chapter shall be conducted in accordance with rule 661—61.3(101B).

EXCEPTION: Testing performed or sponsored by the department to determine the compliance of a cigarette tested in accordance with rule 661—61.4(101B) shall be conducted in accordance with the test method and performance standard specified in a proposal approved under rule 661—61.4(101B).

661—61.8 and 61.9 Reserved.

661—61.10(101B) Certification and fee.

61.10(1) Each manufacturer shall submit a written certification to the department attesting to all of the following:

a. Each certified fire safe cigarette listed in the certification has been tested in accordance with rule 661—61.3(101B), 661—61.4(101B), or 661—61.5(101B).

b. Each certified fire safe cigarette listed in the certification meets the performance standard specified in rule 661—61.3(101B) or approved under rule 661—61.4(101B).

61.10(2) Each certified fire safe cigarette listed in the certification shall be described in the certification as follows:

- a.* The brand or trade name on the package.
- b.* The style of cigarette, such as light or ultra light.
- c.* The length of the cigarette in millimeters.
- d.* The circumference of the cigarette in millimeters.
- e.* The flavor of the cigarette, such as menthol or chocolate, if applicable.
- f.* Whether the cigarette is filtered or nonfiltered.

- g.* The type of cigarette package, such as soft pack or box.
- h.* The marking approved in accordance with Iowa Code section 101B.7.
- i.* The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test.
- j.* The date the testing was performed.

61.10(3) Each cigarette certified under this rule shall be recertified every three years.

61.10(4) The manufacturer shall, upon request, make a copy of the written certification available to the office of the attorney general and the department of revenue for purposes of ensuring compliance with this chapter.

61.10(5) For each cigarette listed in a certification, a manufacturer shall pay, electronically or by mail, a fee of \$100 to the department. Checks shall be made payable to the Iowa Department of Public Safety.

61.10(6) A certification and fee submitted pursuant to this rule shall be submitted online as indicated on the state fire marshal's website or mailed to the address specified in subrule 61.1(1).

An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

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661—61.11(101B) Changes to the manufacture of a certified fire safe cigarette. If a manufacturer produces a cigarette certified pursuant to this chapter and makes any change to the certified fire safe cigarette thereafter that is likely to alter the cigarette's compliance with the standards specified in this chapter, prior to the cigarette's being sold or offered for sale in this state, the manufacturer shall retest the cigarette in accordance with the testing standards specified in rule 661—61.3(101B) or shall propose an alternate test method and performance standard pursuant to rule 661—61.4(101B) or rule 661—61.5(101B), and shall maintain records of the retesting as required by rule 661—61.6(101B). Any altered cigarette that does not meet the performance standard specified in rule 661—61.3(101B) or approved pursuant to rule 661—61.4(101B) shall not be sold in this state.

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661—61.12(101B) Notification of certification.

61.12(1) A manufacturer certifying cigarettes in accordance with rule 661—61.3(101B) or rule 661—61.4(101B) shall provide a copy of the certification to all wholesalers and agents to whom the manufacturer sells cigarettes and shall also provide sufficient copies of an illustration of the cigarette packaging marking used by the manufacturer in accordance with rule 661—61.13(101B) for each retailer to whom the wholesalers or agents sell cigarettes.

61.12(2) A wholesaler or agent shall provide a copy of the cigarette packaging marking received from a manufacturer to all retailers to whom the wholesaler or agent sells cigarettes. A wholesaler, agent, or retailer shall permit the state fire marshal, the department of revenue, or the office of the attorney general to inspect markings of cigarette packaging marked in accordance with rule 661—61.13(101B).

661—61.13(101B) Marking fire safe cigarette packaging.

61.13(1) Cigarettes that have been certified by a manufacturer in accordance with rule 661—61.3(101B) or rule 661—61.4(101B) shall be marked to indicate compliance with the requirements of this chapter. The marking shall be in eight-point type or larger and consist of one of the following:

a. Modification of the product's universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code.

b. Any visible alphanumeric or symbolic character or combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap.

c. Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

NOTE: Though compliance with this subrule may be achieved by any of the methods described above, the recommended marking shall be the letters “FSC” displayed in accordance with any of the methods described above.

61.13(2) A manufacturer shall use only one marking and shall apply the marking uniformly for all packages, including but not limited to packs, cartons, and cases and to brands marketed by that manufacturer.

61.13(3) A manufacturer shall present its proposed marking to the department for approval using the following procedures:

a. Requests for approval of a proposed marking shall be included in the certification submitted pursuant to rule 661—61.10(101B).

b. Upon receipt of the request, the department shall approve or disapprove the marking offered within ten business days of receiving a request for approval. If the department fails to approve or disapprove a proposed marking within ten business days, the marking shall be deemed approved.

EXCEPTION: A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved.

61.13(4) A manufacturer shall not modify its approved marking until the modification has been approved by the department in accordance with subrule 61.11(3).

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661—61.14 to 61.19 Reserved.

661—61.20(101B) Applicability—preemption.

61.20(1) Pursuant to Iowa Code Supplement section 101B.10, this chapter shall cease to be applicable if federal fire safety standards for cigarettes that preempt this chapter are enacted and take effect subsequent to January 1, 2009, and the state fire marshal shall notify the secretary of state and the Iowa Code editor if such federal fire safety standards for cigarettes are enacted.

61.20(2) Pursuant to Iowa Code Supplement section 101B.10, political subdivisions shall not adopt or enforce any ordinance, rule, or regulation that conflicts with any provision of this chapter, or with any policy of the state expressed by this chapter, whether the policy is expressed by inclusion of or exclusion from this chapter.

661—61.21(17A) Violations and penalties. A person who violates any provision of Iowa Code Supplement chapter 101B or of this chapter shall be subject to a civil penalty of an amount no greater than specified for the specific offense in Iowa Code Supplement section 101B.8. Notice of a civil penalty may be provided by mail or by personal service. A person subject to a civil penalty may appeal the imposition of the penalty as provided in 661—Chapter 10. An appeal of a civil penalty shall be subject to the provisions of 661—Chapter 10 for contested cases.

These rules are intended to implement Iowa Code Supplement chapter 101B.

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