

(4) Joint laboratory testing services

The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

(e) Extensions for limited laboratory capacity**(1) In general**

The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

- (A) the tobacco products of such manufacturer are in compliance with all other requirements of this subchapter; and
- (B) the conditions described in paragraph (2) are met.

(2) Conditions

Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

- (A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;
- (B) the products currently are awaiting testing by the laboratory; and
- (C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

(3) Extension

The Secretary, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

(4) Additional extension

In addition to the time that may be provided under paragraph (3), the Secretary may pro-

vide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

(f) Rule of construction

Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this chapter or the Family Smoking Prevention and Tobacco Control Act other than this section.

(June 25, 1938, ch. 675, §915, as added Pub. L. 111-31, div. A, title I, §101(b)(3), June 22, 2009, 123 Stat. 1820.)

Editorial Notes**REFERENCES IN TEXT**

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (f), is div. A of Pub. L. 111-31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of this title and Tables.

Statutory Notes and Related Subsidiaries**MODIFICATION OF DEADLINES FOR SECRETARIAL ACTION**

With respect to any time periods specified in an amendment by div. A of Pub. L. 111-31 that begin on June 22, 2009, within which the Secretary of Health and Human Services is required to carry out and complete specified activities, with certain limitations, the calculation of such time periods shall commence on the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary has collected fees under section 387s of this title, and the Secretary may extend or reduce the duration of one or more such time periods, except that no such period shall be extended for more than 90 days, see section 6 of Pub. L. 111-31, set out as a note under section 387 of this title.

§ 387p. Preservation of State and local authority**(a) In general****(1) Preservation**

Except as provided in paragraph (2)(A), nothing in this subchapter, or rules promulgated under this subchapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this subchapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this subchapter shall

limit or otherwise affect any State, tribal, or local taxation of tobacco products.

(2) Preemption of certain State and local requirements

(A) In general

No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this subchapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

(B) Exception

Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5 shall be treated as a trade secret and confidential information by the State.

(b) Rule of construction regarding product liability

No provision of this subchapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

(June 25, 1938, ch. 675, § 916, as added Pub. L. 111-31, div. A, title I, § 101(b)(3), June 22, 2009, 123 Stat. 1823.)

§ 387q. Tobacco Products Scientific Advisory Committee

(a) Establishment

Not later than 6 months after June 22, 2009, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the “Advisory Committee”).

(b) Membership

(1) In general

(A) Members

The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

(iii) 1 individual as a representative of the general public;

(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

(vi) 1 individual as a representative of the interests of the tobacco growers.

(B) Nonvoting members

The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

(C) Conflicts of interest

No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member’s tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

(2) Limitation

The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this chapter. The Secretary may appoint Federal officials as ex officio members.

(3) Chairperson

The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

(c) Duties

The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

(1) as provided in this subchapter;

(2) on the effects of the alteration of the nicotine yields from tobacco products;

(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

(d) Compensation; support; chapter 10 of title 5

(1) Compensation and travel

Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meet-