

§ 1140.10

(b) *Cigarette tobacco* means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

(c) *Distributor* means any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this part.

(d) *Manufacturer* means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product.

(e) *Nicotine* means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

(f) *Package* means a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(g) *Point of sale* means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(h) *Retailer* means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this part.

(i) *Smokeless tobacco* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

Subpart B—Prohibition of Sale and Distribution to Persons Younger Than 18 Years of Age

§ 1140.10 General responsibilities of manufacturers, distributors, and retailers.

Each manufacturer, distributor, and retailer is responsible for ensuring that the cigarettes or smokeless tobacco it

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manufactures, labels, advertises, packages, distributes, sells, or otherwise holds for sale comply with all applicable requirements under this part.

§ 1140.12 Additional responsibilities of manufacturers.

In addition to the other responsibilities under this part, each manufacturer shall remove from each point of sale all self-service displays, advertising, labeling, and other items that the manufacturer owns that do not comply with the requirements under this part.

§ 1140.14 Additional responsibilities of retailers.

In addition to the other requirements under this part, each retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco to any person comply with the following requirements:

(a) No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age;

(b)(1) Except as otherwise provided in § 1140.16(c)(2)(i) and in paragraph (b)(2) of this section, each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age;

(2) No such verification is required for any person over the age of 26;

(c) Except as otherwise provided in § 1140.16(c)(2)(ii), a retailer may sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine);

(d) No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use; and

(e) Each retailer shall ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that

do not comply with the requirements of this part, are removed or are brought into compliance with the requirements under this part.

§ 1140.16 Conditions of manufacture, sale, and distribution.

(a) *Restriction on product names.* A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on January 1, 1995.

(b) *Minimum cigarette package size.* Except as otherwise provided under this section, no manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(c) *Vending machines, self-service displays, mail-order sales, and other "impersonal" modes of sale.* (1) Except as otherwise provided under this section, a retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

(2) *Exceptions.* The following methods of sale are permitted:

(i) Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

(ii) Vending machines (including vending machines that sell packaged, single cigarettes) and self-service displays that are located in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

(d)(1) Except as provided in paragraph (d)(2) of this section, no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

(2)(i) Paragraph (d)(1) of this section does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

(ii) Paragraph (d)(2) of this section does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

(iii) For purposes of paragraph (d) of this section, the term "qualified adult-only facility" means a facility or restricted area that:

(A) Requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

(B) Does not sell, serve, or distribute alcohol;

(C) Is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

(D) Is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this paragraph (d)(2) of this section;

(E) Is enclosed by a barrier that:

(1) Is constructed of, or covered with, an opaque material (except for entrances and exits);

(2) Extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

(3) Prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

(F) Does not display on its exterior:

(1) Any tobacco product advertising;

(2) A brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or