

only after notice and opportunity for a hearing under part 16 of this chapter is provided. However, FDA may rescind an exemption prior to notice and opportunity for a hearing under part 16 of this chapter if the continuance of the exemption presents a serious risk to public health. In that case, FDA will provide the manufacturer an opportunity for a hearing as soon as possible after the rescission.

[76 FR 38974, July 5, 2011]

Subpart B [Reserved]

PART 1140—CIGARETTES, SMOKELESS TOBACCO, AND COVERED TOBACCO PRODUCTS

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AUTHORITY: 21 U.S.C. 301 *et seq.*, Sec. 102, Pub. L. 111-31, 123 Stat. 1776.

SOURCE: 75 FR 13230, Mar. 19, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 1140.1 Scope.

(a) This part sets out the restrictions under the Federal Food, Drug, and Cosmetic Act on the sale, distribution, and

use of cigarettes, smokeless tobacco, and covered tobacco products. Section 1140.16(d) sets out restrictions on the distribution of free samples for cigarettes, smokeless tobacco, and other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

(b) The failure to comply with any applicable provision in this part in the sale, distribution, and use of cigarettes, smokeless tobacco, covered tobacco products, or other tobacco products renders the product misbranded under the Federal Food, Drug, and Cosmetic Act.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

[81 FR 29102, May 10, 2016]

§ 1140.2 Purpose.

The purpose of this part is to establish restrictions on the sale, distribution, and use of cigarettes, smokeless tobacco, and covered tobacco products in order to reduce the number of children and adolescents who use these products, and to reduce the life-threatening consequences associated with tobacco use.

[81 FR 29102, May 10, 2016]

§ 1140.3 Definitions.

For the purposes of this part:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following:

- (1) Is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or
- (2) Is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but
 - (i) Solely controls moisture and/or temperature of a stored product; or
 - (ii) Solely provides an external heat source to initiate but not maintain combustion of a tobacco product.

Cigarette. (1) Means a product that:

- (i) Is a tobacco product and

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(ii) Meets the definition of the term “cigarette” in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

(2) Includes tobacco, in any form, that is functional in the product, which, 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 or as roll-your-own tobacco.

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 also apply to cigarette tobacco.

Component or part means any software or assembly of materials intended or reasonably expected:

(1) To alter or affect the tobacco product’s performance, composition, constituents, or characteristics; or

(2) To be used with or for the human consumption of a tobacco product. Component or part excludes anything that is an accessory of a tobacco product.

Covered tobacco product means any tobacco product deemed to be subject to the Federal Food, Drug, and Cosmetic Act under §1100.2 of this chapter, but excludes any component or part that is not made or derived from tobacco.

Distributor means any person who furthers the distribution of a tobacco product, 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.

Importer means any person who imports any tobacco product that is intended for sale or distribution to consumers in the United States.

Manufacturer means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.

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.

Package or packaging means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

Point of sale means any location at which a consumer can purchase or otherwise obtain tobacco products for personal consumption.

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

Roll-your-own tobacco means any tobacco product that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

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.

Tobacco product. As stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part, a tobacco product:

(1) Means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product) and

(2) Does not mean an article that is a drug under section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act, or a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act.

[81 FR 29102, May 10, 2016]

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, importer, and retailer is responsible for

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ensuring that the cigarettes, smokeless tobacco, or covered tobacco products it manufactures, labels, advertises, packages, distributes, imports, sells, or otherwise holds for sale comply with all applicable requirements under this part.

[81 FR 29103, May 10, 2016]

§ 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.

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

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

(2)(i) Except as otherwise provided in paragraph (a)(2)(ii) of this section and in §1140.16(c)(2)(i), each retailer must 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;

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

(3) 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);

(4) 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 dis-

tributed by the manufacturer for individual consumer use; and

(5) Each retailer must 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.

(b) Notwithstanding the requirements in paragraph (a) of this section and in addition to the other requirements under this part, each retailer of covered tobacco products is responsible for ensuring that all sales of such covered tobacco products to any person comply with the following requirements:

(1) No retailer may sell covered tobacco products to any person younger than 18 years of age;

(2)(i) Except as otherwise provided in paragraph (a)(2)(ii) of this section and in §1140.16(c)(2)(i), each retailer must 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;

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

(3) A retailer may not sell covered tobacco products with the assistance of any electronic or mechanical device (such as a vending machine), except in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

[81 FR 29103, May 10, 2016]

§ 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,

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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 appli-

cable 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

(3) Any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate § 1140.34(c).

(iv) Distribution of samples of smokeless tobacco under paragraph (d)(2) of this section permitted to be taken out of the qualified adult-only facility shall be limited to one package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the individual portions of smokeless tobacco shall not exceed eight individual portions, and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free

samples also shall take reasonable steps to ensure that the amounts in this paragraph (d)(2)(iv) are limited to one such package per adult consumer per day.

(3) Notwithstanding paragraph (d)(2) of this section, no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco:

(i) To a sports team or entertainment group; or

(ii) At any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by paragraph (d)(3) of this section.

(4) The Secretary shall implement a program to ensure compliance with paragraph (d) of this section and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

(5) Nothing in paragraph (d) of this section shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.

(e) *Restrictions on labels, labeling, and advertising.* No manufacturer, distributor, or retailer may sell or distribute, or cause to be sold or distributed, cigarettes or smokeless tobacco with labels, labeling, or advertising not in compliance with subpart D of this part, and other applicable requirements.

Subpart C [Reserved]

Subpart D—Labeling and Advertising

§ 1140.30 Scope of permissible forms of labeling and advertising.

(a)(1) A manufacturer, distributor, or retailer may, in accordance with this subpart D, disseminate or cause to be disseminated advertising or labeling which bears a cigarette or smokeless tobacco brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification, in newspapers; in magazines;

in periodicals or other publications (whether periodic or limited distribution); on billboards, posters, and placards; in nonpoint-of-sale promotional material (including direct mail); in point-of-sale promotional material; and in audio or video formats delivered at a point-of-sale.

(2) A manufacturer, distributor, or retailer intending to disseminate, or to cause to be disseminated, advertising or labeling for cigarettes or smokeless tobacco in a medium that is not listed in paragraph (a)(1) of this section, shall notify the agency 30 days prior to the use of such medium. The notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by persons younger than 18 years of age. The manufacturer, distributor, or retailer shall send this notice to the Office of Compliance and Enforcement, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993.

(b) [Reserved]

(c) This subpart D does not apply to cigarette or smokeless tobacco package labels.

[75 FR 13230, Mar. 19, 2010, as amended at 83 FR 13183, Mar. 28, 2018]

§ 1140.32 Format and content requirements for labeling and advertising.

(a) Except as provided in paragraph (b) of this section, each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for cigarettes or smokeless tobacco shall use only black text on a white background. This section does not apply to advertising:

(1) In any facility where vending machines and self-service displays are permitted under this part, provided that the advertising is not visible from outside the facility and that it is affixed to a wall or fixture in the facility; or

(2) Appearing in any publication (whether periodic or limited distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication. For the purposes of this section, an adult publication is a

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newspaper, magazine, periodical, or other publication:

(i) Whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(ii) That is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence.

(b) Labeling and advertising in an audio or video format shall be limited as follows:

(1) Audio format shall be limited to words only with no music or sound effects.

(2) Video formats shall be limited to static black text only on a white background. Any audio with the video shall be limited to words only with no music or sound effects.

§ 1140.34 Sale and distribution of non-tobacco items and services, gifts, and sponsorship of events.

(a) No manufacturer and no distributor of imported cigarettes or smokeless tobacco may market, license, distribute, sell, or cause to be marketed, licensed, distributed, or sold any item (other than cigarettes or smokeless tobacco or roll-your-own paper) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

(b) No manufacturer, distributor, or retailer may offer or cause to be offered any gift or item (other than cigarettes or smokeless tobacco) to any person purchasing cigarettes or smokeless tobacco in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) No manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name (alone or in conjunction with any other word), logo, symbol,

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motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco. Nothing in this paragraph prevents a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995, and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

PART 1141—CIGARETTE PACKAGE AND ADVERTISING WARNINGS

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Subpart B—Cigarette Package and Advertising Warnings

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Subpart C—Additional Disclosure Requirements for Cigarette Packages and Advertising

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AUTHORITY: 15 U.S.C. 1333; 21 U.S.C. 371, 387c, 387f; Secs. 201 and 202, Pub. L. 111–31, 123 Stat. 1776.

SOURCE: 76 FR 36753, June 22, 2011, unless otherwise noted.