

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT¹

[Public Law 89–92; 79 Stat. 282;]

[As Amended Through P.L. 111–31, Enacted June 22, 2009]

【Currency: This publication is a compilation of the text of Public Law 89–92. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Federal Cigarette Labeling and Advertising Act”.

DECLARATION OF POLICY

SEC. 2. 【15 U.S.C. 1331】 It is the policy of the Congress, and the purpose of this Act, to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

(1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and

(2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

DEFINITIONS

SEC. 3. 【15 U.S.C. 1332】 As used in this Act—

(1) The term “cigarette” means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling,

¹Section 3 of Public Law 98–474 (15 U.S.C. 1341) provides for “a program to inform the public of any dangers to human health presented by cigarette smoking”, establishes the Interagency Committee on Smoking and Health, and requires the Secretary of Health and Human Services to submit to the Congress biennial reports regarding smoking.

is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(2) The term “commerce” means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term “United States”, when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term “State” includes any political division of any State.

(4) The term “package” means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(5) The term “person” means an individual, partnership, corporation, or any other business or legal entity.

(6) The term “sale or distribution” includes sampling or any other distribution not for sale.

(7) The term “little cigar” means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(8) The term “brand style” means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(9) The term “Secretary” means the Secretary of Health and Human Services.

SEC. 4. [15 U.S.C. 1333] LABELING.

(a) LABEL REQUIREMENTS.—

(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes are addictive.

WARNING: Tobacco smoke can harm your children.

WARNING: Cigarettes cause fatal lung disease.

WARNING: Cigarettes cause cancer.

WARNING: Cigarettes cause strokes and heart disease.

WARNING: Smoking during pregnancy can harm your baby.

WARNING: Smoking can kill you.

WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

WARNING: Quitting smoking now greatly reduces serious risks to your health.

(2) **PLACEMENT; TYPOGRAPHY; ETC.**—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word “WARNING” shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

(3) **DOES NOT APPLY TO FOREIGN DISTRIBUTION.**—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(4) **APPLICABILITY TO RETAILERS.**—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

(A) contains a warning label;

(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

(b) **ADVERTISING REQUIREMENTS.**—

(1) **IN GENERAL.**—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

(2) **TYPOGRAPHY, ETC.**—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word “WARNING” shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The

text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital “W” of the word “WARNING” in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

(c) MARKETING REQUIREMENTS.—

(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

(d) GRAPHIC LABEL STATEMENTS.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Secretary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.

(d) ²CHANGE IN REQUIRED STATEMENTS.—The Secretary through a rulemaking conducted under section 553 of title 5, United States Code, may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and

² So in law. There are two subsections (d)'s.

shall appear within the area specified in subsection (b) of this section.

(2) **RESOLUTION OF DIFFERENCES.**—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

(3) **CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.**—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

(4) **RETAILERS.**—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.

PREEMPTION

SEC. 5. [15 U.S.C. 1334] (a) Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no statement relating to smoking and health, other than the statement required by section 4 of this Act, shall be required on any cigarette package.

(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act.

(c) **EXCEPTION.**—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.

UNLAWFUL ADVERTISEMENTS

SEC. 6. [15 U.S.C. 1335] After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of

electronic communication subject to the jurisdiction of the Federal Communications Commission.

CIGARETTE INGREDIENTS

SEC. 7. [15 U.S.C. 1335a] (a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a), respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;

(B) information pertaining to any such ingredient which in the judgment of the Secretary poses a health risk to cigarette smokers; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code and section 1905 of title 18, United States Code and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a). Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

FEDERAL TRADE COMMISSION

SEC. 8. [15 U.S.C. 1336] Nothing in this Act (other than the requirements of section 4) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

REPORTS

SEC. 9.³ (a) The Secretary shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter concerning (1) current information in the health consequences of smoking, and (2) such recommendations for legislation as he may deem appropriate.

(b) The Federal Trade Commission shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter, concerning (1) current practices and methods of cigarette advertising and promotion, and (2) such recommendations for legislation as it may deem appropriate.

CRIMINAL PENALTY

SEC. 10. [15 U.S.C. 1338] Any person who violates the provisions of this Act shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$10,000.

INJUNCTION PROCEEDINGS

SEC. 11. [15 U.S.C. 1339] The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this Act upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

CIGARETTES FOR EXPORT

SEC. 12. [15 U.S.C. 1340] Packages of cigarettes manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this Act, but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

SEPARABILITY

SEC. 13. [15 U.S.C. 1331 note] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the other provisions of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

³The requirement to submit reports under section 9 was terminated pursuant to section 3003 of Public Law 104-66 (109 Stat. 734).