

invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby.”

#### CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98-474, §2, Oct. 12, 1984, 98 Stat. 2200, provided that: “It is the purpose of this Act [see Short Title of 1984 Amendment note above] to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings and to enable individuals to make informed decisions about smoking.”

### § 1332. Definitions

As used in this chapter—

(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, 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.

(Pub. L. 89-92, §3, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 93-109, §2, Sept. 21, 1973, 87 Stat. 352; Pub. L. 98-474, §6(b), Oct. 12, 1984, 98 Stat. 2204; Pub. L. 99-92, §11(b), Aug. 16, 1985, 99 Stat. 403.)

#### AMENDMENTS

1985—Pars. (8), (9). Pub. L. 99-92 added par. (8) and re-designated former par. (8) as (9).

1984—Par. (8). Pub. L. 98-474 added par. (8).

1973—Subsec. (7). Pub. L. 93-109 added subsec. (7).

1970—Subsec. (3). Pub. L. 91-222 inserted provisions defining “State”.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-109, §4, Sept. 21, 1973, 87 Stat. 352, provided that: “The amendment made by this Act [amending this section and section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973].”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

### § 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 licensee 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, 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 [21 U.S.C. 301 et seq.]. 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)<sup>1</sup> Graphic label statements**

Not later than 24 months after June 22, 2009, 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)<sup>1</sup> Change in required statements**

The Secretary through a rulemaking conducted under section 553 of title 5 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 [21 U.S.C. 301 et seq.], 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, 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 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 memoran-

dum 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, 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 [21 U.S.C. 301 et seq.].

**(4) Retailers**

This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.

(Pub. L. 89-92, § 4, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 98-474, § 4(a), Oct. 12, 1984, 98 Stat. 2201; Pub. L. 99-92, § 11[(a)], Aug. 16, 1985, 99 Stat. 402; Pub. L. 99-117, § 11(d), Oct. 7, 1985, 99 Stat. 495; Pub. L. 111-31, div. A, title II, §§ 201(a), 202(b), 206, June 22, 2009, 123 Stat. 1842, 1845, 1849.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(4), (d), and (e)(3), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2009—Pub. L. 111-31, § 201(a), amended section generally. Prior to amendment, section related to cigarette labeling requirements.

Subsec. (d). Pub. L. 111-31, § 202(b), added subsec. (d) relating to change in required statements.

Subsec. (e). Pub. L. 111-31, § 206, added subsec. (e).

1985—Subsec. (c). Pub. L. 99-92 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), the" for "The label", and added par. (2).

Subsec. (c)(2)(A). Pub. L. 99-117 substituted "brand style" for "brand" in provisions preceding cl. (i).

1984—Pub. L. 98-474 amended section generally, designating existing provisions as subsec. (a), expanding choice of warnings to be placed on cigarette packaging and further expanding scope of places that must contain warnings to include advertisements and outdoor billboards, and adding subsecs. (b) to (d).

1970—Pub. L. 91-222 substituted "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" for "Caution: Cigarette Smoking May Be Hazardous to Your Health."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-31, div. A, title II, § 201(b), June 22, 2009, 123 Stat. 1845, provided that: "The amendment made by subsection (a) [amending this section] shall take effect

<sup>1</sup> So in original. There are two subsecs. designated (d).

15 months after the issuance of the regulations required by subsection (a) [final rule issued June 22, 2011, eff. Sept. 22, 2012; see 76 F.R. 36628]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).”

#### EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-92, §11(c), Aug. 16, 1985, 99 Stat. 403, provided that:

“(1) The amendments made by subsection (a) [probably refers to undesignated par. preceding subsec. (b), amending this section] shall take effect October 12, 1985, except that—

“(A) on and after the date of the enactment of this Act [Aug. 16, 1985] a manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation specified in section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), apply to its brand styles of cigarettes and the Commission may take action on such an application, and

“(B) a manufacturer or importer of cigarettes may elect to have the amendments apply at an earlier date or dates selected by the manufacturer or importer.

“(2) The Federal Trade Commission may, upon application of a manufacturer or importer of cigarettes with an approved application under section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), extend the effective date specified in paragraph (1) to January 11, 1986. The Commission may approve an application for such an extension only if the Commission determines that the effective date specified in such paragraph (1) would cause unreasonable economic hardship to the applicant. Section 4 of the Federal Cigarette Labeling and Advertising Act [this section], as in effect before October 12, 1985, shall apply with respect to a manufacturer or importer with an application approved under this paragraph.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-474, §4(b), Oct. 12, 1984, 98 Stat. 2203, provided that: “The amendment made by subsection (a) [amending this section] shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984].”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: “Section 4 of the amendment made by this Act [amending this section] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act [Apr. 1, 1970].”

### § 1334. Preemption

#### (a) Additional statements

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 387c(a)(2) of title 21 or section 387t(a) of title 21, no statement relating to smoking and health, other than the statement required by section 1333 of this title, shall be required on any cigarette package.

#### (b) State regulations

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 chapter.

#### (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.

(Pub. L. 89-92, §5, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 111-31, div. A, title II, §§202(a), 203, June 22, 2009, 123 Stat. 1845, 1846.)

#### REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), 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 Title 21, Food and Drugs, and Tables.

The effective date of the Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 111-31, which was approved June 22, 2009.

#### AMENDMENTS

2009—Subsec. (a). Pub. L. 111-31, §202(a), substituted “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 387c(a)(2) of title 21 or section 387t(a) of title 21, no” for “No”.

Subsec. (c). Pub. L. 111-31, §203, added subsec. (c).

1970—Subsec. (b). Pub. L. 91-222 substituted provision that no requirement or prohibition based on smoking and health should be imposed under State law with respect to the advertising or promotion of any cigarettes which packages are labeled in conformity with the provisions of this chapter for provision that no statement relating to smoking and health should be required in the advertising of any cigarettes which packages are labeled in conformity with the provisions of this chapter.

Subsecs. (c), (d). Pub. L. 91-222 struck out subsecs. (c) and (d) relating to the authority of the Federal Trade Commission with respect to unfair or deceptive advertising acts or practices, and reports to Congress by the Secretary of Health, Education, and Welfare and the Federal Trade Commission. See sections 1336 and 1337 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: “Section 5 of the amendment made by this Act [amending this section] shall take effect as of July 1, 1969.”

### § 1335. Unlawful advertisements on medium of electronic communication

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to