

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 Division of Drug Marketing, Advertising, and Communications, 5600 Fishers Lane (HFD-40), rm. 17B-20, Rockville, MD 20857.

(b) No outdoor advertising for cigarettes or smokeless tobacco, including billboards, posters, or placards, may be placed within 1,000 feet of the perimeter of any public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds, or basketball courts), elementary school, or secondary school.

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

§897.32 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 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.

(c) Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising permitted under this subpart D, shall include, as provided in section 502 of the act, the product's established name and a statement of its intended use as follows: "Cigarettes—A Nicotine-Delivery Device for Persons 18 or Older", "Cigarette Tobacco—A Nicotine-Delivery Device for Persons 18 or Older", or "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff" or "Dry Snuff", whichever is appropriate for the product, followed by the words "A Nicotine-Delivery Device for Persons 18 or Older".

§897.34 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