

Protecting young Canadians from tobacco marketing

An Appropriate Response to Little Cigars

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Table of contents

An Appropriate Response to Little Cigars.....	1
Table of contents.....	0
1. Introduction.....	1
Health Canada should respond to the marketing of ALL novelty tobacco products.	1
Health Canada has delayed its response to calls from health organizations – and tobacco manufacturers – to clamp down on novelty flavoured cigarillos.	2
Health Canada’s proposals are slower and more modest than those proposed by other legislative representatives or governments.	2
Health Canada’s proposals to protect youth from little cigars are less ambitious than its proposals for other risks.	3
Public Health interests are best served when governments recognize the problems associated with cigarillo sales are not just about ACCESS, but also about AVAILABILITY.	3
2. Sales and Use	4
Cigarillos have caused a hidden increase in tobacco use.	4
Cigarillos are a youth phenomenon.	5
Cigarillos are the fastest growing category of tobacco sales.....	5
Early intervention is needed to prevent the spread by peer-modelling.....	6
Smokers perceive flavoured cigarillos as less harmful.	6
Cigarillos are sold like party-favours, not addictive and harmful drugs.....	7
Flavoured cigarillos are packaged like toys.	7
Cigarillos are marketed by tobacco companies as “try me” products.....	9
3. Responding to Tobacco Industry statements about cigarillo marketing	10
Marginal products contributing to an already existing epidemic	10
Let the industry deal with product “freshness” issues.....	11
4. Definition of a little cigar	12
A more flexible and responsive approach needed.....	12
5. Proposed changes – Package count	14
<i>Minimum number of tobacco products per package</i>	14
Kreteks and bidis	14
Blunts	15
Minimum quantity of cigarette tobacco	16
Minimum quantity of smokeless tobacco cigarette tobacco.....	17
6. Other proposed changes.....	18
Proposed changes to the Tobacco Products Information Regulations (TPIR)	18
Proposed changes to the Tobacco Product Reporting Regulations (TRR)	19
Proposed changes to the Cigarette Ignition Propensity Regulations.....	20
7. Other measures NOT currently proposed by Health Canada.....	21
Need to ban new products.....	21
Pack count, product design and packaging standardisation.....	21
Bills C-50 and C-566.....	21
8. Appendices.....	23
Letter from Marc Paci, 4 September 2003.....	23
Montana Regulation 42.31.206, 42.31.207 and 42.31.208.....	23

1. INTRODUCTION

Successes and failures from past efforts aimed at reducing cigarette-use across the country and especially among young people should serve as a springboard for tackling the recent manufacturer-driven marketing explosion of little cigars and other tobacco market novelties.

Decreased cigarette prevalence among all Canadians, including the young is attributed to a comprehensive set of measures which include graphic health warnings making up 50% of cigarette pack covers, ingredients and emissions disclosure and minimum package count of 20, and strong public education campaigns clearly communicating that there is no safe level of tobacco use or exposure to tobacco smoke.

Historically, for reasons which have no public health rationale, cigar products have been exempted from this comprehensive strategy and have been exempted both from public health regulations and public health communications strategies. Cigar category products and rolling papers containing tobacco are regulated under weaker standards than those used for cigarettes, leading to a more favorable business environment for the introduction and sale of cigarette-like products parading as cigars. As a result, cigar smoking is often perceived as less harmful and less addictive.

The exemptions granted to a once marginal and declining category of tobacco products have now back-fired on public health, as new varieties of little cigars and other novelties inundate the market at an unprecedented rate.

Health Canada should respond to the marketing of ALL novelty tobacco products.

Flavoured little cigars or cigarillos, as they are also known, are a novelty tobacco product which, either by design or by coincidence, have become a vehicle for initiation of young Canadians to nicotine addiction. They are not the only novelty tobacco product currently on the market, nor can we expect that they will be the last one. Although this consultation paper does not propose a structural way of preventing or responding quickly to this and other novelty marketing by tobacco manufacturers, the policies which flow from it (either new regulations, new legislation, or other legal instruments) should ensure a timely response to such market developments.

With no freeze on the market pending some public health intervention at the Federal level, additional novelty products such as cotton-candy and bubble-gum flavoured blunts have found their way into corner stores.

Health Canada has delayed its response to calls from health organizations – and tobacco manufacturers – to clamp down on novelty flavoured cigarillos.

Nearly 4 years ago, lawyers for *Distribution GVA*, a Quebec-based distributor of tobacco products wrote to Health Canada asking for clarification as to whether “Prime Time” cigarillos were cigars or cigarettes. In a letter dated September 4th 2003, *Distribution GVA* described Prime Time cigarillos as having all the characteristics of a cigarette with the exception of being brown in colour (see Appendix 1). At least one tobacco distributor appeared perplexed by the fact that brown cigarettes are regulated like cigars and can be sold with fewer packaging restrictions than regular cigarettes.

In October 2006, the *Coalition québécoise pour le contrôle du tabac* addressed complaints to Health Canada and its Québec counterpart regarding the aggressive and kid-pleasing marketing and merchandising of cigarillos.¹

Health Canada’s proposals are slower and more modest than those proposed by other legislative representatives or governments.

The Québec government has proposed regulations dealing with package count, held a period for commentary and finally implemented regulations which bans the sale of any tobacco products containing less than 10 units, unless the purchase amounts to more than \$5 (or \$10 after June 1, 2009).² A private member's bill that would result in

¹ *Coalition pour le contrôle du tabac*, 2006. « Plainte concernant les cigarillos. » Letters dated October 18, 2006.
www.cqct.qc.ca/Documents_docs/DOCU_2006/MEMO_06_10_18_PlaintesCigarillosSC.pdf &
www.cqct.qc.ca/Documents_docs/DOCU_2006/MEMO_06_10_18_PlaintesCigarillos.pdf (accessed July 2008)

² *Québec Government*, 2008. Regulation under the *Tobacco Act*, Section 6. June 2008.
www.msss.gouv.qc.ca/sujets/santepub/tabac/download.php?f=01d894825bce63a37c1e101527e3dfa6 (accessed July 2008)

a partial ban on flavoured cigarillos has been introduced in Nova Scotia ³ and one federally.⁴

Despite the development of more ambitious legislative proposals, the Government of Canada is merely at the stage of proposing some regulatory improvements regarding package count of cigarillos and smokeless products.

Health Canada’s proposals to protect youth from little cigars are less ambitious than its proposals for other risks.

The government recently launched a new action plan to strengthen consumer protection in Canada, and promised to: *“Work to prevent problems before they occur; to target the highest risk products and to provide a rapid response to problems.”*⁵ The emergence of flavoured cigarillos and other novelty products, and the length of time required to develop regulations under the *Tobacco Act* to forestall their use by young people exposes the shortcomings of current tobacco legislation in the light of this standard of consumer protection.

Public Health interests are best served when governments recognize the problems associated with cigarillo sales are not just about ACCESS, but also about AVAILABILITY.

Cigarillos, the recently packaged and flavoured tobacco products and other novelties point to the lack of a scheduled and planned phase-out of tobacco products from the consumer product arena. While governments have identified the need to curb tobacco-use, they have yet enacted a road map to achieve this. All the while, industry marketing and product development efforts keep modernizing products and proposing alternatives to non-tobacco use (ie. Regular cigarettes to light cigarettes, conventional cigarettes to less smoke smell cigarettes, smoked products to smokeless products, convention commercial products to exotic and natural narghile, bidis, roll-your-own blunts or even native Indian cigarettes, etc.) .

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³ Bill-159, *An Act to Amend Chapter 14 of the Acts of 1993, the Tobacco Access Act*, Nova Scotia, May 2008. www.gov.ns.ca/legislature/legc/bills/60th_2nd/1st_read/b159.htm (accessed July 2008)

⁴ Bill C-556, *An Act to amend the Tobacco Act* (cigarillos, cigars and pipe tobacco), Ottawa, June 2008. www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3580364&Language=e&Mode=1 (accessed July 2008)

⁵ Health Canada, 2008. Advertisement, “Your Family’s Safety: Our Government’s Priority.” Health Canada, winter 2008.

By increasing the availability (and attractiveness) of their products, tobacco companies increase their potential market and draw in new clients. They increasingly use the “product” and “packaging” component of the marketing mix (price, product, package, promotion). Flavoured cigarillos are a way for new players to enter a mature tobacco market – and to ‘grow’ that market.

The history of human nature and not just tobacco control demonstrates how kids want what is presented as adult-reserved behaviour and objects. Those who are responsible for protecting youth from tobacco use cannot afford to pretend that allowing the industry to flood the market with tobacco products that taste good, look like candy and other children’s goods will not have serious and long-term impact. Authorities promote tobacco industry interests when they deal with tobacco industry novelty products merely as an access issue.

2. SALES AND USE

Cigarillos have caused a hidden increase in tobacco use.

Health Canada is to be commended for including new questions about cigarillos use on the national Canadian Tobacco Use Monitoring Survey, and should take additional measures to change the definition of smoker to include cigarillo smoking in any future statements of smoking prevalence.

Our analysis of the latest CTUMS data reveals that inclusion of little cigar use in measurements of smoking increase smoking rates among Canadian men from 21% to 23%, and rates for all Canadians from 12% to 20%.⁶ Clearly, little cigars have derailed Canada’s efforts to reduce tobacco use.

Moreover, 5% of cigarillo smokers aged 15-19 are not cigarette smokers, and would therefore not identify with measures specifically targeting cigarette smokers. Cigarillo-use is a problem requiring specific monitoring and interventions by authorities.

⁶ Physicians for a Smoke-Free Canada, 2008. Cigarillo Smoking in Canada: A review of results from CTUMS, Wave 1 – 2007, February 2008. www.smoke-free.ca/pdf_1/cigarillos-2008.pdf

Cigarillos are a youth phenomenon.

Across Canada, only young Canadians are as likely to experiment with cigarillos as cigarettes, and young people have three times the rates of cigarillo use as adults.⁷ (The relative risk of using cigarillos is 3.44 times higher for those under 20 as it is for those over 25. The relative risk is 2.66 times as high for those aged 20-24 compared with adult Canadians over 25 years of age.) This situation is significantly different than with cigarettes, where youth use is no higher than the general population, and is lower than in young adults.

Cigarillos are the fastest growing category of tobacco sales

Cigarillos are not only the fastest growing tobacco product, they are also one of the fastest growing consumer product categories. AC Nielsen reported in its 2006 Panel Track report that cigars had the second highest growth (at 32%) in unit sales in convenience stores from 2005 to 2006 (after energy bars and drinks).⁸ Convenience stores sold more cigars in 2006 than they did loaves of bread.

Table: Volume of Unit Sales by Category in Convenience and Gas-Convenience, AC Nielsen, 2006

Category	Unit Share	Unit % Chg
1. Cigarettes	20.6	2
2. Flavoured Soft Drinks	12.6	1
3. Beer Products	12.1	12
4. Chocolate	8.1	-4
5. Snack Foods	6.9	-3
6. Flat Water	5.5	26
7. Milk	5.1	0
8. Juices & Drinks -- Shelf Stable	4.7	-1
9. Gum	4.3	0
10. Candy Confections	3.3	-6
11. Cigars	2.1	32
12. Energy Bars & Drinks	1.8	104
13. Confections -- Frozen	1.8	0
14. Baked Desserts -- Prepackaged	1.6	0
15. Meat Sticks & Beef Jerky	1.1	9
16. Bread -- Commercial	0.9	-4
17. Juices & Drinks -- Refrigerated	0.8	7

⁷ Physicians for a Smoke-Free Canada, 2008. Cigarillo Smoking in Canada: A review of results from CTUMS, Wave 1 – 2007, February 2008. www.smoke-free.ca/pdf_1/cigarillos-2008.pdf

⁸ ACNielsen, 2006. Paneltrack.

We believe that this market growth has occurred principally because cigarillos are popular among young adults *and* minors. 2007 CTUMS data reveal that close to half (46%) of all young adults and one third (31%) of 15-19 year olds had experimented with cigarillos.⁹ Compared to the 40 billion or so cigarettes which are found on Canada's tobacco market, cigarillos, like cigars, remain a relatively marginal product, but young adults are trendsetters and youth are known to copy their habits.

Early intervention is needed to prevent the spread by peer-modelling

Tobacco company products are introduced by direct marketing, but are also promoted through informal and personal promotions, as when a smoker displays a tobacco product package. Young smokers are used as unpaid marketing representatives to their peer-group and younger cohorts.



Unless regulators act diligently now to portray these products differently, the numerous youth carrying and smoking cigarillos across Canada will serve to showcase cigarillo use as attractive and youthful for many years to come.

Smokers perceive flavoured cigarillos as less harmful.

Since 2003, Health Canada has known that the way cigarillos are packaged, sold and used has created dangerous misperceptions about their harmfulness. A report prepared for Health Canada reveals



left: packs of 20 cigarettes
right: pack of 4 little cigars

⁹ Health Canada, 2008. Canadian Tobacco Use Monitoring Survey (CTUMS) - Summary of Results for the First Half of 2007 (February - June). www.hc-sc.gc.ca/hl-vs/tobac-tabac/research-recherche/stat/_ctums-esutc_2007/wave-phase-1_summary-sommaire-eng.php

how some cigarillo smokers perceive cigarillos as less toxic than cigarettes and as a pleasurable treat to savour and enjoy.¹⁰ The report goes on to say “*the main perception was that small cigars are more popular – more socially acceptable [than cigarettes].*”

In addition to making cigarillo trial attractive financially, small packages also present cigarillos as smaller and somehow less harmful versions of regular tobacco products.

Cigarillos are sold like party-favours, not addictive and harmful drugs.

Regulators unwillingly perpetuate tobacco manufacturers’ marketing messages that cigarillo consumption is exclusive, festive and occasional by allowing cigarillos to be packaged and labelled like cigars. They do so despite evidenced that these products are used by young people in the same way cigarettes are used: According to Québec’s Institut de la statistique survey of grade 7 to 11 students, 22% of youth smoking cigarillos smoked them everyday or almost everyday.¹¹



left: pack of gum
right: mini cigarillo pack & stick

Flavoured cigarillos are packaged like toys.

Products that are as addictive and as harmful as cigarettes,¹² but that are allowed to be packaged in toy-ish and trial size formats are more likely compared to candies and trinkets and less to tobacco products and their adverse effects on health.

¹⁰ Les Études de marché Créatec +, 2003. *Health Warning Messages on Smokeless Tobacco, Cigars and Pipe Products – A Qualitative Study with Consumers*. Ottawa: Health Canada. [www.smoke-free.ca/warnings/WarningsResearch/574043%20Report%20\(HWM%20on%20Smokeless%20Tobacco,%20Cigars%20and%20Pipe%20P.doc](http://www.smoke-free.ca/warnings/WarningsResearch/574043%20Report%20(HWM%20on%20Smokeless%20Tobacco,%20Cigars%20and%20Pipe%20P.doc) (accessed July 2008)

¹¹ Institut de la statistique du Québec, 2007. *Enquête québécoise sur le tabac, l’alcool, la drogue et le jeu chez les élèves du secondaire, 2006*. See page 50 www.stat.gouv.qc.ca/publications/sante/pdf2007/Tabac_Alcool2006.pdf (accessed July 2008)

¹² Health Canada, 2007. « Small cigars : Big concerns » poster presented by Levasseur G, *et al*, at the 61st Tobacco Science Research Conference, September 23-26, 2007 in Charlotte, USA. www.tsrcinfo.com/images/61st_TSRC_Preliminary_Program_-_28_Aug_2007_Revision.pdf

Kid-friendly packaging of cigarillos make these tobacco products appear less objectionable and quite unrelated to cigarettes. Trial size packs of what are currently considered cigar category products may lead consumers to deny the true addictiveness of cigarillos.

Furthermore, the plethora of flavours and variety in package count create numerous purchase opportunities of products that taste and look different. This may falsely reassures consumers into thinking they are not repeatedly purchasing tobacco products but merely “sampling” them.



Cigarillos are marketed by tobacco companies as “try me” products

In an internal tobacco industry document, cigarette manufacturer, Philip Morris, characterizes as compelling marketing benefits the trial-generating possibilities and high curiosity factor which flavours generate.¹³

FROM A BUSINESS POINT-OF-VIEW: MARKETING BENEFITS

• WE HAVE SIGHTED SOME COMPELLING BENEFITS:

- HIGH CURIOSITY-TO-TRY FACTOR
- POTENTIAL FOR HIGH "TALK-APPEAL" AND EXCITEMENT TO SHARE FLAVOR TRIALS AMONG FRIENDS
- EXCITING, INNOVATIVE RETAIL TRIAL-GENERATING POSSIBILITIES
- MULTI-PACK PURCHASING POSSIBILITIES
- POTENTIAL TO RETAIN BRAND LOYALTY BY OFFERING EXPERIENTIAL CHOICES WITHIN ONE BRAND, CAPITALIZING ON CURRENT ALTERNATE PURCHASING BEHAVIOR OF SWITCHING FROM NON-MENTHOL ONCE IN AWHILE JUST FOR A CHANGE OF PACE
- POTENTIAL FOR CONCRETE "ADDED VALUE" TO COUNTER PRICE PURCHASING
- OPPORTUNITY TO RESTIMULATE ATTENTION TO THE BRAND VIA NEW FLAVOR INTRODUCTIONS FROM TIME TO TIME

Philip Morris. "New flavors qualitative research insights presentation," 1992
Bates Number: 2048207530

Many products other than tobacco are packaged in small packs to promote convenience and trial. This is especially true of products designed to appeal to kids. Merchandising in trial friendly sizes and multi-flavour packs products that generate addictions is deceptive and counter-productive to any tobacco reduction efforts.



¹³ Philip Morris, 1992. New flavors qualitative research insights presentation. October 1992. No. Bates 2048207525/7537 <http://legacy.library.ucsf.edu/tid/cro16e00> (accessed June 2008)

3. RESPONDING TO TOBACCO INDUSTRY STATEMENTS ABOUT CIGARILLO MARKETING

Marginal products contributing to an already existing epidemic

Publicly the tobacco industry has consistently argued that it does not aim to attract underage recruits and is only interested in promoting brand switching among, as one cigarillo manufacturer puts it, “legal-aged consumers who have the right to products that look good, smell good and taste good”.¹⁴ For this reason, manufacturers have qualified proposed regulations of cigarillos in Québec and elsewhere as “misguided”¹⁵ and “unfairly punitive to manufacturers of traditional cigars”.¹⁶

However, cigar manufacturers have told retailers a different story.



Ads published in the March/April 2007 (left) and January/February 2006 editions of *Your Convenience Manager (YCM)* Magazine.

¹⁴ Casa Cubana, 2008. Minimum Packaging and Pricing Requirements On Specialty Tobacco Products. A Response to the Governments of Québec's Proposed Regulations, April, 2008.

¹⁵ Casa Cubana, 2008. Anti-Tobacco Industry Using Kids To Promote Their Private Agendas and Further Misrepresent the Facts, Press Release, 29 April 2008. www.cnw.ca/en/releases/archive/April2008/29/c2784.html

¹⁶ SmallGuysTobaccoGroup, 2008. Règlementation, Loi du tabac (sic). Commentary on the proposed regulations. April, 2008.

In retail trade magazines destined to the Canadian convenience store industry, cigarillo manufacturers have regularly played up the fact that their products can be sold in inexpensive small packs of 2, 5 and 8 in ads.

Cigarillo manufacturers have gone on record saying small packs increase sales and promote trial. Manufacturers speak of the sale of single sticks and small packs as profit boosters and generators of “*more trial and impulse purchases*”.

The tobacco industry has a vested interest in trying to make any of its products attractive and likely to be tried, especially on impulse. There is no reason to accept a claim that marketing strategies designed to promote impulse sales would be aimed only at current smokers and would never affect never smokers or smokers who are trying to quit.

Moreover, studies have shown that children's are more likely to experiment with tobacco products as more of their social environment is saturated by tobacco-use and a context favourable to tobacco consumption.¹⁷ As more adults smoke, more children as likely to start smoking. Preventing the increase and reducing tobacco-consumption in the adult population is a known measure to reduce initiation and tobacco-use among minors.

Let the industry deal with product “freshness” issues

The tobacco industry may claim that 20 unit packaging of cigars is difficult to achieve and inappropriate given the “freshness” criteria. Certain cigarillo manufacturers have argued in Québec that expensive cigarillos and cigars ought to be stored in a humidor, and are bought as individual sticks by consumers who do not own a humidor or whose cigarillo consumption is too seldom to warrant a humidor at home. Prime Time, Bravo, Colt, Mini-Colt, Black Capitain's, Al-Capone, DON CARBONE, Pom Pom's and BlackStone brand cigarillos, as well as Mignon brand cigars are currently not sold in humidors in most convenience stores across Québec and Ontario.

¹⁷ U.S. Department of Health and Human Service, 1994. Preventing Tobacco Use Among Young People: A Report of the Surgeon General. Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Cancer for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. (see page 95) http://profiles.nlm.nih.gov/NN/B/C/L/Q/_/nnbclq.pdf (accessed May 2008)

Storage is an issue for many products, not just tobacco. Despite Canada's harsh winter, tall palm trees can be bought in many garden centres. Customers buying them, do so knowing they will have to bring them indoors (somewhere) during winter months. If product freshness is an issue to the cigar industry, surely the entrepreneurial and creative spirit which has enabled the industry to flourish despite increasing regulations will find ways to extend product expiration and shelf life. In response to freshness and product integrity issues, more and more fine wines are sold in bag-in-a-box and tetra pack type packaging.

Furthermore, some varieties of cigarillos currently on the market have been sold in packs of 20 for several years. Clearly the industry has seen some value in merchandising packs of 20 cigarillos in the past, and this despite the fact such packs are often more expensive than many premium cigarettes brands.

4. DEFINITION OF A LITTLE CIGAR

Firstly, we commend Health Canada for looking into current cigarillo physical and chemical properties, as well as emissions and regulatory frameworks elsewhere. While the definition proposed by Health Canada would certainly encompass many of the brown cigarettes parading as cigar type products, we would recommend Health Canada use more than the weight factor or presence of an acetate or other filter as criteria to distinguish little cigars from cigars.

A more flexible and responsive approach needed

The tobacco industry has a long history of circumventing existing regulations by making simple modifications to products and marketing. For example, when the Canadian government banned advertising at point-of-sale, the industry began displaying products in attractive, eye-catching patterns and mounting them in manners easily mimicking ads. More recently, when the Competition Bureau of Canada banned light and mild descriptors, the industry replaced descriptors by colour-coding packs, numerical values and placing new descriptors on packs.

In Québec, in the week following Gazette Part III publication/ adoption of regulations banning the sale of tobacco products for less than 5 dollars, the manufacturer of Prime Time cigarillos put on the market packs containing 3 cigarillos complete with SKUs. These packs of 3 are now selling for \$5,01 excluding the GST.

Common sense would indicate that the manufacturing of cigarillos to weigh slightly more than 1,36 kg per thousand units (with or without a mouthpiece) can easily be done. For instance, the weight or grade of paper used in the wrapper could easily be increased, without substantially changing the properties or feel of the cigarillos.



We therefore encourage the use of a broader range of criteria to distinguish cigarillos from other cigars. Essentially any cigarillo comparable to the appearance or packaging of cigarette should meet the labelling and packaging requirement established for cigarettes. For example, cigarillos having the diameter and length of commercial cigarettes should follow cigarette not cigar regulations. Health Canada should consider requiring that products sold in packs containing more than 2 sticks should also be considered as little cigars and should be regulated as cigarettes.

In reaction to a wave of cigarillo and other novelty products entering the market, the state of Montana in July 2007 built upon the US Treasury Department's Alcohol and Tobacco Tax Bureau classifications of small and large cigars definitions and now uses more than weight as a criteria. Products that weight more than 1.36kg per thousand units and that do not have a filter, but that are sold in packs of 10 or 20 fall into the little cigar category and cannot be sold in packs containing less than 20 units.¹⁸ (See Appendix II for the complete regulations). The regulations assimilate to cigarettes any product having the diameter and size of cigarettes found on the market, which has the benefit of adapting the classification of cigarillos as the industry modifies size and design of cigarettes.

¹⁸ Montana Department of Revenue, 2007. Administrative Rule 42.31.206 in Specific administrative rules related to little cigars and cigarettes - Administrative Rules of Montana 42.31.206, 207 and 208. <http://mt.gov/revenue/forbusinesses/littlecigars/littlecigars.asp> (accessed July 2008)

Recommendations

Physicians for a Smoke-free Canada encourages Health Canada to look beyond current design of products and anticipate product changes that could lessen the impact of the proposed regulations. In addition to the filter or weight criteria, products currently sold in packs of more than 2, or that have the length and diameter of cigarettes on the market should be considered as little cigars.

5. PROPOSED CHANGES – PACKAGE COUNT

Minimum number of tobacco products per package.

Physicians for a Smoke-Free Canada supports package count policies that are applied equitably to all smoked products.

Kreteks and bidis

Cigarillos, large cigars, small cigars and blunts are not products that should be easily available or accessible to young Canadians. Similarly, kreteks and bidis are not safe products for consumer use.^{19, 20} Packaging standards for these products should resemble that of cigarettes. Requirement for a minimum package size of 20 units would make these products less affordable for young people and would reinforce public education efforts to inform Canadians that no smoked products are a safe alternative to cigarettes.

Any exceptions to the minimum package size create a regulatory incentive for manufacturers to weaken tobacco control measures. For example, reduced pack count requirements for blunts, bidis and kreteks could motivate manufacturers to tinker with cigarettes or cigarillos design to classify them as bidis or kreteks.

¹⁹ Council on Scientific Affairs, 1988. Evaluation of the Health Hazard of Clove Cigarettes. *Journal of the American Medical Association* 1988, 260:3641–3644

²⁰ Centers for Disease Control and Prevention, 1999. Bidi Use Among Urban Youth—Massachusetts, March–April 1999. *Morbidity and Mortality Weekly Report* [serial online]. 1999;48(36):796–799 (accessed July 2008). www.cdc.gov/mmwr/preview/mmwrhtml/mm4836a2.htm

A particular risk exists that bidis and kreteks will be perceived as less harmful. Marketers have tried to distance their tobacco products from the stigma associated with cigarettes by placing phrases such as “*naturally sun dried*” “*organic tobacco*” and “*100% natural tobacco*” as brand attributes on cigarette packs. As bidis and kreteks are lesser known products, they may be perceived as less processed, less commercial and as natural substitute to cigarettes. Reduced pack count requirements for bidis and kreteks would further disassociate these products from cigarettes, when all three are addictive, highly carcinogenic and toxic.

Blunts

For the past 2 years now, thin and flavoured rolling papers containing tobacco have found their way into more and more convenience stores across Québec, Ontario and perhaps in other regions as well. They are marketed as blunts or tobacco wrappers. Packs contain 1 or 2 very fine papers containing tobacco and a straw-like stick (presumably to used when stuffing rolled-paper with tobacco or other smoking materials).

Blunt wrappers come in variety of fruit, drink and candy flavours (watermelon, strawberry-banana, peanut butter and jelly, cotton candy, etc.), but also with appellations associated to drugs (Purple Haze, Krypto, kush, etc.). Because these products are not considered cigarettes, but a cigar, packages usually contain 1 or 2 rolling papers and sell for less than 2 dollars. Like cigars, they only carry partial warnings or no warnings at all.



Blunts wrappers should be banned because of their known use as means to make illegal drugs taste better and more easily consumed.²¹ If not banned, they should be sold in packs containing at least 50 grams of tobacco. This would increase their price and make their packaging less user-friendly.

Recommendations

Physicians for a Smoke-Free Canada recommends minimal packaging for all cigarillos and other novelty tobacco products should be that specified for cigarettes: 20 per pack.

Minimum quantity of cigarette tobacco

Bill C-50 which amended the excise duty on tobacco products and alcohol received Royal Assent on June 18, 2008.²² Through C-50, duties paid on tobacco are now charged for 50 grams or fractions of 50 grams of tobacco.²³ Through the current proposal, Health Canada is harmonising the minimal amount which can be sold to that used when calculating federal taxes on tobacco. This essentially establishes a minimal price for even the smallest purchase of cigarette tobacco. While fixing the minimum weight sale for cigarette tobacco to 50 grams does necessarily translate into higher priced products, it does eliminate the possibility of selling a smaller quantity of cigarette tobacco for that minimal price. To a certain degree, this indirectly determines the smallest size a tobacco product can be.

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²¹ **Office of the Inspector General, 1999.** Youth use of cigars: Patterns of use and perceptions of risk. Office of Inspector General June Gibb Brown, Department of Health and Human Services, February 1999. <http://oig.hhs.gov/oei/reports/oei-06-98-00030.pdf> (accessed July 2008)

²² Bill C-50, An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget — Chapter No. 28, Journals No. 115, Wednesday, June 18, 2008. www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3586970

²³ Canada Revenue Agency (CRA), 2008. Excise Duty Notice: Enhancements to Tobacco Compliance and Changes to Duty and Special Duty on Certain Tobacco Products. www.cra-arc.gc.ca/E/pub/em/edn21/edn21-e.pdf

Minimum quantity of smokeless tobacco cigarette tobacco

Physicians for a Smoke-Free Canada believes this measure will make it easier for authorities and the public to recognize sale conditions where duties are not being paid, and are likely resulting from contraband. Additionally, the measure proposed will limit the smallness a tobacco product can be, impeding design and packaging possibilities. Smaller packages, regardless of price, could be used to market tobacco as a one-time use purchase, with itsy-bitsy amounts being perceived as risk free. With a minimal amount set at 50 grams, products are likely to occupy a larger volume and be less convenient to carry. This measure facilitates enforcement of fiscal policies and also poses some restrictions on package size, both of which reduce the appeal of tobacco products.

In reaction to Bill C-50, Imperial Tobacco wrote:

...certain provisions of the federal government's Bill C-50, which include the application of a surtax on "manufactured tobacco" sold in quantities equal to or lower than 50 grams, will ultimately impede the introduction of new smokeless tobacco products with potentially lower health risks such as Swedish style snus" "a smokeless tobacco used orally, which is not chewed or spit, are traditionally sold in quantities much lower than 50 grams due to the nature and usage of the product. When certain sections of Bill C-50 come into force, the tax on snus will increase from \$0.46 to \$2.89 per tin; a 600% increase.²⁴

Clearly, obstacles in pricing make it more difficult to market certain products. Similarly, restricting the minimal weight of smokeless tobacco makes it more difficult to market certain packaging options. At a time when cigarette manufacturers have minimised pack size to liken packs to trendy electronic gadgets (nano-pods, cell phones, MP3 players), restricting on a weight basis the smallness of smokeless tobacco packs appears as sound tobacco control policy.

Currently, Skoal Long Cuts tins contain 15 grams. At this weight, tins are small and look inoffensive. At 25 grams, tins would likely be larger, less convenient to carry in a pocket and would generally look less toy-ish.

Physicians for a Smoke-Free Canada recommends further changes to reduce the marketing and packaging options that a 25 gram or more minimal weight is likely to generate. Manufactures have themselves explained that such a policy impedes the

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²⁴ Imperial Tobacco Canada, 2008. Imperial Tobacco Canada responds to new tobacco surtax, Press release, June 2008. www.newswire.ca/fr/releases/archive/June2008/27/c8477.html

launch of new products. And this is especially true for miniaturized products, which are made to look cute and user-friendly.

Controlling portion count would not have as significant an impact as would a minimal weight requirement. Industry could make very small portions look appropriate for kids or market a larger portion product as a one day nicotine fixer for adults.

Recommendations

We recommend a 50 gram minimum weight for oral tobacco products.

6. OTHER PROPOSED CHANGES

Proposed changes to the Tobacco Products Information Regulations (TPIR)

In accordance with article 11 of the World Health Organization's *Framework Convention on Tobacco Control (FCTC)*, Canada agreed that "each unit packet and package of tobacco products and any outside packaging and labeling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages".²⁵ While Canada ratified the treaty in November, 2004, it has failed to bring its labelling of flavoured cigarillos, blunts, bidis and other products into compliance with its FCTC obligations for a 30% minimum warning on the principal display area.

All tobacco products sold in Canada should carry the highest standard of health warning requirements provided by regulations. Should packaging or package count make such warnings illegible or appear distorted, then minimum packaging and pack count standards should be established to insure that health labeling requirements are met.

All tobacco products, whether smokeless or cigar-type products, should be required to meet cigarette labeling requirements, i.e. graphic health warnings making up 50% of on the 2 main display surfaces.

Establishment of different warning requirements according to tobacco category can misleadingly convey some notion as to the overall risk proportion which is associated

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²⁵ World Health Organisation, 2005. Framework Convention on Tobacco Control (FCTC), Tobacco Free Initiative, Geneva. www.who.int/tobacco/framework/WHO_FCTC_english.pdf

to the category: single blunts which requires no warning at all are relatively harmless as compared to a 10 pack of cigarillos which carries a larger warning (30%), which is in turn less harmful than cigarettes which carry larger warnings (50%).

Physicians for a Smoke-Free Canada believes Canada should be compliant to all FCTC obligations. Furthermore, we commend Health Canada for seeking to regulate little cigars the same way as cigarettes under the TPIR, but would hope that Health Canada extend such requirement to all tobacco products, especially all products in the cigar category. From a public health perspective, all tobacco products, unless proven safe, should have the same requirements. Moreover, the existence of various requirement regime creates business incentives to tinker with products in an effort to introduce them as products requiring lower warning requirements.

Recommendations

We recommend 50% (or larger) health warning messages, as well as appropriate health information messages on all tobacco products.

Proposed changes to the Tobacco Product Reporting Regulations (TRR)

The manufacturing and marketing environment of cigars, whether little or large and many other tobacco market novelties is in many ways more favourable for businesses than is the manufacturing and merchandising of cigarettes. Canada's TRR regulations require cigarette but not cigar manufacturers and importers to provide Health Canada with laboratory measurements of selected toxic substances found in the unburned tobacco of each of their brands and in the smoke of *some of those products*. Public disclosure of this data has given the public and the health community in particular useful information to assess the health hazards associated with tobacco use. These have been communicated to the population and have raised awareness and concern over cigarette use.

Manufacturers of cigars have not had to pay for this laboratory testing, and have not had to make such data known to Health Canada. Cigar manufacturers disclose no fact-based data as to content and toxic emissions to Health Canada or the public. For this reason, much less is known about cigarillo and cigar emissions and compositions. What is known has been paid for by public funds not industry.

Physicians for a Smoke-Free Canada is concerned about the lack of transparency and of information that authorities have tolerated with regard to the content and

emissions of cigar category products which are sold or manufactured in Canada. Moreover, the existence of lower testing and reporting requirements for cigar category products creates business incentives to tinker with products in an effort to introduce them in this category, and not as cigarettes.

Recommendations

All cigar category products (blunts, wraps, cigarillos, etc.) should be regulated the same way as cigarettes under TRR regulations. .

Proposed changes to the Cigarette Ignition Propensity Regulations

While not proposed in the consultation paper, Physicians for a Smoke-Free Canada should like to emphasize the need to reduce the ignition propensity of all smoked tobacco products entering Canada, including little cigars. As of October 1st, 2005, cigarettes manufactured in Canada must burn their full length no more than 25% when they are lit but no smoked. Designing cigarettes to meet the requirements of the Cigarette Ignition Propensity Regulations makes cigarettes less likely to start fires.²⁶ These regulations only apply to cigarettes. Hand-rolled tobacco, tobacco sticks, cigars, bidis and kreteks are specifically exempted.

The Cigarette Ignition Propensity Regulations reduce the risks of fire induced harms for all Canadians, smokers and non-smokers. Regardless of the tobacco product that is smoked, all Canadians should be protected by the same level of fire safety. The increased use of cigarillos has increased exposure to fire risks related to their use. Non-smoking neighbours of Canadians smoking kreteks or cigarillos should not incur a higher risk of fire injury because such products are by design exempted from the prevailing fire safety standards.

Recommendations

All cigar category products (blunts, wraps, cigarillos, etc.) should be regulated the same way as cigarettes under TRR regulations.

²⁶ Health Canada, date unknown. Cigarette Ignition Propensity Regulations - Information Sheet. www.hc-sc.gc.ca/hl-vs/pubs/tobac-tabac/ignition-incend/index-eng.php#does (accessed July 2008)

7. OTHER MEASURES NOT CURRENTLY PROPOSED BY HEALTH CANADA.

The proposed regulations focus on restrictions of package count and more complete warnings on cigarillos. While package count is most definitely influencing appeal and affordability of these products, Physicians for a smoke-free Canada believes other factors, such as flavouring and novelty, have played a significant role in making these products popular and attractive to young people. In light of this, the proposed interventions would bring some corrective measures to increased tobacco use among Canadian young people, but appear as an insufficient response to the ever-increasing number of flavoured and attractively packaged products on the market.

Need to ban new products

The common denominator enabling all tobacco manufacturers, regardless of the type of product they manufacturer, to circumvent existing tobacco control measures and to recruit young users has been innovation to overcome regulations. Changes to existing product design, packaging and marketing, often used in combination with flavourings, have meant that Canadians are now exposed to a greater variety of just as deadly and addictive but somehow “new” tobacco products.

It is difficult to comprehend the well meaning intentions of government efforts to reduce tobacco use, when new attractive and appealing products by-pass various product safety and labelling requirements. As with any other escalating public health threat, authorities need to prevent the problem from getting worse. Authorities should implement a moratorium on all new tobacco products and varieties. This would give government the time to implement additional corrective measures.

Pack count, product design and packaging standardisation

Minimum pack count requirement open the door to standardized sized packaging, and we hope standardized package and product design. Tobacco products need not only be of minimum size but also have minimum appeal if they are to be truly uninteresting to new users, especially children.

Bills C-50 and C-566

The *Tobacco Act* and its regulations have served public health well, but an additional legislative tool is now within reach, one which could rapidly secure some important health gains. We ask Health Canada to recognize that comprehensive review of the current *Tobacco Act* and its regulations are unlikely to happen quickly, making the

optimal use of various bills before the House of Parliament, namely Bill C-52 and Bill C-566 an urgent matter.

In particular, Bill C-52, *An Act respecting the Safety of Consumer Products*, proposes government authority to pull dangerous products off the market and to require manufacturers to report adverse results from their products use. Bill C-52 currently exempts tobacco products, but its powers would allow Health Canada to pull novelty tobacco products, such as blunts, off the market.

Recommendations

We recommend that the government support amendments to Bill C-52 which will accelerate consumer health protection from novelty tobacco products.

Bill C-566, a private Member's bill, would amend the *Tobacco Act* to implement measures beyond those contemplated in this current consultation paper, such as the banning of flavours.

We believe that these measures will be supported by smokers. A majority of smokers who live with children have voluntarily made their homes smoke-free. Similarly, even though they may appreciate the variety of flavours on the market, smokers will likely understand that flavouring tobacco makes cigarettes, cigarillos and other novelty products more appealing and enjoyable for kids..

Recommendations

We recommend that the government support and adopt measures to curb the production and marketing of novelty products that are equally strong to those included in Bill C-566.

8. APPENDICES

Letter from Marc Paci, 4 September 2003

Montana Regulation 42.31.206, 42.31.207 and 42.31.208

28.

PATERAS & IEZZONI
Société en nom collectif
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Montréal, le 4 septembre 2003

Santé Canada
a/s Mme Geneviève Dugré
Complexe Guy-Favreau
200, boul. René-Lévesque ouest
Tour Est - 2^e étage
Montréal (Québec)
H2Z 1X4

OBJET : Distribution G.V.A. INC.
N/dossier : 4868-C-3

Madame,

Veuillez prendre note que notre firme représente Distribution G.V.A. Inc. et son Directeur général, monsieur Vincent Albanese.

Le ou vers le mois de juin 2003, un des fournisseurs de notre client, Casa Cubana, lui a demandé s'il voulait distribuer un produit qui porte le nom « Prime Time ». Ledit produit a toutes les caractéristiques d'une cigarette, sauf sa couleur est foncée. Pour cette raison, notre client a refusé de distribuer ce produit. Notre client hésite à s'impliquer dans la vente et la distribution de ce produit sans avoir la confirmation de votre part que ledit produit est un cigare et non une cigarette.

De plus, lors des nombreuses conversations téléphoniques que vous avez eues avec Monsieur Albanese, vous lui avez fait croire que vous étiez de la même opinion que lui à l'effet que ledit produit est une cigarette et non un cigare. Par contre, vous avez informé Monsieur Albanese que ce dossier a été referé à vos bureaux d'Ottawa pour une décision finale. Or, notre client attend toujours une réponse de votre part.

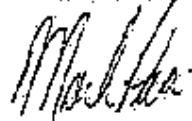
29.

2/...

Le marché pour « Prime Time » est très fort et Distribution G.V.A. Inc. reçoit beaucoup de demandes de sa clientèle pour ledit produit. Si vous décidez que le produit est un cigare, Distribution G.V.A. Inc. sera en mesure de vendre et de distribuer le produit à sa clientèle. Par contre, si vous décidez que le produit est une cigarette, notre client attendra que vous preniez les mesures nécessaires pour que la vente de ce produit soit contrôlée de la même façon que la vente des cigarettes.

Espérant recevoir de vos nouvelles sous peu, veuillez agréer, Madame, l'expression de nos meilleurs sentiments.

PATERAS & IZZONI



MARK J. PACI

MJP/fg



Classification of Certain "Little Cigars" as Cigarettes

Important Information for Manufacturers, Montana Licensed Wholesalers, Subjobbers and Retailers

Effective July 1, 2007, some little cigars-because of their appearance and characteristics-will be classified as cigarettes.

Administrative Rules of Montana 42.31.206, 42.31.207, and 42.31.208 clarify that certain little cigars are considered cigarettes for the Youth Access to Tobacco Products Control Act and the taxation of tobacco products in Montana. These rules also establish the criteria and process the department will use to identify which little cigars are cigarettes for the Youth Access Act and for tax purposes, and how to contest and request a judicial review of this determination. The rules were adopted and certified by the Secretary of State on January 16, 2007.

The rules will impact such little cigar brands as (but not limited to) Blackstone, Captain Black, Dark Horse, Dean's, Hats Off, Muriel, Prime Time, Red Buck, Rojo, Swisher Sweet Little Cigars, and Winchester.

A notice and supporting materials are being mailed to all tobacco manufacturers, wholesalers, subjobbers and retailers to ensure that it is clear how we intend to implement these new rules. Here is the process that we will follow:

- An information packet will be mailed no later than June 14, 2007. We will allow three days mailing time and will assume that you will have notice of these changes no later than June 18, 2007.
- A retailer who possesses any product included on the enclosed list (listed product) and who can prove that 1) the product was purchased prior to June 18, 2007; and 2) they have not ordered or purchased any listed product that does not meet the requirements of the new rules after June 18, 2007, will have until July 18, 2007 to dispose of the product.
- A retailer who is unable to dispose of the listed product by July 18, 2007 may request an additional period of time not to exceed two weeks in which to dispose of the product. Additional disposal time may be requested by calling Jim McKeon, Miscellaneous Tax Unit Manager at (406) 444-1940 or by email at jmckeon@mt.gov. All listed products in the possession of an individual or entity that has been granted additional disposal time must be disposed of by no later than July 31, 2007; otherwise, the product is contraband and subject to immediate seizure.

Any listed product that does not meet the requirements of the new rules purchased after June 18, 2007, and not sold prior to July 1, 2007, is contraband and subject to immediate seizure.

Future determinations by the department under the new administrative rules are effective immediately upon publication. We will not allow time to sell off existing inventory for future determinations. Therefore, if you wish to sell a product that is not on the list, but that you suspect might be in the future, please contact us about that product.

The links below will help you better understand the classification of cigarettes as defined in Montana statute.

- [Questions and Answers on "How It Affects You as a Manufacturer, Wholesaler, Subjobber, or Retailer"](#) ;

Subchapter 2

Tobacco Products Other Than Cigarettes

42.31.201 DEFINITIONS The following definitions apply to this subchapter:

- (1) "Interstate commerce" means the transportation of tobacco products intended for delivery to a person licensed by the department to receive unstamped or untaxed tobacco products in Montana or intended for delivery into another state.
- (2) "Montana Department of Justice current tobacco product directory" means the tobacco manufacturer and brand directory as required by 16-11-504, MCA.
- (3) "Reporting entity" means any Montana cigarette wholesaler or licensed Montana retailer acting as a tobacco wholesaler who brings tobacco products into Montana for sale to consumers.
- (4) "Retailer acting as a tobacco wholesaler" means a licensed retailer who purchases other tobacco products from a manufacturer, distributor, or importer who has not prepaid the tax on tobacco products.
- (5) "Statutory discount" means the amount the wholesaler or retailer is allowed to defray their administrative expenses.
- (6) "Tobacco products" include, but are not limited to:
 - (a) cigarettes;
 - (b) cigars;
 - (c) smoking, chewing, and snuff tobaccos; and
 - (d) moist snuff.
- (7) "Wholesale price" means the comparable arm's length price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction. (History: 16-11-103, MCA; IMP, 16-11-102, 16-11-202, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1993 MAR p. 2427, Eff. 10/15/93; AMD, 2000 MAR p. 3569, Eff. 12/22/00; AMD, 2004 MAR p. 2935, Eff. 12/3/04; AMD, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.202 PAYMENT OF TAX (1) The wholesaler or retailer shall remit the appropriate tax calculated at the statutory rate for all untaxed tobacco products purchased for sale in Montana less the statutory discount.

(2) All wholesalers or retailers shall remit the tax on forms provided and/or approved by the department, together with copies of the itemized invoices procured from the manufacturers or from the wholesalers of all tobacco products or on a computerized printout preapproved by the department.

(3) All such remittance shall be made to the department by the 15th of each month covering purchases of tobacco products made during the previous month.

(4) Failure to provide all the required information in this rule may result in a late filing and late pay penalty added to the tax due in accordance with ARM 42.2.504. (History: 16-11-103, MCA; IMP, 16-11-203, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2000 MAR p. 3569, Eff. 12/22/00; AMD, 2003 MAR p. 1890, Eff. 8/29/03; AMD, 2004 MAR p. 2935, Eff. 12/3/04; AMD, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.203 OUT-OF-STATE WHOLESALERS (1) All out-of-state wholesalers meeting the conditions of "transacting business in this state" as provided in 35-1-1026, MCA, and all out-of-state wholesalers doing intrastate business within Montana, are subject to all of the provisions of Title 16, chapter 11, part 1, MCA, and these regulations as Montana wholesalers. (History: 16-11-103, MCA; IMP, 16-11-201, 16-11-203, MCA; Eff. 12/31/72; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2001 MAR p. 3569, Eff. 12/22/00; AMD, 2004 MAR p. 2935, Eff. 12/3/04; AMD, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.204 PAYMENT OF TAX BY RETAILER (1) A retailer must assume that the tobacco products tax has not been paid to the department in the absence of the statement required by ARM 42.31.212 on the invoice or sales slip for tobacco products. (History: 16-11-103, MCA; IMP, 16-11-202, 16-11-205, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 2776, Eff. 12/25/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2000 MAR p. 3569, Eff. 12/22/00; AMD, 2004 MAR p. 2935, Eff. 12/3/04; AMD, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.205 DISPLAY OF NOTICE OF TAX (REPEALED) (History: 16-11-103, MCA; IMP, 16-11-202, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2000 MAR p. 3569, Eff. 12/22/00; AMD, 2004 MAR p. 2935, Eff. 12/3/04; REP, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.206 A TOBACCO PRODUCT LABELED AS ANYTHING OTHER THAN A CIGARETTE (1) A tobacco product labeled as anything other than a cigarette or not bearing a label, including but not limited to little cigars, may be considered, as provided in ARM 42.31.207, a cigarette under 16-11-102, MCA, if it meets two or more of the following criteria:

- (a) the product is sold in packs containing 20 or 25 sticks;
- (b) the product is available for sale in cartons of ten packs;
- (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
- (d) the product is of a length and diameter found in commercially-manufactured cigarettes;
- (e) the product has a cellulose acetate or other integrated filter;
- (f) the product weighs less than three pounds per thousand sticks;
- (g) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- (h) other evidence that the product fits within the definition of cigarette in 16-11-102, MCA.

(2) Tobacco products that are determined to be cigarettes must meet the requirements of 16-11-307, MCA.

(3) A cigar is a roll of tobacco that is wrapped in 100% natural leaf tobacco or:

(a) is wrapped in any substance that contains 75% or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and

(b) does not meet the criteria stated in (1). (History: 16-11-103, MCA; IMP, 16-11-102, MCA; NEW, 2007 MAR p. 124, Eff. 7/1/07.)

42.31.207 DEPARTMENT DETERMINATIONS (1) A manufacturer may request a determination from the department as to whether its product is a cigarette within the meaning of 16-11-102, MCA.

(2) Upon receipt of a manufacturer's request for determination, the department shall determine if a product is a cigarette within the meaning of 16-11-102, MCA, using the criteria in ARM 42.31.206 and the characteristics of the tobacco product, its packaging and labeling, and the totality of the circumstances.

(3) If the department receives information that a tobacco product may qualify as a cigarette under 16-11-102, MCA, from a source other than the manufacturer, the department may conduct a review and issue a determination in accordance with (4) through (6).

(4) Along with a request for determination, or upon request by the department, the manufacturer shall submit the following:

(a) product samples of at least 20 sticks of each style within each brand family for which a determination is requested;

(b) the weight per thousand sticks of the product;

(c) all advertisements and labels that mention or depict the product and point of sale merchandising material for the product; and

(d) the package and any larger container such as a carton, or detailed graphics for any unprinted or proposed packaging.

(5) The manufacturer may submit any other relevant evidence for the department to consider when making the determination.

(6) The department shall notify the tobacco product manufacturer of its determination in writing within ten days after the department makes the determination.

(7) ARM 42.31.206 and 42.31.207 are not effective until July 1, 2007. (History: 16-11-103, MCA; IMP, 16-11-102, MCA; NEW, 2007 MAR p. 124, Eff. 7/1/07.)

42.31.208 CONTESTED CASE AND JUDICIAL REVIEW OF DETERMINATIONS (1) A determination by the department that a product is a cigarette pursuant to 16-11-102, MCA, may be contested in the manner prescribed in 15-1-211, MCA, and ARM 42.2.613 through 42.2.620.

(2) In a contested case before the department, the burden of proof shall be on the manufacturer to establish by clear and convincing evidence that the product is not a cigarette as defined in 16-11-102, MCA. (History: 16-11-103, MCA; IMP, 15-1-211, 16-11-102, 16-11-149, MCA; NEW, 2007 MAR p. 124, Eff. 1/26/07.)

Rules 42.31.209 and 42.31.210 reserved

42.31.211 WHOLESALER INVOICES (REPEALED) (History: 16-11-103, MCA; IMP, 16-11-202, 16-11-203, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; REP, 2000 MAR p. 3569, Eff. 12/22/00.)

42.31.212 STATEMENT BY WHOLESALER (1) All invoices or sales slips issued by wholesalers covering sales to retailers of all tobacco products must contain a statement (typed, printed, or stamped) that the applicable Montana tobacco products tax is included in the total billing cost. (History: 16-11-103, MCA; IMP, 16-11-111, 16-11-112, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2007 MAR p. 124, Eff. 1/26/07.)

42.31.213 WHOLESALER AND RETAILER RECORDS (REPEALED) (History: 16-11-103, MCA; IMP, 16-11-118, 16-11-202, 16-11-203, MCA; Eff. 12/31/72; AMD, 1992 MAR p. 668, Eff. 3/27/92; AMD, 1995 MAR p. 2853, Eff. 12/22/95; AMD, 2000 MAR p. 3569, Eff. 12/22/00; REP, 2004 MAR p. 2935, Eff. 12/3/04.)

42.31.214 DEPARTMENT EXAMINATIONS AND PRESERVATION OF RECORDS (REPEALED) (History: 16-11-103, MCA; IMP, 16-11-202, 16-11-203, MCA; Eff. 12/31/72; REP, 2000 MAR p. 3569, Eff. 12/22/00.)

Rules 42.31.215 through 42.31.220 reserved

42.31.221 CREDITS FOR UNSALEABLE TOBACCO PRODUCTS OTHER THAN CIGARETTES (1) Credits of the statutory rate for tobacco products shall be granted in accordance with the provisions of 15-1-503, MCA, in cases where the tobacco products purchased and delivered become unsaleable. A manufacturer's credit memo will be required for proof of returned merchandise. During the first 180 days of a tax rate change, refund applications will be issued using the previous tax rate unless the department receives evidence that the tax paid on the application was paid at the new tax rate.

(2) Credits will be granted for tobacco products shipped from Montana and destined for retail sale and consumption outside Montana on which the tax has been paid. Evidence of the original sales slips or invoices will be required for proof of sales to out-of-state retailers. (History: 16-11-103, MCA; IMP, 16-11-114, MCA; Eff. 12/31/72; AMD, 1993 MAR p. 2427, Eff. 10/15/93; AMD, 2000 MAR p. 3569, Eff. 12/22/00; AMD, 2003 MAR p. 1890, Eff. 8/29/03; AMD, 2004 MAR p. 2935, Eff. 12/3/04; AMD, 2007 MAR p. 124, Eff. 1/26/07.)