

Guidelines for Enforcement of Section 7 of COTPA, 2003 in Accordance with the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014

What the new rules prescribe:

Following warnings from 1st April 2016 - to be changed after one year!!



No distractions on the pack: Regulation prohibits use of any messages, images and pictures that directly or indirectly promote any specific brand or tobacco use generally or any matter or statement which is inconsistent with or detracts from the specified warnings on the packs.

Not more than two languages - one on each side: With regard to the text warnings, where more than one language is used on the packs, the text *warning shall appear in not more than two languages used on the package* with the warning in one language on the one side and the other language on the other side. This provision is intended to keep the warnings clear and legible and prevent cluttering of the texts on each side of the pack.

Legal Metrology: With an eye to curb the illicit trade in tobacco products, the amendment to the regulations also mandate that each package of tobacco product shall display the following information:

- Name of the product;
- Name and address of the manufacturer or importer of packer;
- Origin of the product (for imported products);
- Quantity of the product;
- Date of manufacture; and
- Any other matter as may be required by the government in accordance with the international practice.

Minimum size prescribed: One of the most significant aspects of the amended regulations is that it provides for a minimum size for the warnings. As per the new regulations, the warnings on each panel of tobacco packs should not **be less than 3.5 cm (width) and 4 cm (height)** so as to *ensure that the warnings are legible, prominent and conspicuous*. This will prevent sale of tobacco products in small and miniature packages which the industry resort to for attracting youth and poor consumers.

Role of Enforcement Officer

- Ensure that no tobacco product is sold without the pictorial health warnings as prescribed.

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- Enter and search any premise if suspect existence of tobacco products without specified health warnings.
- Seize and confiscate such material that is in contravention of the law.
- Record and take action on every instance of violations as **second or subsequent offence has enhanced punishments.**
- Carry out regular inspections of places of possible violations.
- Be technically equipped to measure the size and colour specifications of the specified warnings.
- Get someone to witness the action taken against the violator(s).

Q – Which court will take cognizance of the offences under COTPA?

As per S.190 of the Criminal Procedure Code any Magistrate of the first class (JM-I) and any Magistrate of the second class (JM-II) specially empowered may take cognizance of any offence:

- Upon receiving a complaint of facts which constitute such offence;
- Upon a police report of such facts;
- Upon information received from any person other than a police officer, or
- Upon his own knowledge, that such offence has been committed.

Powers of the court (Ss. 28 and 29 Cr.P.C)

- **JM-II:** imprisonment ≤ 1 year or with fine ≤ Rs. 5000 or with both.
- **JM-I:** imprisonment ≤ 3 years or with fine ≤ Rs. 10000.
- **CJM:** any fine and punishment up to 7 years.
- **The Assistant Sessions Judge:** punishments up to 10 years imprisonment and any fine.
- **The Sessions Judge:** any punishment authorized by law; but the sentence of death passed by him should be subject to the confirmation by the High Court.
- A **Chief Metropolitan Magistrate** has the powers of a **CJM** and a **Metropolitan Magistrate**, the powers of a JM-I.

State governments can also designate certain courts to take cognizance of the violations reported under COTPA.

Q – Who will take action against violations of Section 5 and 7?

On a complaint from an enforcement officer a competent court will take cognizance of the offence and pronounce such punishment as deemed appropriate.

Q – Can a complaint be filed against enforcement officer for ensuring compliance with COTPA?

No action can be taken against an enforcement officer for any action taken by him in good faith while discharging his duty. Every person authorised as an enforcement officer under COTPA is deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Q – Is there a grace period for replacement of products on shelf by the vendors/distributors?

No. there is no grace period for the industry to implement the notification. Industry only gets TWO MONTHS as grace for the second round of warnings after 12 months (Rule 5.5) to clear their stocks from the shelf for actual replacement to take place. In effect requiring change of graphic health warnings (second set) on all tobacco products within next 14 months.

Q – What is the process for implementation of Section 7?

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- i. **SEARCH - Section 12:** Authorized officers search the premises where tobacco products sold. As per the provisions of CrPC.
- ii. **SEIZURE - Section 13:** In case of violation of any provision of COTPA enforcement officer to seize such products. Not more than 90 days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.
- iii. **CONFISCATION - Section 14:** Confiscation of products in violation of COTPA. However if it is proved that the person apprehended is not responsible for the violation the court may, instead of confiscation, pass order it deems fit against the person actually responsible for the violation
- iv. **COST in lieu of Confiscation Section 15:** The court may, subject to such conditions as may be specified in its order for the confiscation, give the owner an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. However, on payment of such cost, ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.
- v. **Confiscation not to interfere with other punishments - Section 16:** Confiscation of payment of cost in lieu of confiscation does not bar other penalties or punishments against the offender.
- vi. **NO confiscation without given a notice – Section 18:** No confiscation shall be made without giving a notice in writing informing the owner of the products of the grounds of such confiscation and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice. If no notice given of confiscation within 90 days of seizure such products to be returned to the owner or the person from whose possession it was seized.

Punishment for producer and manufacturer (S. 20)

- Any person who produces or manufactures tobacco products which do not contain the specified warning, in case of first conviction, shall be punished with imprisonment for a term which may extend to two years, or a fine of up to Rs 5000, or both. If it is a second or subsequent conviction, he shall be punished with imprisonment for a term which may extend to five years and with a fine of up to Rs 10,000.

Punishment for retailers (S. 20)

- Any person who sells or distributes tobacco products which do not contain the specified warning, on first conviction shall be punishable with imprisonment for a term which may extend to one year, or a fine of up to Rs 1000, or both. In case of second or subsequent conviction he shall be punished with imprisonment for a term which may extend to two years and with a fine up to Rs 3000.

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