

General Guidelines for implementation of Section 7 of COTPA, 2003 'Pictorial Health Warnings on all tobacco product packages'

The following guidelines are elaborated for effective implementation of the pictorial health warnings on all tobacco product packages under Section 7 of the 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003' (COTPA).

Section 7 of COTPA mandates that no person can produce, supply, distribute or import any tobacco product unless every tobacco product package carries a specified warning including a pictorial warning as may be prescribed by the rules.

I) SPECIFIED HEALTH WARNINGS

- (a) The COTPA Rules dated March 15, 2008 prescribe that every package of cigarettes and other tobacco products should bear the specified pictorial warnings. **The Components of the specified health warnings under the Rules are:**



For smoking forms of tobacco product packs



For smokeless forms of tobacco product packs

- The health warning "Smoking Kills" (on smoking forms of tobacco products) and "Tobacco Kills" (on smokeless or chewing and other forms of tobacco products) is printed in white font colour on a red colour background.
 - Pictorial depiction of the ill effects of tobacco use on health is placed below the health warning.
 - The health message "Tobacco Causes Cancer" is printed in black font colour on a white colour background.
- (b) **Specified health warning shall appear in all type of packs in which cigarette and other tobacco products are packaged for consumer use or retail sale**
- (c) **Area of the specified Health Warning**
- The Specified Health Warnings shall occupy 40% of the principal display area of the front panel of tobacco product packs.
 - The size of the specified health warning shall be legible and prominent and is to be increased proportionally according to the increase in package size occupying 40% of the principal display area.
 - The Principal display area for different tobacco packs are:
 - For box type packages, two equal sized largest surface area of the box that may be displayed or visible under normal or customary conditions of sale or use;

- For pouch type packages, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;
- For conical or cylindrical type of packages, the entire curving area of the pack that may be displayed or visible under normal or customary conditions of sale or use;
- For any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal or customary conditions of sale or use;

(d) Positioning of specified Health Warning

- The specified warning shall be positioned parallel to the top edge of the package and in the same direction as the other information on the package. For conical packs (such as bidis), the widest end of the pack will be considered as the top end of the pack.
- And further, in a manner that ensures that none of the elements of the warning are covered when the package is sealed or opened.

(e) Language to be used in the specified Health Warning

- The specified warnings shall be inscribed in the language/s used on the pack. If more than one language is used on the pack the specified health warning shall appear in not more than two languages, i.e. the language in which the brand name appears and in any one of the other languages as used on the product pack.

II) SPECIFIED HEALTH WARNINGS TO BE PRINTED FROM 1st DECEMBER, 2011.



For smoking forms of tobacco product packs

For smokeless forms of tobacco product packs

The full text and graphic details of the specified health warnings shall be reproduced as per the *source document* provided by the Government of India in form of the CD. The warnings can also be downloaded from the website (www.mohfw.nic.in).

III) OTHER FEATURES

- **Prohibition on use of messages on the tobacco product packages that directly or indirectly promotes a specific tobacco brand or tobacco usage in general.**
- **Prohibition on use of misleading terms on the tobacco product packages:** The use of misleading terms on tobacco packages is prohibited. Thus no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of: words or descriptors, whether or not part of the brand name, such as "light", "ultra light", "mild", "ultra mild", "low tar", "slim" or similar words or

descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, or likely or intended to be associated with, such descriptors.

- **Prohibition on obscuring, masking, altering or detracting from the specified health warnings**
 - The rules prohibit the designing of the product package or parts of the package or accessories thereto in a manner that would result in covering or obscuring the specified health warnings.
 - The rules also prohibit selling or supplying of any product, device, or other thing that is intended to be used, or that can be used, to cover, obscure, mask, alter, or otherwise detract from the display of specified health warning on the tobacco product package.
 - Since cigarettes and other tobacco products are sold in multiple packaging, the health warnings should be printed or pasted or affixed on every retail pack in which the tobacco product is normally intended for consumer use or retail sale.
 - The warnings should be placed in such a way so that it is not masked/ obscured or damaged in any way while opening the packs.
 - For any tobacco product sold in pouches or sachets the health warning should not be placed at the joints between two packs.

III. PUNISHMENT FOR VIOLATION (as per Section 20 of COTPA)

- Any violation of the provisions related to the specified health warnings under the Act, including rules made thereunder, by the **producer and manufacturer** of cigarettes and other tobacco products will lead to a penalty, for the first offence an imprisonment which may extend up to two years or with a fine which may extend to five thousand rupees or both and for any subsequent offence imprisonment which may extend up to five years and with fine which may extend up to ten thousand rupees.
- Any violation of this provision of the Act by the **seller and distributor** of cigarettes and other tobacco products will lead to a penalty, for the first offence, of imprisonment which may extend to one year or with a fine which may extend up to one thousand rupees or both and for any subsequent offence imprisonment which may extend to two years and with fine which may extend to three thousand rupees.
- If an offence is committed by a company, then the person in charge at the time when the offence was committed along with the company would be guilty of the offence and liable to punishment.

IV. AUTHORISED OFFICERS TO ENFORCE THE PROVISIONS

- The following officers have been notified vide Notification dated 30th July 2009, to ensure compliance with the Packaging and Labelling Rules 2008. These officers from respective department are notified by the Central Government who shall be competent to act under sections 12 and 13 of the COTPA and are conferred with the power of Entry, Search and Seizure under the said provisions of COTPA.

Table 1: The authorized officers

Designation	Department
All officer of the level of Superintendent & above of the Customs & Central Excise	All premises registered under Department of Revenue
All officer of the rank of Inspectors & above of Sales Tax / Health / Transport Departments	Department of Revenue / Health / Transport of State

Junior Labour Commissioner	Labour Department
Joint Director	O/o Commissioner of Industries / Small Scale Industries
Sub – Inspector and above of Police / State Food & Drug Administration or any other officer holding the equivalent rank of the Sub – Inspector of Police	Department of Food & Drugs & Department of Home Affairs.

V. PROCESS OF ENFORCEMENT

1. When is an offence said to have been committed?

- (i) The producer, manufacturer, seller, distributor and importer of cigarettes and other tobacco products fail to ensure that every tobacco product package produced, manufactured, sold, distributed and imported by him has the specified health warning including a pictorial warning as prescribed by the rules.
- (ii) The Authorized Officer shall look out for the following violations which are likely to be committed by the offender in contravention of the Packaging and Labelling Rules.
 - a) Tobacco product package is being sold, supplied, imported or distributed without the specified health warning as specified in the Schedule to the Rules.
 - b) The specified health warning does not occupy at least 40% of the principal display area of the front panel of the tobacco product package
 - c) The warning is not positioned parallel to the top edge of the package
 - d) The warning is not in the same direction as the information on the package.
 - e) Any part of the specified warning is severed, covered or hidden in any manner when the package is sealed or opened.
 - f) The tobacco product package display messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general on.
 - g) The warning is not in the language/s used on the pack or in more than two languages.
 - h) The tobacco product package or label contains any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.
 - i) The specified health warning on tobacco packs is not changed according to the bi-annual (every 24 months) rotation notified by the Central Government.

2. Who and when can one initiate the action?

- The above mentioned officers (*Table -1*), shall *suo moto*, wherever they have a reason to suspect that the provisions of Section 7 of COTPA read with the Packaging and Labelling Rules, 2008 has been or is being contravened, OR on the basis of complaint, oral or written, given by any person / citizen / any organization that the provisions of COTPA or the Rules pertaining to the packaging and labeling of tobacco products are being violated, shall enter and search any premises as prescribed in Section 12 of COTPA and further seize the contravening article under Section 13 of the Act.

3. What is the procedure of action?

- a) The officer shall form a raiding party before carrying out the search and seizure.
- b) The raiding party shall include the Officer himself along with two independent witnesses and one police officer not below the rank of Sub – Inspector (optional).
- c) On the reason of suspect of contravention, the officer along with the raiding party shall enter and search the premises.
- d) Where the officer has reason to believe that the offence appears to have been committed, the officer shall seize the contravening products.
- e) The officer shall be required to give seizure memo / receipt to the owner / occupant / in-charge of the premises.
- f) A *Panchanama* shall be drawn in the presence of the two witnesses who shall narrate the place and the goods seized in their statements. **(Appendix 1)**
- g) The package/goods seized shall be kept in sealed condition where the seal shall be affixed in the presence of the two witnesses and the owner / occupant/ in-charge of the premises.
- h) The officers shall be required to maintain a register of complaint mentioning the name, address, date and other details of the person complaining.
- i) The package/goods seized shall not be retained by the officer who seizes the package for a period exceeding ninety days from the date of the seizure, unless the approval of the District Judge or such other designated judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.
- j) The officer shall then proceed for confiscation of the seized material before the District Judge, of principal civil court of original jurisdiction within the local limits of whose jurisdiction the material was seized.
- k) **The Court adjudging the confiscation may, subject to such conditions as may be specified in the order give the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. On payment of the costs 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 incorporated on each such package.**
- l) **No order adjudging confiscation or direct payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice in writing within a period of ninety days from the date of the seizure of the package of cigarettes or any other tobacco products, informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and, if he so desires, of being heard personally or through a representative in the manner.**
- m) **Since the order of confiscation or payment of cost by the court of civil jurisdiction does not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of COTPA or under any other law. The officer conducting the search and seizure will register a criminal complaint with the Police Station in whose jurisdiction the place / premises is situated. The officer shall be the complainant in the said complaint. Upon the criminal complaint being registered with the Police Station, the police officer shall then take appropriate action as per the provisions of the Criminal Procedure Code, 1973.**
- n) The officer shall then file a complaint before the Metropolitan Magistrate, under Section 20 of COTPA.
- o) The officer shall bear in mind that the offence committed under Section 7 of COTPA read with the Packaging and Labelling Rules 2008 **IS NOT COMPOUNDABLE.**

- p) Authorized officers need to record and proceed against every instance of violations as second or subsequent offence has enhanced punishments under COTPA.

4. What actions the State Government can take?

State governments may take following actions:

- a) Constitute Inspection and Compliance Cells (ICC's) at the district and state level, consisting of officers from various departments who will conduct regular inspection and monitoring at places where tobacco product in any form is manufactured, distributed, sold or transported. *Alternatively the existing monitoring committee notified for implementation of Section - 5 can also be empowered to take such action.*
- b) Issue broad guidelines for the officers carrying out search and seizure, keeping in mind the local requirements of that State. E.g. the composition of the raiding party, time, place and manner in which the raid may be carried out or recorded.
- c) Issue guidelines / directions to all the manufacturers in the State to ensure that the provisions of the Act and the Rules are not violated.
- d) Sensitize the representatives of tobacco industry/ distributors/ vendors / sellers of cigarettes and other tobacco products about the provision and the rules and set up a mechanism for recording complaint and monitoring implementation.
- e) Sensitize, train and empower Police, Food & Drug Inspectors and other authorized officers as notified by the Central Government vide notification dated 30th July, 2009.
- f) Notify additional authorized officers for implementing the provisions of the rules including officers from panchayats and municipal corporations to take action under COTPA to ensure compliance of the law.
- g) Set up raiding squads for monitoring, enforcement and compliance with packaging and labeling rules and other COTPA provisions and regulations.
- h) Give wide publicity to the rules and its implementation along with the list of notified officers in the local daily newspapers and broadcast channels.
- i) Encourage public in general to report violations of the law to the authorised officers and direct authorized officers for prompt response and action on such complaints.

5. Action to be taken by tobacco retailers, distributors, manufacturers and importers for compliance of Section 7 of the Act:

i. Retailers

- All tobacco products must have the specified health warnings and no tobacco product should be sold without specified health warnings.
- Ask distributors to give fresh packaged products with date of manufacture and correct warnings.
- Ensure that all the provisions of the packaging and labelling rules are complied including that the warnings are not obscured or covered in part or in whole in the selling areas.
- Report violation by distributors and manufacturers to authorised officers and to the toll-free number 1800-110-456.

ii. Distributors

- Ensure that they do not distribute any tobacco product which does not bear the specified health warnings as provided in the Packaging and Labelling Rules.
- Ensure that all tobacco products received by them from a manufacturer comply with the rules.

- Report any violation by manufacturers to the authorised officers and to the toll-free number 1800-110-456.

iii. Manufacturers

- Ensure that no tobacco product is manufactured without the date of manufacture inscribed on the packs.
- Ensure each unit of tobacco product pack intended for sale and distribution in India bears the specified health warnings as prescribed under COTPA rules before the product packs leave the manufacturing unit for distribution.

iv. Importers

- Ensure that no tobacco product is imported without the date of manufacture inscribed on the packs.
- Ensure each unit of tobacco product pack imported for sale and distribution in India bears the specified warnings as prescribed under the Packaging and Labelling Rules.

Appendix 1

Panchnama dated _____

Whereas:

We

Sr. No	Name and parentage of Panch witnesses	Address	Age	Occupation
1				
2				

The above-mentioned Panchs on being called by

Shri _____, the authorized officer of _____, under the *Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003* and the _____ Rules, 20__ , in exercise of the powers under Section _____ of the said Act, today came to the premises of **Mr.** _____, Address _____ to search the said place, where there is a reason to suspect that the provisions of Section ___ of the said Act read with the _____ Rules, 20__ has been or is being contravened.

We declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

1. Signature of Accused

Date

Time

Name

Address

1. Signature of Witness

Date

Time

Name

Address

2. Signature of Witness

Date

Time

Name

Address:

Attachment: List of the Inventory taken in possession

Signature of Authorized Officer

Name

Date

Time

Place