

2008/14



**TOBACCO PRODUCTS CONTROL
REGULATIONS 2008**

Sir F. Goodwin, KBE

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 24th day of June 2008

Present:

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL**

PURSUANT to section 43 of the Tobacco Products Control Act 2007, His Excellency the Queen's Representative, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations:

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Price \$4.50

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ORDER

1. Title and commencement - These regulations may be cited as the Tobacco Products Control Regulations 2008.

2. Interpretation – In these regulations, unless the context otherwise requires

“Additive” means a substance that forms part of a tobacco product that is not cured tobacco leaf; and includes -

- (a) A substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
- (b) Any substance that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch or similar part of the tobacco product;

“Act” means the Tobacco Products Control Act 2007;

“Carton” means a package comprising two or more packages within -

- (a) A container; or
- (b) A wrapper that obscures or tends to obscure any writing on any of those packages that would be legible if the wrapper were completely transparent;

“Cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper;

“Cigarette pack” means a retail package containing cigarettes;

“Constituents” in relation to tobacco products intended for smoking, means the chemicals inherent in the product itself or in the smoke emitted from the product and in relation to smokeless tobacco products, constituents mean the chemicals inherent in the tobacco itself;

“Displayed”, in relation to any package, face, or flap, means displayed on the outside of the package, face, or flap;

“Flip-top pack” means a retail package of the kind commonly called a flip-top pack, a hinge-top pack, or a hinge-lid box;

“Harmful constituents” means, in respect of any tobacco product, any constituent of that product which is generally recognized as harmful and includes the substances specified in regulation 9;

“Health message” means a health message, either in text or in pictorial or other illustrative form as from time to time required by the laws of Australia or New Zealand in relation to the sale of tobacco products or in the form of a message as set out in column 2 of Schedule 1;

“Information on harmful constituents” means the information required by regulation 16;

“Other information” means, in relation to information on tobacco packaging, information relating to the social, economic, cultural or other effects of tobacco use or exposure to tobacco smoke, or advice on avoidance of harms associated with tobacco use or exposure;

“Package” means any container, wrapper, carton, or other enclosure that contains any tobacco product or in which tobacco products are customarily sold and includes the package’s label.

“Principal display surface” means, -

- (a) in the case of a package or carton that has at least two equal sized sides or surfaces, other than the top and bottom, that may be displayed or visible under normal or customary conditions of sale or use, the area of each of two of those sides or surfaces, including the sides of any lid or cover if those sides are part of the package or carton;
- (b) in the case of a package or carton that has sides of more than one size, the area of each half of the total area of its largest side;
- (c) in the case of a package or carton that has a lid or flap that is the part of the package or carton displayed or visible under normal or customary conditions of sale or use, the area of each half of the total area of the top surface of the lid or flap; and
- (d) in the case of a package or carton that does not have a particular side or surface that is predominantly displayed or visible under normal or customary conditions, any two

portions that each occupy 40 percent of the total surface area of the package or carton and that can be displayed or visible under normal or customary conditions of sale or use, excluding, where applicable, the top surface of any lid, but including the side of the lid if the side is a part of the side of the package or carton.

“Retail package” means a package intended for retail sale as a single unit. For the purpose of this definition -

- (a) A package may be intended for retail sale as a single unit even if it is also intended for any or all of the following -
 - (i) Sale of any other kind;
 - (ii) Transporting retail packages contained within it;
 - (iii) Holding or displaying, for separate retail sale, retail packages contained within it; and
- (b) If a retail package is a carton, it includes every package the carton contains (whether or not the latter are intended for retail sale as single units);

“Wrapper” means a wrapping containing a retail package or several retail packages; and includes a non-removable adhesive label or sticker securely attached to it.

PART I

REQUIREMENTS FOR PERMITTED FORMS OF ADVERTISING

3. Permitted exterior displays on retail premises - For the purpose of section 7(a) of the Act, a retailer who displays that retailer’s name or trade name on the exterior of that retailer’s place of business being a name which contains any word or expression relating to tobacco products or tobacco smoking permitted by that subsection must, immediately beneath the word or expression, display one of the health messages specified in Schedule 1, in lettering not less than half the size of the word or expression.

4. Price notice - Every price notice which indicates the tobacco products available for purchase within a retailer’s place of business and their prices must comply with the following requirements -

- (a) A price notice that indicate the names and prices of only one or two tobacco brands or brand variants must be no larger than 90mm by 55mm;

- (b) A price notice that indicates the names and prices of three or more tobacco brands or brand variants must be no larger than 360cm²;
- (c) The combined area of all price notices to which subclauses (a) and (b) of this regulation applies must not exceed 21cm by 29.7cm at any point of sale inside a retailer's place of business;
- (d) There may be displayed at any point of sale inside a retail outlet no more than two price notices of the sort to which subclause (a) of this regulation relates and no more than three price notices of the sort to which subclause (b) of this regulation applies;
- (e) No material other than the following may appear on any price notice -
 - (i) The name of the tobacco product (which may consist of or include a brand or brand variant);
 - (ii) Any logo, design, or similar device that is usually associated with that tobacco product;
 - (iii) A depiction of the package in which the tobacco product is customarily sold;
 - (iv) The quantity in which the tobacco product is sold (whether by weight or number);
 - (v) The price of the tobacco product;
 - (vi) A health message as required by this regulation.
- (f) Every price notice to which subclauses (a) or (b) of this regulation refer must carry one of the health messages specified in Schedule 1, in English and Cook Islands Maori, centered at the bottom of the notice and in a text size that is at least double the text size of any other text on that notice.
- (g) Price notices to which subclauses (a) or (b) of this regulation refers may also carry the attribution 'Ministry of Health Warning' in English and Cook Islands Maori, printed after the health message, provided that the print size of the attribution is no greater than one half the print size of the words that make up the health message.

5. Requirements for health messages and other information during sponsored events - (1) For the purpose of section 11(3) of the Act, one of the health messages specified in Schedule 1 and the other information which corresponds to that message in the Schedule, must appear on every tobacco product advertisement displayed at or of any sponsored event or, (if references to sponsorship are limited to attribution, acknowledgment, association or identification, then) on every display of those references.

(2) Where two or more tobacco product advertisements are to appear, two or more different health messages and the other information corresponding to those health messages, as specified in Schedule 1, shall appear in rotation so that each tobacco product advertisement or reference to tobacco sponsorship displays a different message and the other information corresponding to that message.

(3) Where the number of tobacco product advertisements or references to tobacco sponsorship exceeds the number of health messages and other information specified in Schedule 1, the health messages and other information specified in Schedule 1 shall appear in rotation so that as far as is possible the health messages and corresponding other information used appear in equal numbers across all the tobacco product advertisements and references to tobacco sponsorship displayed.

PART II **TESTING, REPORT AND RETURNS**

6. Manufactured cigarettes to be tested - Manufactured cigarettes must be tested at least once in each calendar year, in accordance with section 20 of the Act, for the purpose of providing a report under section 21 of the Act within 60 days of testing and in any event not later than the 31st day of January the following year on the levels of harmful constituents in the smoke from each brand of manufactured cigarettes.

7. Conduct of tests for manufactured cigarettes - Tests for the harmful constituents of brands of manufactured cigarettes, and the respective quantities of those constituents present in the smoke, must be conducted in accordance with the following standard methods published by the International Standards Organization:

- (a) For tar, ISO 4387:1991(E) (Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine);
- (b) For nicotine, ISO 10315:1991(E) (Cigarettes - Determination of nicotine in smoke condensates - Gas chromatograph method);
- (c) For carbon monoxide, ISO 8454:1995(E) (Cigarettes - Determination of carbon monoxide in the vapour phase of cigarette smoke - NDIR method);
- (d) For tar, nicotine, and carbon monoxide, in addition to the applicable standard method specified in paragraph (a) or paragraph (b) or paragraph (c), -

- (i) ISO 3308:1991(E) (Routine analytical cigarette-smoking machine - Definitions and standard conditions); and
- (ii) ISO 8243:1991(E) (Cigarettes - Sampling); and
- (iii) ISO 3402:1991(E) (Tobacco and tobacco products - Atmosphere for conditioning and testing).

8. Reports and returns - Every manufacturer and every importer of any class of tobacco product shall within 60 days of testing and in any event not later than the 31st day of January the following year file with the Secretary the results of any test conducted for the purposes of section 21 of the Act and shall, not later than the 31st day of January in each year, file with the Secretary -

- (a) An annual report as per Schedule 2 of these regulations of the results of all tests that, during the previous year, have been conducted by that manufacturer or importer for the purposes of section 21 and 22 of the Act; and
- (b) A return as provided in Schedule 3 to these regulations, showing, in respect of the Cook Islands -
 - (i) The weight of tobacco and of all additives used in the manufacture of each such product sold by the manufacturer or importer during the previous calendar year; and
 - (ii) The quantity of each brand, and of each brand variant, of each such product sold by the manufacturer or importer during the previous calendar year; and
 - (iii) The recommended price of each brand, and each brand variant, of each such product sold by the manufacturer or importer during the previous calendar year.

9. Harmful constituents - Tar, nicotine, and carbon monoxide are harmful constituents for the purposes of these regulations.

PART III
CONSUMER INFORMATION REQUIREMENTS

10. Application - The requirements of this Part apply to all tobacco products that are for retail sale in the Cook Islands.

11. Display Criteria – (1) Any health message or other information that is required by these regulations to be displayed on tobacco packets shall be displayed –

- (a) in a form at that time fully compliant with the laws relating to the sale of tobacco products in either Australia or New Zealand; or
- (b) in Cook Islands Maori and English, as prescribed by regulations; and, in each case
- (c) in a manner that ensures that message and other information are legible and prominently displayed.

(2) Tobacco products that display health messages and other information that is in a form at that time fully compliant with the laws relating to the sale of tobacco products in either Australia or New Zealand shall not be required to comply with the requirements of regulations 13, 14, and 16 to 20 inclusive.

12. Obligation to display - (1) Subject to section 25 of the Act, every person who sells, distributes, displays for sale or distributes tobacco products in the Cook Islands, or imports any tobacco product into the Cook Islands shall ensure that that tobacco product displays the applicable health messages and other information, in accordance both with Schedule 1 to these regulations and any Gazette notice issued under subclause (2) of this regulation (should there be any issued at the time). Compliance with these regulations is not contingent in any way upon the issue of a Gazette notice.

(2) The Minister may from time to time, by notice placed in the Gazette, make changes to Schedule 1 to these regulations, to specify, -

- (a) what health messages and other information must be displayed on tobacco products;
- (b) which health messages and other information must be displayed on each class of tobacco products.

(3) Any Gazette notice placed by the Minister in accordance with subclause (2) of this regulation may refer to written documentation or electronic files obtainable from the Secretary and containing the text and/or images that are required under Schedule 1 to be displayed on tobacco packaging as health messages and other information.

(4) Any Gazette notice issued under subclause (2) of this regulation shall specify the date upon which it shall take effect, which date shall be a date considered reasonable by the Minister for the purposes of allowing sufficient time for importers, manufacturers and distributors to comply with changes to Schedule 1 to these regulations.

(5) No two Gazette notices under subclause (2) of this regulation may be issued within thirty six months of each other.

13. Manner of display - The health messages and other information required to be displayed must -

- (a) occupy at least 50 percent of each principal display surface and be positioned parallel to the top edge of the package, towards the top part of the package as much as possible while satisfying the requirements of paragraph (b), and in the same direction as the other information that is on the package;
- (b) be displayed on a principal display surface in a manner that ensures that none of the words of the message and other information will be severed when the package is opened;
- (c) contain the information, wording and/or pictorial representations specified in Schedule 1 to these regulations;
- (d) as closely as possible be reproduced in the colours, style and format specified in Schedule 1 to these regulations.

14. Pitch - Health messages and other information that is entirely textual in nature shall be displayed using black characters on a white background in Helvetica bold type in a pitch that results in it occupying not less than 60% and not more than 70% of the area in which it is displayed as determined in accordance with regulation 13(a).

15. Messages to appear in rotation - (1) The health messages and other information required by these regulations must be displayed in rotation, so that in each calendar year, as nearly as possible, each of them appears on an equal number of retail packages of the same kind of tobacco product.

(2) For the purposes of subclause (1), tobacco products are not of the same kind only if, -

- (a) They are sold under different brand names; or
- (b) They are sold under the same brand name; but differ in one or more of the following ways -
 - (i) Containing or not containing menthol;
 - (ii) Being otherwise differently flavoured;
 - (iii) Producing different quantities of tar;
 - (iv) Having or not having filter tips or cork tips;

- (v) Being sold in retail packages containing different numbers of pieces;
- (vi) Being of different length or mass.

16. Information on harmful constituents to be displayed on cigarette packets – Subject to regulation 20, a cigarette pack that is sold or offered for sale by a manufacturer, importer, distributor, or retailer must display information in the following form -

“Smoking exposes you to more than 40 harmful chemicals. These chemicals damage blood vessels, body cells and the immune system QUIT NOW to reduce your risk of chronic illness or premature death”.

17. Format of information harmful constituents - The text of information on harmful constituents must be printed in black on a rectangular white background -

- (a) In roman font in the typeface known as Helvetica or a font which is substantially similar in appearance;
- (b) In upper-case and lower-case letters, as it is set out in regulation 16;
- (c) In type that is -
 - (i) Clear and legible; and
 - (ii) Subject to paragraph (b), the same height throughout the message; and
 - (iii) Of normal weight.

18. Display of information on harmful constituents - (1) The information on harmful constituents shall be displayed on packets of manufactured cigarettes and cartons in a manner that does not interfere with the display of health messages and other information.

(2) The information on harmful constituents shall be displayed on packets of manufactured cigarettes so that it takes up an entire side of the packet, or a minimum of nine percent of the packet surface, whichever is the greater.

(3) The information on harmful constituents shall be displayed on cartons of manufactured cigarettes so that it takes up a minimum of five percent of the surface of the carton.

19. Alternative information on harmful constituents on packages of cigarettes imported in small quantities - In the case of retail packages that are imported into the Cook Islands, it is a sufficient compliance with these regulations if the package displays information on harmful constituents -

- (a) In the English language; and
- (b) In a manner and form that is substantially to the same effect as that required by regulations 16 to 18.

20. Ministry of Health warning - Unless the attribution “Ministry of Health Warning” is already included with a health message or other information or information on harmful constituents which is required to be displayed on tobacco packaging, any person may add to the health message or other information or information on harmful constituents required to be displayed on that packaging by these regulations the attribution “Ministry of Health Warning”, printed after the rest of the health message or information or information on harmful constituents, provided that any attribution so added shall be -

- (a) In upper-case and lower-case letters, as it is set out above; and
- (b) In italic font in the type face known as Helvetica or a font that is substantially similar in appearance; and
- (c) In a point size such that its risers are no more than half the height of the equivalent risers of the rest of the message, other information or list; and
- (d) Otherwise in accordance with this Part.

G.L. Harmon
Clerk of the Executive Council

These Regulations are administered by the Ministry of Health

BY AUTHORITY:
Cook Islands Government – 2008

SCHEDULE 1

HEALTH MESSAGES AND OTHER INFORMATION

It shall be sufficient compliance with these regulations that health messages and other information take the exact form, in any case, required at that time by the laws relating to the sale of tobacco products in either Australia or New Zealand.

However if in any case health messages and other information do not comply in that way, then, for the purposes of both the Act and these regulations, the following health messages and other information shall be utilized.

Column 1	Column 2	Column 3
Item	Health message	Other information
1	Smoking causes lung cancer (repeat in Cook Islands Maori)	<p>SMOKING CAUSES LUNG CANCER</p> <p>Tobacco smoke contains many cancer-causing chemicals including tar. When you breathe the smoke in, these chemicals can damage the lungs, and can cause cancer. Lung cancer is the most common cancer caused by smoking. Lung cancer can grow and spread before it is noticed. It can kill rapidly.</p>
2	Smoking is addictive (repeat in Cook Islands Maori)	<p>SMOKING IS ADDICTIVE</p> <p>Nicotine, a drug in tobacco, makes smokers feel they need to smoke. The more you smoke, the more your body will depend on getting nicotine and you may find yourself getting hooked. It may be difficult to give up smoking once you are hooked on nicotine.</p>
3	Smoking kills (repeat in Cook Islands Maori)	<p>SMOKING KILLS</p> <p>Tobacco use has been shown to cause more illness and early death than using any other drug.</p>
4	Smoking causes heart disease (repeat in Cook Islands Maori)	<p>SMOKING CAUSES HEART DISEASE</p> <p>Tobacco smoking is a major cause of heart disease. It can cause blockages in the body's arteries. These blockages can lead to chest pain and heart attacks.</p>
5	Smoking when pregnant harms your baby (repeat in Cook Islands Maori)	<p>SMOKING WHEN PREGNANT HARMS YOUR BABY</p> <p>Poisons in tobacco smoke reach your baby through the bloodstream. If you smoke when you are pregnant, you greatly increase</p>

		the chance of having a baby of low birth-weight. Smoking may lead to serious complications which could harm your baby.
6	Your smoking can harm others (repeat in Cook Islands Maori)	YOUR SMOKING CAN HARM OTHERS Tobacco smoke causes cancer and poisons people. People who breathe in your tobacco smoke can be seriously harmed. Your smoking can increase their risk of lung cancer and heart disease. Children who breathe your smoke may suffer asthma attacks and chest illnesses.

SCHEDULE 2

FORM OF REPORT

Manufacturer, exporter or importer:

Laboratory:

Calendar year:

Product	Tar	Nicotine	CO
Brand and brand variant	Mean CI*	Mean CI*	Mean CI*

**CI = 95% confidence interval*

I, (Full name) of (Address), (Position held in testing laboratory), certify that the report correctly records the results of all tests carried out at the laboratory at (Location) by or on behalf of the (Name of manufacturer or importer) during the year (Year) for the purposes of the Tobacco Products Control Regulations 2008.

Dated at this day of .

SCHEDULE 3

FORM OF RETURN

Manufacturer, importer or exporter:

Calendar year:

Tobacco product class:

Cigarettes/cigarette tobacco/pipe tobacco/cigars/other (specify)*

(a) Tobacco weight by product class:

(b) Weight of additives in total by product class:

(c) List of additives and quantities not exceeded for each brand and brand variants in this return:

Common botanical or chemical name	Quantity not exceeded (percentage by weight)

(d) Brand information:

Brand and brand variant	Quantity released for sale	Price (see note)

I, (Full name) of (Address), (Position held), certify that the information contained in/and annexed to* this return is correct for the purposes of the Tobacco Products Control Regulations 2008.

Dated at this day of .

*Delete as appropriate

Note: Price sheets supplied by the manufacturer or importer to retailers during the calendar year of recommended prices for each brand and brand variant or an equivalent list may be attached to the return instead of including that information above.

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