

[LEGAL NOTICE No. 152]

TOBACCO CONTROL REGULATIONS 2000

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TOBACCO CONTROL ACT 1998
(ACT NO. 47 OF 1998)

TOBACCO CONTROL REGULATIONS 2000

IN exercise of the powers conferred on me by section 28 of the Tobacco Control Act 1998, I hereby make these Regulations—

Part 1 – PRELIMINARY

Citation

1. These Regulations may be cited as the Tobacco Control Regulations 2000.

Commencement

2. These Regulations come into force on the date of *Gazetta*, except that—
- (a) paragraphs (d) and (e) of regulation 4(1) come into force on 1st January 2001;
 - (b) Part 3 comes into force on 9th November 2000;
 - (c) regulation 24 comes into force on 1st January 2001;
 - (d) regulations 36 and 37 come into force on 1st January 2001.

Interpretation

- 3.—(1) In these Regulations, unless the contrary intention appears—

“assistance or support” means any sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given in respect of an event in exchange for any promotion or publicity of, or any agreement to promote or publicise—

- (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product;
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product); or
- (c) any combination of the matters mentioned in paragraphs (a) and (b);

“cigar” means a roll of cut tobacco for smoking enclosed in a tobacco leaf or the leaf of another plant;

“event” includes a series of events, if the series is known by a collective name;

“flip-top pack” means a retail container of the kind commonly called a flip-top pack or hinge-top pack;

“health notice” means the notice in English, Fijian and Hindustani specified in Part B of the Schedule to the Act;

"health warning" means one of the warning messages specified in English, Fijian and Hindustani in Part A of the Schedule to the Act and a reference in these Regulations to a health warning includes a reference to the relevant health notice;

"image" means any image and includes any representation or illustration, whether or not of any actual thing, and any word;

"pouch" means a retail container that—

- (a) is made from flexible material; and
- (b) takes the form of a rectangular pocket with a flap that covers the opening;

"soft-pack" means a retail container of the kind commonly called a soft pack or soft cup;

"statement as to tar and nicotine content" means the statement required by section 8 of the Act as set out in regulation 18;

"surface" in relation to a retail container of which the outer surface includes 2 or more flat areas that are bounded by edges of the container, means any of the flat areas;

"the Act" means the Tobacco Control Act, 1998;

"the Regulations" means any regulations made under the Act and includes these Regulations;

"word" includes an abbreviation, an initial and a number.

(2) In these Regulations, a reference to a manufacturer, distributor or retailer of tobacco products includes a reference to a person who manufactures, distributes or sells a range of products, only some of which are tobacco products.

(3) In these Regulations, 'retail container'—

- (a) means a container in which a tobacco product is sold at retail;
- (b) subject to sub-regulation (2), if several containers are contained inside a larger container (for example, packets of cigarettes in a carton) and the whole is offered for retail sale as one unit - includes the larger container and each smaller container therein;
- (c) does not include—
 - (i) a display case that is sold with the tobacco product displayed in it;
 - (ii) a wrapper on, or a container containing, a single cigar; or
 - (iii) a larger container which is formed by an outer wrapper of cellophane or other transparent material.

(4) For the purposes of these Regulations, if a retail container is normally sold wrapped (including but not limited to a transparent wrapper that is normally removed from the container when the container is opened) the wrapper is not part of the retail container.

(5) For the purposes of the Act and the Regulations, unless the contrary intention appears—

- (a) openings, gaps or edges that are created on a surface of a retail container when the container is opened are to be disregarded;
- (b) an area of a surface that bears decorative ridges, embossing, bulges or other irregularities, but is otherwise flat, is taken to be a flat area;
- (c) a soft pack is taken to be a solid that has all its surfaces rectangular and that has edges equal in length to the edges of the smallest rectangular solid inside which the pack will fit when it is not compressed;
- (d) a surface that has rounded corners but is otherwise square or rectangular is taken to be square or rectangular, as the case requires;
- (e) the total surface area of a retail container is the area that would be covered by the outer layer of the container if it were opened out and pressed flat.

(6) A reference in these Regulations to a cylindrical container includes a container that is, in one plane, elliptical, rather than circular, in cross-section.

(7) For the purposes of the Act and the Regulations, 'retail place' includes a kiosk, cart or any other structure if a tobacco product is offered for retail sale to the public from that kiosk, cart or any other structure.

(8) Any sign or notice required to be placed on any premises or place under these Regulations must be in the English, Fijian and Hindustani or any other language commonly understood in that area or place.

Part 2 – CONDITIONS FOR DISPLAY OF TOBACCO PRODUCT ADVERTISEMENTS IN SHOPS AND RETAIL PLACES

Point of sale advertising – shops and retail places

4.—(1) For the purposes of section 3(3) of the Act a tobacco product advertisement in a shop or other retail place—

- (a) must be within 1 metre of the point of sale;
- (b) if placed on or near a window, must face the inside of the shop or other retail place;
- (c) must not be affixed to the outer side of any outside wall or outer window or door;
- (d) must not be larger than 500 square centimetres;

- (e) must contain only –
 - (i) a brand name or trademark of a tobacco product or any combination or part thereof; and
 - (ii) a health warning;
- (f) must not contain any slogan or any other image; but
- (g) may specify the price of the tobacco product.

(2) The health warning referred to in sub-regulation 1(e) must be in English, Fijian and Hindustani or any other language commonly understood in the area, must be clearly and conspicuously printed and in a block outlined in black, and must cover not less than 20% of the area of the advertisement.

Part 3 – EXEMPT SPONSORED EVENTS

Rules for exempt sponsored events

5.—(1) For the purpose of paragraph (d) of the definition of 'exempt sponsored event' in section 2 of the Act, the maximum duration is 3 consecutive days, including any intervening period of one day or less during which the event is not actually staged.

(2) A person must not display, exhibit, announce, broadcast, transmit or telecast a tobacco product advertisement that is both audible and visual (whether contained on a video recording, a film, a television transmission or otherwise) at or to an exempt sponsored event.

Audible tobacco product advertisements at exempt sponsored event

6.—(1) This regulation is made pursuant to section 3 (4)(e) of the Act and applies to any tobacco product advertisement that uses sound at an exempt sponsored event.

(2) The advertisement must only be an announcement which is an acknowledgement of any assistance or support provided.

(3) The acknowledgement—

- (a) may only be included in a speech at either the opening or the conclusion of the event;
- (b) must be given in a manner which gives it no more prominence than the generality of that speech;
- (c) must, if there is more than one sponsor or supporter of event, occur only within a list of those sponsors or supporters;
- (d) must refer only to—
 - (i) the nature of the assistance or support provided;
 - (ii) the brand name of the tobacco product in respect of which the assistance or support was provided;

- (iii) the manufacturer or distributor by whom the assistance or support was given; or
- (iv) any part or combination of the matters specified in sub-paragraphs (ii) and (iii);
- (e) must not include any slogan or other words intended or likely to promote the sale of any tobacco product or to promote smoking; and
- (f) must not be accompanied by any image.

Visual tobacco product advertisements at exempt sponsored event

7.—(1) This regulation is made pursuant to section 3 (4)(e) of the Act and applies to a visual tobacco product advertisement at an exempt sponsored event, other than an advertisement to which regulation 8 applies.

(2) The advertisement—

- (a) must contain only the brand name or trademark of a tobacco product or the name of a manufacturer or distributor of a tobacco product, whether in part or in combination;
- (b) may contain words acknowledging the assistance or support;
- (c) must not contain any slogan or other words, or any image, intended or likely encourage the use, to notify the availability of, or to promote the sale of, any tobacco product or to promote smoking;
- (d) must include one of the health warnings in English, Fijian and Hindustani, which together must be clearly and conspicuously printed in a block and outlined in black which covers not less than 20% of the area of the advertisement;
- (e) must not be contained on any printed matter available, issued or distributed to the public at the event;
- (f) if there is more than one sponsor or supporter of the event, must not be larger than any other visual tobacco product advertisement at the event.

(3) A visual tobacco product advertisement to which this regulation applies may be displayed or exhibited on the perimeter of the field, court, green or ground upon which the event, or part of the event, is taking place.

(4) If the event includes any game or sport or any other entertainment or performance, whether or not of a sporting nature, which is conducted on a stage or similar structure, or on a field, court, green or ground, the advertisement must not be displayed or exhibited on the stage or structure or on the area of the field, court, green or ground on which that part of the event is taking place.

Assistance or support in form of donation of exhibit

8.—(1) This regulation is made pursuant to section 3 (4)(e) of the Act and applies to an acknowledgement of assistance or support in the form of the donation of an exhibit.

(2) If an exhibit forms part of a collection and other exhibits in the collection have been donated by persons or organisations not associated with tobacco products, the acknowledgement must appear once only on a single sign that is—

- (a) in close proximity to the exhibit; and
- (b) similar in style to, and not larger than, signs bearing acknowledgements of those persons or organisations.

(3) Where sub-regulation (2) does not apply, the acknowledgement must be in the form "Donated by (full name of donor)" and must appear once only on a single sign not more than 200 square centimetres in area and in close proximity to the exhibit.

Part 4 – PROHIBITED SCHEMES

Free gifts promoting tobacco product or smoking prohibited

9. For the purpose of section 6(1)(b) of the Act, the offer, supply or distribution to the public of a free sample of a product which is not a tobacco product, but which is intended to promote the sale of a tobacco product or smoking generally, is a scheme for that purpose.

Part 5 – EXEMPTED IMPORTED BRANDS

Exempted imported brands

10. For the purpose of section 7(8) of the Act, the imported brands of tobacco products specified in Schedule 1 to these Regulations are exempt from displaying the health warnings and health notice required by section 7 of the Act.

Part 6 – LABELLING OF TOBACCO PRODUCT CONTAINERS

Format and rotation of health warning

11.—(1) For the purpose of section 7(11) of the Act, the text of a health warning must be printed or otherwise marked in type that is—

- (a) clear, legible and conspicuous;
- (b) of the same height throughout the warning;
- (c) black in colour;
- (d) of normal weight; and
- (e) of such a size that the text as nearly as possible fills the area of the block in which it is required to be printed or marked.

(2) For the purpose of section 7(6) of the Act and of these Regulations, a tobacco product is to be treated as if it were sold or distributed under different brands if it is sold or distributed under one brand name but is distinguished in one or more of the following ways—

- (a) containing or not containing menthol;
- (b) being otherwise differently flavoured;

- (c) having different contents of tar;
- (d) allegedly differing in "mildness";
- (e) having or not having filter tips or cock tips;
- (f) being sold in retail containers containing different numbers of pieces;
- (g) being of different length or mass.

Position of health warning

12.—(1) For the purpose of section 7 of the Act, the health warning that is to be printed on a retail container which is a packet and which is a rectangular block in shape must be placed on the surface required by section 7(3) of the Act.

(2) For the purposes of section 7(3) of the Act and sub-regulation (1)-

- (a) a flip-top pack;
- (b) a soft-pack; and
- (c) any other retail container (except a pouch) which is made of cardboard or other paper product all of the surfaces of which are either rectangular or square,

are to be taken to be packets which are a rectangular block in shape.

(3) If a retail container (other than a pouch) is not a packet, but all of its surfaces are either rectangular or square, the health warning must be placed—

- (a) if one of the largest surfaces of the container forms, or forms part of, a lid - on that surface;
- (b) in any other case—on that one of the largest surfaces of the container that is towards a person who holds the container correctly for the purpose of removing its contents.

(4) If a retail container is a pouch, the health warning must be placed on that one of the largest surfaces of the folded container that is not overlapped by the flap of the container.

(5) If a retail container is a cylindrical container containing cigarettes or cigars, the health warning must be placed on that part of the curved surface of the container that extends for one-twelfth of the circumference of the container on each side of the vertical centre line of the brand name label on that surface (or, if that label appears more than once on that surface, the larger or largest of those labels).

(6) If a retail container is a cylindrical container containing tobacco the health warning must be placed on that one of the circular surfaces that forms, or forms part of, the lid.

(7) If a retail container is in the shape of a hexagonal or octagonal prism, containing cigarettes or cigars, the health warning must be placed on that one of the rectangular surfaces of the container that bears the brand name label or, if that label appears on more than one of those surfaces, the surface on which the larger or largest of those labels appears.

(8) In any other case, the health warning must be printed on that one of the largest surfaces of the container that is towards a person who holds the container correctly for the purpose of removing its contents.

Area to be covered by health warning

13.—(1) For the purpose of section 7 of the Act, the health warning that is to be printed on a retail container which is a—

- (a) flip-top pack;
- (b) soft pack; or
- (c) any other retail container (except a pouch) all the surfaces of which are rectangular or square,

must be printed in a block which covers not less than 20% of the appropriate surface.

(2) The health warning that is to be printed on a retail container which is a—

- (a) pouch;
- (b) cylindrical container containing cigarettes or cigars;
- (c) cylindrical container containing tobacco; or
- (d) container in the shape of a hexagonal or octagonal prism, containing cigarettes or cigars, must be printed in a block which covers not less than 15% of the area of the appropriate surface of the container.

(3) The health warning that is to be printed on a retail container the shape of which is not described in sub-regulation (1) or (2) must be printed in a block which covers not less than 15% of the total surface area of the container.

(4) In this regulation, 'appropriate surface' means the surface prescribed by regulation 12 for a retail container of that type.

Orientation of a health warning

14. For the purpose of section 7 of the Act, the text of a health warning must be oriented—

- (a) if the surface on which the warning and notice is to be printed has other text printed on it, and all, or the majority of, that other text is oriented in one direction – in that direction; or
- (b) if paragraph (a) does not apply – in any direction.

Use of adhesive labels

15.—(1) For the purpose of section 7 of the Act, a health warning and the statement as to the tar and nicotine content that is required by the Act or the Regulations to be printed or otherwise marked on a retail container may be printed on an adhesive label that is affixed to the retail container.

- (2) An adhesive label under sub-regulation (1) must—
- (a) comply with the Act and the Regulations in all respects;
 - (b) be affixed to the surface of the container on which the warning that it bears is required to be printed or marked, but if the container is not a rectangular block in shape may be affixed anywhere on that surface; and
 - (c) be fastened firmly to the retail container so as not to be easily removable.

Statement as to tar and nicotine content - general

16.—(1) The following statement must be printed on a retail container of cigarettes—

The smoke from each cigarette contains, on average:

- (yy) milligrams or less of tar
- (zz) milligrams or less of nicotine”.

- (2) When the statement required by sub-regulation (1) is printed on a container “(yy)” or “(zz)” are to be replaced by—
- (a) the average amount of tar and nicotine respectively produced by a cigarette of the kind contained in the retail container, when cigarettes of that kind are tested according to the testing methods specified in regulation 22; or
 - (b) if, when cigarettes of that kind are tested according to those testing methods –
 - (i) the average amount of tar produced by a cigarette does not exceed 15 milligrams; and
 - (ii) the average amount of nicotine produced by a cigarette does not exceed 1.5 milligrams,

a figure worked out by taking from the column of Schedule 2 that relates respectively to tar or nicotine, the lowest figure that is greater than the average amount of tar or nicotine, respectively, produced by a cigarette of that kind.

Position of statement as to tar and nicotine content

17.—(1) For the purpose of section 7 of the Act, if a retail container contains cigarettes and is a –

- (a) flip-top pack;
- (b) soft pack;
- (c) retail container (except a pouch) all the surfaces of which are rectangular or square;
- (d) cylindrical container; or
- (e) container in the shape of a hexagonal or octagonal prism,

the statement required by section 8 of the Act and regulation 16 must be printed—

- (i) if both or all of the sides of the container are the same in area – on one side of the container;

- (ii) if one side of the container is larger than the other or others – on the larger or largest side;
- (iii) if 2 or more sides of the container are larger than the other or others - on one of those larger sides.

(2) If a retail container containing cigarettes is not of a kind described in sub-regulation (1), the statement required by regulation 16 may be printed or marked anywhere on the container.

Format of statement as to tar and nicotine content

18. For the purpose of section 8 (2) of the Act, the statement as to the tar and nicotine content required by regulation 16 must be—

- (a) in type that is—
 - (i) clear and legible;
 - (ii) black in colour;
 - (iii) of normal weight; and
 - (iv) of such a size that the text as nearly as possible fills the background on which it is printed;
- (b) if the statement is required to appear on the side of the container – oriented so that the lines of type making up the statement are parallel to the longest edges of the surface on which the statement is printed.

Area of statement as to tar and nicotine content

19. For the purpose of section 8 (2) of the Act, the statement as to tar and nicotine must occupy –

- (a) in the case of a flip-top pack – at least 60% of one side not including the part of that side that forms part of the top;
- (b) in the case of a carton – at least 25% of the side on which the statement is printed;
- (c) in the case of a retail container which is not of a kind described in sub-regulation 17(1) – at least 9% of the total surface area of the container;
- (d) in the case of a retail container other than a flip-top pack, a carton or an irregular container – the whole of one side.

Meaning of side of a retail container of cigarettes

20.—(1) For the purpose of these Regulations, a reference to the sides of a retail container containing cigarettes is a reference –

- (a) in the case of a cylindrical retail container - to those parts of the curved surface of the container that, if the vertical centre-line of the largest brand-name of the curved surface of the container is taken to be at 0 degrees, extend –
 - (i) from 60 degrees to 120 degrees; and

- (ii) from 240 degrees to 300 degrees, around the circumference of a flat surface of the container;
 - (b) in the case of a container that has 2 surfaces that are hexagonal or octagonal, and of which all the other surfaces are square or rectangular – to the square or rectangular surfaces of the container, other than the front and the back;
 - (c) in the case of a carton – to the larger 2 of the 4 surfaces other than the front and the back;
 - (d) in any other case – to the surfaces of the container, other than the back and the front, that are vertical when the container is held so that the axis of the cigarettes within it is vertical.
- (2) For the purposes of sub-regulation (1) –
- (a) the front of a retail container (other than a pouch) which is a rectangular block in shape is that surface of the container on which the health warning in Fijian and Hindustani is required to be printed; and
 - (b) the back of a retail container of a kind described in paragraph (a) is that surface of the container on which the health warning in English is required to be printed.

Warnings not to be obscured etc.

21.—(1) If a health warning or the statement as to tar and nicotine content is likely to be obscured or obliterated by a wrapper on the container, the warning or statement must be printed on both the wrapper and the container.

(2) A health warning and the statement as to tar and nicotine content must not be likely to be obliterated, removed or rendered permanently unreadable when the retail container on which it is printed is opened in the normal way.

Testing methods

22.—(1) For the purpose of section 8 of the Act and these Regulations, the testing methods to be used to determine the average amount of tar and nicotine produced by a cigarette are the following standard methods published by the International Standards Organisation—

- (a) tar – ISO 4387 (Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine);
- (b) nicotine – ISO 10315 (Cigarettes – determination of nicotine in smoke condensates – gas chromatographic method).

(2) The testing methods specified in sub-regulation(1) are to be used in accordance with the following standards published by the International Standards Organisation –

- (a) ISO 3308 (Routine analytical cigarette-smoking machine – definitions and standard conditions);
- (b) ISO 8243 (Cigarettes – sampling);

- (c) ISO 3402 (Tobacco and tobacco products – atmosphere for conditioning and testing).

Part 7 – VENDING MACHINES

Vending machines –health warnings

23. For the purpose of section 11 of the Act, a person who –

- (a) owns a vending machine;
- (b) is the lessee of a vending machine; or
- (c) is in charge of a place at which a vending machine is available for use by the public.

must ensure that there is kept conspicuously displayed on the front of the vending machine a statement containing a health warning in English, Fijian and Hindustani or any other language commonly understood in the area.

Point of sale advertising—vending machines

24. A tobacco product advertisement may be displayed on a vending machine that contains tobacco products only if the advertisement does not extend beyond any of the extremities of the machine itself.

Part 8—SMOKE-FREE AREAS etc.

Prescribed smoke-free areas

25.—(1) For the purposes of section 14(1) of the Act, the following areas are prescribed as smoke-free areas—

- (a) any workplace;
- (b) any enclosed entranceway, foyer, lobby, stairway, passageway, elevator or toilet to which the public have, or more than one worker has, access;
- (c) any room in which educational instruction is being given;
- (d) any area of a shop or other retail place to which the public have access.

(2) Sub-regulations (1)(a) and (1)(b) do not apply to that part of any premises (other than an eating house) in respect of which a person is licensed under the Liquor Act (Cap.192) to sell and supply liquor for consumption on these premises.

(3) Sub-regulation (1)(a) does not apply in respect of any area in an eating house in which smoking is permitted under section 13 of the Act.

(4) Sub-regulation (1)(a) does not apply to any work place –

- (a) which is a room which is—
 - (i) wholly enclosed; and
 - (ii) independently ventilated; and

- (b) which is occupied for the time being by only one worker; and
- (c) which is not a place to which the public normally have access.

(5) In this regulation –

‘worker’ includes an employee and a private contractor;

‘workplace’ means any premises, whether owned or occupied by the Government or a private person, which is wholly or partially enclosed by walls, and in which workers are employed.

Signage at smoke-free buildings, smoke-free areas, eating houses, etc.

26.—(1) The occupier and the person in charge of any eating house must, if smoking is permitted at the eating house, either—

- (a) display on each table in the smoke-free zone a sign to the effect that smoking is prohibited; or
- (b) display such a sign on a wall or other surface so that it is clearly visible from all seats in the smoke-free zone.

(2) The owner and the person in charge of any—

- (a) amusement centre, theatre or sports stand;
- (b) hospital or clinic;
- (c) lift or elevator;
- (d) airport terminal building;
- (e) prescribed smoke-free building; or
- (f) prescribed smoke-free area (other than an area referred to in regulation 25 (1)(c)),

must at the entrance to such a place clearly and prominently display a sign to the effect that smoking is prohibited at that place.

Part 9 – EXEMPTIONS

Application to Minister for exemption under section 15

27.—(1) A person may apply to the Minister to have a particular person, advertisement or event exempted by an order made under section 15(2) of the Act.

(2) An application must be made at least 3 months before the day or first day, as the case requires, on which the event is to be held or the exemption is otherwise required.

(3) The Minister may consider an application received later than 3 months before the day mentioned in sub-regulation (2), if, in the opinion of the Minister, sufficient time remains for a proper consideration of the application.

(4) An application must be in writing and must set out the grounds on which the applicant thinks the Minister should grant it.

(5) If the Minister needs further information to decide an application, the Minister may ask the applicant to provide the information.

(6) Subject to sub-regulations (7) to (9), the Minister must decide an application within 30 days after receiving it.

(7) If the Minister thinks that it will take longer to decide an application, the Minister may extend, by up to 30 days, the period for deciding it.

(8) An extension must be made by written notice given to the applicant within 30 days after the Minister receives the application concerned.

(9) If the Minister makes an extension, the Minister must decide the application concerned within the extended period.

(10) If the Minister has not decided an application before the end of the day by which the Minister is required to decide it, the application is deemed to have been withdrawn without prejudice to the right to re-apply.

(11) Nothing in this regulation limits the power of the Minister to make a decision under section 15(1) or 15(2) of the Act otherwise than because of an application under this regulation.

Political discourse

28.—(1) This regulation and regulations 29 to 35 are made pursuant to section 15 of the Act.

(2) Anything in the nature of an advertisement which—

- (a) does not promote, and is not intended to promote, any particular tobacco product or particular range of tobacco products;
- (b) does not promote, and is not intended to promote smoking; and
- (c) relates solely to government or political matters,

is not a tobacco product advertisement for the purposes of the Act or the Regulations.

(3) In this regulation—

‘government or political matters’ means government or political matters relating to any level of government in Fiji and includes –

- (a) participation in, association with and communications in relation to any election or appointment to public office;
- (b) political views or public conduct relating to activities that have become the subject of political debate;

- (c) the performance, conduct, capacity or fitness for office of a person elected or appointed to, or seeking election or appointment to, any public office;
 - (d) the actions or policies, or proposed actions or policies, of any level government in Fiji or any political party.
- (4) Without limiting sub-regulation (2), the use in an advertisement of the whole name of a manufacturer, distributor or retailer of tobacco products does not, of itself, constitute -
- (a) the promotion of a tobacco product or range of tobacco products for the purposes of sub-regulation (2)(a); or
 - (b) the promotion of smoking for the purposes of sub-regulation (2)(b).

Legal obligations

29. The doing of anything that is, or apart from the Act and the Regulations would be, required to be done by any other law does not to that extent constitute a tobacco product advertisement for the purposes of the Act or the Regulations.

*Management advertisements and certain advertisements
as to availability or recall of products*

30. The following are exempt from the operation of section 3(1) of the Act and do not constitute tobacco product advertisements for the purposes of the Act or the Regulations -
- (a) an advertisement (for example, an advertisement for staff or calling for tenders), relating to the internal management of the business of a manufacturer, distributor or retailer of tobacco products, that does not promote a tobacco product or smoking;
 - (b) an advertisement by a manufacturer or distributor of tobacco products indicating that tobacco products, or tobacco products of a particular kind, are available from the manufacturer or distributor, as the case may be, if the advertisement does not -
 - (i) state the brand name of any individual product;
 - (ii) contain any other matter that would enable any individual product to be identified;
 - (iii) promote, or give publicity to, any individual product; or
 - (iv) offer a tobacco product for sale by retail;
 - (c) the taking of any action to prevent a product from causing injury to anyone, including action -
 - (i) to recall a product;
 - (ii) to disclose a defect in, or a dangerous characteristic of, a product;
 - (iii) to disclose circumstances in which the use of a product is or may be dangerous;

- (iv) to disclose procedures for disposing of a product; or
- (v) to tell people who have bought a product that the product will be repaired or replaced, or that the price of the product will be refunded.

Trade communications

31. For the purposes of the Act and the Regulations, information that is or includes a tobacco product advertisement that is communicated to a group of people all of whom are involved in the manufacture, distribution or sale of tobacco products is exempt from the operation of section 3(1) of the Act and its communication does not, of itself, amount to the display, distribution, exhibition, announcement or publication of a tobacco product advertisement.

Non-tobacco product having the same name as a tobacco product

32.—(1) If—

- (a) apart from this regulation, an advertisement that relates to a non-tobacco product would be a tobacco product advertisement only because the name, or part of the name, of the non-tobacco product is the same as, or substantially similar to, the name, or part of the name, of—
 - (i) a tobacco product; or
 - (ii) the manufacturer, distributor or retailer of a tobacco product; but
- (b) the manufacturer of the non-tobacco product is not associated in any way with the manufacturer of the tobacco product,

the advertisement is exempt from the operation of sections 3(1) and 5 of the Act and is not a tobacco product advertisement for the purposes of the Act or the Regulations.

(2) Without limiting the circumstances in which 2 persons would, apart from this sub-regulation, be taken to be associated with each other for the purposes of sub-regulation (1), 2 bodies corporate that are related to each other are to be taken to be associated with each other for the purposes of that sub-regulation.

(3) For the purposes of this regulation, the question whether 2 bodies corporate are related to each other is to be determined in the same way as the question would be determined under the law relating to companies.

Anti-smoking advertisements

33. If—

- (a) apart from this regulation, an advertisement would be a tobacco product advertisement; and
- (b) it is clear from the advertisement that its sole or principal purpose is to discourage smoking or the use of tobacco products,

the advertisement is exempt from the operation of sections 3(1) and 5 of the Act and is not a tobacco product advertisement for the purposes of the Act and the Regulations.

Advertisements in telephone directories

34. The publication of the name of a manufacturer, distributor or retailer of tobacco products in a telephone directory or other trade directory is exempt from the operation of sections 3(1) and 5 of the Act and does not, of itself, amount to the display, distribution, exhibition, announcement or publication of a tobacco product advertisement for the purposes of the Act and the Regulations.

Advertisement arising out of assistance in support

35.—(1) If an advertisement promotes or publicises—

- (a) a tobacco product or a trademark or brand name or part of a trademark or brand name of a tobacco product;
- (b) the name or interests of a manufacturer or distributor of a tobacco product in association directly or indirectly with the tobacco product; or
- (c) any combination of matters mentioned in paragraph (a) or (b),

in exchange for any assistance or support given or agreed to be given under a contract, agreement undertaking or understanding (whether or not legally binding) entered into before 9th November, 2000, then subject to sub-regulation (2), the advertisement is exempt from the operation of section 3(1).

(2) The exemption granted by sub-regulation (1) ceases to have effect on 9th November, 2000.

Part 10 – ENFORCEMENT

Importers of exempt imported brands to report quarterly

36.—(1) An importer of a tobacco product specified in Schedule 2 who sells or distributes that product at wholesale or retail must make a written report to the Minister stating –

- (a) the total number of retail containers of each brand of tobacco product that has been imported by that person in the preceding quarter;
- (b) the total number of imported retail containers of each brand of tobacco product that has been sold or distributed by that person in the preceding quarter;
- (c) the nature of each of the health messages or warnings printed on those containers; and
- (d) any other information relating to the importation or labelling of retail containers of tobacco products that the Minister may, from time to time, specify in writing.

(2) A report must—

- (a) be made in respect of each quarter of the calendar year;
- (b) if the Minister approves a form for the report - be in that form; and
- (c) be delivered to the Minister within one calendar month of the end of the quarter.

Manufacturers and distributors to report quarterly

37.—(1) A manufacturer or a distributor of a tobacco product who sells or distributes that product at wholesale, but pre-packed in retail containers, must make a written report to the Minister stating —

- (a) the total number of retail containers of each brand of tobacco product that has been manufactured by that person during the preceding quarter;
- (b) the total number of retail containers of each brand of tobacco product manufactured by that person during the preceding quarter on which each of the different health warnings has been placed during the preceding quarter;
- (c) the total number of retail containers of each brand of tobacco product that has been sold or distributed by that person during the preceding quarter;
- (d) the total number of retail containers of each brand of tobacco sold or distributed by that person during the preceding quarter on which each of the different health warnings has been placed;
- (e) the person's plan as to how the person intends to comply with the requirements of section 7(6) of the Act during the remaining part of the calendar year;
- (f) any other information relating to the labelling of retail containers of tobacco products that the Minister may, from time to time, specify in writing.

(2) A report must—

- (a) be made in respect of each quarter of the calendar year;
- (b) if the Minister approves a form for the report - be in that form; and
- (c) be delivered to the Minister within one calendar month of the end of the quarter

Offence to give false or misleading information

38.—(1) A person, who, in a report required by regulation 36 or 37—

- (a) knowingly makes a false statement; or
- (b) knowingly states a matter or omits to state a matter so as to mislead the Minister,

commits an offence (whether or not the Minister is actually misled) and is liable on conviction to a fine of \$5,000 for a first offence and \$10,000 for a second or subsequent offence.

(2) A person who fails to make a report required by regulation 36 or 37 within the time specified in the regulation commits an offence and is liable on conviction to a fine of \$1,000.

(3) Section 22(5) of the Act applies for the purposes of a report required to be made under regulation 36 or 37.

Information to be confidential

39.—(1) The Minister or any person acting under the Minister's direction must not, without the permission of the maker of the report, disclose information obtained under regulation 36 or 37 in a form or manner that discloses the trading performance of the maker,

except as is necessary in the performance of the Minister's functions under the Act or the Regulations or any other law, or for the purposes of a prosecution for an offence against the Act or the Regulations.

(2) Any person who knowingly and wilfully contravenes sub-regulation (1) commits an offence and is liable on conviction to a fine of \$2,000.

(3) Nothing contained in this regulation is to be taken as preventing the Minister or any person acting under the Minister's direction from referring generally to the levels of manufacture, importation, distribution, sales or consumption of tobacco products or to any matter concerning a person's compliance with the requirements of the Act or the Regulations.

Authorised officers

40.—(1) For the purposes of section 16(1) of the Act, the following are prescribed as authorised officers for the purposes of the Act and the Regulations –

- (a) a police officer;
- (b) a health inspector or sanitary inspector in the service of the Government, the Central Board of Health, the council of a municipality or any local authority;
- (c) a labour inspector or labour officer within the meaning of section 2 of the Employment Act (Cap. 92);
- (d) a medical or dental practitioner registered under the Medical and Dental Practitioners Act (Cap. 255);
- (e) a medical assistant registered under the Medical Assistants Act (Cap. 255A);
- (f) a medical officer of health within the meaning of section 2 of the Public Health Act (Cap. 111);
- (g) a nurse registered under the Nurses, Midwives and Nurse Practitioners Act (Cap. 256);
- (h) an inspector within the meaning of section 5 of the Health and Safety at Work Act 1996;
- (i) an inspector within the meaning of section 4 of the Fair Trading Decree 1992; and
- (j) an officer designated by the Minister responsible for Fijian Affairs.

(2) In this regulation and regulation 41, "Central Board of Health" means the Board of that name constituted by section 3 of the Public Health Act (Cap. 111).

Council or local authority may bring proceedings

41.—(1) Proceedings for an offence against the Act or the Regulations or for the recovery of a fine under the Act or the Regulations may be brought on behalf of—

- (a) the council of a municipality, if the offence was committed within the boundaries of that municipality;

- (b) a local authority, if the offence was committed within the district for which that authority is responsible; or
- (c) the Central Board of Health.

(2) The Central Board of Health, the Council of a municipality or a local authority may appear before any court or in any legal proceedings arising under the Act or the Regulations by its clerk or secretary or by any officer or member authorised generally or specifically to appear on its behalf in proceedings under the Public Health Act, the Local Government Act or the Act or the Regulations.

(3) A person referred to in sub-regulation (2), whether or not a legal practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under the Act or the Regulations which the Central Board of Health, the council of the municipality or the local authority is authorised to institute and carry on under sub-regulation (1).

(4) A person referred to in sub-regulation (2) must comply with any directions issued by or on behalf of the Director of Public Prosecutions.

(5) Nothing in this regulation makes any person liable to be prosecuted twice for the same offence.

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SCHEDULE 1
(Regulation 10)
—

EXEMPTED IMPORTED BRANDS OF TOBACCO PRODUCT

| <i>Brand Name</i> | <i>Special Features</i> | <i>Size</i> | <i>Place of Manufacture</i> |
|-------------------|-------------------------|-------------|-----------------------------|
| Winfield | Extra Mild | 25 | Australia |
| Benson & Hedges | Ultra Mild | 25 | Australia |
| Marlboro | Lights Flip Top Box | 25 | Australia |
| Marlboro | Lights Flip Top Box | 20 | USA |
| Marlboro | Lights Soft Pack | 20 | USA |
| Marlboro | Lights Menthol | 20 | USA |
| Alpine | Lights Menthol | 25 | Australia |
| Longbeach | Mild | 20 | Australia |
| Longbeach | Super Mild | 20 | Australia |
| Longbeach | Menthol | 20 | Australia |
| Longbeach | Mild | 40 | Australia |
| Longbeach | Super Mild | 40 | Australia |
| Lark | Mild | 20 | USA |

Note : (See section 7 (8) of the Act). This exemption only applies if –

- (a) the imported brand accounts for less than 3% of sales of tobacco products to consumers in Fiji;
- (b) the container carries a health warning and notice in English substantially similar to the prescribed health warning and notice.

SCHEDULE 2
(Regulation 16 (2))

FIGURES FOR DESCRIBING AVERAGE AMOUNT OF TAR AND NICOTINE

| <i>Tar</i> (milligrams) | <i>Nicotine</i> (milligrams) |
|----------------------------|---------------------------------|
| 1 | 0.2 |
| 2 | 0.3 |
| 3 | 0.4 |
| 8 | 0.8 |
| 12 | 1.2 |
| 15 | 1.5 |

Made this 22nd day of December, 2000

P. K. NACUVA
Minister for Health