



Tobacco Control Regulations 2020

No. 2020/02

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Pursuant to section 63 of the Tobacco Control Act 2018, Cabinet makes the following regulations –

- 1 Title**
These regulations are the Tobacco Control Regulations 2020.
- 2 Commencement**
These regulations come into force on the day after the date on which they are made in accordance with Article 13 of the Constitution

3 Interpretation

- (1) In these regulations, unless the context otherwise requires, –

Act means the Tobacco Control Act 2018

Brand variant means a tobacco product distinguishable from other tobacco products by any means, including the following –

- (a) the tobacco product is sold under different brand names;
- (b) the tobacco product is sold under the same brand name, but differs 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, nicotine, carbon monoxide or other constituents;
 - (iv) allegedly differing in "mildness";
 - (v) having or not having filter tips or cork tips;
 - (vi) being sold in retail packages containing different numbers of pieces; or
 - (vii) being of different length or mass

Point of sale means a counter or checkout where tobacco products may be bought; and includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of that counter or checkout.

- (2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

Part 1 Licensing

4 License required for importers, exporters, and other sellers

- (1) Pursuant to Section 9 of the Tobacco Control Act, an application for a license by an importer, exporter, distributor, or retailer shall be made no less than 3 months prior to the commencement of importation, exportation, distribution or retailing in the prescribed form as set out in Schedule 1 of these Regulations and shall include the following:

- (i) name, address and telephone number of the applicant;
- (ii) Tax registration number and business registration number;
- (iii) valid business licence from the local authority for the same location;
- (iv) in the case of renewal of licence, the licence number in effect;
- (v) for a new importer, a certified copy of General bonded Warehouse or Excise Warehouse Bond Certificate, issued by the Department of Finance;
- (vi) a list of all brand variants of tobacco products imported or distributed; and

- (vii) a signed application form by the applicant affirming the content of the application to be complete, true and correct.
- (2) An importer shall update the list of all brand variants of tobacco products imported by them whenever a new or additional brand is imported or if a listed brand is no longer imported.
- (3) A licence issued under this regulation is only valid with respect to the importer, distributor or retailer designated on the licence, and may not be transferred or assigned to another person.

5 Issuance and renewal of a license

- (1) Pursuant to Section 10 of the Tobacco Control Act, licenses issued by the Department of Health require that the applicant:
 - (i) holds a valid Niue business license issued by the Licensor of Businesses;
 - (ii) operates business from a permanent structure or building;
 - (iii) has not been convicted of contravening the Tobacco Control Act or its Regulations in the past 2 years;
 - (iv) holds no more than 3 licenses under the Tobacco Control Act or its Regulations ;
 - (v) has not been convicted of a crime within the past 10 years as evidenced by a Police record from the country where they have lived for the past 6 months or more;
 - (vi) is at least 21 years of age;
 - (vii) has not breached any conditions imposed by a license issued under the Tobacco Control Act within the last year;
 - (viii) has paid the licensing fee as set out in Schedule 2 of these Regulations; and
 - (ix) for import license, pursuant to Section 34 of the Tobacco Control Act, has submitted all required tobacco test reports;
 - (x) pursuant to Part 6 of the Tobacco Control Act, is not a current employee of the Government of Niue; and
 - (xi) has submitted their application for new license(s) at least 3 months prior to commencing operations; and for renewing license(s) at least 2 months prior to expiry of existing license(s). This is a regulation heading

Part 2 Testing and Reporting

6 Testing and Reporting

- (1) Pursuant to Section 33 of the Tobacco Control Act, tests for the harmful constituents of brands of tobacco and the respective quantities of those constituents present in the smoke must be conducted with the standards specified under these Regulations.

- (2) All tobacco importers must:
- (a) test all tobacco products annually per brand variant at a laboratory that is nominated by the Director of Health; specifically,
 - (i) all toxicants listed in the Annual Testing Report Form in Schedule 3 of these Regulations must be tested in the smoke emissions except for ammonia and metals, which should be tested for contents only;
 - (ii) contents and emissions must be tested using analytical methods which have been evaluated by the WHO Tobacco Laboratory Network (TobLabNet) and demonstrated to have adequate sensitivity, selectivity, accuracy and reproducibility for the products tested;
 - (iii) for smoke emissions, the smoke should be captured using both the ISO method and the WHO Intense regimen;
 - (iv) test results must be reported both as the specific analytical result and normalized per milligram of nicotine in order for it to be comparable across brand variants over time;
 - (b) the cost of all required tests will be borne by the tobacco importer;
 - (c) individual test results, a statistical summary of the results and accompanying quality assurance data including method validation data and results from analysis of quality control materials and reference products is to be given to the Department of Health, which must determine whether the tests were done in accordance with the standards;
- (3) In addition to subsection (2)(a)(ii), if-
- (a) a TobaLabNet standard method is not available, then either the ISO or CORTESTA testing method, that have equivalent and adequate sensitivity, selectivity, accuracy and reproducibility for the products tested may be used;
 - (b) standard methods do not exist for a specific constituent, analytical methods used must have been demonstrated to provide results which have adequate sensitivity, selectivity, accuracy and reproducibility for the products tested.
- (4) Pursuant to Section 35 of the Tobacco Control Act, an importer of any brand variant of tobacco product must, within 60 days of testing and in conjunction with any new or annual renewal application for license, submit to the Director of Health the results of any test conducted.
- (5) In addition to subclause (1), the results of all tests which have been conducted must be in the following forms:

- (a) an annual report in a form as prescribed under Schedule 3; and
 - (b) a return in a form as prescribed under Schedule 4.
- (6) Pursuant to Section 34(3) of the Tobacco Control Act, and in addition to Subsection (4), any additional tests required by the Director of Health:
- (a) must be conducted in a laboratory nominated by the Director of Health; and
 - (b) costs of the additional tests must also be borne by the importer.

Part 3 Signage

7 Signage

- (1) Pursuant to Section 19(1)(a) of the Tobacco Control Act, a retailer may place within the retailer's place of business a price notice which indicates the tobacco products available for purchase and their prices in accordance with the following:
- (a) Price notice signs must be 210mm in width and 297mm in length;
 - (b) Price notice signs must:
 - (i) be in black text on white background;
 - (ii) include the name of the tobacco product (which may consist of or include a brand name or brand variant);
 - (iii) include the quantity in which the tobacco product is sold (whether by weight or number); and
 - (iv) include the price of the tobacco product.
 - (c) Price notice signs must not include:
 - (i) any tobacco company logo or colouring associated with a tobacco product; and
 - (ii) any depiction of the package in which the tobacco product is customarily sold.
 - (d) There may be displayed at any point of sale inside a retail outlet no more than 2 price notices.
- (2) Pursuant to Section 21(1) of the Tobacco Control Act, the "smoking kills" sign that retailers must display at point of sale and where price notice signs under subsection 1 must:
- (a) be 210mm in width and 297mm in length;
 - (b) include the words "Smoking kills" in English and "Ko e mate e Ula" in Niuean;
 - (c) be in black text centred on yellow background; and
 - (d) be in at least 80 point text in Arial Black font.

- (3) Pursuant to Section 43(2) and 46(7) of the Tobacco Control Act, the “No Smoking” signs that owners or operators of public places or workplaces must:
 - (a) be at least 180mm by 180mm in size;
 - (b) include the words “No Smoking” in English and “Tapu ai ula tapaka” in Niuean in black text centred on white background; and
 - (c) include the universal no smoking symbol which takes up at least 80% of the entire sign.
- (4) Pursuant to Section 43(2) of the Tobacco Control Act, the “No Smoking” signs that owners or operators of public transport must:
 - (a) be at least 160mm by 50 mm in size;
 - (b) include the words “No Smoking” in English and “Tapu ai ula tapaka” in Niuean in black text centred on white background;
 - (c) include the universal no smoking symbol which takes up at least 25% of the sign; and
 - (d) be displayed on the passenger-side dashboard.

Part 4

Packaging and Labelling

8 Packaging and labelling

- (1) Pursuant to Section 37 of the Tobacco Control Act, any tobacco product sold, distributed or displayed in Niue must include the following:
 - (a) health warning in English
 - (b) graphic health warnings
 - (c) information on toxic constituents
- (2) The Minister, acting on advice from the Director of Health, may, by notice in the Niue Gazette, state that tobacco product labelling and the packaging of identified tobacco products, imported from an identified country or countries, is regarded by him/her as being substantially similar to or has the same effect as required by the Act.
- (3) Pursuant to Section 41(3) of the Tobacco Control Act, a person must not sell, distribute, or display for sale or distribution or export any tobacco product that has packaging or labelling that include any words or terms that imply that the product meets any kind of standard or elicits a particular feeling such as “cooling” or “refreshing”.

Schedule 1
TOBACCO LICENSE APPLICATION

TOBACCO LICENSE APPLICATION <i>Pursuant to Niue Tobacco Control Act (2018) and Regulations</i> The administration fee for this application is NZ\$25. This is separate from the license fee(s).				
APPLICANT INFORMATION (OWNER OF BUSINESS)				
Name:			Date of Birth:	
Residential address:				
Email:	Phone #:		Fax #:	
BUSINESS INFORMATION				
Name of business:				
Please indicate the type of ownership of this business:				
Partnership <input type="checkbox"/>		Sole owner <input type="checkbox"/>		Corporation <input type="checkbox"/>
Business License #:				
Address of business:				
Email:	Phone #:		Fax #:	
Contact person for business:				
Address:				
Email:	Phone #:		Fax #:	
TOBACCO LICENSE DETAILS				
Please indicate if this application is for a new license or a renewal* of an existing license:				
New License: <input type="checkbox"/> Renewal of License*: <input type="checkbox"/> If renewal*, please give your current tobacco license #: _____				
Please indicate which license or licenses you are applying for (more than one type of license may be needed):				
Type of License			Fee	
Importation of tobacco products <input type="checkbox"/>			NZ\$5,000	
Exportation of tobacco products <input type="checkbox"/>			NZ\$5,000	
Retail of tobacco products <input type="checkbox"/>			NZ\$250	
If you are a retailer, please indicate the type of premise below:				
Shop <input type="checkbox"/>	Duty Free Shop <input type="checkbox"/>	Supermarket <input type="checkbox"/>	Hotel/Guest House <input type="checkbox"/>	Ship <input type="checkbox"/>
Restaurant <input type="checkbox"/>	Night club <input type="checkbox"/>	Other (please specify): _____		
PRODUCT DETAILS				
Please specify the brand variants (e.g., Brand Name, menthol, quantities) of tobacco products imported or sold under the intended license:				

SIGNATURES				
By signing this form, I declare that the details of this application are true and correct. I understand that submitting false or misleading information is an offence. I also understand that my business may be de-registered for any failure to comply with tobacco control and tax laws or regulations of Niue				
Signature of business owner: _____			Date: _____	
Name of business owner: _____				
ADMINISTRATION USE ONLY				
Application granted <input type="checkbox"/>	License#:	Start:	(dd/mm/yy)	Expires: (dd/mm/yy)
Application denied <input type="checkbox"/>	Reasons for decline: _____			
Application fee paid:	Date paid: (dd/mm/yy)			
License fee(s) paid:	Date paid: (dd/mm/yy)			
Fees received by (name, title, signature): _____				

* Applicant must submit testing reports as required by the Niue Tobacco Control Act (2018) and Regulations.

Schedule 2

FEES

Type of License	Fee
Importation of tobacco products	NZ\$5,000
Exportation of tobacco products	NZ\$5,000
Retail of tobacco products	NZ\$250

Schedule 3 ANNUAL TESTING REPORT

Importer: _____
 Laboratory: _____
 Report number: _____
 Date of test: _____

Emissions: Pursuant to Part III, Section 2, test results should be normalized to per milligram of nicotine in order for it to be comparable across brand variants over time. Under each toxicant, the testing standard used should be specified, and for emissions, the report should certify that the WHO Intense Regime was used to capture the tobacco smoke.

Acetaldehyde	Carbon Monoxide
Acrolein	Formaldehyde
Benzene	Nicotine
Benzo[a]pyrene	4-(methylnitrosamino)-1-(3-pyridyl) -1-butanone (NNK)
1,3 Butadiene	N'-nitrosonornicotine (NNN)

Contents: Pursuant to Part III, Section 2, test results should be normalized to per milligram of the weight in order for it to be comparable across brand variants over time. Under each toxicant, the testing standard used should be specified.

Arsenic
Cadmium
Lead
Nicotine

Description of sample(s):

I, _____ (Full name) of _____ (Address), certify that the report correctly records the results of all tests carried out at the laboratory by or on behalf of _____ (name of importer or distributor) during the year ____ (year) for the purposes of the Niue Tobacco Control Regulations.

Dated at _____ this ____ day of _____ 20__.

Schedule 4
FORM OF RETURN

Importer: _____
Laboratory: _____
Report number: _____
Date of report: _____

a) Tobacco product class (e.g., loose roll-your-own, cigarettes, etc.):

- _____
- (i) Tobacco weight by product class:
(ii) Weight of additives in total by product class:
(iii) List of additives and quantities not exceeded for each brand and
brand variant in this return:

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

b) Tobacco product brand

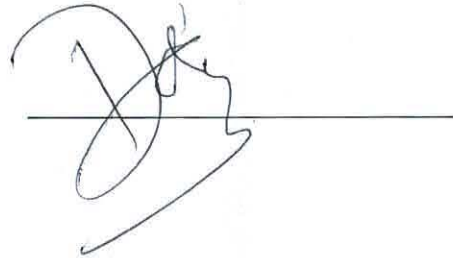
Brand and brand variant	Quantity released for sale	Price

I, _____ (full name) of
_____ (address), _____ (title),
certify that the information contained in /and annexed in this Form of Return
is correct for the purposes of the Tobacco Control Regulations 2019.

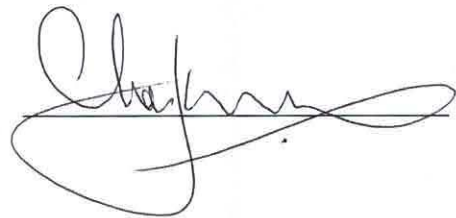
Dated at _____ this _____ day of _____ 20____.

Approved by the Cabinet of Ministers at the Cabinet Chambers, Fale Fono,
Alofi, this 1st day of April 2020.

Signed by Hon. Toke Tufukia Talagi
Premier

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a series of loops and a long horizontal stroke extending to the right.

Countersigned by Charlene Funaki
Clerk to Cabinet

A handwritten signature in black ink, featuring a large, stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

These regulations are administered by the Health Department.
These regulations were made on the 1st day of April 2020.
