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DEPARTMENT OF FINANCE

REPUBLIC OF THE PHILIPPINES

Department of Finance

Department of Health

Department of Budget and Management

Bureau of Internal Revenue

Philippine Health Insurance Corporation

Joint Memorandum Circular No. **003.2020**

IMPLEMENTING RULES AND REGULATIONS OF HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS AS PRESCRIBED BY REPUBLIC ACT NOS. 11346 AND 11467

Pursuant to Section 17 of Republic Act No. 11346 entitled "An Act Increasing the Excise Tax on Tobacco Products, Imposing Excise Tax on Heated Tobacco Products and Vapor Products, Increasing the Penalties for Violations of Provisions on Articles Subject to Excise Tax, and Earmarking a Portion of the Total Excise Tax Collection From Sugar-Sweetened Beverages, Alcohol, Tobacco, Heated Tobacco and Vapor Products for Universal Health Care, Amending for this Purpose Sections 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288, and 289, Repealing Section 288(B) and 288(C), and Creating New Sections 263-A, 265-B, and 288-A of The National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, and for Other Purposes", and Section 12 of RA No. 11467 entitled "An Act Amending Section 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and Adding a New Section 290-A to Republic Act No. 8424, as Amended, Otherwise Known as the National Internal Revenue Code of 1997", the following rules and regulations are hereby promulgated to implement certain provisions of said Acts:

RULE I – GENERAL PROVISIONS

Section 1. Short Title.

These Rules shall be known and cited as the "Implementing Rules and Regulations of Heated Tobacco Products and Vapor Products as Prescribed by Republic Act ("RA") Nos. 11346 and 11467".

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Section 2. Coverage.

These Rules shall apply to all Vapor Products and Heated Tobacco Products as defined in the RA Nos. 11346 and 11467 and these Implementing Rules and Regulations ("Rules").

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Section 3. Definition of Terms.

- (a) 'Acts' shall refer to RA Nos. 11346 and 11467.
- (b) 'Container' means any object used for or capable of holding one or more Vapor Products or Heated Tobacco Products packaging or wrapping.
- (c) 'Distributor' refers to any person or entity that distributes or supplies Vapor Products or Heated Tobacco Products to retailers and/or other persons and entities who are not end-users or consumers of Vapor Products or Heated Tobacco Products.
- (d) 'Exact Replica' refers to the sample printed visual depiction of a Vapor Products or Heated Tobacco Products Packaging submitted by Manufacturers and Importers to the Bureau of Internal Revenue ("BIR") pursuant to an application for registration of new brands or variants of existing brands or new brands in accordance with Revenue Regulations ("RR") No. 3-2006 and its amendatory issuances, which contain the graphic and textual health warnings and other additional information as required under RA No. 10643.
- (e) 'Graphic Health Warning' refers to the photographic image printed on the packaging of Vapor Products or Heated Tobacco Products, which accurately depicts the hazards of such use and is accompanied by a textual warning related to the picture as prescribed by the Department of Health ("DOH").
- (f) 'Graphic Health Warnings Law' refers to RA No. 10643, otherwise known as "An Act to Effectively Instill Health Consciousness Through Graphic Health Warnings on Tobacco Products".
- (g) 'Heated Tobacco Products' shall refer to tobacco products that may be consumed through heating tobacco either electrically or through other means sufficient to release an aerosol that can be inhaled without burning or any combustion of the tobacco. Heated Tobacco Products include liquid solutions and gels that are part of the product and are heated to generate an aerosol.

- (h) 'Importer' refers to any person or entity that is engaged in the importation of Vapor Products or Heated Tobacco Products.
- (i) 'Manufacturer' refers to any person or entity that is engaged in the business of manufacturing or assembling Vapor Products or Heated Tobacco Products.
- (j) 'Non-compliant Packages' shall refer to any Vapor Products or Heated Tobacco Products Packaging, labelling, including mastercases, inserts, onserts, or outside packaging and labelling, which fail to comply with packaging and/or labelling requirements and specifications under the Graphic Health Warnings Law, these Rules, and other regulations and guidelines issued to further implement the provisions of RA 10643.
- (k) 'Packaging' means the packet or packaging or any other packaging and labelling of Vapor Products or Heated Tobacco Products for sale and distribution in the domestic market, importation, trade, exchange, or for exhibition, such as, but not limited to, outside packaging and labelling, onserts, inserts, mastercases, packs, tins, boxes, pouches, flip-tops, slide and shell packages, cartons, bottles, cannisters, or other containers of Vapor Products or Heated Tobacco Products containing the product name, logo, or trademark of the vapor products or heated tobacco products companies, primarily intended for consumers or for retail sale.
- (l) 'Retailer' refers to any person or entity engaged in the direct sale or offer for sale of Vapor Products or Heated Tobacco Products to consumers or end-users;
- (m) 'Tobacco Products' shall mean product entirely or partly made of leaf tobacco as raw material that are manufactured to be used for smoking, sucking, chewing or snuffing, or by any other means of consumption.
- (n) 'Vapor Products' shall mean electronic nicotine and non-nicotine delivery systems (ENDS/ENNDS), which are combinations of (i) liquid solution or gel, that transforms into an aerosol without combustion through the employment of a mechanical or electronic heating element, battery or circuit that can be used to heat such solution or gel, and includes, but is not limited to (ii) a cartridge, (iii) a tank and (iv) the device without a cartridge or tank. It is commonly known as nicotine salt/salt nicotine, and conventional 'freebase' or 'classic' nicotine, and other similar products: Provided, that all Vapor Products shall be covered by these Rules regardless of its nicotine content.

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RULE II – MINIMUM AGE FOR ACCESS TO VAPOR PRODUCTS AND HEATED TOBACCO PRODUCTS

The sale of any Vapor Products and/or Heated Tobacco Products to persons below twenty-one (21) years old is prohibited and shall be punishable in accordance with Section 144(B) and (C) of the National Internal Revenue Code, as amended (NIRC).

It shall not be a defense for the person selling that he/she did not know or was not aware of the real age of the person buying. Neither shall it be a defense that he/she did not know nor had any reason to believe that the product was for the consumption of the person below 21 years of age to whom it was sold, distributed or transferred.

In case of doubt as to the age of the alleged person buying, it can be verified by means of any valid form of identification paper containing both the photograph and the date of birth of the bearer.

RULE III – GRAPHIC HEALTH WARNINGS

A. Technical Standards and Requirements

Section 1. Application of Graphic Health Warnings Law.

The Packaging of Vapor Products, Heated Tobacco Products, and other similar products shall carry a Graphic Health Warning in compliance with the Graphic Health Warnings Law, its Implementing Rules and Regulations, and all other relevant rules and regulations in relation to the implementation of the Graphic Health Warnings Law.

Section 2. Issuance of Graphic Health Warning Template.

Within 30 days from the effectivity of these Rules, the DOH shall also issue the Graphic Health Warning Template for the Packaging of Heated Tobacco Products and Vapor Products including inserts, and onserts, outside packaging and labelling, and any other wrapping withdrawn from the manufacturing facilities, or imported into the Philippine customs territory.

Section 3. Compliance with Graphic Health Warnings Law.

Manufacturers, Distributors, Importers, and sellers of Heated Tobacco Products and Vapor Products are given a period of eighteen (18) months from the effectivity of the Rules to comply with the requirements of the Graphic Health Warnings Law, its Implementing Rules and Regulations, and all other relevant

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rules and regulations in relation to the implementation of the Graphic Health Warnings Law.

Section 4. Prohibition on Sale of Non-Compliant Packages.

No person or legal entity shall sell or commercially distribute or display any Vapor Products or Heated Tobacco Products without ensuring that the labels and packages, as well as any other container used in displaying the said products meet the requirements under the Acts, the Graphic Health Warnings Law, and relevant rules and regulations.

Section 5. Submission of Exact Replicas.

Manufacturers, Distributors, and Importers of Vapor Products and Heated Tobacco Products shall submit to the BIR Exact Replicas of the Packaging and other Container or wrapping of the Vapor Products or Heated Tobacco Products, duly compliant with the Graphic Health Warning Template and the relevant rules and regulations, as a requirement in applying for registration in accordance with Section 156 of the National Internal Revenue Code ("NIRC"), as amended, and RR Nos. 03-2006 and 17-2012, as amended, and other relevant revenue issuances that may be issued by the BIR and/or the Secretary of Finance.

Section 6. Affixture of Internal Revenue Tax Stamp.

The BIR shall mandate the proper affixture of internal revenue tax stamp. In addition, the BIR shall ensure that stamp taxes are not affixed on Non-Compliant Packages and the taxpayer shall certify under oath that the products withdrawn are compliant with the Graphic Health Warnings Law and the templates approved and issued by the DOH as well as existing revenue issuances of the BIR.

Section 7. Compliance with the National Internal Revenue Code and The Graphic Health Warnings Law.

The requirement to comply with the Graphic Health Warnings under RA No. 10643 shall remain separate and distinct from the requirements imposed under the NIRC, as amended; provided that the BIR shall ensure that Packaging approved per the NIRC, as amended, are also compliant with the Graphic Health Warnings Law and its relevant rules and regulations.

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Prescribed by RA Nos. 11346 and 11467

8/11/19

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RULE IV – PROHIBITION ON FLAVORING

Section 1. Flavoring of Vapor Products.

The manufacture, importation, sale and distribution of Vapor Products with flavoring other than plain tobacco or plain menthol shall be prohibited.

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RULE V - RESPONSIBILITIES OF GOVERNMENT AGENCIES

Section 1. Issuance of Guidelines.

For purposes of the full implementation of these Acts, the concerned government agencies shall issue the necessary rules and regulations containing the detailed guidelines, procedure, requirements, penalties as provided for in the Acts, and other information necessary for the effective implementation of the Acts and these Rules.

Apart from the abovementioned mandate and the inherent functions in their charters, the following government agencies are given the following mandates:

A. Department of Health (DOH)

- (1) The DOH shall issue the necessary guidelines and policies for the effective implementation of the Graphic Health Warnings Law for Vapor Products and Heated Tobacco Products;
- (2) The DOH shall initiate and continuously conduct scientific studies on the health impact of Vapor Products and Heated Tobacco Products. The DOH shall likewise be responsible in educating the public on the possible health impact of Vapor Products and Heated Tobacco based on the result of its scientific studies;
- (3) The DOH, through the Food and Drug Administration ("FDA"), shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising and distribution of Heated Tobacco Products, including banning the sale to non-smokers or persons below twenty-one (21) years old; and
- (4) The DOH, through the FDA, shall periodically determine and regulate, consistent with evolving medical and scientific studies, the manufacture, importation, sale, packaging, advertising, and distribution of vapor products, including banning the sale to non-smokers or persons below twenty-one (21) years old, and banning of flavorings.

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B. Department of Budget and Management (DBM)

- (1) The DBM, in consultation with the Department of Agriculture, and National Tobacco Administration, shall issue the necessary rules and regulations, and guidelines governing the allocation and disbursement of the fund allocated to tobacco-producing provinces pursuant to Section 288-A (C) of the National Internal Revenue Code of the Philippines, as amended by RA No. 11346.

C. Department of Finance (DOF)

- (1) The DOF, upon the recommendation of the BIR, shall issue the necessary revenue regulations and other guidelines for the effective implementation of the Acts and these Rules;
- (2) The DOF, upon the recommendation of the BIR, shall issue the necessary revenue regulations and other guidelines prescribing the floor price or the minimum price of Vapor Products and Heated Tobacco Products taking into account the sum of the excise tax and value added tax as provided in RA No. 11467;
- (3) The DOF, in coordination with the BIR and the Bureau of Customs, shall issue a certification to the DBM, not later than April 15 of every fiscal year, on the total revenue collected from excise tax on Heated Tobacco Products and Vapor Products from the preceding fiscal year allocated for the projects provided in Section 288-A (D) of the Tax Code; and
- (4) To aid the DOH in their fiscal space estimation for the Medium-Term Expenditure Program (MTEP) and annual planning, the DOF shall furnish the DOH and Philippine Health Insurance Corporation with the certification issued to DBM as provided in the preceding section for those earmarked for health.

RULE VI - FINAL PROVISIONS

Section 1. Repealing Clause.

All provisions of department orders, rules and regulations, administrative orders, memorandum circulars, and other issuances of government agencies, or any part thereof, which are inconsistent with these Rules are hereby repealed or modified accordingly.


Section 2. Separability Clause.


If any part or provision of these Rules is held invalid or unconstitutional, the other provisions not affected thereby shall remain in full force and effect.

Section 3. Effectivity Clause.


These Rules shall take effect immediately after its publication in the Official Gazette or a newspaper of general circulation.

Adopted this ___ day of ___ in Manila, Philippines


Francisco T. Duque III
Secretary
Department of Health


Carlos G. Dominguez
Secretary
Department of Finance
SEP 03 2020





Wendel E. Avisado
Secretary
Department of Budget and
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Caesar R. Dulay 036602
Commissioner
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Dante A. Gierran
President and Chief Executive Officer
Philippine Health Insurance Corporation

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