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and arrow format at the end of the advertisement for a length of time and in graphics so that it is easily legible. If the advertisement has an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is announced at the end of the advertisement in a manner that is clearly audible. If an advertisement has both a visual and an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format and announced simultaneously at the end of the advertisement in a manner that is easily legible and clearly audible. Provided, however, in the case of an audio advertisement in a retail store or other place where smokeless tobacco products are offered for sale, no warning shall be required, even if a manufacturer, packager, or importer of smokeless tobacco products provides an incentive for disseminating the ad, so long as the announcement includes only the brand name or product identifier, the price, and the product's location in the store.

§307.9 Requirements for disclosure on utilitarian objects.

(a) In the case of advertisements for smokeless tobacco products on utilitarian objects, the warning statements required by the Act and these regulations must be in a conspicuous and legible type in contrast with all other printed material on the object and must appear within the circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if in accordance with with those set forth in §307.7(b). The required warning statement shall be deemed conspicuous if it conforms to the requirements and proportions as set forth in §§307.7(c) and 307.7(d). For purposes of determining the size of the warning statement, the display area for an advertisement on a utilitarian object shall be the visible area on which the brand name, logo or selling message appears. For example, the display area for a t-shirt with a brand name, logo or selling message on the front or back is the entire front or back of the shirt, excluding any sleeves. For a t-shirt with a brand name, logo or selling message on the sleeve, the display area is the sleeve. However, in no case must the diameter of the circle exceed the longest line displayed in the brand name, logo or selling message. The Commission considers a logo to include any brand specific characteristics of a smokeless tobacco product, including but not limited to any recognizable pattern of colors or symbols associated with a particular brand.

(b) The warning statement required by the Act and these regulations must be printed, embossed, embroidered or otherwise affixed to the utilitarian object with a permanence and durability that is comparable to the permanence and durability of the brand name, logo, or selling message. For example, if a product brand name or logo is embroidered on a hat, and a legible warning cannot be embroidered in the proper size due to technological limitations, the warning may be affixed to the hat by another method, so long as its permanence and durability is comparable to that of the brand name, logo or selling message.

(c) The warning statement required by this Act and these regulations must be in a conspicuous and prominent location on the object. A conspicuous and prominent location on the object is one that is proximate to and on the same surface as the smokeless tobacco brand name, logo, or selling message, and is visible when the brand name, logo or selling message is visible. If the brand name, logo or selling message is displayed in more than one location on the utilitarian object, the warning must appear proximate to each brand name, logo or selling message. In the alternative, the warning may appear only once on the object; in that case, however, the advertising display area consists of the aggregate of all the surface areas on which any brand names, logos or selling messages appear.

(d) *Small Items.* For those utilitarian objects under 8 square inches which are viewed predominantly by the user, the warning statement required by this Act and by these regulations shall be deemed conspicuous and prominent when:

(1) Printed on the package of an item, if the item is disseminated in a

package to the consumer. The entire surface area of the package would comprise the display area for purposes of determining warning size in accordance with §§ 307.7 (c) and (d) of the current regulations; or

(2) Placed in the form of a sticker or decal directly onto the item in the Number 1 warning size as set forth in §§ 307.7 (c) and (d) of the current regulations. The item should be packaged in such a way to ensure that the sticker cannot be removed before placement in the hands of the consumer.

(e) *Hats.* For fabric baseball style hats, the warning statement required by the Act and these regulations shall be deemed conspicuous and prominent in the Number 3 size as set forth in §§ 307.7 (c) and (d).

(f) Any manufacturer, packager or importer may apply to the Commission for an exemption from the warning requirements of the Act and these regulations for items such as food products to which the health warnings could logically apply. Authority to grant such exemptions has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and result in expedited treatment of any request for an exemption. The Commission's discretionary right to review actions of the delegate, and the procedure by which a smokeless tobacco manufacturer, packager, or importer may request full Commission review of the delegate's action are as set forth in § 307.4(c) of these regulations.

[56 FR 11662, Mar. 20, 1991]

§ 307.10 Cooperative advertising.

The Act prohibits any manufacturer, packager, or importer of smokeless tobacco products from advertising or causing to advertise any smokeless tobacco product within the United States without the required warning. Accordingly, all advertisements for smokeless tobacco products (including cooperative advertisement) paid for, directly or indirectly, in whole or in part, by a manufacturer, packager, or importer of smokeless tobacco products must bear the required warning. Provided, however, in the case of a print advertisement for a smokeless tobacco product disseminated by a retailer of smokeless tobacco products, other than a manufacturer, packager, or importer of smokeless tobacco products, with a display area of 4 square inches or less, no warning is required so long as the advertisement contains only the brand name or other product identifier and a price. In addition, no warning is required in the case of certain in-store audio announcements as described in § 307.8. Any advertisement of a smokeless tobacco product paid for entirely by a retailer or any person other than a manufacturer, packager, or importer of smokeless tobacco products need not carry a warning statement.

[51 FR 40015, Nov. 4, 1986. Redesignated at 56 FR 11662, Mar. 20, 1991]

PLANS

§ 307.11 Rotation, display, and distribution of warning statements on smokeless tobacco packages.

(a) In the case of the package of a smokeless tobacco product, each of the three warning statements required by the Act must (1) be displayed randomly by each manufacturer, packager, or importer of a smokeless tobacco product in each 12-month period in as equal a number of times as possible on each brand of the product and (2) be randomly distributed in all parts of the United States in which the product is marketed. The Commission will interpret the statutory language ''equal number of times as possible'' as permitting deviations of 4 percent or less in a 12-month period. Random distribution means that there is nothing in the production or distribution process of a smokeless tobacco product that would prevent the three warning statements on the package from being distributed evenly in all parts of the United States where the product is marketed.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product shall submit to the Commission or its designated representative a plan