

[58 FR 41375, Aug. 3, 1993]

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

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AUTHORITY: 15 U.S.C. 4401 *et seq.*

SOURCE: 51 FR 40015, Nov. 4, 1986, unless otherwise noted.

SCOPE

§ 307.1 Scope of regulations in this part.

These regulations implement the Comprehensive Smokeless Tobacco Health Education Act of 1986 *to be codified at* 15 U.S.C. 4401.

§ 307.2 Required warnings.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 is the law that requires the enactment of these regulations. Section 7 of this law provides that no statement, other than the three warning statements required by the Act, shall be required by any Federal, State, or local statute or regulation to be included on the package or in the advertisement (unless the advertisement is an outdoor billboard) of a smokeless tobacco product. The warning statements required by the Act are as follows:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

DEFINITIONS

§ 307.3 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) *Act* means the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252) and any amendments thereto.

(b) *Commission* means the Federal Trade Commission.

(c) *Regulation(s)* means regulations promulgated by the Commission pursuant to sections 3 and 5 of the Act.

(d) *Commerce* means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (2) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Vir-

gin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (3) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(e) *United States*, when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(f) *Smokeless tobacco product* means any finely cut, ground, powered, or leaf tobacco that is intended to be placed in the oral cavity, including snuff, chewing tobacco, and plug tobacco.

(g) *Brand* means smokeless tobacco products that bear a common identifying name or mark, regardless of whether the products are differentiated by type of product, size, shape, packaging, or other characteristic, and, in the case of generic or private label smokeless tobacco products, means all products produced by a single manufacturer or its affiliates or imported by a single importer or its affiliates.

(h) *Package* means any pack, can, box, jar, carton, pouch, container, or wrapping in which any smokeless tobacco product is offered for sale, sold, or otherwise distributed to consumers, but for purposes of these regulations *package* does not include (1) any shipping container or wrapping used solely for transporting smokeless tobacco products in bulk or quantity to manufacturers, packagers, processors, wholesalers, or retailers unless the container or wrapping is intended for use as a retail display or (2) any wrapping or container that bears no written, printed, or graphic matter.

(i) *Label* means any written, printed, or graphic matter affixed to or appearing on any smokeless tobacco product or any package containing a smokeless tobacco product with the exception of any revenue stamp affixed to a smokeless tobacco product.

(j) *Billboard* means any outdoor sign with an area of more than 150 square feet.

(k) *Manufacturer* means any person who manufactures, produces, or processes any smokeless tobacco product.

(l) *Packager* means any person who puts any smokeless tobacco product into packages to be offered for sale, sold, or distributed to consumers.

(m) *Importer* means any person who puts any smokeless tobacco product that was not manufactured inside the United States into commerce to be offered for sale, sold, or distributed to consumers.

(n) *Utilitarian objects* means items, other than smokeless tobacco products, that are sold or given or caused to be sold or given by any manufacturer, packager or importer to consumers for their personal use and that display the brand name, logo, or selling message of any smokeless tobacco product. Such items include, but are not limited to, pens, pencils, clothing or sporting goods.

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

GENERAL REQUIREMENTS

§ 307.4 Prohibited acts.

(a) No manufacturer, packager, or importer of any smokeless tobacco product shall distribute, or cause to be distributed, in commerce any smokeless tobacco product in a package that, in accordance with the labeling requirements of the Act and these regulations, does not bear one of the following warning statements.

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

Each smokeless tobacco product shall upon being prepared for distribution in commerce for retail sale, but before it is distributed to be offered for retail sale, be labeled in accordance with the Act and regulations in this part. In the case of an importer, the label statements may be affixed in the country of origin or after importation into the United States, but shall be affixed before the smokeless tobacco product is removed from bond for sale or distribution. This section does not apply to

any smokeless tobacco product that is manufactured, packaged, or imported in the United States for export from the United States, if the product is not in fact distributed in commerce for use in the United States.

(b) No manufacturer, packager, or importer of any smokeless tobacco product shall advertise or cause to be advertised (other than through the use of billboard advertising) within the United States any smokeless tobacco product unless the advertising bears one of the warning statements as required by the Act and the regulations and set forth in § 307.4(a). This requirement is not applicable to company and divisional names, when used as such, to signs on factories, plants, warehouses, and other facilities related to the manufacturer or factory storage of smokeless tobacco, to corporate or financial reports, to communications to security holders and others who customarily receive copies of these communications, to employment advertising, to advertising in tobacco trade publications, or to promotional materials that are distributed to smokeless tobacco wholesalers, dealers, or merchants, but not to consumers. In addition, this requirement does not apply to shelf-talkers and similar product locators with a display area of 12 square inches or less.

(c) No manufacturer, packager, or importer shall fail to submit a plan to the Commission which specifies the method that will be used to rotate, display, and distribute the statements required by the Act and regulations in this part. The Commission shall approve a plan if the plan provides for the rotation, display, and distribution of the statements in a manner that complies with the Act and these regulations. Authority to approve plans submitted by smokeless tobacco manufacturers, packagers, and importers 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

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result in expedited treatment of these plans. Pursuant to section 1(b) of the Reorganization Plan, the Commission will retain the discretionary right to review the actions of the delegate. Any smokeless tobacco manufacturer, packager, or importer may within 30 days of the delegate's action file with the Secretary of the Commission a request for full Commission review of the action. If no review is sought by petition of the submitter of a plan or any intervenor or upon the Commission's own initiative within 30 days of the action, or if a review is sought and denied in this 30 day period, the delegate's action shall be deemed to be the action of the Commission.

(d) A manufacturer, packager, or importer of smokeless tobacco products shall be deemed to be in compliance with the Act and these regulations if it has taken reasonable steps to:

(1) Provide, by written contract or other clear instructions, for the rotation of the label statements required by the Act;

(2) Give clear instructions and, if possible, furnish materials (such as film negatives, acetates, or other facsimiles) for the production of smokeless tobacco packages and advertising that contain the required warning statements; and

(3) Prevent and correct mistakes, errors, or omissions that have come to its attention.

In the event of the distribution of labels or the publication of advertisements that do not conform with the Act and these regulations, the burden of establishing that reasonable steps have been taken (including fulfilling the conditions described in paragraphs (d)(1) through (3) of this section) to comply shall rest with the manufacturer, packager, or importer of smokeless tobacco.

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

§ 307.5 Language requirements.

The warning statement on the label of a smokeless tobacco product required by the Act and these regulations shall be set out in the English language. If the label of a smokeless tobacco product contains a required warning in a language other than

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English, the required warning must also appear in English. In the case of an advertisement for a smokeless tobacco product in a newspaper, magazine, periodical, or other publication that is not in English, the warning statement shall appear in the predominant language of the publication in which the advertisement appears. In the case of any other advertisement, the warning statement shall appear in the same language as that principally used in the advertisement.

LABEL DISCLOSURES

§ 307.6 Requirements for disclosure on the label.

(a) In the case of the label of a smokeless tobacco package, the warning statement required by the Act and these regulations must be in a conspicuous and prominent place on the package. A conspicuous and prominent place is a part of a label that is likely to be displayed, presented, shown, or examined. For example, in the case of the following types of packages, the following places shall be deemed to be conspicuous and prominent.

Cylindrical can—Side of the package
Pouch—Front of the package, provided that, in the case of a pouch with two identical face panels, the front of the pouch is the face panel upon which the warning is printed

Rectangular box of snuff, plug of chewing tobacco, or dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Any side of the package, provided that the side panel used does not bear any written or graphic matter other than the background color of the side panel and reasonable extensions of graphic matter from other panels

However, in the case of any package of smokeless tobacco, absent special circumstances, the required warning statement shall not be deemed to be in a conspicuous and prominent place if it appears on the bottom (that is, the underside) of the package or is printed on the tear line or on any other surface where it will be obliterated when the package is opened. However, in the case of a rectangular package that is wrapped in a continuous sheet of foil or plastic with randomly appearing label information, the required warning shall be deemed to be in a conspicuous

and prominent place if it appears at least once in its entirety on any part of the package that is not crimped or seamed.

(b) The label statement required by the Act and these regulations must also be in a conspicuous format and in a conspicuous and legible type in contrast with all other printed material on the package. The required warning statement shall be deemed to be in a conspicuous format if it appears in two to four lines that are parallel to each other as well as to the base of the package. However, in the case of a cylindrical package with a diameter of 1 and $\frac{3}{4}$ inches or less the required warning statement need not be parallel with the base of the package to be deemed to be in a conspicuous format. In the case of all packages the required warning statement shall be deemed to be in a conspicuous format if it is separated in every direction from other written or graphic matter on the label by the equivalent of at least twice the point size of the type in which the warning is printed or if it is the only written matter on the surface of the package. The required warning statement shall be deemed to be in a conspicuous and legible type if it appears in all capitals in Univers 57 normal or an equivalent type style. For example, in the case of the following types of packages with the specified capacity, the following type sizes shall be deemed to be conspicuous and legible.

- 1 and $\frac{1}{2}$ ounce snuff can—Seven point type
- 2 to 4 ounce pouch or plug of chewing tobacco—Eight point type, provided that if the warning statement is printed in one line, it will be deemed to be conspicuous and legible in eleven point type
- Can roll consisting of cans wrapped for sale as a single unit—Twelve point type, provided that, if the warning statements on the individual cans are completely visible no warning statement is required on the outer wrapping
- Dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Twelve point type

The required warning statement shall be deemed to be in contrast with all other printed material on the package if it is printed in a color (including black and white) that is clearly visible against the background on which the warning appears.

ADVERTISING DISCLOSURES

§ 307.7 Requirements for disclosure in print advertising.

(a) In the case of print advertisements for smokeless tobacco, including but not limited to, advertisements in newspapers, magazines, or other periodicals; point-of-sale promotional materials; non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, or paperback book inserts; and posters and placards (other than outdoor billboard advertising), the warning statement required by the Act and these regulations must be in a conspicuous and prominent location, in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in capital letters in a circle and arrow format. A conspicuous and prominent location is anywhere within the trim area other than the margin in the case of an advertisement in a newspaper, magazine, or other periodical, and in all cases is not immediately next to other written matter or to any circular designs, elements, or similar geometric forms (other than a picture of a smokeless tobacco package such as a cylindrical snuff can). A circle and arrow will not be deemed to be conspicuous and prominent if it is included as an integral part of a specific design or illustration, such as a picture of the package, in the advertisement, unless at least 80 percent of the area of the advertisement is taken up by a picture of the package.

(b) The advertising warning statements required by the Act and these regulations must be in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in all capital letters in a circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if they are such that the base of the arrow is equal to $\frac{3}{4}$ of the diameter of the circle; the neck of the arrow is equal to $\frac{1}{8}$ of the diameter of the circle; the widest part of the head of the arrow is equal to the diameter of the circle; the tip of the arrow is centered at a point equal to $\frac{3}{4}$ of the diameter from the lowest point of the circle; and the distance between the tip of the arrow and the base of the

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arrow is equal to $\frac{3}{8}$ of the diameter of the circle. The statements shall be deemed to be conspicuous if they are parallel to the foot of the advertisement and centered in the circle, and the word "WARNING" followed by a colon appears in the neck of the arrow.

(c) The required warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 57 normal or an equivalent type style and:

(1) The rule and the statement are printed in a color (including black and white) that is clearly visible against the background upon which they appear; and

(2) The background field within the circle and arrow is clearly visible against the background of the advertisement; and

(3) The warning has the following minimum outside dimensions in relation to the size of the advertisement.

1

Display Area: Up to 15 square inches
Circle Diameter: 1/2"
Rule Width: 1 point
Type Size: 4 1/2 point, set solid
Type Style: Univers 57

2

Display Area: 15 to 65 square inches
Circle Diameter: 1"
Rule Width: 1 1/2 point
Type Size: 8 point, set solid
Type Style: Univers 57

3

Display Area: 65 to 110 square inches
Circle Diameter: 1 1/4"
Rule Width: 2 point
Type Size: 10 point, set solid
Type Style: Univers 57

4

Display Area: 110 to 180 square inches
Circle Diameter: 1 1/2"
Rule Width: 2 1/2 point
Type Size: 12 point, set solid
Type Style: Univers 57

5

Display Area: 180 to 360 square inches
Circle Diameter: 1 3/4"
Rule Width: 2 1/2 point
Type Size: 14 point, set solid
Type Style: Univers 57

6

Display Area: 360 to 470 square inches
Circle Diameter: 2"
Rule Width: 2 1/2 point
Type Size: 16 point, set solid
Type Style: Univers 57

7

Display Area: 470 to 720 square inches
Circle Diameter: 3 1/4"
Rule Width: 3 1/2 point
Type Size: 27 point, set solid
Type Style: Univers 57

8

Display Area: 5 to 10 square feet
Circle Diameter: 3 3/4"
Rule Width: 3 1/2 point
Type Size: 30 point, set solid
Type Style: Univers 57

9

Display Area: 10 to 20 square feet
Circle Diameter: 6"
Rule Width: 3 1/2 point
Type Size: 48 point, set solid
Type Style: Univers 57

10

Display Area: 20 to 30 square feet
Circle Diameter: 7"
Rule Width: 7 point
Type Size: 58 point, set solid
Type Style: Univers 57

11

Display Area: 30 to 40 square feet
Circle Diameter: 8 3/4"
Rule Width: 9 point
Type Size: 72 point, set solid
Type Style: Univers 57

12

Display Area: 40 to 80 square feet
Circle Diameter: 11 3/4"
Rule Width: 12 point
Type Size: 96 point, set solid
Type Style: Univers 57

13

Display Area: Over 80 square feet
Circle Diameter: 1' 4 3/4"
Rule Width: 14 point
Type Size: 1 7/16" cap height, set solid
Type Style: Univers 57

A warning printed in black in a circle with a black rule and a white interior background shall be deemed a clearly visible color against a clearly visible background, except that any such black on white warning that appears

against a uniform white background in an advertisement shall be deemed to be conspicuous only if it meets the size requirements of §307.7(d) of this section.

(d) As an alternative to the format specified in §307.7(c), the required

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warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 67 normal or an equivalent type style and

(1) The rule that forms the circle and arrow and the required statement are printed in a color (including black and white) that is clearly visible against

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the background upon which they appear,

(2) The background of the circle and arrow is a uniform color, and

(3) The warning has the following minimum outside dimensions in relation to the size of the advertisement.

1

Display Area: Up to 15 square inches
Circle Diameter: 5/8"
Rule Width: 1 point
Type Size: 5 point, set solid
Type Style: Univers 67

2

Display Area: 15 to 65 square inches
Circle Diameter: 1 1/4"
Rule Width: 2 point
Type Size: 10 point, set solid
Type Style: Univers 67

3

Display Area: 65 to 110 square inches
Circle Diameter: 1 5/8"
Rule Width: 2 1/2 point
Type Size: 12 point, set solid
Type Style: Univers 67

4

Display Area: 110 to 180 square inches
Circle Diameter: 2"
Rule Width: 3 point
Type Size: 15 point, set solid
Type Style: Univers 67

5

Display Area: 180 to 360 square inches
Circle Diameter: 2 1/4"
Rule Width: 3 point
Type Size: 17 point, set solid
Type Style: Univers 67

6

Display Area: 360 to 470 square inches
Circle Diameter: 2 5/8"
Rule Width: 3 point
Type Size: 20 point, set solid
Type Style: Univers 67

7

Display Area: 470 to 720 square inches
Circle Diameter: 4 1/4"
Rule Width: 4 point
Type Size: 34 point, set solid
Type Style: Univers 67

8

Display Area: 5 to 10 square feet
Circle Diameter: 4 7/8"
Rule Width: 4 point
Type Size: 36 point, set solid
Type Style: Univers 67

9

Display Area: 10 to 20 square feet
Circle Diameter: 7 3/4"
Rule Width: 6 point
Type Size: 57 point, set solid
Type Style: Univers 67

10

Display Area: 20 to 30 square feet
Circle diameter: 9 1/8"
Rule Width: 9 point
Type Size: 76 point, set solid
Type Style: Univers 67

11

Display Area: 30 to 40 square feet
Circle Diameter: 11 3/8"
Rule Width: 11 point
Type Size: 94 point, set solid
Type Style: Univers 67

12

Display Area: 40 to 80 square feet
Circle Diameter: 15 1/4"
Rule Width: 15 point
Type Size: 1 5/16" cap height, set solid
Type Style: Univers 67

13

Display Area: Over 80 square feet
Circle Diameter: 1'9 3/4"
Rule Width: 17 point
Type Size: 1 13/16" cap height, set solid
Type Style: Univers 67

(e) An advertisement in a newspaper, magazine, or other periodical that occupies more than one page shall not be required to have more than one warn-

ing statement, but the dimensions of the circle and arrow shall be determined by the aggregate area of the entire advertisement, and the warning

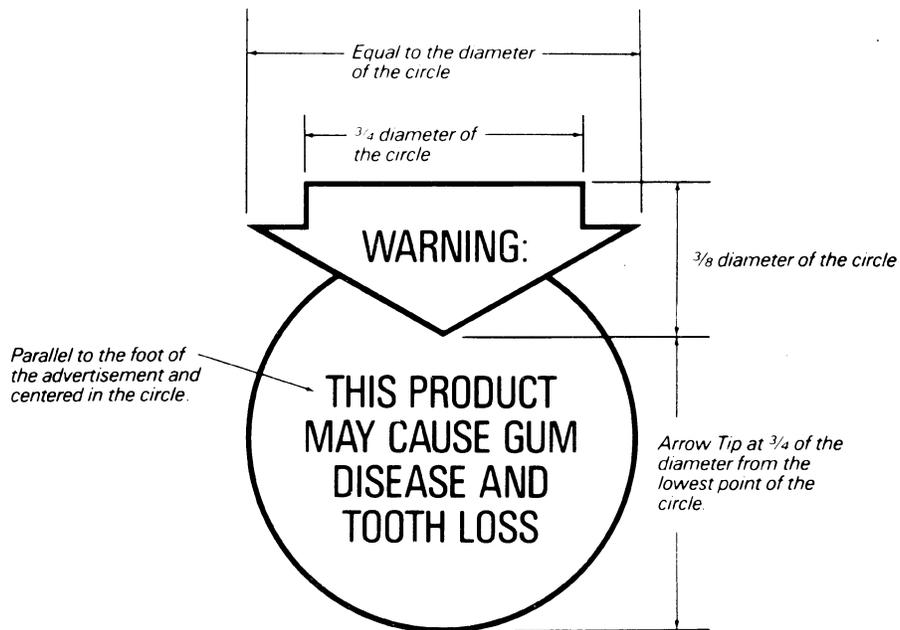
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statement shall appear on the page that contains most of the advertisement. Point-of-sale and non-point of sale promotional materials of more than one page in length shall not be required to have more than one warning statement, and the dimensions of the circle and arrow shall be determined by

the size of the advertisement on the page on which most of the advertisement appears. Warning statements in circles and arrows that meet the specifications of this section and conform to the following diagram shall be deemed to be in a conspicuous format.

How to Conform to the Rule



§ 307.8 Requirements for disclosure in audiovisual and audio advertising.

In the case of advertisements for smokeless tobacco on videotapes, cassettes, or discs; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the warning statement required by the Act and these regulations must be conspicuous and prominent. If the adver-

tisement has a visual 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 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 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

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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

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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 that provides for the display of the three warning statements on the package of a smokeless tobacco product as

required by the Act and these regulations. This plan shall be sufficiently detailed to enable the Commission to determine whether the warning statements appear on the package in a manner consistent with the Act and these regulations. These requirements may be satisfied in a number of ways. For example, a plan may satisfy the equal display requirement by providing for the engraving or preparation of cylinders, plates, or equivalent production materials in a manner that results in the simultaneous printing of the three required warnings in as near an equal number of times as possible under the circumstances. Alternatively, a plan may satisfy the equal display requirement by providing that stickers bearing the three required warnings be printed in equal numbers and affixed randomly to packages of the product. Alternatively, a plan may satisfy the equal display requirement by providing for the preparation of separate cylinders, plates, and equivalent production materials and requiring that they be changed at fixed intervals in a manner that results in the display of the three required warnings in as near an equal number of times as possible under the circumstances during a 1-year period. In any event, nothing in these regulations requires the use of more than one warning statement on the label of any brand during a given 4-month period.

(c) A plan for the rotation, display, and distribution of warning statements on smokeless tobacco packages shall include representative samples of labels with each of the three warning statements required by the Act and these regulations. This provision does not require submission of a label with each of the required warning statements for every brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of labels for different types of smokeless tobacco products, such as moist snuff, scotch snuff, and loose-leaf and plug chewing tobacco, and a range of package sizes for each type of product.

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

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

(a) In the case of advertising for a smokeless tobacco product, each of the three warning statements required by the Act must be rotated every 4 months by each manufacturer, packager, or importer of a smokeless tobacco product in an alternating sequence in the advertisement for each brand of the product. Any rotational system, however, may take into account practical constraints on the production and distribution of advertising.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every four (4) months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each four-month period or require each brand to display a different warning during a given four-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each four-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are

ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

(c) A plan for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising shall include a representative sample of each of the three warning statements required by the Act and these regulations. This provision does not require the submission of all advertising for each brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of actual examples of different types of advertising materials for various brands, prototypes of actual advertising materials, the warning statement as it would appear in different sizes of advertisements, or acetates or other facsimiles for the warning statement as it would appear in different sizes of advertisements.

[51 FR 40015, Nov. 4, 1986. Redesignated and amended at 56 FR 11662, 11663, Mar. 20, 1991; 58 FR 4874, Jan. 15, 1993; 61 FR 45886, Aug. 30, 1996]

PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.

- 308.1 Scope of regulations in this part.
- 308.2 Definitions.
- 308.3 Advertising of pay-per-call services.
- 308.4 Special rule for infrequent publications.
- 308.5 Pay-per-call service standards.
- 308.6 Access to information.
- 308.7 Billing and collection for pay-per-call services.
- 308.8 Severability.
- 308.9 Rulemaking review.

AUTHORITY: Pub. L. 102-556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.)

SOURCE: 58 FR 42400, Aug. 9, 1993, unless otherwise noted.

§ 308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dis-

pute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711-14, 5721-24.

§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.¹

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e)(1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer

¹Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.