

# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

### MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 209

2011

#### NOTICE OF INTENTION TO MAKE REGULATIONS: TOBACCO PRODUCTS CONTROL ACT, 2010

In terms of section 37(3) of the Tobacco Products Control Act, 2010 (Act No. 1 of 2010), I hereby publish a draft of the regulations (which is set out in the Schedule below) which I intend to issue under section 37(1) of that Act. Interested persons are invited to furnish me through the Permanent Secretary: Health and Social Services, Private Bag 13198, Windhoek, with any comments thereon or representations in connection therewith within a period of 30 days from the date of publication of this notice in the *Gazette*.

**R.N. KAMWI**  
**MINISTER OF HEALTH AND SOCIAL SERVICE**

Windhoek, 6 October 2011

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## **Part 1 Introduction**

### **Definitions**

**1.** In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has a corresponding meaning, and -

“the Act” means the Tobacco Products Control Act, 2010 (Act No. 1 of 2010).

## **Part 2 Pictures, pictograms, health messages and warnings**

### **Pictures, pictograms, health messages and warnings**

**2.** (1) Every package in which a tobacco product is sold on retail basis must as closely as possible resemble the design set out in Annexure 1 and must contain the information specified in this regulation.

(2) A package referred to in subregulation (1) must reflect -

- (a) one picture or pictogram set out in paragraph 1 of Annexure 2 with the health message printed thereunder;
- (b) one of the warnings set out in paragraph 2 of Annexure 2; and
- (c) the statement “This product contains nicotine, tar and other harmful chemicals”.

(3) A picture or pictogram with the health message concerned and a warning referred to in subregulation (2) must -

- (a) be positioned in the manner; and
- (b) fill the area on the package,

as described in Annexure 1.

(4) A package referred to in subregulation (1) may not bear or display any wording such as “mild”, “low tar” or “light”, or any other word, term or sign that directly or indirectly creates an impression that a particular tobacco product or brand is less harmful than others.

### **Print and appearance of pictures, pictograms, health messages and warnings**

**3.** (1) The health messages and warnings referred to in regulation 2(1) to be reflected on a package in terms of regulation 2 must be -

- (a) in the official language of Namibia;
- (b) in Helvetica type;
- (c) in black, red or blue print on a white background;
- (d) in upper-case lettering;
- (e) centred within the area in which it is displayed, and the text of the message must occupy not less than 60% and not more than 70% of the area in which it is displayed; and

- (f) surrounded by a border that -
  - (i) is the same colour as the print used for the text of the message; and
  - (ii) outlines the area in which the message is displayed without encroaching on that area.

(2) A picture, pictogram, health message and warning must be rotated as equal as possible across all tobacco products and different brands, and in any case on every successive fifty packages of each brand of the product and must be randomly distributed in all areas within Namibia.

(3) The area to be occupied by the health messages and warnings referred to in subregulation (1) and by the statement referred to in regulation 2(1)(c) may not contain any matter other than that required by these regulations.

#### **Pictures, pictograms, health messages and warnings not to be removable**

**4.** The pictures, pictograms, health messages and warnings reflected on a package in terms of regulation 2 must be of such a nature that it cannot be -

- (a) removed from the package; and
- (b) destroyed or become unreadable when the package is opened in any normal way.

#### **Signs indicating availability of tobacco products**

**5.** A retailer of tobacco products may indicate the availability of tobacco products and the price thereof only by means of signs at the point of sale that -

- (a) are placed on the shelf or portion thereof where tobacco products are stacked;
- (b) bears only the name of the product and its retail cost; and
- (c) is in a colouring similar to the rest of the pricing labels of all other products in that retail outlet.

#### **Sign at point of sale to contain certain messages and size thereof**

**6.** (1) Subject to subregulation (2), a sign that indicates the availability of tobacco products and their price -

- (a) must contain a health message as contained in Annexure 2 in letters that are at least 2cm in height and 1,5 cm in width; and
- (b) may not exceed one square metre in size.

(2) The health message referred to in subregulation (1)(a) must appear at the top of the sign and across its full width.

#### **Availability of tobacco products to persons under age of 18 years**

**7.** (1) Pursuant to section 18(2) and 18(3) of the Act a retailer of tobacco products must prominently at the point of sale display a sign which -

- (a) bears the wording "We cannot, by law, sell tobacco products to anyone under the age of 18 years"; and

- (b) is of a size not less than 210 millimetres by 297 millimetres (“A4 size”).
- (2) The letters of the wording referred to in subregulation (1) must -
  - (a) be at least 2cm in height and 1,5 cm in width; and
  - (b) be in red coloured Helvetica font on a white background.

### **Part 3**

#### **Signs indicating prohibition of smoking of tobacco products and duties and responsibilities of owners or persons in charge of places or areas referred to in section 22(1)**

##### **Signs indicating prohibition of smoking of tobacco products**

- 8.** (1) The owner of or person in charge of a place or an area contemplated in section 22(1) must prominently at every entrance to such place or area display a sign which -
- (a) bears the wording “Smoking of Tobacco Products Prohibited”; and
  - (b) is of a size not less than 210 millimetres by 297 millimetres (“A4 size”).
  - (2) The letters of the wording referred to in subregulation (1) must -
    - (a) be at least 2cm in height and 1,5 cm in width; and
    - (b) be in red coloured Helvetica font on a white background.

##### **Duties and responsibilities of owners or persons in charge of places or areas referred to in section 22(1)**

- 9.** In addition to regulation 8, the owner of or person in charge of a place or an area contemplated in section 22(1) must -
- (a) next to or underneath every sign referred to in regulation 8(1) prominently display the provisions of sections 22 and 29 of the Act, as close as possible to the form and size which it has been printed in the *Gazette*;
  - (b) next to or underneath every sign referred to paragraph (a) prominently display -
    - (i) one picture or pictogram set out in paragraph 1 of Annexure 2 with the health message printed thereunder; and
    - (ii) one of the warnings set out in paragraph 2 of Annexure 2;
  - (c) not allow smoking in any form in the place or area concerned;
  - (d) point out to persons who smoke in the place or area concerned that smoking is prohibited;
  - (e) if a person to whom it has been pointed out that smoking is prohibited in the place or area concerned, does not refrain from smoking, lay a criminal charge against such person;
  - (f) train his or her or its employees on how to deal with clients that smoke in the place or area concerned; and

- (g) guide clients on how to lodge complaints if there has been a contravention of the Act in respect of the place or area concerned.

**Part 4**  
**Packaging of tobacco products**

**Packaging of tobacco products**

- 10. Tobacco products in the form of -
  - (a) cigarettes sold in packages must be contained in a package of at least 20 cigarettes;
  - (a) single sticks of cigarettes cannot be sold unless they are contained in a package which is well labelled with the health message, warning and statement referred to in regulation 2(2);
  - (b) loose tobacco intended to be smoked or other tobacco products which are not intended to be smoked, must be in a package or container of at least 100 grams.

**Part 5**  
**Provision for phasing out of existing sponsorship or contractual obligations**

**Existing contracts, undertakings or agreements**

- 11. (1) Subject to subregulation (2), existing contracts, undertakings or agreements for or in relation to -
  - (a) the advertising of tobacco products, if any; and
  - (b) the organisation, sponsorship or promotion of any organised activity, if any, in Namibia by any manufacturer, importer, distributor or retailer of any tobacco product,

which existed and were binding on the date of coming into operation of the Act, may continue for a period not exceeding six months from that date.

- (2) The parties to any contract, undertaking or agreement referred to in subregulation (1) must submit, within one month of the date of coming into operation of the Act, to the Permanent Secretary -
  - (a) a certified copy of any such contract, undertaking or agreement, or
  - (b) if such contract, undertaking or agreement is not in writing, sworn statements, by both parties, to the effect that they have entered into a contract, undertaking or agreement, and setting out the terms of the contract, undertaking or agreement.

**Part 6**  
**Measures to prevent illicit trade in tobacco products**

**Measures to prevent illicit trade in tobacco products**

- 12. (1) No person may sell or import for sale any tobacco products unless the package -
  - (a) bears the statements -

- (i) “Sales only allowed in Namibia”; and
  - (ii) indicating the country of origin of the product,  
in Helvetica typeface in upper-case letters;
- (b) bears the statements in paragraph (a)(i) and (ii) above -
- (i) in black letters on a white background; and
  - (ii) appearing on either of the side panels of the package and occupying at least 60% of the display area; and
- (c) complies with regulations 2, 3 and 4.
- (2) Tobacco products in transit through Namibia must –
- (a) have on the outer package containing the consignment printed information relating to -
- (i) the shipment route and date;
  - (ii) the shipment destination;
  - (iii) the point of departure and consignee; and
  - (iv) a batch or serial number; and
- (b) be accompanied by a consignment note or other similar document containing the information set out in paragraph (a).

#### **Part 7**

#### **Maximum permissible levels of tar, nicotine and other constituents in tobacco products**

##### **Maximum tar and nicotine yield of cigarettes**

**13.** The tar yield of cigarettes marketed in Namibia must not be greater than 12 mg per cigarette, and the nicotine yield not greater than 1,2 mg per cigarette.

##### **Determination of amount of tar and nicotine in smoke of cigarette**

**14.** The amount of tar and nicotine in the smoke of a cigarette is determined in accordance with paragraphs 1 and 2 of Annexure 3.

#### **Part 8**

#### **Protection from exposure to tobacco smoke**

##### **Distance of smoking of tobacco products from window of, ventilation inlet of, doorway to or entrance into public place**

**15.** Pursuant to section 22(1)(b) of the Act no person may smoke a tobacco product within a distance of two metres from a window of, ventilation inlet of, doorway to or entrance into a public place.

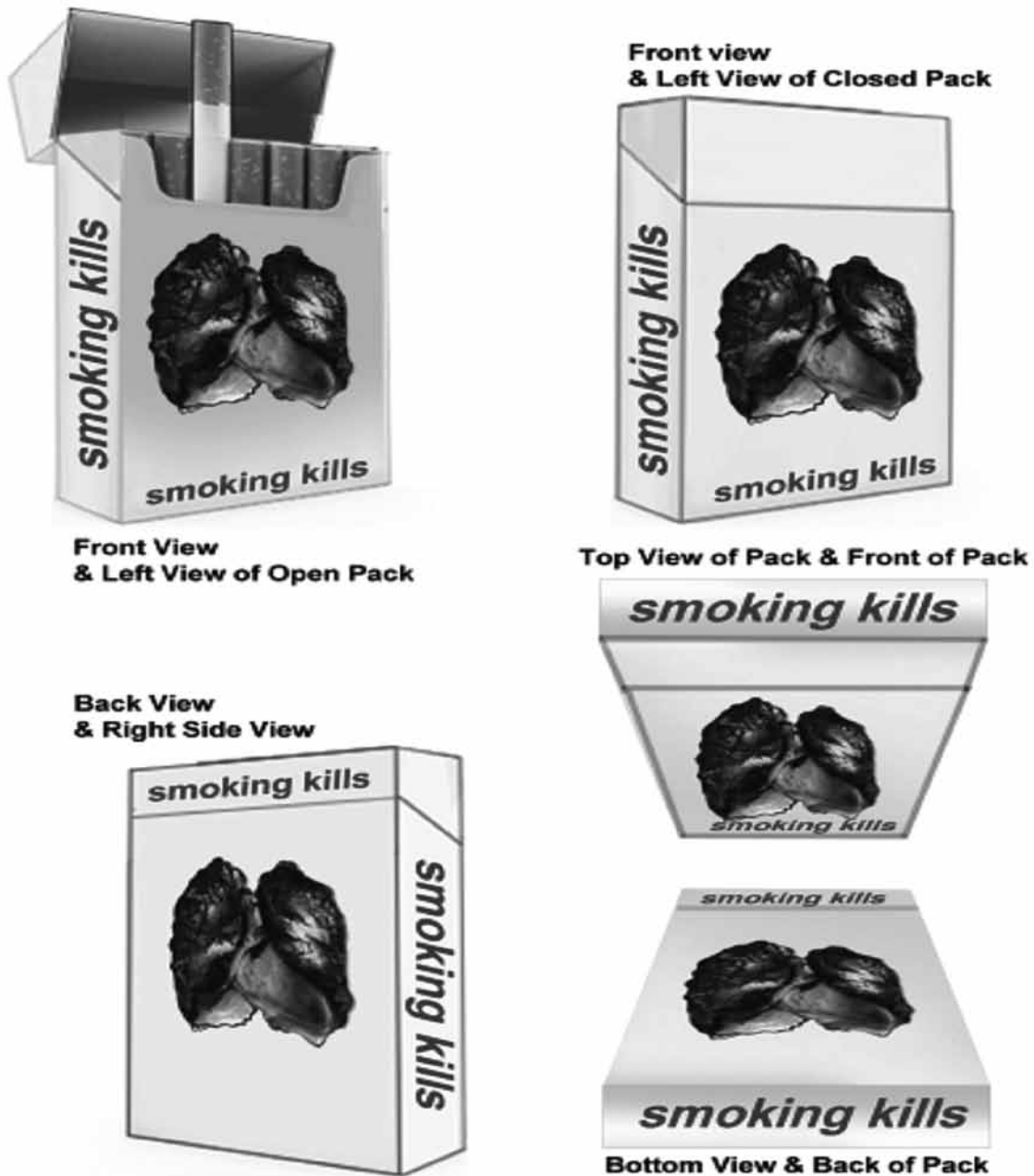
#### **Part 9**

## Offences and penalties

### Offences and penalties

16. Any person who contravenes or fails to comply with regulation 2, 3, 4, 5, 6, 7, 8, 9, 10, 11(2), 12, 13 or 15 commits an offence and is liable on conviction to a fine not exceeding N\$4000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### ANNEXURE 1 Packet design (Regulation 2)



NB: The picture or pictogram must cover not less than 60% of the surface area on both the largest sides of the packet, while the remaining areas must bear the rest of the text.



**ANNEXURE 2**  
**Pictures, pictograms and warnings**  
 (Regulations 2(1) and 6(1))

1. The pictures and pictograms:



Second hand smoking  
Kills



Tobacco smoking  
causes diseases



Tobacco is Poisonous  
and bad for your health



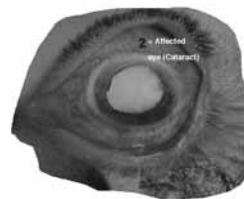
Smoking affects  
your body



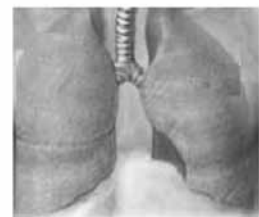
Smoking damages  
your lungs



Smoking causes  
breast cancer



Smoking causes  
cataracts and blindness



Keep your lungs  
healthy stop smoking



Smoking spoils your  
Teeth



Smoking causes  
throat cancer



Smoking is;  
dangerous to  
the unborn baby



Smoking causes  
heart disease;

2. The warnings

DANGER: SMOKING CAN KILL YOU.

DANGER: SMOKING CAUSES CANCER.

DANGER: SMOKING CAUSES HEART DISEASE.

DANGER: SMOKING DAMAGES YOUR LUNGS.

WARNING: SMOKING IS DANGEROUS TO YOUR HEALTH.

WARNING: SMOKING IS DANGEROUS TO CHILDREN.

WARNING: SMOKING IS DANGEROUS TO THE UNBORN BABY.

WARNING: SMOKING IS DANGEROUS TO BREASTFEEDING WOMEN.

- WARNING: SMOKING IS DANGEROUS TO NON-SMOKERS.
- DANGER: TOBACCO IS ADDICTIVE.
- DANGER: TOBACCO SMOKING CAUSES DISEASE.
- WARNING: SMOKING SPOILS YOUR TEETH.
- WARNING: SMOKING CAUSES THROAT CANCER.
- WARNING: SMOKING CAUSES CATARACTS AND BLINDNESS.
- WARNING: KEEP YOUR LUNGS HEALTHY; STOP SMOKING.

### **ANNEXURE 3**

#### **Determination of amount of tar and nicotine in smoke of cigarette (Regulation 14)**

1. The amount of tar and nicotine in the smoke of a cigarette must, for the purposes of this Annexure, be determined in accordance with the International Standards Organisation's methods ISO 4387:1991, 3308:1991, 7210:1983, 3402:1991, 8243:1991, 10315:1991, 3400:1989, 10362-1:1991, 10362-2:1994, 2971:1987, 6488:1981, 6565:1983.
  2. The tests will be carried out at a laboratory nominated by the Permanent Secretary, but in all respects at the expense of the manufacturer or importer.
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