



FEDERAL TRADE COMMISSION  
PROTECTING AMERICA'S CONSUMERS

# Memorandum to Potential Cigarette Manufacturers and Importers



Tags: [Tobacco](#)

Date: March 21, 2011

## MEMORANDUM

TO: Potential Cigarette Manufacturers or Importers

FROM: Division of Advertising Practices

Federal Trade Commission

United States Government

Federal Trade Commission

Washington, D.C. 20580

March 21, 2011

## I. OVERVIEW

Any company wishing to sell or advertise cigarettes within the United States – regardless of the volume of its sales – must submit a plan to the Federal Trade Commission ("FTC") explaining how it will comply with the health warning display requirements, and have that plan approved by the FTC<sup>1</sup>. This memorandum provides an overview of the governing statute, and also outlines the elements that should be included in any plan submitted to the FTC.

The requirements for health warnings on cigarettes are governed by the [Federal Cigarette Labeling and Advertising Act](#), 15 U.S.C. §§ 1331-1340 ("the Cigarette Act").

Section 1333 of the Cigarette Act imposes labeling and advertising requirements on cigarette manufacturers, packagers, and importers, and requires any company wishing to sell cigarettes within the United States to have a plan approved by the Federal Trade Commission explaining how it will comply with those health warning display requirements. More specifically, Section 1333(a) sets forth the precise wording and punctuation of the warnings required to appear on all packaging and advertising of cigarettes sold, distributed, or advertised in the United States. Section 1333(b)(1) provides the capitalization, placement, and size requirements for the warnings on

cigarette packaging. Section 1333(b)(2) sets forth the requirements for warnings in advertisements, except for outdoor billboards, which are covered in Section 1333(b)(3).

Section 1333(c)(1) requires that the warnings rotate quarterly in both advertising and packaging in accordance with a plan submitted to and approved by the Federal Trade Commission. Section 1333(c)(2) provides an alternative to quarterly rotation of warnings on packaging for companies with sufficiently low sales volumes. This provision allows a cigarette manufacturer or importer to apply to the Federal Trade Commission for permission to display the four warnings an equal number of times on a brand style's packaging for a one-year period, if the company's annual sales of that brand style are less than one-fourth of one percent of all of the cigarettes sold in the United States in the previous calendar year and more than half of the cigarettes manufactured or imported by that company are packaged into brand styles that meet this low sales threshold. There are no exceptions, however, to the quarterly rotation requirement for advertising.

Section 1335a of the Cigarette Act requires that cigarette manufacturers and importers annually file with the Secretary of the Department of Health and Human Services ("DHHS") a list of the ingredients added to tobacco in the manufacture of their cigarettes. Furthermore, the Tariff Act of 1930, 19 U.S.C. § 1681a(c)(1), as amended by the Tariff Suspension and Trade Act of 2000, Pub. L. No. 106-476, 114 Stat. 2179, prohibits the importation of cigarettes unless at the time of entry the importer presents a sworn statement signed by the original cigarette manufacturer stating that the manufacturer has submitted and will continue to submit the list of ingredients to DHHS.

## II. HEALTH WARNING ROTATION PLANS

Health warning rotation plans should be submitted to the Commission in the form of a letter addressed to: Mary K. Engle, Associate Director, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (Submissions sent via Federal Express or other courier services should be addressed to: 601 New Jersey Avenue, NW, Washington, DC 20580.) The plan should include the following elements:

### A. Packaging

1. **Warning Label Size and Location:** A plan must identify each of the cigarette brands and brand styles for which the company is seeking approval of its health warning rotation plan. For each such brand style, the company must submit one sample pack and carton (if those cigarettes will be sold in cartons) displaying each of the four required warning statements. The warnings on both the packs and the cartons must be of appropriate size, conspicuousness, and contrast, and the samples must be actual packs and cartons – we cannot approve a plan based on packaging artwork.

It is illegal to import cigarettes unless the warning statements are permanently imprinted both on cigarette packs and cartons in the proper format.[3](#)



- Warning Label Rotation:** If the company will be rotating the warnings quarterly on its packaging, it must provide a schedule showing the warning that is assigned to each brand during each quarter of the year. See the Sample Schedule for Quarterly Rotation, attached below. The company must also specify the date on which the quarterly rotation will be based, e.g., the date on which the cigarettes are packaged.

If the company wishes to use the option provided by Section 1333(c)(2) and display the four warnings an equal number of times during the year on the packaging of each brand style, it must provide a statement of its sales volume (i.e., the number of cigarettes sold) by brand style for the previous fiscal year, as well as its anticipated sales for the one year period to be covered by its plan, in order to demonstrate that its sales are small enough to qualify for this alternative.<sup>4</sup> The plan must also explain how the company will ensure that all four warnings will be equally displayed on the packs and cartons of each brand style for the one-year period beginning on the date the plan is approved.

- Records of Compliance:** All companies must maintain sufficient records to demonstrate compliance with the approved plan filed, and the plan must indicate that the company will do so.

## B. Advertising

The company should indicate in its plan whether or not it intends to advertise the cigarettes it manufactures or imports.

- Warning Label Size and Placement:** If the company advertises, it must explain in its plan how it will comply with the format requirements of the Cigarette Act and must include an example of each of the advertising "warning statement formats" that it intends to use.

The standards that the Commission uses to enforce the warning size requirements of the Cigarette Act are not specified in terms of inches or meters. Instead, pursuant to consent agreements entered into with six major cigarette companies in 1981<sup>5</sup>, the formats and sizes of the warnings required for advertisements of various dimensions are set forth in acetate exhibits (plastic overlays). These acetates are referred to as Exhibits 1 through 14 in the attached Schedule For Warnings in Advertisements. Exhibits 1-11 reflect the Cigarette Act's current size and format requirements for ads other than billboards. When you have determined the size of your advertisement, you can refer to the Schedule to determine which acetate you need to place on it. For example, if your advertisement is 60 square inches, you will need to use the acetate specified in Exhibit 1 or 1(a). Size information for billboard warnings (Exhibits 12-14) can be obtained by contacting Commission staff.

Electronic versions of the acetates with the required warning statement formats are [available in pdf form below](#). To ensure that they are printed in the correct size, the "print scaling" setting on your computer should be "none."



2. **Warning Label Rotation:** If the company intends to advertise its cigarettes, it must provide the Commission with a rotation schedule for the warnings on each brand's advertising. See the Sample Schedule for Quarterly Rotation, attached below.
3. **Foreign Language Disclosures:** If all or part of an advertisement is in a language other than English or if the ad is carried in a foreign language publication, a foreign language warning is required. Warnings in languages other than English must be submitted to the Commission for approval.

### III. FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The Family Smoking Prevention and Tobacco Control Act ("FSPTCA"), which was enacted in June 2009, amends the Cigarette Act to replace the four current cigarette health warning statements with nine new statements, beginning in 2012. The FSPTCA also mandates new size and type requirements for these warnings, and transfers authority for review and approval of health warning statement plans from the Commission to the Department of Health and Human Services in 2012.

Because the FSPTCA also imposes certain requirements on the marketing and sale of cigarettes that are already in effect, you should ensure that you are in compliance with those requirements. For example, since September 22, 2009, the use of certain characterizing flavors (other than tobacco or menthol) in cigarettes has been prohibited. The FSPTCA also imposes registration and reporting requirements on tobacco manufacturers and importers and its "modified risk tobacco provisions" now prohibit the use of certain descriptors, such as "light." Additional information is available at [www.fda.gov/TobaccoProducts/default.htm](http://www.fda.gov/TobaccoProducts/default.htm) and [www.fda.gov/TobaccoProducts/ResourcesforYou/ForIndustry/default.htm](http://www.fda.gov/TobaccoProducts/ResourcesforYou/ForIndustry/default.htm).

Staff contacts: Sallie Schools (202-326-3344) or Bonnie McGregor (202) 326-2356.

#### Sample Schedule for Quarterly Rotation


	Brand W	Brand X	Brand Y	Brand Z
1st Quarter (Jan. - Mar.)	A	B	C	D
2nd Quarter (Apr. - June)	B	C	D	A
3rd Quarter (July - Sept.)	C	D	A	B
4th Quarter (Oct. - Dec.)	D	A	B	C



The warnings are as follows:

A.	<b>SURGEON GENERAL'S WARNING:</b> Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
B.	<b>SURGEON GENERAL'S WARNING:</b> Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
C.	<b>SURGEON GENERAL'S WARNING:</b> Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
D.	<b>SURGEON GENERAL'S WARNING:</b> Cigarette Smoke Contains Carbon Monoxide.

## Schedule for Warnings in Advertisements

	<i>Size of Advertisement</i>	<i>Warning Statement</i>
Category 1.	0 to 65 square inches	<a href="#">Exhibit 1 (warnings A, B, C, and D)</a> or <a href="#">1(a) (warnings A, B, C, and D)</a>
Category 2.	Over 65 to 110 square inches	<a href="#">Exhibit 2 (warnings A, B, C, and D)</a> or <a href="#">2(a) (warnings A, B, C, and D)</a>
Category 3.	Over 110 to 180 square inches	<a href="#">Exhibit 3 (warnings A, B, C, and D)</a>
Category 4.	Over 180 to 360 square inches	<a href="#">Exhibit 4 (warnings A, B, C, and D)</a>
Category 5.	Over 360 to 470 square inches	<a href="#">Exhibit 5 (warnings A, B, C, and D)</a>
Category 6.	Over 470 to 720 square inches	<a href="#">Exhibit 6 (warnings A, B, C, and D)</a>
Category 7.	Over 5 to 10 square feet	<a href="#">Exhibit 7 (warnings A, B, C, and D)</a>
Category 8.	Over 10 to 20 square feet	<a href="#">Exhibit 8 (warnings A, B, C, and D)</a>
Category 9.	Over 20 to 40 square feet	<a href="#">Exhibit 9 (warnings A, B, C, and D)</a>
Category 10.	Over 40 to 80 square feet	<a href="#">Exhibit 10 (warnings A, B, C, and D)</a>
Category 11.	Over 80 to 160 square feet	<a href="#">Exhibit 11 (warnings A, B, C, and D)</a>
Category 12.	Over 160 to 350 square feet	Exhibit 12
Category 13.	Over 350 to 1,200 square feet	Exhibit 13
Category 14.	Over 1,200 square feet	Exhibit 14 

**NOTES:** All warning statements to be black on white. Exhibits 12, 13, and 14 to be centered horizontally at bottom of advertisement, with at least 3" of white space at each end.

## Endnotes:

1. As discussed below, authority to approve health warning rotation plans will be transferred from the Commission to the Department of Health and Human Services in 2012, at which time new text and formatting requirements for the warnings will also become effective.
2. Under 18 U.S.C. § 1001, knowingly and willfully making false statements to a federal government agency is a crime punishable by a fine and/or imprisonment.
3. See Tariff Suspension and Trade Act of 2000, Pub. L. No. 106-476.
4. A company that has not yet begun to manufacture or import cigarettes will be unable to provide historic sales figures, but should state when it plans to begin manufacturing or importing and its anticipated sales volume.
5. United States v. Liggett Group, Inc., Dkt. No. 76 Civ. 811 (JMC) (S.D.N.Y., Dec. 17, 1981) (consent judgment).

[Exhibit 1 \(warnings A, B, C, and D\)](#) (1.52 MB)

[Exhibit 1a \(warnings A, B, C, and D\)](#) (1.31 MB)

[Exhibit 2 \(warnings A, B, C, and D\)](#) (2 MB)

[Exhibit 2a \(warnings A, B, C, and D\)](#) (1.85 MB)

[Exhibit 3 \(warnings A, B, C, and D\)](#) (2.63 MB)

[Exhibit 4 \(warnings A, B, C, and D\)](#) (2.95 MB)

[Exhibit 5 \(warnings A, B, C, and D\)](#) (3.74 MB)

[Exhibit 6 \(warnings A, B, C, and D\)](#) (7.68 MB)

[Exhibit 7 \(warnings A, B, C, and D\)](#) (11.22 MB)

[Exhibit 8 \(warnings A, B, C, and D\)](#) (20.87 MB)

[Exhibit 9 \(warnings A, B, C, and D\)](#) (46.05 MB)

[Exhibit 10 \(warnings A, B, C, and D\)](#) (37.95 MB)

[Exhibit 10 \(warnings A, B, C, and D\)](#) (52.55 MB)

