DEPARTMENT OF TRADE AND INDUSTRY

Date Filed: 29 August 2008.

Republic Act No. 9211 (Tobacco Regulation Act of 2003)
Inter-Agency Committee-Tobacco Memorandum Circular No. 01, s. of 2008

Monitoring and Enforcement Guidelines of the Tobacco Regulation Act and Its Implementing Rules and Regulations

WHEREAS, it is the policy of the State to protect the populace from hazardous products and promote the right to health and instill health consciousness;

WHEREAS, it is also the policy of the State, consistent with the Constitutional ideal to promote the general welfare, to safeguard the interests of the workers and other stakeholders in the tobacco industry;

WHEREAS, there is a need for the government to institute a balanced policy whereby the use, sale and advertisements of tobacco products shall be regulated in order to promote a healthful environment and protect the citizens from the hazards of tobacco smoke, and at the same time ensure that the interests of tobacco farmers, growers, workers and other stakeholders are not adversely compromised;

WHEREAS, pursuant to Section 29 of Republic Act (RA) No. 9211, otherwise known as the "Tobacco Regulation Act", the Inter-Agency Committee-Tobacco (IACT) has the exclusive power and function to administer and implement the provisions of RA9211;

WHEREAS, the exclusive power and function of the IACT to administer and implement the provisions of RA9211 includes the power to execute it and to enforce its provisions;

WHEREAS, Section 32 of RA 9211, as well as Title VI, Rule 1 of IACT Memorandum Circular No. 1-04, otherwise known as the "Rules and Regulations Implementing RA 9211" (IRR of RA 9211), provide for penal sanctions for violations of the provisions of RA 9211;

WHEREAS, in view of the duration of the penalties under Section 32 of RA 9211, criminal cases for violations thereof may be filed with the Municipal Trial Courts and Municipal Circuit Trial Courts, or with the Office of the Prosecutor for preliminary investigation, in accordance with Section 1 (b), Rule 110 in relation to Section 1, Rule 112 of the Revised Rules of Criminal Procedure;

WHEREAS, Section 1, Rule 2, Title VI of the IRR of RA 9211 provides that criminal proceedings may be instituted for the enforcement of RA 9211;

NOW, THEREFORE, in order to assist the IAC-Tobacco in the administration and implementation of the provisions of RA 9211, the following Monitoring and Enforcement Guidelines are hereby promulgated:

[Further content]
I. SCOPE AND COVERAGE

These policies, guidelines, rules and regulations shall apply to the monitoring and enforcement of RA 9211 and its IRR.

II. DEFINITION OF TERMS

For purposes of these guidelines, the following terms shall have the meanings indicated:

1. DOH refers to the Department of Health
2. DTI refers to the Department of Trade and Industry
3. Hotline refers to the “Consumer Complaint Hotline” of the DTI and such other similar communications systems as may be established by the DOH
4. IACT refers to the Inter-Agency Committee Tobacco established under Section 29 of RA 9211.
5. IACT Member Agencies/Organizations refers to the agencies/organizations which compose the Inter-Agency Committee Tobacco under Section 29 of RA 9211.
6. Pilot Agency refers to either the DTI or DOH pursuant to Rule IV of these guidelines.
7. Local Office of the Pilot Agency refers to the DOH Center for Health Development or the DTI Regional/Provincial Office in the particular locality where the alleged violation was committed. It shall likewise refer to such other local offices which the Pilot Agencies may hereafter designate from within their respective departmental organizations to perform the functions under Rules IV to VI of these guidelines.
8. RA 9211 refers to Republic Act No. 9211, otherwise known as the Tobacco Regulation Act.
9. IRR of RA 9211 refers to Memorandum Circular No. 1-04, otherwise known as the “Rules and Regulations Implementing Republic Act No. 9211”

III. MONITORING COMPLIANCE

III.1 Proactive Vigilance in Monitoring Compliance - All IACT Member Agencies/Organizations shall, at all times, be vigilant in monitoring compliance with the provisions of RA 9211 and its IRR. Such vigilance shall include the conduct, with or without complaint, of regular and routine inspections to monitor compliance with the provisions of RA 9211 and its IRR in every locality in the Philippines.

IACT Member Agencies/Organizations that discover violations of RA 9211 and its IRR shall proceed in accordance with the applicable provisions of Item V of these guidelines.

IV. PILOT AGENCIES

IV.1 Designated Pilot Agencies; Areas of Responsibility - For purposes of streamlining the system for the monitoring and enforcement of the provisions of RA 9211 and its IRR, the Pilot Agencies and their respective areas of administrative responsibility are hereby designated as follows:

A. Department of Trade and Industry (DTI)
B. Department of Health (DOH)

i. Healthful Environment

- Section 5, RA 9211 - Smoking Ban in Public Places
- Section 6, RA 9211 - Designated Smoking and Non-Smoking Areas

ii. Advertising and Promotions

- Section 13, RA 9211 - Warnings on Cigarette Packages
- Section 14, RA 9211 - Warnings on Advertising
- Section 15, RA 9211 - Restrictions on Advertising
- Section 16, RA 9211 - Restrictions on Print Media Advertising
- Section 17, RA 9211 - Restrictions on Outdoor Advertising
- Section 18, RA 9211 - Restrictions on Advertising in Cinemas
- Section 19, RA 9211 - Restrictions on Television and Radio Advertising
- Section 20, RA 9211 - Restrictions on Advertising in Audio, Video, and Computer cassettes/disks and Similar Medium
- Section 21, RA 9211 - Restrictions on Advertising on the Internet
- Section 22, RA 9211 - Ban on Advertisement
- Section 23, RA 9211 - Restrictions on Tobacco Promotions
- Section 24, RA 9211 - Naming Rights
- Section 25, RA 9211 - Restrictions on Sponsorships
- Section 26, RA 9211 - Ban on Sponsorships
- Section 27, RA 9211 - Restrictions on Sampling

IV.2 Functions of the Pilot Agencies - In addition to their functions under Item III.1 hereof, the Pilot Agencies shall:

a. Receive, document and investigate all complaints and written reports for violations of RA 9211 and its IRR under Items V and VI hereof;

b. Jointly adopt measures for close and mutual coordination in order to effectively prevent and/or address violations of RA 9211, i.e., if one Pilot Agency receives a complaint or written report relative to matters falling within the administrative responsibility of another Pilot Agency in accordance with sub-items IV.1 hereof, then such Pilot Agency shall immediately refer/endorse the complaint to the Pilot Agency having administrative responsibility over the same;

c. Perform such other functions as may be directed by the IACT.
IV.3. Reportorial Requirements - The Pilot Agencies shall submit to the IACT a monthly detailed report on all activities taken pursuant to items III.1 and IV.2 of these guidelines.

IV.4 Designation of Officers/Personnel by the Pilot Agencies - Each Pilot Agency shall designate officers/personnel within each of its Local Offices in such numbers as may be necessary to adequately and efficiently receive, document, and investigate all complaints and reports for violations thereof, committed within their respective localities and falling within the Pilot Agency’s area of administrative responsibility.

V. FILING OF COMPLAINTS

Proceedings by IACT Member Agencies/Organizations relative to violations of RA 9211 and its IRR shall be initiated upon:

a. Discovery of violation by its employee/personnel under Item V.1 of these guidelines;

b. Complaint filed by any person with any IACT Member Agency/Organization under Item V.2 of these guidelines;

In addition to the foregoing, complaints for violation of RA 9211 and its IRR may likewise be filed with the Pilot Agencies via the Hotline, private courier, registered mail, or electronic mail/message, pursuant to Item V.3 of these guidelines.

V.1 Written Report by employee/personnel of the IACT Member Agencies/Organizations - The employee/personnel of the IACT Member Agency/Organization who personally discovers a violation of RA 9211 and its IRR shall, within twenty-four (24) hours from discovery, prepare and submit to his/her agency/organization a written report containing the following information:

- Name and designation of the employee/personnel who discovered the violation;
- Date, time and place of discovery of the alleged violation;
- Brief description of the alleged violation;
- Name of the person(s) who committed the violation, if identified; and
- Other relevant additional information, if any.

V.2 Complaints filed with IACT Member Agencies/Organizations - The employee/personnel of any IACT Member Agency/Organization who receives a complaint filed personally by any person shall, within twenty-four (24) hours from receipt thereof, prepare and submit to his/her agency/organization a written report containing the following information obtained from the complainant:

- Name, age and contact information of the complainant;
- Description of the alleged violation;
- Date and time when the alleged violation occurred;
- Place where the alleged violation occurred;
- Name of the person(s) who committed the alleged violation, if identified; and
- Other relevant additional information, if any.

V.3 Hotline, Private Courier, Registered Mail, Electronic Mail/Message Complaints filed with the Pilot Agencies - The employee/personnel of the Pilot Agency who
receives a complaint from any person called in via the Hotline, or sent through private courier, registered mail or electronic mail/message, shall within twenty four (24) hours from receipt thereof, prepare a report containing the following information obtained from the complainant:

- Name, age and contact information of the complainant;
- Description of the alleged violation;
- Date and time when the alleged violation occurred;
- Place where the alleged violation occurred;
- Name of the person(s) who committed the alleged violation, if identified, and
- Other relevant additional information, if any.

V.4 Forwarding of Reports to the Local Office of the Pilot Agency concerned

- The IACT Member Agency/Organization concerned shall immediately forward all reports submitted under Items V.1, V.2; and V.3 to the Local Office of the Pilot Agency having administrative responsibility thereon pursuant to Item IV.1 of these guidelines, in the place where the alleged violation was committed.

VI. INVESTIGATION PROCESS

Upon receipt of the Report under Item V of these guidelines, the Local Office of the Pilot Agency shall observe the following procedures:

VI.1 Research and Investigation - Within ten (10) working days from receipt of the Report, the Local Office of the Pilot Agency shall conduct the appropriate research and investigation for purposes of gathering competent data and information on the alleged violation of RA 9211.

VI.2 Investigation Report - Within five (5) working days from the expiration of the period in Item VI.1 hereof, the Local Office of the Pilot Agency shall prepare an Investigation Report and furnish original or certified true copies thereof to the complainant.

The Local Office of the Pilot Agency shall likewise furnish certified true copies of all Investigation Reports to the IACT Secretariat for its records. Within fifteen (15) days after its receipt of the Investigation Report, the IACT Secretariat shall disseminate copies of the Investigation Reports to the IACT Member Agencies/Organizations.

VI.3 Action on the Investigation Report - In all cases where the Investigation Report may involve criminal violation(s) of RA 9211, the Local Office of the Pilot Agency shall render the necessary assistance to the Complainant(s) in instituting the appropriate criminal proceedings against the Respondent(s) by a sworn affidavit complaint in accordance with Section 1, Rule II, Title VI of the IRR of RA 9211, and the applicable provisions of the Revised Rules of Criminal Procedure.

VII. FORMS

Within thirty (30) days from the approval hereof, the Pilot Agencies shall draft the necessary forms required under these guidelines.
VIII. CONSTRUCTION

VIII.1 These guidelines shall be liberally construed to carry out the objectives of RA 9211 otherwise known as the "Tobacco Regulation Act", and its IRR.

VIII.2 Nothing in these guidelines shall be construed to preclude or otherwise diminish the following:

- The authority of the IACT to directly act on all matters pertaining to the performance of its functions under RA 9211 and its IRR.

- The exercise of IACT Member Agencies/Organizations of administrative functions pursuant to their respective mandates under other existing laws, rules and regulations.

The exercise of any person or government agency of the right to directly file the appropriate criminal complaint for violation of RA 9211 in accordance with the provisions of Rule II, Title VII of the IRR of RA 9211, and Revised Rules of Criminal Procedure, and other existing laws, rules and regulations.

VIII.3 Persons who file their complaints under the provisions of Item V hereof are deemed to have done so in their individual capacity. Nothing in these guidelines shall be construed to mean that the complainants under Item V hereof are acting for and on behalf of the IACT.

IX. SEPARABILITY CLAUSE

Should any provision of these guidelines be subsequently declared unconstitutional or invalid, the other provisions not so declared and not affected by such declaration shall remain in full force and effect.

X. EFFECTIVITY

These Monitoring and Enforcement Guidelines shall take effect fifteen (15) days after completion of its publication in at least two (2) newspapers of general circulation, and the filing of the requisite number of copies with the University of the Philippine Law Center in accordance with Section 3, Chapter 2, Book VII of the Revised Administrative Code.

Adopted: 30 June 2008

Recommended by:
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DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

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Department Order No. 2008-23

Guidelines in the Review of Ordinances, Orders, Rules and Regulations Issued by Local Government Units Concerning Public Transportation, Including the Granting of Franchises to Tricycles for Hire, Establishment and Operation of Public Transport Terminals, Re-Routing of Public Utility Vehicles, Issuance of Traffic Citation Tickets and Imposition of Other Local Fees and Charges Affecting Public Transport Operation