



FREE MARKET FOUNDATION

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Comments and Representations

to the

Director-General of the Department of Health

(for the attention of the Director: Heath Promotion)

about the proposed

Regulations relating to

the Display of Tobacco Products at Wholesale and Retail

[made known under Government Notice R.634 of 24 August 2012]

1. Introduction

The Free Market Foundation (FMF) comments as follows on the proposed ‘Regulations Relating the Display of Tobacco Products at Wholesale and Retail’ (hereinafter referred to as ‘the proposed regulations’ or ‘the draft regulations’), which were published in the *Government Gazette* on 24 August 2012 under a Government Notice.¹

Interested persons are invited to submit comments or representations on the proposed regulations, within three months of the date of publication of the Notice. The Notice was published on 24 August 2012.

This means that interested persons can submit comments or representations by 24 November 2012.

The proposed regulations

The draft regulations state that tobacco products in a wholesaler’s or retailer’s premises must be displayed only in a single sales unit with a maximum display area, except that cigars can be in a humidor or humidified room. Only one packet or item of each product line may be displayed. No tobacco product may be exposed for sale within a metre of products for children or confectionary unless this distance can’t be practicably maintained due to the premises’ size. Not more than a hundred tobacco products may be displayed, unless the premises are a specialist tobacconist’s. A display may include the products’ price, only if on price tickets or one price list conforming to prescribed requirements. A health and age warning sign must be displayed. Displays must not have enhancing features.

The regulations will come into operation six months after final publication.

The regulations, other than requirements regarding a price list, do not apply to retail outlets with a floor or equivalent area of less than 15 square metres.

¹ Government Notice R634 of 24 August 2012.

Exemption for small retail outlets

The FMF applauds the exemption by regulation 2(2) of small retail outlets from the bulk of the proposed regulations.

This regulation says that these regulations, other than regulation 15 (prescribing requirements for the display of a price list), do not apply to retail outlets that have a floor or equivalent area of less than 15 square metres.

Street vendors and other very small businesses would not have been able to comply with the regulations' requirements regarding sales units, one-metre separation and signage.

– Requirements for the display of a price list of tobacco products

Regulation 15 (prescribing requirements for the display of a price list of tobacco products) will still apply to retail outlets that have a floor or equivalent area of less than 15 square metres.

(Regulation 15 says that the display of a price list of tobacco products must have the title 'Tobacco products price list', not include the prices of other products, be worded with characters no higher than 7 millimetres, have no border or frame, not exceed 630 square centimetres in size, and be limited to one price list for each payment point.)

It is not clear if regulation 15 actually obliges a retailer to display a price list or not. Regulation 14 suggests not: it indicates that a display of tobacco products may include the price, only if the price is displayed by a single price list for all tobacco products if it complies with regulation 15. This suggests that a retailer need not display any prices or price list, if he or she chooses.

– Individual choice and responsibility

Apart from this exemption for small retail outlets, the proposed regulations are stringent and onerous. The FMF respectfully urges the maker of the intended regulations to consider their impact on individual choice and responsibility.

We consider it important to stress our concerns expressed to the Department in our 2010 submission on an earlier draft of these proposed regulations. We appreciate the government's worry shared by all decent people for the health and well-being of citizens. One of our principal concerns is that that

worry should not be at the expense of freedoms won in the struggle against apartheid and protected in our Constitution. Tobacco laws have over-stepped the important boundary between liberty and excessive paternalism.

As we have said, we do not judge or contest expert and often exceedingly-complex medical claims on both sides. But we are experts on the nature and benefits of a free society, and the argument for freedom in these matters.

We consider it important to reiterate that there are serious personal costs and loss of freedom when laws seek to protect people against their own actions. Only free people can make appropriate decisions about the weighing of risks and rewards in matters such as this, provided they are reasonably informed.

The government has done more than enough over the years to ensure that all South Africans are fully aware of the medical consensus that tobacco products are unhealthy and even deadly.

It is forgotten that there are rewards for smokers, and that choosing the risks involved to achieve those benefits is an appropriate individual choice. These rewards include: The pleasure and satisfaction of smoking; the fact that smoking both relaxes and stimulates (depending on circumstances); that for many people smoking enhances the ability to socialise, relax and cope with insecurity; that smoking increases concentration and combats fatigue (under conditions such as long-distance driving, work and study); that smoking may help some avoid excessive consumption of alcohol or over-eating; and so on.

We remain concerned about economic aspects of the proposed regulations, such as the importance of marketing (including display) as an essential element of free commercial speech and the importance of effective competition as necessary for the protection and promotion of citizens' and consumers' rights. We submit that competition for display space and consumer communication through legitimate commercial expression does not promote consumption as opposed to brand-switching.

These continue to be hotly contested matters, yet it remains a suspicion that information at the disposal of government may be from vested interest lobbies, in that the anti-tobacco lobby is no less a vested interest than the tobacco industry.

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About the Free Market Foundation

The Free Market Foundation (FMF) is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles.

The FMF argues for respect for the Constitution, proper application of the rule of law (which is enshrined in the Constitution), high economic growth as the best means of alleviating and reducing poverty, and economic freedom as the best means of achieving an improvement in all aspects of human development.

The FMF is a voluntary association. It receives funding from members (corporate, organisational and individual) and from sponsorships.