SUGGESTED ENFORCEMENT PROCEDURE FOR SECTION 5 & 7
of Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, (COTPA)2003

What constitutes Violation of Section 5 and 7?

1. **Identify the places**/vehicles where loose cigarettes and other smoking tobacco products/tobacco/ tobacco packs without pictorial health warning are being manufactured/distributed/supplied/sold or advertisement of tobacco products is displayed, by actively searching on the spot or getting the information before hand by sending a trustworthy decoy customer preferably from own department.

2. **Planning the raid** by District level task force (must include an independent witness) and sending intimation to The District Administration in advance.

   Nearest/ Concerned Police Station should be informed in writing about the planned raid and recorded.

   If required, call officials from State Tobacco Control Cell, Punjab to join. All the authorised officials should carry their I-card/ order/ authorisation with him/ her.

   Include Helpers to carry the seizing/ sealing material in the team. It is important to maintain secrecy regarding the raid.

   Also include BCC facilitator/Photographer/District Mass Education and Information Officer (MEIO) or any other official notified for photography or videography of the activity.

   **Officers Authorized under Section 5 & 7 of COTPA 2003**

   **Gazette Notification S.O.1866 (E) dated 30th July 2009**

   Following Authorized officers shall be competent to act under Sections 12 and 13 of the COTPA 2003 and are conferred with the power of ENTRY, SEARCH AND SEIZURE under the said provisions of COTPA 2003:

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<th>S No.</th>
<th>Designation</th>
<th>Department</th>
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<tbody>
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<td>1</td>
<td>All officers of the level of Superintendent and above of the customs and Central Excise</td>
<td>All premises registered under Department of Revenue</td>
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<tr>
<td>2</td>
<td>All officers of the rank of Inspectors and above of sales Tax/ Health/ Transport</td>
<td>Department of Revenue/ Health/ Transport of the State</td>
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<tr>
<td>3</td>
<td>Junior labour Commissioner and above</td>
<td>Labour Department</td>
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<tr>
<td>4</td>
<td>Joint Director</td>
<td>O/o Commissioner of Industries/ Small Scale Industries</td>
</tr>
<tr>
<td>5</td>
<td>Sub Inspector and above of Police/ State Food and Drug Administration or any other officer holding the equivalent rank of Sub –Inspector of Police</td>
<td>Department of Food and Drugs and Department of Home Affairs</td>
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</table>

   As per Bare Act COTPA Section 12(1)(a,b) the state has additionally notified officials from MC, Panchayati Raj, Education Deptt to act against violations of Section 5 and 7.

   **Note please:** All Official members of the Permanent District Level Task Force are authorized to act against violations of Section 5 and 7.

3. The authorized officer suo-motu or on receiving a complaint regarding violation of section 5 or 7 (including sale of loose cigarettes/ tobacco), shall proceed after forming a raiding team, for carrying out the search and seizure (Refer to Section 12&13of COTPA, G.S.R. 182(E) Dated 15th March 2008 and Punjab Govt. Notification No. 21/S1/2008-SHB5/383571/2/3 Dated 6.1.2015 regarding ban on sale of Loose Cigarettes and other smoking tobacco products/ tobacco/ tobacco packs without pictorial health warning under Section 7 of COTPA).
4. **Raiding team should carry along Copies of the Act, subsequent Amendments and related Notifications.**

5. On the reason of suspect of contravention (Violation), the officer along with the raiding team or party which has power of entry, search and seize (Refer to Section 12 & 13) shall enter and search the premises.

6. Politely ask the shop owner to show brands of cigarettes sold by him. At this point, the police official and one more member of team should be inside the shop to check if the shop keeper is hiding any loose cigarettes / Tobacco or Tobacco Products Packs without specified pictorial health warning and see if there is any Direct/ Indirect Advertisement of Tobacco Products.

7. Look for hidden trays, baskets, poly-bags etc for loose cigarettes/ tobacco. In case no loose cigarette/ tobacco is handed over by the owner, actively search the shop for loose cigarettes, e-cigarettes, cigarette packs without pictorial warning (Indian or Foreign), hookah, etc.

8. The officer shall bear in mind that the offence committed under Section 5 and 7 of COTPA read with the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 and the Packaging and Labeling Rules, 2008 IS NOT COMPOUNDABLE.

9. Where the officer has reason to believe that the offence appears to have been committed, the officer shall seize the contravening products, (such as advertisement materials, tobacco products packages, loose cigarettes/tobacco etc.)

10. The authorized officer shall be required to prepare 4 copies of **Seizure Memo** (1. Hon'ble Court 2. Police 3. Office Use 4. Violator) and give a copy of seizure memo to the owner / occupant / in-charge (violator) of the premises.

11. A **Panchnama** shall be drawn in the presence of the witness who shall narrate the place and the goods seized in his/her statement. (**Appendix 1**)

12. The advertisement materials/package/goods seized shall be placed in plastic container/jar/envelope and wrapped in cloth, where minimum 5 seals (using a metallic stamp and molten sealing wax/Lac) shall be affixed in the presence of the witness and the owner / occupant/ in-charge of the premises (violator). Mention the particulars of the violator on sealed pack. Seal should also be put at the beginning and end of the thread used for sewing the cloth.

13. **In case of seizure of smuggled/ illicit tobacco products which normally evade excise duty, officials from the excise department should also be called.**

14. Get a copy of Identity proof of the violator and note down its particulars on the seizure memo as well as panchnama.

15. Get the signature/ thumb impression of the violator on all copies of panchnama, seizure memo and all other documents

16. Take the signatures of team members and witnesses on the seizure memo as well as panchnama.

17. Hand over the seizure memo along with a copy of the panchnama to the violator and ask him/her to reach designated court when summoned.

18. The seized items should be handed over to the police party after properly labelling and sealing and get the receipt for the same. **Get a copy of DDR for each sealed pack handed over to the police.**

19. **The seizing activity should be completed as soon as possible.**

20. It is desirable to take still photographs and videography of the activity to be kept as an additional proof.

21. **It is desirable that all the members of the task force should stay at the raid site till all the activities completed.**
22. Any press release or media byte regarding the raid should be given only by the team leader.

23. The officer shall then file a complaint as early as possible before District Judge, under Section 20 or 22 of COTPA. **Mention whether it is a first/second offence by the violator.**

24. The advertisement materials/package/goods seized shall not be retained by the officer who seizes the package or the police station in whose custody material is kept, for a period exceeding ninety days from the date of the seizure, unless the approval of the District Judge or such other designated judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention (Refer to Section 14).

25. The officer shall then proceed for confiscation of the seized material before the District Judge or other designated judge of original jurisdiction within the local limits of whose jurisdiction the material was seized.

26. In case of confiscation of packages or Loose Cigarettes/ Tobacco for violation of Section 5 or 7 of COTPA, 2003, the Court adjudging the confiscation may, subject to such conditions as may be specified in the order give the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, or get the specified warning incorporated on each such package (Refer to Section 15).

27. No order adjudging confiscation or direct payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice in writing within a period of ninety days from the date of the seizure of the package of cigarettes or any other tobacco products, informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and, if he so desires, of being heard personally or through a representative in the manner (Refer to Section 18).

28. Since the order of confiscation or payment of cost by the court of civil jurisdiction does not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of COTPA or under any other law.

29. Authorized officers need to record and proceed against every instance of violations as second or subsequent offence has enhanced punishments under COTPA.

**Materials required during Raid:-**

- a. Court challan books (01 or 02)
- b. Receipt books for Section 4 & 6 violations which are compoundable (one for each authorised officer in the team).
- c. Carbon papers Legal size (15 in number)
- d. Seizure Memo Blank Formats- 20 in number
- e. Panchnama Blank Formats- 20 in number
- f. Ball point pen with thick/ broad tip.
- g. Plain papers- Legal size (30)
- h. Government of Punjab stamp or designated officer's rubber stamp with stamp pad.

**Sealing Materials:-**

- i. Permanent black thick point markers.
- j. Bags/ polybags, Envelop, Plastic Jar/ Box with cover/ scissors/ paper knife
- l. Metallic Sealing Stamp of Authorized Officer.
Note: The team must carry the above items during the raid for at least four samples.

For more information please visit

Panchnama

Panchnama dated ____________________

Whereas:

We ________________________________

<table>
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<tr>
<th>Sr. No</th>
<th>Name and parentage of Panch witnesses</th>
<th>Address</th>
<th>Age</th>
<th>Occupation</th>
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The above-mentioned Panchs on being called by Shri…………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………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The Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, (COTPA) 2003

In exercise of the powers delegated to me under Section 12 and 13 of above Act (COTPA 2003), I hereby seize/detain the under mentioned tobacco products/tobacco advertisement/material which violates/contravenes the provisions of Sections 5 and/or 7 of COTPA 2003 at the premises of M/S……………………………………………………………………………………………………………………………………

Address……………………………………………………………………………………………………………………………………

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name/Descriptions of Product</th>
<th>No. of Units</th>
<th>Remarks/ Nature of Violation</th>
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</table>

Signature of authorized officer
Date ........................................Time.........

----------------------------------------------------------------------------------------
----------------------------------------------------------------------------------------
Name and address of the Witness Name and address of the Witness

Signature of vendor/dealer
During the raid, the products detained/seized have been duly sealed and left in the custody of Sh/Smt ……………………………………………………………………………………………………………………………………… Belt. No ……………………… at Police Station…………………………………………………………… with the instructions not to tamper with the seals and not to dispose of the products till further order by The Hon’ble Court and to present the seized material as per
orders of The Hon'ble Court. (Compliance of CRPC as per Section 12(2) COTPA Act. Punishment for Section 5 & 7 of COTPA is under Section 20 & 22 of COTPA. The Provisions of the Code of Criminal Procedure, 1973 shall apply to every search and seizure made under this Act)

............................................

Signature of Person receiving the above said material

(Police Dept........................ with seal)

On behalf of ........................................
A Complaint through District Level Officer Dr/ Smt./ Sh ................................................ member of Flying Squad for Tobacco Control Department of Health and Family Welfare office of..................................................

V/s

Sh.................................................................................................................................

M/S.................................................................................................................................

Address ............................................................................................................................

Complaint under Section 22 read with Section ................. of The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act 2003, (COTPA 2003))

Respectfully Showeth:-


2. That I inspected the shop of Sh/Smt ......................................................... M/S...............................................................Date..............at.............

3. I found M/S ................................................................. has displayed the board of advertisement of ................................................................. brand of tobacco products/ Displayed and selling Loose Cigarettes/ Tobacco without specified Health Warning (photo enclosed)

4. That Sh/Smt ............................................................. Sh/Smt..........................................................and Sh/Smt ......................................................... all members of Flying Squad were present throughout the whole process of inspection and witnessed the whole process.

5. That Panchnama and Seizure memo were prepared on the spot, which were signed by the accused, as well as witnesses and by me.
6. That accused Sh………………………………….. M/S………………………………………… had displayed an advertisement board of tobacco product on his shop which is prohibited under Section 5/ Displayed and selling Loose Cigarettes/ Tobacco without specified Health Warning under Section-7of COTPA 2003 which is punishable under Sections 22/20 of COTPA 2003, M/S……………………………………………………… though its Prop./partners/ is also liable under the Act.

It is therefore prayed that the accused person(s) be summoned and dealt in accordance with law.

..........................................................
Signature of Authorized Officer
of Flying Squad for Tobacco Control
District...........................................
State of Punjab

List of members of the Flying Squad as witnesses:-

1. ..........................................................

2. ..........................................................

List of documents attached:-

1. Panchnama
2. Seizure/spot memo
3. Photograph
4. Copy of DDR

..........................................................
Signature of Authorized Officer
of Flying Squad for Tobacco Control
District...........................................
State of Punjab
DECLARATION OF CONSENT

I, the undersigned have the full legal capacity to make this declaration of consent. In the event that I am a minor or have a legal representative appointed over me, this declaration of consent will be made by my parent, guardian or other legal representative.

I agree to the recording of my photo/image for purposes of submission in court of law and to help promotion of public health.

Signature of the person.__________________

Place ______________________

Name _______________________

Date ________________________