

Graphic Health Warnings Postponed Again

February 16, 2022



The U.S. Food and Drug Administration has postponed the effective date of its “Required Warnings for Cigarette Packages and Advertisements” final rule to April 9, 2023, following a Feb. 10, 2022, ruling by the U.S. District Court for the Eastern District of Texas.

The move marks at least the fifth delay for graphic warning health warnings in the United States when counting previously set launch dates of June 18, 2021, Oct. 16, 2021, Jan. 14, 2022, April 14, 2022, and July 13, 2022.

The FDA released its final rule requiring new graphic warnings for cigarettes in March 2020. The rule calls for labels that feature some of the lesser known health risks of smoking, such as diabetes. The graphic warnings must cover the top 50 percent of the front and rear panels of packages as well as at least 20 percent of the top of advertisements.

In April and May 2020, cigarette manufacturers and retailers sued the FDA, arguing that the graphic warning requirements amount to governmental anti-smoking advocacy because the government has never forced makers of a legal product to use their own advertising to spread an emotionally charged message urging adults not to use their products.

In a more recent challenge, tobacco companies argued that the deadline was too onerous due to the impact of the Covid-19 pandemic. They also pointed to the risk that they would

lose their investments in new packaging if the graphic health warning requirement were to be thrown out in court.

In March 2021, the Texas District Court granted a motion by the plaintiffs to postpone the effective date of the final rule to April 14, 2022. The move was followed by additional postponements.

This is the FDA's second attempt to enact graphic health warnings under the 2009 Family Smoking Prevention and Tobacco Control Act. The first rule was struck down by the federal court in the District of Columbia as a violation of the First Amendment.

Pursuant to the Feb. 10, 2022, court order, any obligation to comply with a deadline tied to the effective date is similarly postponed. The FDA encourages entities to submit cigarette plans as soon as possible, and in any event by June 10, 2022.

Source: <https://tobaccoreporter.com/2022/02/16/u-s-graphic-health-warnings-postponed-again-2/>