

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(FIFTEENTH LOK SABHA)**  
**(2010-2011)**

**FOURTEENTH REPORT**

**(PRESENTED ON 2.12.2010)**

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**LOK SABHA SECRETARIAT**

**NEW DELHI**

**December, 2010/Agrahayana, 1932 (Saka)**

**COSL No. 23**

**PRICE: Rs.**

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2010-2011)**

1. **Shri P. Karunakaran** **Chairman**
2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D.B. Chandre Gowda
5. Shrimati Paramjit Kaur Gulshan
6. Shri Jitender Singh Malik
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8. Shri Pinaki Misra
9. Dr. Sanjeev Ganesh Naik
10. Shri Rajaram Pal
11. Shri Anantha Venkatarami Reddy
12. Shri Hamdullah Sayeed
13. Shri Adhalrao Patil Shivaji
14. Dr. Rajan Sushant
15. Shri Madhu Goud Yaskhi

**SECRETARIAT**

1. Shri P.K. Misra - Joint Secretary
2. Shri S.C. Kaliraman - Additional Director
3. Smt. Hema Joshi - Committee Officer

## INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorized by the Committee to submit the report on their behalf, present this Fourteenth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sittings held on 3.3.2010, 1.6.2010 & 24.6.2010.

3. The Committee considered and adopted this Report at their sitting held on 25.11.2010 .

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix-I of the Report.

5. Extracts from the Minutes of the Fifth sitting of the Committee (2009-10) held on 3.3.2010, Minutes of the Seventh sitting of the Committee (2009-10) held on 1.6.2010, extracts from the Minutes of the Eighth Sitting of the Committee (2009-10) held on 24.6.2010 and Minutes of the Third sitting of the Committee (2010-11) held on 25.11.2010 relevant to this Report are included in Appendix-II.

**New Delhi;  
December, 2010  
Agrahayana,1932 (Saka)**

**P. KARUNAKARAN,  
CHAIRMAN,  
COMMITTEE ON SUBORDINATE LEGISLATION**

# REPORT

I

## **Infirmities in the Standards of Weights and Measures(Packaged Commodities) Amendment Rules, 2006 (GSR 425 –E of 2006)**

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The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 have been amended vide GSR No. 425-E which was published in the Gazette of India, Extraordinary, Part-II, Section 3(i) dated 17 July, 2006 as the Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 2006. On scrutiny of the aforesaid rules and in the light of representation dated 13.1.2007 from Shri Banwarilal Purohit, Ex-Member of Parliament, various infirmities were noticed. These points were referred to the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) for their comments in the matter. The Committee also held discussions with the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on 1<sup>st</sup> June, 2010. These issues are discussed in the succeeding paragraphs:-

### **A. Core of Rule 5 of the PCR (Packaged Commodities Rules) negated by Clause 4 of the amendment of 2006.**

1.2 Prior to amendment to Rule 5 of the aforesaid Rules, it was provided that –

*On and from the commencement of these rules, no person shall pre-pack, or cause or permit to be pre-packed, any commodity for sale, distribution, or delivery except in such standard quantities as are specified in relation to that commodity in Third Schedule:*

*Provided that the Central Government may, if it is satisfied that for any technical or mechanical reason it is not possible to pre-pack any commodity in the standard quantities specified in Third Schedule, authorize the pre-packing of such commodities in such quantities as it specify:*

*Provided further that nothing in this rule shall disallow any person from packing any commodity specified against Sl. Nos. 1,2,3,18 and 18A in Column 2 of the Third Schedule in any quantity beyond the maximum standard quantity specified in Column 3 of that schedule:*

*Provided also that for value based package in respect of coffee, tea, edible oils, vanaspati, ghee, butter oil and toilet soap including all kinds of bath soaps (cakes) retail sale price of which is Rs 5 or Rs 10, as the case may be, the quantities specified in the Third Schedule shall not apply for a period of one year from the date of commencement of the Standards of Weights and Measures (Packaged Commodity) Amendment Rules 2005.*

For Rule 5 of the said Rules, the following were substituted:-

*The Commodities specified in the Third Schedule shall be packed for sale, distribution or delivery in such standard quantities as are specified in that Schedule:*

*Provided that if a commodity specified in the Third Schedule is packed in a size other than that prescribed in that Schedule, a declaration that "Not a standard pack size under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977" or "non standard size under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977" shall be made prominently on the label of such package.*

1.3 The Committee observed that Rule 5 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 substituted by the amendment of 2006 overrides the need to simplify the calculation and comparison of prices, thus confusing the consumer and denying the facility of easy comparison of prices of commodity of same weight or measure. This proviso is, therefore, not at all in the interest of the consumer welfare.

1.4 The Ministry *vide* their O.M. dated 4 May, 2007 apprised the Committee as under:-

*In the 1990s, the Third Schedule to the Rules had specified 38 items for being packed in standard sizes. Keeping in view the liberalized policy of the Government the standing committee on Packaged Commodities Rules recommended deletion of 18 items from the Third Schedule. This was done *vide* amendment to the Rules made in 1994, thus bringing the total items listed under the Third Schedule to 20.*

*Enforcement authorities had limitations in implementing the Third Schedule for the following reasons:-*

- (i) *It was observed in the last 6 to 7 years that manufacturers started the practice of giving some extra quantities free with the package. This was a contravention of the provision of Rule 5 and it also tended to confuse the consumer. Action has not been possible on account of*

*stay by Hon'ble High Court of Delhi. Thus, the manufacturers of commodities listed under the Third Schedule continue to give varying quantities in the garb of providing something extra.*

- (ii) Similarly "Value based packages" priced at Rs 5 to 10 introduced in the Rules in 2004 were given exemption from standard pack sizes.*

*Thus it may be seen that even the few commodities listed under the Third Schedule were not being packed in standard sizes for one reason or other.*

*Further, a strict interpretation of Rule 5 prior to the amendment in 2006, implied that whenever a manufacturer wished to pack in size other than specified under Third Schedule, depending upon consumer demands, even on trial basis, permission of the Central Government was required on each occasion. Time taken in applying and getting permission could impact production and marketing plans of industry and resultantly their competitiveness.*

*The review committee constituted in March 2005, keeping in view the prevailing market scenario recommended deletion of Third schedule to the Rules, as a logical step to the amendment to Third Schedule in 1994 wherein 18 items were deleted.*

*However, as an abundant caution, instead of deleting the provision, the Government has made it recommendatory with the stipulation that those who want to pack in sizes other than prescribed in the Schedule will have to declare that this was "Not a standard pack size under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977".*

*The amended provision, besides retaining the essential feature of the Rules, gives freedom to pack in other sizes depending upon market force, even on trial basis, without a need to seek prior permission of the Government every time. Thus, even while industry has been freed from undue regulation, consumer interests will remain protected.*

- 1.5 Further, in the reply dated 27 June, 2008 the Ministry informed as under:-

*The stay granted by High Court of Delhi mentioned in the reply dated 4 May, 2007 of this Department still continues.*

*The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 cover the entire spectrum of commodities in packaged form intended for retail sale. Specified quantities have been prescribed for only 20 commodities listed in the Third Schedule to the Rules. Accordingly, rest of the commodities, not listed under Third Schedule to the Rules, can be packed in any quantity by the manufacturer.*



*Simplifying the procedure for the manufacturers to get clearance to pack in non-standard pack sizes, as suggested in FR will not be a viable solution for the following reasons:-*

- (i) 50% of the items in the Third Schedule are food items and food consumption vary from country to country. With a liberalized import, the importers will frequently be asking for permission of the Government to sell packages in non standard sizes. This will not only have the same effect of proliferation of pack sizes similar to the situation under the extant provisions of the Rules but will also result in avoidable administrative work.*
- (ii) Secondly, manufacturers of non-standard quantities are now required to make declaration on the package as required under Rule 5. But permission from the Ministry will legitimize such packs, without need to make any such additional declaration on such packages.*
- (iii) After having considered all these aspects only, the Ministry has taken a pragmatic stand on the issue.*

During oral evidence when asked that whether the amendment is really negating the provision of Rule 4, the Secretary, Department of Consumer Affairs stated in this connection as follows:-

“We have to admit that we have received a large number of representations about the misuse of this amendment because people were earlier packing 100 gram biscuits, but now I have myself seen that some of them are of 92 grams, 89 grams, etc. So, it is very difficult for a consumer to check how much quantity he is getting compared to other similar products from other manufacturers. Again, we appointed a Committee under the Chairmanship of the Additional Secretary; this is a Standing Committee; it has representatives again from the industry, consumer organizations and States. The Committee has now come to the conclusion that we will have to make some amendment and four alternatives had been suggested.

One of them is that we should go back to the old system, and that only standard sizes should be there. The second was whether we can ask them to put unit price per gram or per kg. which should be mentioned so that the consumers can check one package with the other package from other manufacturers. Only thing that was happening is that we are not really in the process of amending rules at the present moment because as I said, our priority is to first operationalize the new Act which we are hoping to do by September or October, and after that, we will be able to, in consultation with the States, frame the rules to replace the old rules under the old Act with the new rules because some changes will be required; once that happens, we

will take up this subject of amending the schedule on what we have to do about standard sizes and what changes should be made, etc.”

**1.6 The Committee note that the proviso in the amended Rule 5 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 negates the main para of Rule 5. The proviso gives a blanket permission to packed commodities in non-standardised size, for which only condition is that a declaration that ‘Not a standard pack size’ or ‘Non standard size’ is required to be prominently displayed on the package. The Committee while taking a strong view in this regard, observe that rather than simplifying the procedure for the manufacturers to get clearance to pack in non-standardized packages, the Ministry seems to have taken the easy way in the form of amendment. The Secretary, Ministry of Consumer Affairs even admitted during the oral evidence that after operationalisation of the New Act by September or October, 2010, the process of amending the schedule would be initiated in consultation with the States, on the aspect of replacement of old rules with the new rules. The Committee, therefore, emphasise that expeditious efforts should be made to amend the schedule suitably and also would like to be apprised of the action taken in this regard.**

**(Recommendation No. 1)**

**B. Deletion of Rule 12 (6) (ii)**

**1.7** Prior to amendment to Rule 5 of the aforesaid Rules, it was provided that –

*The declaration of quantity shall not contain any word which tends to create an exaggerated, misleading expression as to the quantity contained in the package, for example words or expressions like –*

- (i) “minimum”, “not less than”, “average”, “about”, “approximately” or other word of a similar nature, or*
- (ii) “Jumbo”, “giant”, “full”, “family huge”, “economy”, “large”, “extra”, “colossal”, “king”, “queen” or any other word or expression of similar nature shall not be used.*

1.8 The Committee noticed that by omission of Clause (ii) of Rule 12 (6), the consumer is bound to be cheated for lack of information on net contents. Besides, the unfair trade practices will flourish to the disadvantage of consumers at large.

1.9 The Ministry *vide* their O.M. dated 4 May, 2007 apprised the Committee as under:-

*The net quantity declaration is required mandatorily on every package under Rule 6. The consumer is primarily guided only by net quantity declaration, when purchasing a commodity. The phrases prohibited might have been relevant in the 1970s when the Rules were framed due to low consumer awareness. Now after 35 years, when the consumer has come of age, the same is considered irrelevant. The said provision was only used by enforcement authorities in booking cases, for use of word "extra", while giving some quantity free with the package by the manufacturer, without any advantage to the consumer.*

1.10 Further, in the reply dated 27 June, 2008 the Ministry have stated that –

*The 'net quantity' is one of the basic mandatory declarations on the package which a consumer looks for at the time of purchase. The amended rules even now explicitly prohibit certain expressions like "minimum", "not less than", "average", "approximately" etc., [vide Rule 12(6)(ii)], which make declaration of net quantity ambiguous.*

*Thus, having regulation in place to ensure required information and to prohibit expression which make declaration of net quantity ambiguous, any further regulation beyond that is considered unwarranted and considered to promote inspector raj only.*

1.11 When asked whether deletion of Rule 12 (6) (ii) is pro-manufacturer and is not in the interest of the consumers, the Secretary, Ministry of Consumer Affairs stated during oral evidence as under:-

"There is adequate protection available to the consumer mainly after the 2006 Act. Nobody can make misleading or exaggerated claim. When we give a large number of examples then, probably, we are limiting our scope for action".

1.12 When asked further, as to whether there be addition to this rules having more words to protect the consumers, the Secretary stated as under-

“Earlier the rule had two parts. One remains which actually says that words like ‘minimum’ ‘not less than’, ‘about’ ‘approximately’ cannot be used. So this is more or less an exhaustive list. About exaggerated list, we already had a list of words like ‘full’, ‘family’ etc. Our submission is that earlier part of sub-rule 6 prohibits the manufacturers from using exaggerated or misleading expressions. So all these are covered under that”.

**1.13 The Committee note that Rule 12 (6) (ii) has been omitted tacitly allowing the manufacturers to use vague expressions like jumbo, giant, king etc. on the package. This can make the comparison of commodity prices and quantity difficult for the consumers. The Committee feel that Ministry’s argument that the amendment is in line with the time as consumer has come of age, is hardly convincing. The amendment gives an opportunity to the manufacturers to confuse the consumers and to make the easy comparison of prices, quantity, etc. a tedious and almost impossible job for the latter. The Committee are of the view that such vague expressions should not form part of the packages as it harms the interest of the consumers. The Committee desire that the Ministry should bring about necessary amendments in the rule to prevent the use of such vague expressions on packages which are likely to be variedly interpreted creating confusion among the consumers.**

**(Recommendation No. 2)**

**C. Amendment to permit use of rubber stamp to declare date of packing.**

1.14 The amendment inserts second proviso to Clause 6(d) of the Rules which permits the use of rubber stamp for indicating the month and year on the packages, whereas, there was no such use of rubber stamp before this amendment.

1.15 The Committee found that if the date of manufacture is declared by using a rubber stamp, it may get smudged or totally obliterated while handling the package commodity, during its journey from the manufacturer to the retailer. As a result, consumer’s knowledge of the age of the commodity would be affected. Smudged and obliterated rubber stamp impression of the

date of packing is not likely to attract the attention of the consumer. Amendment of 2006 permitting rubber stamp impression to declare the date of manufacture/packing, especially in case of food articles, which affect the health of consumers is not in the interest of consumers.

1.16 The Ministry vide their O.M. dated 4 May, 2007 clarified as under:-

*Section 2 (n) of the Standards of Weights and Measures Act, 1976 (Annexure-II) provides that label means "any written, marked, stamped, printed or graphic matter affixed to or appearing upon any commodity or package containing any commodity.*

*Thus, the provisions of the Act provide that a label declaration may be by any of the above means, by stamping, handwritten etc. This is to accommodate all kinds of packages, from cottage industries to departmental stores (who make packages for sale in their stores) to MNCs etc. The Rules further stipulate that declarations are to be prominent and conspicuous. It is for the manufacturer to ensure the mode/manner of giving the declarations depending upon the level of operation. In case of smudging, illegibility etc., of the declarations on the package, it will be violation of the provision contained in Rule 9(1), which provide that the declarations should be legible and prominent. So any package with smudged declarations will be violating the provisions of the Rules, the punishment thereof is provided under Rule 29 (Penalty of Rs. 2000/-).*

*The declaration of date of marking on food articles is not within the purview of the enforcement authorities of weights and measures, as the first proviso to Rule 6(1) (d) stipulates as follows:*

*Provided that for package containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the Rules made there under shall apply.*

1.17 Further, in the reply dated 27 June, 2008 the Ministry have stated that Section 2(n) of the Standards of Weights and Measures Act, 1976 defines 'label' as follow:-

*"label" means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity.*

*Rule 9(b) provides that "where any declaration on a package is printed either in the form of hand-writing or hand-script, such declaration shall be clear, unambiguous and legible".*

*Thus, the manufacturer has the option to declare the information by any of the above means provided under the Act. The amended proviso under Rule 6(d) provides as follows:-*

*Provided also that a manufacturer may indicate the month and year using a rubber stamp without overwriting.*

*Thus, the provision merely reiterates one of the means of providing information already permitted under the Act/Rules and is not a new provision.*

*As packages are made right from MNCs to cottage industries, it is for the manufacturer to adopt a particular means of providing information which befits the scale of operation and also ensure that the information so provided is legible.*

1.18 When asked whether the amendment as carried out to permit the use of rubber stamp to declare the date of packing, the Secretary, Consumer Affairs stated as under:-

“Rule 6 (1)(d) has been modified to allow rubber stamping of the date of manufacture. This was basically done because if a manufacturer is a very huge manufacturer, he gets his labels printed on a large scale and it really does not affect him. But, if he is a small person and making small items like hosiery or some other items like dhotis or lungis and making a few thousand items every month and if he has to get his labels printed every month, it causes a lot of expenditure to him. So this facility was given to them and only month and year of manufacture they can put on the label by way of rubber stamp. I must submit that we have not received any complaint or representation about misuse of this facility and the idea was to help small manufacturers.”

**1.19 The Committee note that in Rule 6(1)(d)(ii), a proviso has been inserted which provides for manufacturers to indicate the month and year using rubber stamp. The indication of month and year which is a reflection of period and quantity of the commodity when indicated through a rubber stamp is likely to get smudged or totally obliterated during transit or any where before reaching the final consumers. It tantamounts to denying the consumer right to information or knowledge about the commodity. The Committee observe that the amendment is likely to make the work of enforcement authorities more difficult as there is more likelihood of smudging and illegibility of rubber stamp impressions resulting in burgeoning of cases of smudged or illegible impressions. The Committee find that the Ministry’s argument that the**

provision merely reiterates one of the means of providing information already permitted under the Act/Rules and is not a new provision, is not at all convincing. Therefore, the Committee desire that the Ministry should reconsider the amendment in the interest of the consumers in order to avoid misuse of this facility.

(Recommendation No. 3)

**D. Blunting the effectiveness of officers of Legal Metrology Department [Amending of Rule 24(7) and 24 (8)]**

1.20 The amendment to Rule 24 has inserted two clauses which make the requirement of mandatory declarations on the packages to be ensured either at the factory level or at the depot of the factory. Further, the other clause provides that for non-compliance of the provisions of this rule, action may be taken after seizing five representative samples of the packages as evidence and the rest of the packages may be released once compliance is ensured by the manufacturer.

1.21 The Committee observed that it would be easy for the manufacturer to make the officer of Legal metrology run from the factory to the depot to evade his inspection of packaged commodity. No harm would befall the manufacturer if the required declarations are made at the manufacturing unit. Otherwise, the officer of the legal metrology would be endlessly waiting for the package commodity to reach the depot. The manufacturer may send the packages commodity without the required mandatory declarations to the market directly without sending to the depot first.

1.22 The Ministry vide their O.M. dated 4 May, 2007 informed the Committee as under:-

*"It is a lack of understanding of the provisions. Rule 24 provide for examination and determination of quantity and error in packages at the premises of the manufacturer or packer.*

*The provisions of sub rule (7) is only making explicit that the premises of the manufacturer include both his factory and depot. When the production is on, the checking can be done at factory premises and when production is not on, checking can be either at factory or depot, where the packages are stored, as the case may be.*

*The allegation that manufacturer may send the package directly to market instead to depot is without basis, as the law is effective even for packages intended for retail sale and therefore, ensure that the provisions are complied with and do not find their way to retail markets.*

*For non compliance of declarations, the amended Rules provide that only 5 packages be seized as evidence and rest of the packages be released after ensuring their compliance.*

*5 packages should suffice as evidence retaining larger quantities even after necessary rectification by the manufacturer would unnecessarily build up of huge inventories with the enforcement authorities and resultant spoilage.”*

1.23 Further, in the reply dated 27 June, 2008 the Ministry have stated as under:-

*Rule 4 provides that “no person shall pre pack or cause or permit to be pre packed any commodity for sale distribution, or delivery unless the package in which the commodity is pre packed bears thereon or on a label securely affixed thereto, such declarations as are required to be made under these rules.*

*Thus, the obligation to make the required declaration lies with the manufacturer/packer or importer, as the case may be. No specific time interval is prescribed for the enforcement authorities to conduct inspection of pre packages at the manufacturer’s premises. The observation that the manufacturer may send the package directly to market instead to depot is possible even under the pre amended Rules. The said presumption is redundant in view of the position that the power of enforcement authorities to conduct inspection at factory/depot is not curtailed by the amended rules.*

1.24 When asked whether the Department came across such cases in past two – three years when the entire package was sealed at the premises of the manufacturers or packers till compliance was demonstrated, the official of the Ministry during evidence stated as under:-

*“It is possible. It may be done when the production is going on, the quantity may be checked by selecting the empty package samples and marking on them. After taking their weight and all these things at the end the net content may be examined whether it is conforming to the last declaration that has been made on the package”.*

**1.25 The Committee note that the insertion of sub-sections (7) & (8) in Rule 24 is likely to reduce the effectiveness of the Inspecting Officials. The sub-section 7 of Rule 24 leaves open the possibility that the Inspecting Officials are made to run from the factory to the depot to evade inspection by the manufacturer/packers. Further, it also**



leaves open the scope for the packaged commodity to be directly sent to market from factory without sending it to the depot. The Ministry's contention in this regard is that when the production is on, the checking can be done at factory premises and when the production is not on, checking can be done either at factory or depot, where the packages are stored. The Committee desire that such arrangements must be provided for in the rules to make it clear, otherwise it carries the risk of blunting the effectiveness of Inspecting Officials.

(Recommendation No. 4)

1.26 The Committee further observe that the sub-section (8) which provides for action to be taken after seizure of 5 representative samples for evidence and releasing the rest of the packages once compliance is ensured, seems to be contradictory. In a situation where the representative package does not carry mandatory declaration, after which the manufacturers/packers are made to comply with the provisions of making mandatory declaration to which the manufacturers/packers comply with, then the packages are to be released. It was not clear whether in such case any other action would be taken against the defaulting manufacturers/packers. The Ministry's plea in this regard that huge inventories would pile up if all the packages are seized in context of the amendment that only 5 packages will be seized as evidence and rest of the packages be released after ensuring their compliance, is hardly convincing as the packages could be sealed at the premises only. Further, the Ministry have also submitted that the seizure of entire godown is not desirable particularly when the violation is of technical nature. This too does not augur well as it fails to explain the situation in which non conforming packages can make way to the market. The Committee, therefore, desire that after seizure of 5 representative samples of packages for evidence, in case of non compliance of the provisions of the rule, the Ministry must provide for adequate safeguards in the rules itself to prevent the release of rest of the packages to the market before compliance is ensured.

(Recommendation No. 5)

## II

### **Non-Specification of the 'Period Of Experience' in the Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009 (GSR 88 of 2009).**

The Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009 (GSR 88 of 2009) were published in Gazette of India dated 6<sup>th</sup> June, 2009. On scrutiny of the Rules, it was observed that under Column No.12 of the Schedule for the post of Junior Investigator, against the entry in item (b) (ii), the period of experience had not been specified. The Ministry of Tribal Affairs were requested to furnish their comments on the above deficiency.

2.2 In response thereof, the Ministry of Tribal Affairs vide their reply dated 30.11.2009 stated as under:-

*“The post of Junior Investigator in this Ministry is the junior most post among the ex-cadre posts and it is filled up on deputation basis. In order to receive a greater number of response to the circulation/advertisement against the vacancy, the period of experience has not been specified. This Ministry is of the view that if a specific period of experience in essential and desirable qualification is included, the response to vacancy circular/ publication may be poor.*

*The vacancy has already been circulated and any amendment at this stage would halt the process. This Ministry is already facing acute shortage of staff”.*

2.3 **On scrutiny of the Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009, it was observed that for the post of Junior Investigator, the entry under the “Essential Qualifications” did not specify the period of experience. In the absence of explicit mention of the period of experience, the candidates having lesser experience may also apply for consideration for appointment to the post of Junior Investigator on deputation basis. In such an eventuality, it would be difficult to logically shortlist the candidates who would be meeting the requirements of the job. On the other hand, the rules also carried the risk of arbitrary use of discretionary powers to the advantage of**

some candidates having lesser experience vis-à-vis candidates possessing sufficiently more experience which might result in giving undue advantage to some candidates while putting other at a disadvantage.

(Recommendation No. 6)

2.4 The Committee further observe that the mention of specific period of experience in the Rules would have eliminated the element of ambiguity in the rules, thereby, minimizing the scope of arbitrary use of discretionary powers. The Committee, however, note that on being pointed out, the Ministry of Tribal Affairs have stated that the vacancy for the post of Junior Investigator has already been published in the Employment News and any amendment at this stage, would halt the recruitment process. The Committee, while not endorsing the excuse of the Ministry in this regard, strongly recommend that it is of utmost significance that the provisions of Subordinate Legislation are spelt out with due care and precision in order to eliminate the element of ambiguity in the Rules. The Committee accordingly impress upon the Ministry to be vigilant while framing the Rules and to ensure that errors of such nature do not recur in future.

(Recommendation No. 7)

New Delhi;  
December, 2010  
Agrahayana, 1932 (Saka)

P. KARUNAKARAN,  
CHAIRMAN,  
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE FOURTEENTH REPORT OF THE  
COMMITTEE ON SUBORDINATE LEGISLATION

(FIFTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	1.6	<p><u>Infirmities in the Standard of Weights and Measures (Packaged Commodities) Amendment Rules, 2006 (GSR 425-E of 2006)</u></p> <p>The Committee note that the proviso in the amended Rule 5 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 negates the main para of Rule 5. The proviso gives a blanket permission to packed commodities in non-standardised size, for which only condition is that a declaration that 'Not a standard pack size' or 'Non standard size' is required to be prominently displayed on the package. The Committee while taking a strong view in this regard, observe that rather than simplifying the procedure for the manufacturers to get clearance to pack in non-standardized packages, the Ministry seems to have taken the easy way in the form of amendment. The Secretary, Ministry of Consumer Affairs even admitted during the oral evidence that after operationalisation of the New Act by September or October, 2010, the process of amending the schedule would be initiated in consultation with the States, on the aspect of replacement of old rules with the new rules. The Committee, therefore, emphasise that expeditious efforts should be made to amend the schedule suitably and also would like to be apprised of the action taken in this regard.</p>
	1.13	<p>The Committee note that Rule 12 (6) (ii) has been omitted tacitly allowing the manufacturers to use vague expressions like jumbo, giant, king etc. on the package. This can make the comparison of commodity prices and quantity difficult for the consumers. The Committee feel that Ministry's argument that the amendment is in line with the time as consumer has come of age, is hardly convincing. The amendment gives an opportunity to the</p>

		<p>manufacturers to confuse the consumers and to make the easy comparison of prices, quantity, etc. a tedious and almost impossible job for the latter. The Committee are of the view that such vague expressions should not form part of the packages as it harms the interest of the consumers. The Committee desire that the Ministry should bring about necessary amendments in the rule to prevent the use of such vague expressions on packages which are likely to be variedly interpreted creating confusion among the consumers.</p> <p>1.19 The Committee note that in Rule 6(1)(d)(ii), a proviso has been inserted which provides for manufacturers to indicate the month and year using rubber stamp. The indication of month and year which is a reflection of period and quantity of the commodity when indicated through a rubber stamp is likely to get smudged or totally obliterated during transit or any where before reaching the final consumers. It tantamounts to denying the consumer right to information or knowledge about the commodity. The Committee observe that the amendment is likely to make the work of enforcement authorities more difficult as there is more likelihood of smudging and illegibility of rubber stamp impressions resulting in burgeoning of cases of smudged or illegible impressions. The Committee find that the Ministry's argument that the provision merely reiterates one of the means of providing information already permitted under the Act/Rules and is not a new provision, is not at all convincing. Therefore, the Committee desire that the Ministry should reconsider the amendment in the interest of the consumers in order to avoid misuse of this facility.</p> <p>1.25 The Committee note that the insertion of sub-sections (7) &amp; (8) in Rule 24 is likely to reduce the effectiveness of the Inspecting Officials. The sub-section 7 of Rule 24 leaves open the possibility that the Inspecting Officials are made to run from the factory to the depot to evade inspection by the manufacturer/packers. Further, it also leaves open the scope for the packaged commodity to be directly sent to market from factory without sending it to the depot. The Ministry's contention in this regard is that when the production is on, the checking can be done at factory premises and when the production is not on, checking can be done either at factory or depot, where the packages are stored. The Committee desire that such arrangements must be provided for in the rules to make it clear, otherwise it carries the risk of blunting the effectiveness of Inspecting Officials.</p>
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2.	1.26	<p>The Committee further observe that the sub-section (8) which provides for action to be taken after seizure of 5 representative samples for evidence and releasing the rest of the packages once compliance is ensured, seems to be contradictory. In a situation where the representative package does not carry mandatory declaration, after which the manufacturers/packers are made to comply with the provisions of making mandatory declaration to which the manufacturers/packers comply with, then the packages are to be released. It was not clear whether in such case any other action would be taken against the defaulting manufacturers/packers. The Ministry's plea in this regard that huge inventories would pile up if all the packages are seized in context of the amendment that only 5 packages will be seized as evidence and rest of the packages be released after ensuring their compliance, is hardly convincing as the packages could be sealed at the premises only. Further, the Ministry have also submitted that the seizure of entire godown is not desirable particularly when the violation is of technical nature. This too does not augur well as it fails to explain the situation in which non conforming packages can make way to the market. The Committee, therefore, desire that after seizure of 5 representative samples of packages for evidence, in case of non compliance of the provisions of the rule, the Ministry must provide for adequate safeguards in the rules itself to prevent the release of rest of the packages to the market before compliance is ensured.</p> <p><u>Non-Specification of the 'Period Of Experience' in the Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009 (GSR 88 of 2009)</u></p>
	2.3	<p>On scrutiny of the Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009, it was observed that for the post of Junior Investigator, the entry under the "Essential Qualifications" did not specify the period of experience. In the absence of explicit mention of the period of experience, the candidates having lesser experience may also apply for consideration for appointment to the post of Junior Investigator on deputation basis. In such an eventuality, it would be difficult to logically shortlist the candidates who would be meeting the requirements of the job. On the other hand, the rules also carried the risk of arbitrary use of discretionary powers to the advantage of some candidates having lesser experience vis-à-vis candidates possessing sufficiently</p>

	2.4	<p>more experience which might result in giving undue advantage to some candidates while putting other at a disadvantage.</p> <p>The Committee further observe that the mention of specific period of experience in the Rules would have eliminated the element of ambiguity in the rules, thereby, minimizing the scope of arbitrary use of discretionary powers. The Committee, however, note that on being pointed out, the Ministry of Tribal Affairs have stated that the vacancy for the post of Junior Investigator has already been published in the Employment News and any amendment at this stage, would halt the recruitment process. The Committee, while not endorsing the excuse of the Ministry in this regard, strongly recommend that it is of utmost significance that the provisions of Subordinate Legislation are spelt out with due care and precision in order to eliminate the element of ambiguity in the Rules. The Committee accordingly impress upon the Ministry to be vigilant while framing the Rules and to ensure that errors of such nature do not recur in future.</p>
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## APPENDIX –II

(Vide Para 5 of the Introduction of the Report)

### EXTRACTS FROM THE MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Wednesday, 3<sup>rd</sup> March, 2010 from 1500 to 1545 hours in  
Chairman's Room No.143, Parliament House , New Delhi.

#### PRESENT

1. Shri P. Karunakaran Chairman

#### MEMBERS

#### LOK SABHA

2. Smt. Paramjit Kaur Gulshan
3. Shri Sanjeev Ganesh Naik
4. Shri Anantha Venkata Rami Reddy
5. Shri Hamdulla Sayeed

#### SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri Raju Srivastava - Deputy Secretary

.....contd/-



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2. At the outset, the Chairman welcomed the members to the sitting of the Committee.
3. XX XX XX
4. Thereafter, the Committee took up for consideration the following memoranda:-
  - (1) XX XX XX
  - (2) XX XX XX
  - (3) XX XX XX
  - (4) **Memorandum No. 13** - Infirmities in the Standard of Weights and Measures (Packaged Commodities) Amendment Rules, 2006 (GSR 425-E of 2006).
5. As regards memorandum at Sl. No (4), the Committee decided to discuss the issue with the representatives of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs).

The Committee then adjourned.

## APPENDIX –III

(Vide Para 5 of the Introduction of the Report)

### MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Tuesday, 1 June, 2010 from 1100 to 1230 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

#### PRESENT

1. Shri P. Karunakaran Chairman

#### MEMBERS

#### LOK SABHA

2. Shri D.B. Chandre Gowda
3. Smt. Paramjit Kaur Gulshan
4. Shri Mangani Lal Mandal
5. Shri Sanjeev Ganesh Naik
6. Shri Rajaram Pal
7. Shri Hamdulla Sayeed

#### SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri Raju Srivastava - Deputy Secretary

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**REPRESENTATIVES OF THE MINISTRY OF CONSUMER AFFAIRS FOOD & PUBLIC  
DISTRIBUTION (DEPARTMENT OF CONSUMER AFFAIRS)**

1. Shri Rajiv Aggarwal - Secretary
2. Shri Rakesh Kacker - Additional Secretary
3. Shri Sanjay Singh - Joint Secretary
4. Shri B.N. Dixit - Director (LM)
5. Shri A.K.Sharma - Assistant Director (WM)

2. At the outset, the Chairman welcomed the Members of the Committee and the representatives of the Ministry of Consumer Affairs Food & Public Distribution (Department of Consumer Affairs) and drew the attention of the witnesses to Direction 55 of Directions by the Speaker, Lok Sabha regarding confidentiality of the proceedings of the sitting of the Committee.

3. Thereafter, the Committee held discussion on the shortcomings noticed in the Standard of Weights and Measures (Packaged Commodities) Amendment Rules, 2006, which included issue of 'Non Standard Package' for items included in the Third Schedule, use of rubber stamp in marking, deletion of Rule 12 (6)(ii) regarding use of vague expressions and issue relating to procedure for examination of and determination of quantity and error in packages at the premises of the manufacturer or packer.

4. The following points were discussed at the sitting of the Committee:-

- (i) Whether the core of Rule 5 of the PCR (Packaged Commodities Rules) negated by Clause 4 of the amendment of 2006 will make the comparison of quantity and price of commodities packed in different shape and size difficult for the consumers ?

:3:

- (ii) Whether deletion of Rule 12(6)(ii) is pro-manufacturer and is not in the interest of the consumers?
- (iii) Amendment to permit use of rubber stamp to declare the date of packing.
  - (a) Whether the amendment rules allowing the use of rubber stamp to indicate the month and year in which the commodity is manufactured or pre-packed will encourage the manufacturers to use the same for labeling purposes?
  - (b) Whether the use of rubber stamp at a wider scale by the manufacturers which is prone to label(s) being smudged or obliterated in due course of time will increase the burden of enforcement authorities?
- (iv) Whether the insertion of sub-sections (7) & (8) in Rule 24 is likely to reduce the effectiveness of the Inspecting Officials ?
- (v) Whether sub-section (7) of Rule 24 leaves open the possibility that the Inspecting Officials are made to run from the factory to the depot to evade inspection by the manufacturer/ packers ?

The verbatim record of the proceedings was kept.

The Committee then adjourned.

## APPENDIX –IV

(Vide Para 5 of the Introduction of the Report)

### EXTRACTS FROM THE MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2009-2010)

The Committee sat on Thursday, 24 June, 2010 from 1100 to 1200 hours in  
Committee Room No.53, Parliament House , New Delhi.

#### PRESENT

1. Shri P. Karunakaran Chairman

#### MEMBERS

#### LOK SABHA

2. Shri Paban Singh Ghatowar
3. Shri Rajen Gohain
4. Shri D. B. Chandre Gowda
5. Smt. Paramjit Kaur Gulshan
6. Shri Pinaki Misra
7. Shri Sanjeev Ganesh Naik
8. Shri Rajaram Pal
9. Shri Hamdulla Sayeed

#### SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Shri J.S. Chauhan - Director
3. Shri S.C. Kaliraman Additional Director
4. Shri Raju Srivastava - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.

3. XX XX XX

4. Thereafter, the Committee took up for consideration the following memoranda:-

(i) **XX XX XX**

(ii) **Memorandum No. 17** - Non-specification of the 'Period of Experience' in the Ministry of Tribal Affairs (Junior Investigator) Recruitment Rules, 2009 (GSR 88 of 2009).

5. After deliberations, the Committee decided to incorporate the points raised in Memoranda Nos. 14 & 17 in their Report to be presented to the House.

6. XX XX XX

The Committee then adjourned.

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XX Omitted portion of the Minutes are not relevant to this Report.

APPENDIX-V  
(vide Para 5 of Introduction of the Report )

**MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE  
LEGISLATION (2010-2011)**

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The Committee sat on Thursday, 25<sup>th</sup> November, 2010 from 1500 to 1600 hours in  
Committee Room No. 62, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

LOK SABHA

2. Shri Paban Singh Ghatowar  
3. Shri D.B. Chandre Gowda  
4. Smt. Paramjit Kaur Gulshan  
5. Dr. Sanjeev Ganesh Naik  
6. Shri Rajaram Pal  
7. Shri Anantha Venkata Rami Reddy  
8. Shri Hamdulla Sayeed  
9. Shri Adhalrao Shivaji Patil

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary  
2. Shri J.S. Chauhan - Director  
3. Shri S.C. Kaliraman - Additional Director

2. At the outset, the Chairman welcomed the members to the sitting of the Committee.
3. The Committee, thereafter, took up for consideration the draft Fourteenth Report and Fifteenth Action Taken Report and adopted the same without any modifications. The Committee also authorized the Chairman to present the same to the House.

The Committee then adjourned.