

Resolution 425/2014 – Ministry of Health. The General Regimen for Enforcement and Processing of Complaints of infractions of Law 26687, the Regulation of Advertising, Promotion and Consumption of Tobacco Products, are approved.

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Taking into consideration file 12002-16241-13-1 of the Register of the MINISTRY OF HEALTH, Law 26.687, its Regulatory Decree 602 of May 29, 2013, Law 19.549 and Regulatory Decree N° 1759/1972 of April 3, 1972 (T.O. 1991), and

WHEREAS:

Tobacco consumption and exposure to environmental tobacco smoke constitute major public health problems that affect the health of the general public and give rise to an enormous amount of illness and death in our country.

Through Law N° 26.687 the advertising, promotion and consumption of products made from tobacco are regulated for purposes of prevention and helping the public to deal with the harm produced by tobacco use.

For this reason, the regulations and restrictions on advertising, promotion and the consumption of products made from tobacco noted above are enumerated in the aforementioned law.

Article 27 of Law N° 26.687 establishes the authority for implementation in the national order to the Ministry of Health.

Article 27 of Decree 602/2013 authorizes the Ministry of Health to issue supplementary provisions or interpretations that have as their purpose the fulfillment of Law N° 26.687.

It proves necessary to adopt measures that make the implementation of the criteria imposed by this law effective, in an effort to establish an enforcement regimen for the proper application and effective fulfillment of Law N° 26.687.

It has become necessary to approve a GENERAL REGIMEN FOR ENFORCEMENT AND PROCESSING OF COMPLAINTS OF VIOLATION OF LAW N° 26.687, as well as a NATIONAL REGISTER OF OFFENDERS WHO VIOLATE THE TOBACCO CONTROL LAW.

The purpose of the said regimen is to create a system to organize information compiled from complaints received, facilitate its verification and systematically notify such competent authorities as may be appropriate.

This measure is carried out in fulfillment of Article 26 of Law N° 26.687, which determines that the enforcement authority, in order to facilitate complaints for non-compliance with its provisions, shall at least provide a toll-free phone number and an e-mail address that are to be disseminated in the mass media and displayed prominently at places where products made from tobacco are sold, as well as in places where their consumption is prohibited.

This measure, for its part, is executed in fulfillment of Article 35 of the aforementioned law, which instructs the MINISTRY OF HEALTH to create a National Register of Offenders, which is to be kept up to date, and its actions are to be coordinated with the other jurisdictions involved in the fulfillment of its provisions.

The proposed regimen is adjusted to the general rules of administrative procedures set forth in Law N° 19.549 and its Regulatory Decree N° 1759/1972 (T.O. 1991).

The National Tobacco Control Program created by Resolution 1124 of [August 4, 2006] is designated to implement this new regimen[.]

The BUREAU OF LEGAL AFFAIRS has taken the steps appropriate to its competency.

The present measure is issued in exercise of the attributions emerging from the Law of Ministries T.O. 1992, as amended by its companion law Nº 26.338.

**Therefore,**

THE MINISTER OF HEALTH

RESOLVES:

Article 1.- The "GENERAL REGIMEN FOR ENFORCEMENT AND PROCESSING OF COMPLAINTS OF VIOLATION OF LAW Nº 26.687 ON THE REGULATION OF ADVERTISING, PROMOTION AND CONSUMPTION OF PRODUCTS MADE FROM TOBACCO," which is appended as ANNEX I of this Resolution, and forms an integral part hereof, is hereby approved.

Article 2.- The "NATIONAL REGISTER OF OFFENDERS WHO VIOLATE LAW Nº 26.687 ON THE REGULATION OF ADVERTISING, PROMOTION AND CONSUMPTION OF PRODUCTS MADE FROM TOBACCO," which is appended as ANNEX II of this Resolution, and forms an integral part hereof, is hereby approved.

Article 3.- The template of the "CERTIFICATE OF INSPECTION" which is appended as ANNEX III of this Resolution, and forms an integral part hereof, is hereby approved.

Article 4.- The NATIONAL PROGRAM FOR TOBACCO CONTROL, created by Ministerial Resolution Nº 1124 of August 4, 2006, within the framework of the UNDER SECRETARY FOR PREVENTION AND RISK CONTROL, is hereby designated as responsible for the implementation and development of the procedures and register created by the foregoing articles.

Article 5.- Let this be registered, with notification and publication hereof, have it conveyed to the National Office of the Official Register and let it be filed.-

Dr. JUAN L. MANZUR, Minister of Health.

ANNEX I

"GENERAL REGIMEN FOR ENFORCEMENT AND PROCESSING OF COMPLAINTS OF VIOLATION OF LAW Nº 26.687 ON THE REGULATION OF ADVERTISING, PROMOTION AND CONSUMPTION OF PRODUCTS MADE FROM TOBACCO"

TITLE I

GENERAL CONSIDERATIONS

Article 1.- Objectives. This Regimen has the following objectives:

To organize the intake and processing of complaints received about possible violations of Law Nº 26.687, and rationally and systematically to notify the national or provincial authorities, or the authorities of the Autonomous City of Buenos Aires, as appropriate.

To establish an administrative mechanism to ensure speed and economy in processing the matter.

Article 2.- Complaints.

Complaints of infractions of Law Nº 26.687 can be submitted through any of the following means:

- a) Phone call to 0800 999 3040,
- b) E-mail to [controldetobacco@msal.gov.ar](mailto:controldetobacco@msal.gov.ar),
- c) Complaint form at <http://www.msal.gov.ar/tobacco>
- d) By submitting notes to be delivered at the entrance desk of this Ministry.

Furthermore, the National Tobacco Control Program can take action on its own initiative in response to infractions.

Article 3.- The Register of Complaints. Complaints received by the means stated in the foregoing article are to be registered in a database that is to be administered by the National Tobacco Control Program, in a format that preserves the security, integrity and confidentiality of the data. The database should contain at a minimum the following fields, and in order for a complaint to be accepted, it is mandatory to fill out the fields marked with an asterisk (\*):

Record Nº  
Date  
First Name  
Last Name  
DNI identification number

Phone  
E-mail\*  
Commercial name or company title of offender \*  
Field/activity  
Address of site of infraction \*  
Place\*  
Province \*  
Reason for complaint \*  
Description of infraction \*  
Date of infraction \*  
Time of infraction  
Relationship of complainant with the place giving rise to complaint  
Observations  
Forwarded to  
Date of forwarding  
Case File

The Register of Complaints is to be administered and overseen by the National Tobacco Control Program.

Article 4.- Jurisdiction. On the basis of a complaint, the National Tobacco Control Program shall identify the jurisdiction where the infraction is alleged to have occurred. If the incoming complaint concerns an act committed in a provincial jurisdiction or the Autonomous City of Buenos Aires, the National Tobacco Control Program shall forward the complaint to the respective jurisdiction or agency.

If the complaint concerns an act committed in a national jurisdiction, said Program shall proceed to classify it and ascertain whether it is appropriate to refer the matter to the Federal Administration of Audiovisual Communication Services (AFSCA – *Administración Federal de Servicios de Comunicación Audiovisual*) or to the Ministry of Economy and Public Finance, whereupon it shall proceed through the appropriate procedure to set in motion the aforesaid actions through the competent channels.

Article 5.- Investigation. In cases of complaints on alleged infractions committed in settings and jurisdictions that call for the intervention of the MINISTRY OF HEALTH, the National Tobacco Control Program shall proceed to request an investigation thereof. For such purposes, authorized inspectors should identify themselves as such at the time of the inspection by showing the appropriate credentials.

If it is a matter of infractions committed in the territory of the provinces, it will be possible to request support from Federal Sanitary Delegations and/or Federal Sanitary Units, or to proceed on the basis of specific agreements entered into with local authorities.

Article 6.- Certificates of infraction. Inspectors authorized to investigate infractions shall be responsible for drawing up an immediate certificate at the site of the infraction, and a detailed report for each inspection performed.

The certificate of infraction shall contain the elements necessary to determine the following things:

- a) The place, date and time of the commission or verification of the alleged infraction;
- b) The company name or name of the establishment where the infraction has been committed, its address, if it is known, and the identification of the person who allegedly committed the infraction, complete first and last name, DNI identification number, and address;
- c) Basic characteristics of the alleged illegal act;
- d) The legal or regulatory provision allegedly infringed; and
- e) The name and title of the inspector on duty.

## TITLE II

### PROCEDURE

#### CHAPTER I

##### GENERAL PRINCIPLES:

Article 7.- The National Law of Administrative Procedures Nº 19.549 and its Regulatory Decree Nº 1759, dated April 3, 1972, and Decree Nº 333, dated February 19, 1985, Decree 467, dated May 13, 1999, and this Internal Regulation shall be applicable in this procedure. Furthermore, insofar as they are pertinent, the provisions of the Procedural, Civil and Commercial Codes of the Nation shall be applicable in a supplementary fashion, as well as penal provisions, to the extent that they are suitable and compatible.

Article 8.- During the conduct of the proceedings the right to defense shall be guaranteed.

## CHAPTER II

### INVESTIGATION OF THE INFRACTION:

Article 9.- If elements are found that imply *a priori* an infraction of Law N° 26.687 in national settings and jurisdictions, the National Tobacco Control Program shall address its documentation to the Under Secretary for Prevention and Risk Control in order that the latter may consider the instigation of administrative proceedings, so as to make effective the sanctions set forth in Law N° 26.687.

Article 10. The conduct of the proceedings shall be carried out through the office of Summary proceedings, or such agency as may replace it in terms of the organic structure of the MINISTRY OF HEALTH OF THE NATION

## CHAPTER III

### CONCLUSION OF PROCEEDINGS

Article 11.

Once the procedure established by Articles 9 and 10 has been performed, the respondent shall be notified that he must, within a period of FIVE (5) days, take a position on the merit thereof.

Article 12. Upon execution of the verifications and procedures leading to elucidation of the matter under investigation, and with evidentiary measures having been conducted, as appropriate, with the addition of the past record of the respondent, the presiding judge shall proceed to draw to a close the activities relating to the investigation.

## CHAPTER IV

### STATEMENT OF CONCLUSION

Article 13. Upon conclusion of the proceeding, the presiding judge shall produce a report that is as precise as possible, which must contain the following elements:

- a) A detailed account of the facts investigated.
- b) An analysis of the evidentiary elements compiled, as appropriate.
- c) Any legal or regulatory provisions that may be considered applicable and, as appropriate, shall state whether the infraction is sanctionable.

## CHAPTER V

### APPLICATION OF SANCTIONS

Article 14. With the issuance of the report indicated in Article 13, and upon statement of the proposal by the National Program for Tobacco Control of the applicable sanction, or the absence of merit for such sanction, the Under Secretary for Prevention and Risk Control shall issue an administrative act imposing the sanction, if such should be duly founded.

Sanctions shall be graded based on, simultaneously, the importance of the infraction, its direct and indirect consequences for public health, the past record of the accused with regard to infractions, and the circumstances in which the act occurred. A sanction is to be applied for each offense that is proven.

Article 15. The Under Secretary for Prevention and Risk Control may order, through issuance of the pertinent administrative act, the following things:

- a) Seizure and destruction of the material that is the subject of the proceeding in question.
- b) Closure of the premises.

## TITLE III

### SUPPLEMENTARY PROVISIONS

Article 16. With the issuance of the administrative act by the Under Secretary for Prevention and Risk Control, the procedures established in the National Law of Administrative Procedures N° 19.549, and by the Regulation of Administrative Procedures approved by Decree N° 1759/1972 T.O., shall be applicable.

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## ANNEX II

“NATIONAL REGISTER OF OFFENDERS WHO VIOLATE LAW N° 26.687 ON THE REGULATION OF ADVERTISING, PROMOTION AND CONSUMPTION OF PRODUCTS MADE FROM TOBACCO”

Article 1.- Purpose. It shall be the purpose of the National Register of Offenders to record and organize up-to-date information concerning infractions and offenders violating Law N° 26.687, with the aim of generating the necessary

information on national and local legal proceedings, for the conduct of statistical analyses, assessment of the functioning of the systems implemented by Law Nº 26.687, and to inform public opinion.

Article 2.- Structure and location of the Register. The National Register of Offenders shall be administered by the National Tobacco Control Program, and shall be kept in the servers used by the MINISTRY OF HEALTH in a format that preserves the security, integrity and confidentiality of the data. The MINISTRY OF HEALTH shall ensure its accessibility via the internet, and it shall consist of at least the following fields:

[GAP IN TEXT]

Article 3.- Origin of the data comprising the Register. All resolutions of the MINISTRY OF HEALTH establishing sanctions must order the registration thereof in the National Register of Offenders. It shall be required for the competent bodies of national or local jurisdictions to submit every six months the infractions committed within their authority, with all data in the format mentioned in the previous item, for purposes of facilitating the updating of the Register.

Article 4.- Advertising. The MINISTRY OF HEALTH shall adopt such measures of management and organization as may be necessary to ensure under all circumstances the confidentiality, security and integrity of data of a personal character that may be included in the Register, and will only make possible the use thereof for the purposes for which they were compiled. The competent bodies of local jurisdictions may search the list of offenders who have violated Law Nº 26.687 on the web page of the Register using a secure password.

ANNEX III

[TEXT ENDS]