
HEALTH

Articles are hereby amended from the Regulation to Law No. 28705, General Law for the Prevention and Control of Tobacco Consumption Risks, approved by Supreme Decree No. 015-2008-SA

**SUPREME DECREE
No. 001-2010-SA**

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

Through Law No. 28705 approval was given for the General Law for the Prevention and Control of Tobacco Consumption Risks;

Through Supreme Decree No. 015-2008-SA the Regulation to Law No. 28705, the General Law for the Prevention and Control of Tobacco Consumption Risks, was approved;

Articles 47, 48 and 49 of the aforementioned regulation regulate the sanctioning power of the National Institute of Defense on the Competency and Protection of Intellectual Property – INDECOPI – and of Municipalities, as well as the criteria to determine violations and to impose sanctions;

Articles 105 and 106 of Law No. 26842, General Health Law, stipulate that it is up to the competent Health Authority to issue the measures necessary to reduce and control risks to people's health from environmental elements, factors and agents and to issue the measures for prevention and control that are indispensable for those actions or events which cause such risks and harm to cease when the environmental contamination entails risk or harm to people's health;

By virtue of the provisions of Article 128 of Law No. 26842, General Health Law, on the use of the powers conferred by the above-stated law, organic laws, laws of organization and duties, other special laws and their regulations, the Health Authority is empowered to stipulate guidance and educational actions, to perform inspections at any building or property, to take samples and to proceed with the corresponding tests, to gather information and perform other actions it may deem proper for compliance with its duties, and, as applicable, to apply safety measures and sanctions. Articles 134 and 135 of the aforementioned law also establish the Health Authority's power to sanction breaches to the provisions contained in the stated law.

Article 36 of Law No. 27783, Organic Law of Bases of Decentralization, establishes that Public

Health is a shared responsibility. Likewise, through Ministerial Resolution No. 405-2005/MINSA, it is recognized that Regional Health Offices form a single health authority in each Regional Government.

Pursuant to the provisions of Article 18 of Law No. 28705, General Law for the Prevention and Control of Tobacco Consumption Risks, in accordance with Articles 7 and 12 of its Regulation approved by Supreme Decree No. 015-2008-SA, the Ministry of Health is the competent body for health oversight on compliance with the above law;

In this respect, in order to protect public health and to carry out the effective control of tobacco smoke contaminants in private and public places as included in Law No. 28705, General Law for the Prevention and Control of Tobacco Consumption Risks, and to protect public health, it is proper to make some amendments to its Regulation, approved by Supreme Decree No. 015-2008-SA.

In accordance with Article 118 (8) of the Political Constitution of Peru and Article 11 (3) of Law No. 29158, Organic Law of Executive Power;

HE HEREBY DECREES:

Article 1 – Amendment

Let there be amendment of Article 6 (6.1), Article 7 (7.1 and 7.2), Article 12 (12.1) and Article 48 of the Regulation to Law No. 28701, General Law for the Prevention and Control of Tobacco Consumption Risks, approved by Supreme Decree No. 015-2008-SA, which shall be written as follows:

“Article 6. – Smokers’ Area

6.1 Property owners, legal representatives and administrators of private work centers, restaurants, cafes, bars, hotels, sports centers and entertainment centers, where applicable, may equip an area designated for smokers that shall be no larger than ten percent (10%) of the area assigned to public service. No minors shall be permitted in these areas.

Article 7. - Inspections under the responsibility of Municipalities and the Ministry of Health

7.1 The municipal authority, Regional Health Offices or whoever acts in their stead in Regional Governments and the Ministry of Health, shall perform periodic inspections and measurements for tobacco smoke contaminants at work centers, restaurants, cafes, bars, hotels, sport centers and entertainment centers and shall sanction violators pursuant to the provisions of Article 48 of this Regulation and Article 128 and Title Six of Law No. 26842 - General Health Law, respectively.

7.2 For measurement of the presence of tobacco smoke outside the area pertaining to Article 6 (6.1) of this Regulation, the municipal authority, Regional Health Offices or whoever acts in their stead in the Regional Governments and the Ministry of Health, shall use whatever

technology they deem proper and may install the systems for such purposes in public service areas and private work centers.

(...)".

"Article 12. – Ministry of Health Oversight

12.1 The Ministry of Health and Regional Health Offices or whoever acts in their stead in Regional Governments shall carry out health oversight, which includes, among others, the physical inspection of signage at the places mentioned in Regulation Articles 5, 8, 9 and 10, and measurement of whether or not there is tobacco smoke in the areas of places not corresponding to those described in Article 6 (6.1) of this Regulation.

The Ministry of Health in the Metropolitan Lima area and the Regional Health Offices or whoever acts in their stead in Regional Governments, shall impose whatever safety measures and sanctions may be appropriate.

(...)."

"Article 48. – Sanctioning Authority of the Municipalities, the Regional Health Offices or whoever acts in their stead in Regional Governments and the Ministry of Health.

Sanctions for the violations shown in this Regulation must be established by the competent Municipalities within the framework of sanctioning power recognized by Article 46 of Law No. 29792, Organic Law of Municipalities. For this they shall issue the corresponding Municipal Ordinances, notwithstanding the competencies conferred upon the Ministry of Health, according to Law No. 26942, General Health Law, or, where applicable, to the Regional Health Offices or whoever acts in their stead in Regional Governments."

Article 2. – Inclusion of the Violations and Sanctions Table

Let there be included the Violations and Sanctions Table, which forms part of this Supreme Decree, as Annex No. 7 to the Regulation to Law No. 28705.

Article 3. – Repeal

All provisions opposing this Supreme Decree are hereby repealed.

Article 4. – Approval

This Supreme Decree shall be ratified by the Minister of Economy and Finance and by the Minister of Health.

Issued at the Governmental Palace in Lima on the thirteenth day of the month of January in the year two thousand ten.

ALAN GARCÍA PÉREZ
Constitutional President of the Republic

MERCEDES ARÁOZ FERNÁNDEZ
Minister of Economy and Finance

OSCAR UGARTE UBILLUZ
Minister of Health

ANNEX NO. 7
VIOLATIONS AND SANCTIONS TABLE

		SCALE OF APPLICABLE FINES	
VIOLATION	Individuals of legal entities with business capital less than or equal to 10 UIT	Legal entities with business capital greater than 10 UIT	NOTES
1) Smoking in prohibited areas, including public transportation units.	For each occurrence: 0.1 UIT (applicable only to individuals)		In the case of public transportation, the transportation company and owner of the transportation unit shall be held jointly responsible before the Municipal Authority
2) Allowing smoking in prohibited areas, including public transportation units, including the detection of the presence of tobacco smoke.	0.5 UIT	1 UIT	
3) Equipping an area for smokers that is larger than the one permitted or that does not meet the requirements established in the Regulation, as well as setting up areas for smokers in non-permitted places.	1 UIT	2.5 UIT	In the case of tobacco sales by minors, seizure of the respective goods shall also be ordered.
4) Selling tobacco products in the places shown in Article 11 (1) of the Law.	2 UIT, plus temporary closure of the establishment or suspension of the sales license, as applicable.	5 UIT, plus temporary closure of the establishment or suspension of the sales license, as applicable.	
5) Selling tobacco products with the participation of minors under the age of 18.	4 UIT and cancellation of the establishment's operating or sales license, as applicable.	10 UIT and cancellation of the establishment's operating or sales license, as applicable.	The Ministry of Health or, where applicable, the Regional Health Offices or whoever acts in their stead in Regional Governments shall apply the sanctions regarding detection of the presence of tobacco smoke in places equipped for non-smokers, in which case upon the 4 th occurrence, the respective Municipality shall request cancellation of the establishment's operating license.

Unofficial Translation

6) Not displaying or improperly displaying the signs described in the Law and Regulation.	0.1 UIT	0.5 UIT	In the case of vending machines, the administrators of the establishments where they are located and the owners of the machines shall be held jointly responsible before the Municipal Authority.
7) Obstructing, damaging or removing evidence of environmental contamination.	0.5 UIT	1 UIT	
8) Breaching the contained provisions concerning the use of vending machines.	1 UIT, plus temporary closure of the establishment or suspension of the sales license, as applicable	2.5 UIT, plus temporary closure of the establishment or suspension of the sales license, as applicable	In the case of the sale of loose tobacco products, in packages of fewer than five (5) units or unfiltered cigarettes, seizure of the respective goods shall also be ordered.
9) Breaching other provisions of the Law and Regulation related to the sale of tobacco products.	2 UIT and cancellation of the establishment's operating or sales license, as applicable.	5 UIT and cancellation of the establishment's operating or sales license, as applicable.	