

HEALTH

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 and amended by Supreme Decree No. 001-2010-SA, is hereby amended

**SUPREME DECREE
No. 001-2011-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, subsequently amended through Supreme Decree No. 001-2010-SA;

Through Law No. 29517, Law No. 28705 was amended to adapt it to the World Health Organization (WHO) Framework Convention on Tobacco Control;

According to the Sole Final Provision of Law No. 29517, the Executive Branch must issue the amendatory regulations on the above-stated Regulation in order to include aspects that have been amended by it;

Pursuant to Article 118 (8) of the Political Constitution of Peru and Article 11 (3) of Law No. 29518, Organic Law of the Executive Branch;

HE HEREBY DECREES:

Article 1 – Amendment

Let there be amendments to Articles 5, 8, 10, 13, 18, 32, 41 and 48, to Article 4 (1, 5 and 11) and Article 22 (22.2) of the Regulation to the General Law for the Prevention and Control of Tobacco Consumption Risks, approved by Supreme Decree No. 015-2008-SA and amended by Supreme Decree No. 001-2010-SA. These shall be written as follows:

Article 4. – Definitions

In order to best apply the Regulation, the following terms and their definitions are established:

1. Enclosed public spaces: Any publicly accessible place that is covered by a roof and has more than one wall, regardless of the material used, of its dimensions or height and whether it is of a temporary or permanent nature.

(...)

5. Work places: For this Regulation a work place shall be understood as any place used by people during their employment or job. This definition must cover not only compensated work, but also voluntary work of the type that is normally compensated. Work places also include not only those where work is performed, but also all places that workers customarily use in the performance of their job, among them, for example, hallways, elevators, stairway skylights, lobbies, adjoining facilities, cafeterias, health services, lounges, dining rooms and attached structures, such as sheds, among others. Work vehicles are considered work places and must be identified specifically as such. The interiors of work places include all spaces within their perimeters.

(...)

11. Means of public transportation: Units of individual or mass transportation, land, air or sea transportation, used to carry passengers, regardless of their condition, type or tonnage.

Article 5. – Smoking ban

5.1 Smoking is banned in the entirety of environments of establishments dedicated to health and education and inside work places and public premises.

5.2 Likewise, smoking is prohibited inside any enclosed public space and on any means of public transportation.

Article 8. – Announcements in visible places

8.1 Announcements shall be placed in the environments and spaces shown in Article 5 (5.1 and 5.2) of the Regulation in the Spanish language, with or without images, and they shall necessarily contain the following inscription:

**“SMOKING IS PROHIBITED IN PUBLIC PLACES
BECAUSE IT IS HARMFUL TO HEALTH”**

“100% TOBACCO SMOKE FREE ENVIRONMENT”

8.2 Open or enclosed public spaces in which, due to their activity or nature, the use of another language becomes indispensable or frequent, must put up additional announcements in that language, but without changing the texts and characteristics shown earlier.

8.3 A reasonable number of warnings must be placed at each of the corresponding places, according to the area dimensions of the establishment or premises and according to the model and characteristics indicated in Annex No. 1 of the Regulation. Visibility of the signs shall depend on the characteristics themselves of each establishment so that they are perceptible to the general public. The parameters of reasonability and perceptibility for the warnings shall be established in the Technical Inspections Regulation to which Article 12 (12.3) of the Regulation refers.

Article 10. – Signs on public transportation vehicles

On public transportation vehicles signs with the smoking ban must be located in visible areas, according to the model and characteristics indicated in Annex No. 1 of the Regulation.

The number of signs shall depend on the vehicle's dimensions, ensuring that they are visible to all passengers, no matter where the passengers are.

Article 12. – Inspection powers

12.1 The following activities may be performed in order to inspect the one hundred percent smoke free environments according to Law:

- a) Physical inspection of the signage at the places referenced in Articles 5, 8 and 10 of the Regulation.
- b) Verification that there are no persons with cigarettes or other lit tobacco products.
- c) Measurement of the presence of tobacco smoke in the areas shown in Article 5 of the Regulation

The above notwithstanding, the Internal Work Regulations for public entities or private companies must include the express ban on smoking in all their facilities and the internal measures for reporting those who smoke where it is forbidden.

12.2 Provincial and District Municipalities are in charge of inspecting the non-compliance with signage shown in Number 12.1 (a) of the Regulation.

12.3 It is the responsibility of the Ministry of Health through the General Environmental Health Office (DIGESA), Regional Health Offices of the Regional Governments or the bodies that act in their stead, and the Provincial and District Municipalities in their areas of competency to perform the activities shown in Number 12.1 (b) and (c) of the Regulation. In this regard the Ministry of Health shall approve a Technical Inspections Regulation through Ministerial Resolution that serves as a guiding technical document on the matter.

Article 18. – Printing of health warnings on tobacco product wrappers or packages

18.1 All types of packages, wrappers, packs or any type of external packaging of any tobacco product must obligatorily display on fifty percent (50%) of each of the principal panels or surfaces the warning phrases and images approved by the Regulation about the health damage caused by smoking. That same area must also bear the following permanently printed phrase: **“Sale prohibited to minors under the age of 18”**, placed vertically in a single line on the right edge over the background of the image or graphic illustration, according to the design to be approved by the Ministry of Health.

18.2 The health warnings described in the preceding paragraph are made up of two (2) phrases and two (2) different images predetermined through Ministerial Resolution from the Ministry of Health and shall be rotated every twelve (12) months.

18.3 The characteristics of the health warnings shall be established through Ministerial Resolution from the Ministry of Health.

Article 22. – Health warnings

(...)

22.2 The phrases making up the health warnings are as follows:

- a. Smoking Causes Gangrene.
- b. Smoking Causes Breast Cancer.
- c. Smoking Causes Sexual Impotence.
- d. Smoking Causes Abortions.

- e. Smoking Causes Lung Cancer.
 - f. Tobacco Smoke Causes Asthma in Children.
 - g. Tobacco Smoke Harms Your Baby.
 - h. Nicotine Is As Addictive As Heroine.
 - i. Smoking Causes Heart Attacks.
 - j. Smoking Causes Cancer of the Larynx.
 - k. Smoking Causes Stroke.
 - l. Smoking Causes Blindness.
- (...)

Article 32. – Rotation of health warning in advertising

Health warnings for tobacco product advertising purposes, as stipulated by the Ministry of Health through a Ministerial Resolution, shall have a duration of twelve (12) months. Such provisions shall be published in the Official Gazette (“El Peruano”) six months in advance.

Article 41. – Coordination for compliance with this Regulation

With local governments, SUNAT, INDECOPI, the Permanent National Anti-Smoking Commission (COLAT) and other civil society organizations with powers assigned according to Law, the Ministry of Health shall coordinate the actions needed to obey the Law and Regulation within the areas of their respective competencies.

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

48.1 Provincial and District Municipalities, through their inspection areas, are responsible for imposing the sanctions resulting from non-compliance with the signage in the places described in Articles 5, 8 and 10 of the Regulation, for which they shall issue the corresponding Municipal Ordinances.

48.2 The Ministry of Health through the General Environmental Health Office (DIGESA), Regional Health Offices of the Regional Governments or the bodies that act in their stead, and the Provincial and District Municipalities in their areas of competency, are responsible for imposing the sanctions resulting from the activities pointed out in Number 12.1 (b), (c) and (c) of the Regulation. The Ministry of Health shall approve the guidelines through Ministerial Resolution for applying the sanctions pursuant to Law and the Regulation. In the case of Regional Governments and Municipalities, they must issue the respective Regional or Municipal Ordinances.

48.3 Civil society organizations with the powers assigned according to Law and to which Article 41 of the Regulation refers may make reports to the entities exercising sanctioning power on the matter, as well as promote citizen educational activities on the matter.

Article 2. – Amendment of the Violations and Sanctions Table

Let Annex No. 7: Violations and Sanctions Table of the Regulation to Law No. 28705 be amended, pursuant to the chart that forms part of this Supreme Decree.

Article 3. – Incorporation

Let Article 30-A be incorporated into the Regulation to the General Law for the Prevention and Control of Tobacco Consumption Risks, approved by Supreme Decree No. 015-2008-SA, according to the following text:

“Article 30-A. – Ban on the sale of cigarette packs containing fewer than ten units.

The distribution and sale of cigarette packs containing fewer than ten (10) units is forbidden."

Article 4. – Temporary system

Let the Ministry of Health be empowered so that through Ministerial Resolution it approves the applicable temporary system for the change of graphic images, figures and mottos on the health warnings of cigarette packs and tobacco products, in keeping with the provisions of Law No. 29517 and the Regulation.

Article 5. – Approval of supplementary regulations

In a time period of no greater than sixty (60) working days from the publication of this Supreme Decree, the Ministry of Health must approve the regulations referenced in Article 12 (12.3) and Article 48 (48.2) of the Regulation, as well as other supplementary regulations that may become necessary for their application.

Article 6. – Repeal

Let Articles 6 and 9, Article 4 (2), and Article 22 (22.3) of the Regulation to the General Law for the Prevention and Control of Tobacco Consumption Risks, approved by Supreme Decree No. 015-2008-SA, amended by Supreme Decree No. 001-2010-SA, be hereby repealed, as well as all provisions opposing this Supreme Decree.

Article 7. - 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 fourteenth day of the month of January in the year two thousand eleven.

ALAN GARCÍA PÉREZ
Constitutional President of the Republic

ISMAEL BENAVIDES FERREYROS
Minister of Economy and Finance

OSCAR UGARTE UBILLUZ
Minister of Health

**ANNEX NO. 7
CHART OF VIOLATIONS AND SANCTIONS**

		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 places.	For each occurrence: 0.1 UIT (applicable only to individuals)			
2) Allowing smoking in prohibited places, demonstrated through: a) The presence of persons with lit cigarettes. b) Detection of the presence of tobacco smoke.	0.5 UIT	1 UIT	In the case of means of public transportation, the transportation company and the transportation unit owner shall be held jointly responsible.	
3) 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.		
4) Selling cigarette packs containing fewer than ten units, including the dispensing of cigarettes by the unit.	3 UIT and final closure of the establishment or cancellation of the respective license, as applicable.	8 UIT and final closure of the establishment or cancellation of the respective license, as applicable	In addition, seizure of the respective goods shall be ordered. Final closure or cancellation shall apply in the face of repeat violation.	
5) Selling tobacco products with the participation of minors under the age of 18.	4 UIT and final closure of the establishment cancellation of the respective license, as applicable.	10 UIT and final closure of the establishment cancellation of the respective license, as applicable.	Final closure or cancellation shall be applied in the face of repeat violation.	
6) Not displaying or improperly displaying the signs described in the Law and Regulation.	0.1 UIT	0.5 UIT		
7) Obstructing, damaging or removing evidence of environmental contamination.	0.5 UIT	1 UIT		
8) Breaching the provisions on 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		
9) Breaching other provisions of the Law and Regulation related to the sales of tobacco products.	2 UIT and final closure of the establishment or cancellation of the respective license, as applicable.	5 UIT and final closure of the establishment or cancellation of the respective license, as applicable..	Final closure or cancellation shall be applied in the face of repeat violation.	

Unofficial Translation