

Brazilian Federal Legislation on Tobacco Control

3.1.1 – General obligations

- Decree (August 1st, 2003)

Creates the National Commission for the Implementation of the Framework Convention on Tobacco Control.

The commission is composed by representatives from the following Ministries: Health; External Relations; Agriculture; Finance; Justice; Labor; Education; Development, Industry and Trade; Agrarian Development; Communications; Environment; Science and Technology; Planning and Budget; Presidential Staff Office; National Drug Control Secretariat; Special Secretariat of Women's Policies.

- Decree n° 5.658 (January 2nd, 2006)

Promulgates the Framework Convention on Tobacco Control

3.2.2 - Protection from exposure to tobacco smoke

- Interministerial Ruling no. 3257 (September 22th, 1988)

Recommends measures to restrict smoking in workplaces.

- Law no. 9294 (July 15th, 1996)

Prohibits the use of cigarettes, cigarillos, cigars, pipe, or any other smoking product, whether tobacco derived or not, in collective areas, public or private, such as public offices, hospitals, classrooms, libraries, workplaces, playhouses and movie theaters, except in especially designated areas.

- Decree no. 2018 (October 1st, 1996)

Regulates Law no. 9294/96, providing definitions to collective areas and properly isolated areas designated exclusively to smoking.

- Law no. 10167 (December 27th, 2000)

Prohibits the use of smoking tobacco products in aircraft and other collective vehicles.

- Interministerial Ruling no. 1498 (August 22th, 2002)

Recommends the implementation of environmental tobacco smokefree programs in health care units and schools.

3.2.3 - Regulation of the contents of tobacco products

The Brazilian Health Surveillance Agency (Anvisa) registers annually all tobacco-related products by means of an electronic system that demands input such as the composition of each brand commercialized within the country or for the exporting market. The industries must inform the type of tobacco used, the constituents and additives used in the manufacturing of each brand. All information must be in compliance with Resolution

(RDC) n° 90, from 27 December 2007. The new regulation was published revoking the RDC 346/2003.

The National Health Surveillance Agency is responsible for the implementation of an official laboratory for control, analysis and research of tobacco products thus entering the Official International Net of Tobacco Laboratories – TobLabNet/WHO aiming at:

Effective research work related to the exposure to tobacco and developing new analysis methods;

Effective fiscal and control analyses to counterproof the accuracy of the informed data;

Effective research and analysis for other interested Governments, being part of the Laboratories World Net, the International Network for Tobacco Testing and Research for Regulation.

Legislation:

- Resolution RDC n. 46 of March 28 2001

Establishes the maximum percentage of tar, nicotine and carbon monoxide allowed;
Prohibits the use of printed names as “light, extra light, smooth, low tar” and alike in relation to any cigarette brand commercialized in the country. No cigarette packs should be sold containing the above printed terms, as such terms mislead the consumers’ to an interpretation of lower toxicity.

- Resolution RDC n. 90 of December 27 2007

Regulation and procedures that should be observed in petitions for the registration and renewal of registration of data of any tobacco-related product.

3.2.4 - Regulation of tobacco product disclosures

The Brazilian Health Surveillance Agency (Anvisa) registers annually all tobacco-related products by means of an electronic system that demands input such as the composition of each brand commercialized within the country or for the exporting market. The industries must inform the type of tobacco used, the constituents and additives used in the manufacturing of each brand. All information must be in compliance with Resolution (RDC) 90, from December 27, 2007. The new regulation was published revoking the RDC 346/2003.

Legislation:

- Resolution RDC n. 90 of December 27th 2007

Regulation and procedures that should be observed in petitions for the registration and renewal of registration of data of any tobacco-related product.

3.2.5 - Packaging and labelling of tobacco products

Brazil has been the first country in the world to ban the use of printed names as “light, extra light, smooth, low tar” and alike. Brazil has been the second country to mandate the insertion of warnings on the packages, thus being one of the proposed actions as per details shown on resolution relative to the WHO Framework Convention on Tobacco Control (WHO/ FCTC).

Legislation:

- Constituição da República Federativa do Brasil (Federal Constitution – published on October 05, 1988)

Determines that all tobacco advertising is subjected to legal restrictions and must bear warnings about the harmful results from its use.

- Provisory Measure n. 2.190-34 (August 23, 2001)

Alters the provisions contained in Law 9.294, of July 15, 1996, and determines that all advertising material as well as all packaging of tobacco products, except those for exporting, must include health warnings accompanied by picture images.

- Resolution RDC n. 335 of January 17, 2003

Mandates the insertion of health warnings, accompanied by picture images, on packaging and in all advertising material of tobacco products.

Determines the printing of the following sentence on the packaging of smoking products: “Forbidden sale to individuals below 18 years of age – Federal Law n. 8.069/1990 and *Law 10.702/2003*”. Prohibits the use of phrases such as “only for adults”

Mandates the impression of the following information on the packs of cigarettes: "This product contains more than 4,700 toxic substances, and nicotine that causes physical or mental dependence. There are no safe levels for consumption of these substances."

3.2.7 - Tobacco advertising, promotion and sponsorship

In 2000, tobacco advertising was restricted to posters, panels and placards displayed inside sales places. So, tobacco advertising was prohibited on magazines, newspaper, television, radio and outdoors. The legislation also prohibits advertising through Internet, merchandising on television, cultural and sportive events sponsorship by tobacco products and other different forms of promotion. These rules have been accomplished countrywide.

The tobacco advertising and F1 events transmitted on television must be accompanied by health warnings about tobacco use harms.

Brazil has been one of the few countries to publish tobacco products’ advertising control legislation. Such proposal is a demand of WHO Framework Convention on Tobacco Control.

Legislation:

- Constituição da República Federativa do Brasil (Federal Constitution – published on October 05, 1988)

Determines that the advertising of tobacco shall be subjected to legal restrictions and must bear warnings about the harmful effects resulting from tobacco use.

- Law 8.068, of September 11, 1990 – Consumer’s Defense and Protection Code
Prohibits misleading advertising.

- Law 9.294 of July 2, 1996

Sets forth restrictions on the use and advertising of smoking products, alcoholic beverages, medicines, therapeutic remedies and pesticides.

- Law 10.167 of December 27, 2000

Alters the provisions contained in Law 9.294, of July 15, 1996, that restricts the advertising of tobacco products to posters, billboards and alike inside points of sale. Prohibits advertising in magazines, newspapers, television, radio, outdoors and any other kind of mass media.

Alters the provisions contained in Law 9.294, defining the monetary value of the fine to be applied in non-compliance cases. Defines the competent bodies to enforce the law as well as to monitor its compliance.

Prohibits advertising through electronic means, including Internet, the so-called indirect advertising or promotion, also called merchandising, as well as advertising in stadiums, track fields, or similar places.

Prohibits the sponsorship of national cultural and sporting events by tobacco products.

- Resolution RDC n. 15 of January 17th 2003

Regulates provisions set forth by Law 9294 of 1996;

Defines the concepts of the terms “tobacco products advertising” and the “inside the points of sale”;

Prohibits the sale of tobacco products on the Internet.

- Law 10.702 of July 14, 2003

Alters provisions contained in Law 9.294, prohibiting the sponsorship of international sporting events by cigarettes brands after September 30, 2005.

Mandates the use of warning messages during the broadcasting of international sporting events, at intervals of fifteen minutes.

- Resolution RDC n. 199 of July 24, 2003

Regulates Law 10.702 of 2003 upon the mandatory use of warning messages during the broadcasting inside Brazil of any international cultural and sporting event.

3.2.8 - Demand reduction measures concerning tobacco dependence and cessation

Legislation:

- Ministry of Health Rule no. 1035 (May 31th, 2004)

Expands the access to the approach and treatment of tobacco addiction for the basic and medium-complexity health-care network of the Single Health System (SUS), for the purpose of consolidating the National Programme for the Control of Tobacco Addiction.

- Ministry of Health Rule no. 442 (August 13th, 2004)

Approves the Plan to Implement the Approach to and Treatment of Smoking in the Unified Health System.

3.3.1 - Illicit trade in tobacco products

Legislation:

- Normative Instruction of Brazilian Internal Revenue Service n. 769 of August 21st 2007

Rules on the installation of production counting equipment in cigarette manufacturing establishments Normative Instruction of Brazilian Internal Revenue Service n. 770 of August 21st 2007

Rules on the special registration required by cigarette manufacturers and importers, as well as the control seal these products are subject to.

3.3.2 - Sales to and by minors

Cigarette Sales for minors - under 18 years of age - is forbidden, as stated in the Child's and Adolescent Statute (Law n. 8.069, July 13, 1990). This Law prohibits the sale, supply or delivery, for children or adolescent, of products which components might cause physical or psychological dependence.

Unfortunately, many sellers do not follow the prohibition to sale cigarettes to minors, not requiring the presentation of an identification document. In spite the legislation foresee penalties for noncompliance, the inspection is not effective.

Legislation:

- Law 8.069, of July 13, 1990 - Statute of the Child and Adolescent (ECA)

Prohibits the sale, supply or delivery, for children or adolescent, of products which components might cause physical or psychological dependence.

- Decree n. 2.637 of June 25, 1998)

Determines that the commercialization of cigarettes in the country, including its exposure to the sale, be made only in packs, boxes or other receptacles containing twenty units.

- Law 10.167 of December 27, 2000

Alters the provisions contained in Law 9.294, of July 15, 1996;

Prohibits the sale by post of tobacco-related products, the distribution of any sample or gift and the selling in educational and health establishments;

Prohibits the participation of children and adolescents in advertising of tobacco related products.

- Edit of Ministry of Labor and Employment n. 06 (February 05, 2001)
Prohibits the employment of people under 18 years of age in the harvesting, beneficiating or in the industrialization of tobacco.
- Resolution RDC n. 304 of November 7, 2002
Prohibits producing, importing, marketing, advertising and distributing of food in the form of cigarette, cigar, cigarillo, or any other tobacco product;
Prohibits the use of packages of food that simulate or imitate the packaging of cigarettes, and the use of brand names that belong to any tobacco product.
- Law 10.702, of July 14, 2003
Alters the provisions contained in Law 9.294, of July 15, 1996, prohibiting the sale of tobacco products to individuals under 18 years of age.
- Anvisa's Resolution RDC 304 (November 07, 2002)
Prohibits producing, importing, marketing, advertising and distributing of food in the form of cigarette, cigar, cigarillo, or any other tobacco product. It also prohibits the use of packages of food that simulate or imitate the packaging of cigarettes, and the use of brand names that belong to any tobacco product.
- Anvisa's Resolution RDC n. 335 of January 17, 2003
Determines the printing of the following sentence on the packaging of smoking products: "Forbidden sale to individuals below 18 years of age – Federal Law n. 8.069/1990 and *Law 10.702/2003*". Prohibits the use of phrases such as "only for adults"

3.3.3 - Provision of support for economically viable alternative activities

- Resolution of Brazilian Central Bank no. 2833 (April 25th, 2001)
Prohibits the concession of public loans from the National Agricultural Family Empowerment Program (PRONAF) to tobacco growers, working in partnership or integrated to the tobacco industry.

3.4.2 – Liability

There isn't any legal rule for criminal and civil liability for tobacco industry. Many bills of law are been studied by the National Congress to implement the payment of a tribute by tobacco industry in order to cover the expenses associated with medical treatment of tobacco-related illnesses in the public health care system.

Furthermore, liability lawsuits have been brought against tobacco industry since last decade. Until this moment, none has achieved success in Brazilian final instance, but part of the juridical community is starting to recognize that tobacco industries should be made responsible by the damages caused by their products.