



Tobacco Control
Legal Consortium



Framework for Analyzing Tobacco Policy Interventions



Step One: Big Picture

WHY?

Why is the policy being proposed?

- Identify the problem you are trying to address.
- Collect information and statistics about the existence of the problem.
- Include local data whenever possible.

WHAT?

What is the goal of the policy?

- Identify the goal(s) of the policy.
- Identify what the policy will do to meet the goal(s).
- Collect information and statistics to show how the policy will meet the goal(s) and address the identified problem.

WHO?

Who are your stakeholders?

- Identify and involve key stakeholders.
- Identify potential supporters and opponents.

Who will be required to follow the policy?

- Consider who will be expected to follow the policy, and how to educate them once it passes.

Step Two: Details

Examples

Has this or a similar policy been implemented elsewhere?

- Consider whether other similar efforts have been successful. If not, why not?
- Note what factors might be the same or different for your location (for example, different state or local laws, stakeholders, community needs, etc.).

Legal Challenges

Authority?

- Determine if there are any concerns regarding the authority to adopt the policy.

Preemption?

- Evaluate whether state or federal laws preempt the policy.

Constitutional?

- Consider whether the policy affects constitutional rights (such as the right to free speech, equal protection, or due process).

Other?

- Investigate whether there are any other legal considerations.

Practical Challenges

Enforcement?

- Determine who will be in charge of enforcing the new policy (and consider whether this group is a key stakeholder).
- Determine what the penalties will be for not following the policy.
- Consider what can be done to solve any enforcement challenges.

Costs?

- Consider the financial costs and benefits of the problem compared to those of the intervention.

Capacity?

- Determine if there is capacity to adopt and implement the policy. (Staff time, funding for education about the policy, and other resources?)

Measuring success?

- Decide how you will know if the policy is successful.

Legal defense?

- Consider whether there is capacity to defend the policy if challenged in court.

Unintended Consequences

Can you anticipate and address any unintended consequences?

- Check if any terms or rules are likely to be misunderstood or misinterpreted.
- Address any rules that create problematic incentives.

Can you identify and correct loopholes?

- Ensure that any exceptions are no broader than intended.
- Check that definitions don't accidentally leave out an important group or category.

Step Three: Review

Elements of an Effective Policy

Findings

- These are brief statements of facts or statistics that outline the issue being addressed and support the need for the policy.
 - The more local the data, the better.
 - The more evidence-based the findings are, the better.
- Strong findings anticipate challenges to the policy and include facts that will be helpful when defending the policy.

Purpose

- This is a statement that explains the goal(s) the policy intends to accomplish.

Definitions

- Clear, well-crafted definitions help avoid unintended consequences and loopholes when it comes time to enforce the policy.
- Key terms should be carefully defined to avoid confusion (and deliberate misinterpretation!)
- Strong definitions include existing and future products or business models.

Main policy provisions

- This section establishes the prohibitions and requirements of the policy.
 - Consider whether the prohibitions and requirements are reasonable.
 - Make sure they fit the purpose of the policy.
 - Check that they identify who must follow the policy.
- If necessary, this section could identify any exceptions or exemptions. Consider legal and practical challenges to exceptions or exemptions, such as an argument that an exemption is unfair or is preferential treatment.

Enforcement

- This section identifies the parties responsible for enforcement, as well as the enforcement procedures, and the penalties or fines.
- If an existing appeal process does not already exist, this section could create or identify an appeal process.

Implementation

- This section identifies the effective date and could identify steps that will be taken to educate people about the policy.

Overall clarity

- In strong policies, terms are used consistently within the policy.
- A well-written policy “fits” within the existing framework of policies or laws. This includes avoiding conflict with existing terms, procedures, penalties, or the general structure of related policies or laws.
- A successful policy is written so the people who are required to follow it can understand it (that is, it’s not just written for the lawyers!).
- Use of active voice can help clarify who is responsible for following a rule. (Compare: “ID’s shall be verified” to “tobacco retailers are required to verify ID’s.”)