



Federal Law/Regulation Summary

DISCLAIMER: This information summary is provided as a service of The We Card Program, Inc., but is not intended to provide legal advice or analysis. These summaries are not intended to be complete representations of federal law or FDA guidance, which change from time to time and may contain additional rules and restrictions relating to tobacco products not mentioned in this summary. Retailers should not rely on these summaries as complete or accurate descriptions of applicable federal law or guidance.

Minimum Age

- Only sell cigarettes, cigarette tobacco, roll-your-own tobacco or smokeless tobacco to anyone age 18 or older. *

* Retailers must also follow state or local tobacco laws, even if they are more restrictive. For example, in some states the minimum age is 19 -- AL, AK, NJ & UT.

We Card suggests that retailers contact their local authority for information on local minimum age requirements that exceed federal or local requirements.

FDA Requirement: Under age 27 -- Minimum Age to Ask for Proof of Age Identification

- Check photo ID of everyone appearing under age 27 who attempts to purchase cigarettes, cigarette tobacco, roll-your-own tobacco or smokeless tobacco and verify the customer is of legal age to purchase.
- Decline a sale when the customer has no photo ID, the photo ID contains no date of birth or the photo ID has expired.

Restricted Products

- FDA regulations apply to some, but not all, tobacco products.
- Cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco products are prohibited from being sold to anyone younger than age 18 (See Minimum Age section).

See definition of Cigarette, Cigarette Tobacco and Smokeless Tobacco.
(For Definitions, Go to Resources section at Upper Right of screen)

- Do NOT break open cigarette or smokeless tobacco packages to sell products in smaller amounts.
- Do NOT sell single cigarettes, also called “loosies.”
- Do NOT sell cigarette packages containing fewer than 20 cigarettes.
- Do NOT give away free samples of cigarettes.
- Do NOT give away free samples of smokeless tobacco except from a “qualified adult-only facility.”

See the definition of Qualified Adult-Only Facility.
(For Definitions, Go to Resources section at Upper Right of screen)

- Do NOT sell flavored cigarettes or flavored cigarette tobacco (other than menthol).
- Remove vending machines and self-service displays UNLESS you operate a “Qualified Adult-Only Facility.”

See the definition of Qualified Adult-Only Facility.

See the definition of Self-Service Display.

(For Definitions, Go to Resources section at Upper Right of screen)

- Only sell cigarettes, cigarette tobacco, roll-your-own tobacco or smokeless tobacco in a direct, face-to-face exchange. **

** Prohibits the sale of cigarettes, cigarette tobacco, roll-your-own tobacco or smokeless tobacco in vending machines, self-service displays, or other impersonal modes of sales, except in very limited situations.

See the definition of Direct, Face-to-Face Exchange

See the definition of Self-Service Display

(For Definitions, Go to Resources section at Upper Right of screen)

Exception: The sale of cigarettes, cigarette tobacco, roll-your-own tobacco or smokeless tobacco through vending machines and self-service displays are allowed in qualified adult-only facilities where no person younger than 18 is permitted to enter.

See the definition of Qualified Adult-Only Facility

(For Definitions, Go to Resources section at Upper Right of screen)

Important: Some state laws prohibit tobacco product vending machines. Check your state law.

Acceptable Forms of Identification

Unless otherwise required by state or local law, FDA recommends that retailers accept only government-issued photographic identification with the bearer’s date of birth. (e.g., State-issued driver’s license or identification card, military identification card, passport or immigration card) for establishing a legal age to purchase cigarettes and smokeless tobacco products. The Photo ID is not acceptable if it has expired.

Fine/Penalty Schedule for Selling to Minors

FDA has a variety of enforcement tools to address retailers who violate Federal statutes or regulations, including civil money penalties, warning letters, seizures, injunctions, no-sale orders and/or criminal prosecution. Retailers who violate the regulations may also be in violation of state law and subject to state penalties or other related orders.

FDA FINES & PENALTIES		
# of Violations	Fine	Fine*
1st	\$250	Warning Letter
2nd in 12 months	\$500	\$250
3rd in 24 months	\$1,000	\$500
4th in 24 months	\$2,000	
5th in 36 months	\$5,000	
6th or more	\$11,000	
Repeated	No Sale Order	
*Reduced fine with FDA “approved” training program.		

Affirmative Defense

Federal law provides that the FDA shall adopt regulations that may provide any retailer that implements the “approved training program,” a reduced civil money penalty if that retailer is found in violation. The FDA does not require such, but it recommends retailers train and educate their employees.

Until the FDA issues guidance or regulations on what constitutes an FDA “approved training program,” the FDA indicates “the agency intends to use a lower maximum civil money penalties schedule for all retailers who violate the regulations restricting the sale and distribution of cigarettes and smokeless tobacco products, whether or not they have implemented a training program. However, FDA may consider further reducing the civil money penalty for retailers who have implemented a training program.”

Minor Possession

Not applicable under Federal law (however, see the We Card State Law Summary for state level law)

Sign Requirement

Not applicable under Federal law (however, see the We Card State Law Summary for state level law)

Compliance Checks

FDA conducts compliance checks of retail stores to determine whether retailers are complying with the new federal law, using:

- Attempted purchases of tobacco using underage customers.
- Inspections of stores for other compliance requirements.
- Inspections of stores in response to public complaints to the FDA’s request for the general public to report suspected store violations (1-877-CTP-1373 or AskCTP@fda.hhs.gov)

The FDA indicates that it will conduct follow-up compliance checks on stores found in violation.

Visual Characteristics of a State-Issued License

Not applicable under Federal law (however, see the We Card State Law Summary for state level law)

Other

Advertising, Labeling, and Promotion Requirements

- Prohibits the sale of cigarettes and smokeless tobacco in vending machines, self-service displays, or other impersonal modes of sales, except in very limited situations.

See the definition of Self-Service Displays

(For Definitions, Go to Resources section at Upper Right of screen)

Exception: The sale of cigarettes, cigarette tobacco, and smokeless tobacco through vending machines and self-service displays are allowed in qualified adult-only facilities where no person younger than 18 is permitted to enter.

See the definition of Qualified Adult-Only Facility

(For Definitions, Go to Resources section at Upper Right of screen)

Important: Some state laws prohibit tobacco product vending machines. Check your state law.

- Prohibits the sponsorship of any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name, logo, symbol, motto, selling message, recognizable

color or pattern of colors, or any other indicia of product identification similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

- Prohibits the sale or distribution of items, such as hats and tee shirts, with cigarette and smokeless tobacco brands or logos.
- Requires that audio ads use only words with no music or sound effects.
- Some forms of advertising require FDA notification

Retailers may advertise for FDA tobacco regulated products in their stores and in other “permissible forms” of advertising (*shown in green box*) with no requirement to notify the FDA.

Other forms of advertising REQUIRE retailers to notify the FDA 30-days in advance (*shown in yellow box*).

