



# 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.

as of February 27, 2020

## Minimum Age

**Deny sales to anyone under 21 years old** for FDA regulated products (SEE Restricted Products section).

Note: The new federal 21 year minimum-age for FDA regulated products of all tobacco and vaping products (SEE Restricted Products section) was declared immediately effective on December 20, 2019. This law allows for no exceptions.

You must **Check photo ID of everyone appearing under age 30** who attempts to purchase FDA regulated products and verify the customer is of legal age to purchase. This is an each-and-every time requirement (even if you know the person to be of legal age.) If you “carded” them yesterday, you must “card” them again today!

**Decline a sale** when the customer is underage, has no photo ID, the photo ID contains no date-of-birth or the photo ID has expired.

## Restricted Products

FDA regulations apply to these tobacco products:

- Cigarettes, cigarette tobacco and roll-your-own tobacco
  - Do NOT break open cigarette 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 sell flavored cigarettes, cigarette tobacco or roll-your-own tobacco (other than menthol or tobacco)
  - Only sell in a direct face-to-face exchange\*.
- Smokeless tobacco
  - Do NOT break open packages to sell products in smaller amounts.
  - Only sell in a direct face-to-face exchange\*.
  - Do NOT sell without a health warning label.
- Cigars
- Hookah & Pipe tobacco
- Dissolvable tobacco products
- Electronic Nicotine Delivery System (ENDS), which are products such as:

- e-cigarettes
  - e-hookah
  - ecigars
  - vape pens
  - advanced refillable personal vaporizers
  - electronic pipes
  - Components and Parts, such as:
    - e-liquids\*\*
    - atomizers
    - batteries (with or without variable voltage)
    - cartomizers (atomizer plus replaceable fluid-filled cartridge)
    - digital display/lights to adjust settings
    - clearomisers
    - tank systems
    - flavors
    - vials that contain e-liquids
    - programmable software
- **Do NOT give away free samples** of any of these FDA regulated products or components and parts. **EXCEPTION:** Free samples of smokeless tobacco in limited are only allowed in a “qualified adult-only facility” -- where no person younger than 21 is permitted to enter or be present (or a higher minimum-age if your state or locality has a higher age limit.)
  - **Do NOT sell in vending machines** UNLESS you operate a “qualified adult-only facility” -- where no person younger than 21 is permitted to enter or be present (or a higher minimum-age if your state or locality has a higher age limit.) Important: Some state laws prohibit tobacco product vending machines. Check your state law.

Excluded from FDA regulation are accessories, such as: ashtrays, spittoons, hookah tongs, cigar clips and stands, pipe pouches, humidors.

\*The sale of cigarettes, cigarette tobacco and smokeless tobacco through vending machines and self-service displays are allowed in adult-only facilities where no person younger than 21 is permitted to enter or be present (or a higher minimum-age if your state or locality has a higher age limit.)

\*\* Retail establishments, such as vape shops, that mix and/or prepare e-liquids or assemble vaporizers are considered “tobacco product manufacturers.” Many separate regulations will apply. See FDA regulations for tobacco product manufacturers at [www.fda.gov](http://www.fda.gov).

## 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 FDA regulated 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
1st	Warning Letter
2 within 12 months	\$297
3 within 24 months	\$594
4 within 24 months	\$2,381
5 within 36 months	\$5,952
6 within 48 months	\$11,904
5 or more within 36 months	No Sale Order

as of 1-17-20

## 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 training, 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

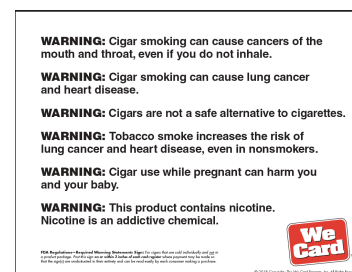
Not applicable under Federal law

## Sign Requirement

**Effective 8/10/18:** For retailers who sell cigars individually without packaging, there is a sign requirement. [Download We Card's Sign](#)

**ALERT:** A U.S. District court has overturned this FDA regulation in February 2020. However, there are expectations this regulation will be revisited and may be reinstated after ongoing adjustments or legal matters before the courts.

Therefore, retailers need to be prepared for this requirement if it is required once the legal matters are resolved by the court.



**Cigars Sold Individually without Packaging** – Retailers who sell cigars individually, and not in a product package must post a sign at each point-of-sale that displays all six of the required warning statements per 21 CFR § 1143.5(a)(3). Each sign must be at least

8.5x11 inches in size; clear, legible, and conspicuous; printed in black Helvetica bold or Arial bold type or other similar sans serif fonts against a solid white background, in at least 17-point font size with appropriate spacing between the warning statements; posted on or within 3 inches of each cash register where payment may be made; and unobstructed in its entirety and read easily by each consumer making a purchase. The required warning statements on the sign must be: printed in a manner that contrasts, by typography, layout, or color, with all other printed material; and capitalized and punctuated as indicated above.

## **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](mailto: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

## **Other**

See additional information and requirements on advertising, labeling and promotion requirements at:

<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm205021.htm>