TIPS FOR RETAILERS: PREVENTING SALES TO MINORS

Presented by: Office of Compliance and Enforcement

June 2018

Disclaimer: This is not a formal dissemination of information by FDA and does not represent Agency position or policy.
OVERVIEW

- Retailer Training Programs
- Available FDA Training Materials
- Age Verification Techniques
- Conducting Internal Compliance Checks
- Hiring and Management Practices
- Other Training Materials
Each day in the United States:

- 2,300 youth under 18 years of age smoke their first cigarette\(^1\)
- 400 youth under 18 years of age become daily cigarette smokers\(^1\)

Nationwide:

- 1.13 million high school students currently use cigars, cigarillos, or little cigars\(^2\)
- 1.68 million high school students currently use electronic cigarettes\(^2\)

Retailers are any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.\(^3\)


The FDA does not endorse any specific third-party POS (Point of Sale) systems, age-verification systems, or training programs.
For a more comprehensive overview of developing a training program for employees who make tobacco sales, you may also review:

Guidance for Industry: Tobacco Retailer Training Programs found on CTP’s Guidance webpage.

CTP’s September 5, 2013 “Tobacco Retailer Training Programs” webinar by searching “Tobacco Compliance Webinars” on the FDA’s website search bar.

- For quick access to this information, after accessing the “Tobacco Retailer Training Programs” webinar, start viewing it at approximately 8 minutes and 30 seconds.
Launched nationally November 2017
Full toolkit of free resources to help retailers better comply with federal tobacco regulations:

• Posters
• Regulation flyers
• Register signage
• Register stickers
• Age verification calendars
• Instruction booklet

The new This Is Our Watch materials are available for order or download free via the CTP Exchange Lab (https://digitalmedia.hhs.gov/tobacco/).
“THIS IS OUR WATCH”

WE I.D. TOBACCO PURCHASES

THANK YOU FOR HAVING YOUR I.D. READY

PROVIDED BY THE FDA CENTER FOR TOBACCO PRODUCTS

IT’S UP TO US TO PROTECT OUR COMMUNITY FROM UNDERRAGE TOBACCO USE.
• Check photo ID of everyone under age 27 who attempts to purchase any tobacco product.
• Only sell tobacco products to customers age 18 or older.*
• Never sell tobacco products in a vending machine unless in an adult-only facility.**
• Never give away free samples of tobacco products, including any of their components or parts.

*Federal law requires customers to be 18 or older to purchase tobacco products. Retailers must follow state or local tobacco laws, even if they are more restrictive. For example, in some states the minimum age is 19.
**We offer a variety of forms of tobacco in our vending machines. If you need assistance with the machine, feel free to ask a worker or call for assistance. Please note that we cannot assist you with the machine on the floor or from a distance.

IT’S UP TO US TO KEEP MINORS SAFE.
CHECK I.D.

Customers must show valid photo I.D. and be old enough to purchase any tobacco product.*

PHOTO Ensure it’s really the customer.
BIRTH DATE Must be old enough to purchase any tobacco product.*
LICENSE EXPIRATION License should not be expired.
SECURITY FEATURES Run the magnetic strip or barcode with a scanner if available.

PROVIDED BY THE FDA CENTER FOR TOBACCO PRODUCTS
AGE VERIFICATION

Photo IDs:

• Acceptable or unacceptable forms of photographic identification

• How to verify the authenticity of photographic identification

• Ways to determine whether photographic identification has been altered

• Importance of closely examining photographic identification
EXAMPLES OF ACCEPTABLE FORMS OF PHOTO ID

- Driver's license or other state photo identity card issued by Department of Motor Vehicles (or equivalent)
- Federally recognized tribal-issued photo ID
- Foreign government-issued passport
- Canadian provincial driver's license or Indian and Northern Affairs Canada card
- U.S. Citizenship and Immigration Services Employment Authorization Card (I-766)
Ways to identify invalid IDs:

- Spelling errors
- Word usage errors
  - Ex: Weight: Brown; Height: 162; Eye color: 5’05”; etc.
- Card is expired
- Various Point of Sale (POS) systems have software that can confirm document authenticity

Even if the ID is valid, the customer may still be underage, so be sure to check the date of birth.
### SPECIFIC AGE VERIFYING TECHNOLOGY

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stand-Alone Age Calculator Systems</td>
<td></td>
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<tr>
<td>Point-of-Sale Systems that Prompt Clerk to Check ID</td>
<td></td>
</tr>
<tr>
<td>Point-of-Sale Systems that Prompt Clerk to Enter Date of Birth (DOB)</td>
<td></td>
</tr>
<tr>
<td>Point-of-Sale Systems that Require Scan of ID</td>
<td></td>
</tr>
</tbody>
</table>
STAND-ALONE AGE CALCULATOR SYSTEMS

Advantages
Great tool for calculating age to confidently be able to complete or deny a sale
Can continue to use current POS system in conjunction with age calculator

Things to Consider
Does not automatically stop the sale to the minor at the POS
Only helpful if clerks utilize the calculator and deny the sale if the customer is under 18, (or, in some cities, counties, and states, 19, 20, or 21)
Advantages
Reminds clerk to check ID

Things to Consider
Does not automatically stop the sale to the minor at the POS

Clerk has to calculate age manually based on customer’s ID and deny the sale if the customer is under 18, (or, in some cities, counties, and states, 19, 20, or 21)
POS SYSTEMS THAT PROMPT CLERK TO ENTER DATE OF BIRTH (DOB)

**Advantages**
Requires clerk to enter a date of birth

Performs age calculation and prevents transaction from proceeding if under age

**Things to Consider**
Clerk can enter any DOB

Clerk may enter incorrect DOB to complete sale

Override codes may exist
POS SYSTEMS THAT REQUIRE SCAN OF ID

**Advantages**

Requires clerk to check ID

Performs age calculation and prevents sale if under age

Requires a valid ID to complete sale

**Things to Consider**

Customers may not be in possession of scan-ready ID cards

May not work with out-of-state or other types of IDs

Override codes may exist
## AGE-VERIFICATION TECHNOLOGIES

<table>
<thead>
<tr>
<th>Age Verification</th>
<th>Advantages</th>
<th>Things to Consider</th>
</tr>
</thead>
</table>
| Stand-Alone Age Calculator Systems (e.g., FDA age calculator app) | Great if you need help calculating age to complete or deny a sale | App does not prevent sale  
Only helpful if clerk uses it and denies sale based on the info |
| Point-of-Sale Systems that Prompt Clerk to Check ID | Prompts clerk to verify customer’s age | Does not prevent sale  
Clerk may miscalculate age  
Clerk can continue sale without verifying age |
| Point-of-Sale Systems that Prompt Clerk to Enter Date of Birth (DOB) | Reminds clerk to check ID  
Performs the age calculation and prevents sale if under age | Clerk can enter any DOB they want  
May enter false DOB to complete sale.  
May have override codes |
| Point-of-Sale Systems that Require Scan of ID | Reminds clerk to check ID  
Performs the age calculation and prevents sale if under age  
Requires a valid ID to complete sale | May not work with passports or other forms of ID  
Override codes may exist |
Takeaways

Each system has advantages and things to consider; however, the retailer needs to determine which is best for their business.

May need to implement other controls, such as internal compliance checks.
Routine checks of employee compliance helps ensure the law and your policies are being followed.

Examples:

• Hire a “secret shopper” or “mystery shopper”, through a third-party contractor, where permitted
• Unannounced written tests
• Review security footage
• Review point of sale reports to determine compliance rate
• Combination of several techniques
Compliance checks should be conducted routinely

Consider conducting reviews, checks, or sending in mystery shoppers:

- at varying hours of operation
  - during busy times
  - during slow times
- for all employees
  - at times when experienced employees are working
  - at times when new employees are working

Checks should be unannounced, but employees should be aware that their compliance will be reviewed
HIRING AND MANAGEMENT PRACTICES

Hiring Practices¹:

• Consider requiring employees who sell tobacco products to be at least 18 years of age

Potential Management Practices:

• Take employee performance on compliance checks into account
• Include store’s compliance rate in retailer manager’s performance reviews, if permitted by law
• Require manager’s override for any discrepancies involving sales of tobacco products

¹ DiFranza, J.R., and Coleman, M., “Sources of tobacco for youths in communities with vigorous enforcement of tobacco sales laws,” Tobacco Control, 10; 323-328, 2001. (finding that employees under the age of 18 are more likely to sell tobacco to minors than are older clerks)
Many states have online trainings and resources to help retailers comply with state and federal laws.

- Alabama
- Maryland
- Massachusetts
- Missouri
- New York
REVIEW

FDA Resources

Age Verification

Internal Compliance Checks

Hiring and Management Practices

Other Training Materials
<table>
<thead>
<tr>
<th>Cigarettes (including cigarette tobacco and roll your own)</th>
<th>Smokeless Tobacco</th>
<th>Covered Tobacco Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only sell to anyone age <strong>18 or older</strong></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Check the photo ID with date of birth of anyone under age 27</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Do NOT sell using self-service displays (except in facilities where the retailer ensures no person younger than 18 is permitted to enter)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Do NOT sell using devices such as vending machines (except in facilities where the retailer ensures no person younger than 18 is permitted to enter)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Do NOT give away free samples</td>
<td>X</td>
<td>(except from qualified adult-only facility)</td>
</tr>
<tr>
<td>Do NOT break open cigarette or smokeless tobacco packages to sell products in smaller amounts such as single cigarettes (also called “loosies”)</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Do NOT sell cigarette packages containing fewer than 20 cigarettes</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Do NOT sell flavored cigarettes</td>
<td>X</td>
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Additional information on Retailer Training and Enforcement can be found at the FDA Center for Tobacco Products website at: https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm249332.htm

Please direct any additional questions to: AskCTP@fda.hhs.gov