

TIPS FOR RETAILERS: PREVENTING SALES TO PERSONS UNDER 21 YEARS OF AGE

Presented by: Office of Compliance and Enforcement

CENTER FOR TOBACCO PRODUCTS

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

AGENDA

- Tobacco-21(T-21) Update
- 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

- 1,500 kids smoke their first cigarette¹
- 200 kids become daily cigarette smokers¹

Rates of youth use of e-cigarettes remain an ongoing concern

- 2 Million U.S. middle and high school students reported currently using e-cigarettes in 2021, with more than 8 in 10 using flavored e-cigarettes²
- About 2 in 5 high school students who use e-cigarettes reported frequent use; about 1 in 4 reported daily use²
- Among current youth users, disposables are the most commonly used type of e-cigarette device²

Retailers can help FDA keep harmful tobacco products out of the hands of our youth

1. Substance Abuse and Mental Health Services Administration. (2020). Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>.
2. Centers for Disease Control and Prevention. Tobacco Product Use and Associated Factors Among Middle and High School Students – National Youth Tobacco Survey, United States, 2021. MMWR Surveill Summ 2022;71(No. SS-5):1–29. DOI: <http://dx.doi.org/10.15585/mmwr.ss7105a1>

RAISING THE FEDERAL MINIMUM AGE OF SALE (TOBACCO-21/T-21)



On December 20, 2019, the Federal Food, Drug, & Cosmetic Act (FD&C Act) was amended to raise the minimum age of sale of tobacco products from 18 to 21 years of age. (Tobacco-21/T-21)

- It is illegal to sell tobacco products such as: cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and covered tobacco products to anyone under the age of 21.
 - Examples of covered tobacco products: hookah tobacco, cigars, pipe tobacco, e-cigarettes, and other electronic nicotine delivery systems (ENDS)
- There are NO exemptions from this requirement.

In order to comply with federal regulations, retailers that operate brick and mortar retail stores must:

- Only sell cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and covered tobacco products to individuals 21 years of age or older.
- Check photo IDs of any tobacco customer under the age of 27.
- Retailers must continue to comply with all other applicable requirements under the FD&C Act and FDA's tobacco product regulations.

UPDATE TO FEDERAL LAW FOR TOBACCO PRODUCTS CONTAINING NICOTINE NOT DERIVED FROM TOBACCO



- On March 15, 2022, the President signed legislation to amend the FD&C Act to extend FDA’s jurisdiction to products “containing nicotine from any source,” not just nicotine derived from tobacco.
- Specifically, this legislation expanded the definition of “tobacco product” to include products containing nicotine from any source.
- As of April 14, 2022, retailers of tobacco products containing nicotine not made or derived from tobacco must ensure compliance with applicable requirements under the FD&C Act resulting from this law. As such, it is illegal for a retailer to sell any tobacco product containing nicotine from any source – including cigarettes, smokeless tobacco, cigars, and e-cigarettes – to anyone under 21.
- After July 13, 2022, a non-tobacco nicotine product can only be legally marketed in the United States if it has received a marketing granted order (MGO) from FDA.
- This means that it is illegal for a retailer or distributor to sell or distribute a non-tobacco nicotine product that is not subject to a MGO from FDA. Without this MGO, a product is in violation of the law and its manufacturer, retailer, or distributor risks FDA enforcement.
- Visit FDA’s website to learn more about the agency’s regulations and guidance on selling tobacco products in retail stores at: <https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products>.

DISCLAIMER



- The FDA does not endorse any specific third-party POS (Point-of-Sale) systems, age-verification systems, or training programs.
- The FDA does not charge for educational or training materials.

- For a comprehensive overview of developing a training program for employees who make tobacco sales, please view:
- The “Tobacco Retailer Training Programs” webinar at <https://www.youtube.com/watch?v=s9ci-tHS0sU>
 - Guidance Document: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/tobacco-retailer-training-programs>

“THIS IS OUR WATCH”

- “This is Our Watch,” the Center for Tobacco Products’ (CTP) retailer education program, helps tobacco retailers better understand FDA tobacco regulations, the importance of compliance, and the greater purpose – protecting the nation's youth from the harms of tobacco use.
- Materials are free and available for order or download via the CTP Tobacco Education Resource Library <https://digitalmedia.hhs.gov/tobacco/>
- The materials include:
 - Posters
 - Flyers
 - Register signage
 - Register stickers
 - Age verification calendars

“THIS IS OUR WATCH”



- Considerations when looking at 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 identification card issued by Department of Motor Vehicles (or equivalent)
- Federally recognized tribal-issued photo ID
- U.S. or 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 ID'S

- Spelling errors
- Word usage errors
 - *Ex: Weight: Brown; Height: 162; Eye color: 5'05"; etc.*
- Card is expired
- Some 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

- Stand-Alone Age Calculator Systems
- Digital Age Verification Calendar
- Point-of-Sale Systems that Prompt Clerk to Check ID
- Point-of-Sale Systems that Prompt Clerk to Enter Date of Birth (DOB)
- Point-of-Sale Systems that Require Scan of ID

FDA AGE CALCULATOR



Age: 30 years



THIS IS OUR WATCH: DIGITAL AGE VERIFICATION CALENDAR

- CTP provides the digital age verification calendar as part of the "This is Our Watch" retailer education program.
- Retailers who use CTP's "This is Our Watch" digital age verification calendar need to update the minimum purchase age on the calendar to 21 years.
- Retailers who would like a "This Is Our Watch" digital age verification calendar may order one free of charge from the CTP Tobacco Education Resource Library website: https://digitalmedia.hhs.gov/tobacco/print_materials/RE-26
 - Operating instructions may be found at <https://www.youtube.com/watch?v=m097Qh8x00s>



STAND-ALONE AGE CALCULATOR SYSTEMS

FDA-developed Age Calculator App, FDA's "This is Our Watch" digital age verification calendar:

- **Advantages**
 - Great tool for calculating age to be able to complete or deny a sale
 - Current POS system can be used in conjunction with age calculator
- **Things to Consider**
 - Does not automatically stop the sale to the underage individual at the POS
 - Only helpful if clerks utilize the calculator **and** deny the sale to individuals under the age of 21

- **Advantages**
 - Reminds clerk to check ID
- **Things to Consider**
 - Does not automatically stop the sale to the underage individual at the POS
 - Clerk must calculate age manually based on customer's ID and deny the sale to individuals under the age of 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 purchaser is underage

- **Things to Consider**

- Clerk may enter incorrect DOB to complete sale
- Override codes may exist

- **Advantages**

- Requires clerk to check ID
- Performs age calculation and prevents sale if underage
- 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



Age Verification	Advantages	Things to Consider
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 underage	May enter incorrect 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 underage Requires a valid ID to complete sale	May not work with passports or other forms of ID Override codes may exist

- Each system has advantages and things to consider; however, the retailer needs to determine which system is best for their business
- May need to implement other controls, such as internal compliance checks

Routine compliance checks help ensure employees are following the law and store policies.

- 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 CHECK FREQUENCY

- FDA recommends that compliance checks should be unannounced, but conducted routinely
- Consider conducting compliance checks at varying hours of operation (for example during busy or slow times)
- FDA recommends employees be made aware that their compliance will be reviewed. Consider conducting compliance checks for employees with various levels of experience:
 - at times when experienced employees are working
 - at times when new employees are working

- Hiring Practices:
 - Consider requiring employees who sell tobacco products to be at least 21 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

- Many states have online trainings and resources to help retailers comply with state and federal laws.
 - Examples include:
 - Alabama
 - Maryland
 - Massachusetts
 - Missouri
 - New York

- FDA Resources
- Age Verification
- Internal Compliance Checks
- Hiring and Management Practices
- Other Training Materials

- The “Tobacco Retailer Training Programs” webinar at <https://www.youtube.com/watch?v=s9ci-tHS0sU>
- Additional information on Retailer Training and Enforcement can be found at the FDA Center for Tobacco Products website:
 - <https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Retail/ucm249332.htm>
- Please direct questions to: AskCTP@fda.hhs.gov or call us at 1-877-CTP-1373