



# **Compliance Training for Tobacco Retailers**

**Impersonal Modes of Sale;  
Prohibition Against Breakage of Packages  
of Cigarettes and Smokeless Tobacco;  
Minimum Cigarette Package Size;  
Free Samples**

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# Sale and Distribution Requirements

- The regulations state:
- Except as otherwise provided, a retailer must sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays. 21 CFR 1140.16(c).
- CTP draft guidance – Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents advises:
  - Retailers must sell tobacco products without the aid of any electronic or mechanical device.
  - Face to Face = hand to hand
  - Retailers should see the customer with their own eyes and physically give the tobacco product to him or her.\*

# Impersonal Modes of Sale of Tobacco Products



- Impersonal Modes of Sale are addressed at 21 CFR 1140.16 – Vending machines, self-service displays, mail-order sales, and other “impersonal” modes of sale.

# Exception

- Exception: The face-to-face exchange requirement does not apply if the retailer is using a vending machine or self-service display in a facility where no one younger than 18 years of age is present or permitted to enter at any time.



*Draft Guidance for Industry: Compliance with Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents*

# Requirements for Facilities with Vending Machines or Self Service Displays

- The regulations do not specify how facilities are to be restricted to exclude people under the age of 18 from a facility where there are vending machines or self service displays.
- It is the retailer's responsibility to establish a procedure for ensuring compliance with the regulations.
- Retailers may choose to check identification of all customers at the entrance of their establishment to confirm that a customer is over the age of 18. If the customer is under the age of 18, he or she should not be permitted to enter the facility.
- In order to qualify for the exception, no one under the age of 18 can be present or permitted in the establishment. This requirement applies at *all* times.

# Requirements for Facilities with Vending Machines or Self Service Displays

- Some facilities, such as clubs or recreation halls, might be “off limits” to people younger than 18 years of age most of the time, but if they are occasionally rented for parties or other social events where people younger than 18 years of age may be present, they do not qualify for the exception.
- If the facility has a vending machine or self-service display for cigarettes or smokeless tobacco, no one younger than 18 years of age can be present or be permitted in the facility at any time, even on special occasions.

# Unacceptable Example of a Facility With a Vending Machine or Self-Service Display

- The regulation applies at all times in all areas of the establishment.

## Scenario:

- A retailer owns a restaurant and bar that are connected to one another.
- A vending machine selling cigarettes is located in the bar.
- Persons under the age of 18 are allowed to dine in the restaurant, but can pass through the bar for access to the rest rooms.
- The vending machines violates the regulations.

The exception to the regulation is strictly interpreted. To qualify for an exception, the facility cannot allow people under the age of 18 at all times.

# Acceptable Examples of Facilities with Self Service Displays or Vending Machines

## Scenario:

- A retailer own a factory and there are 10 buildings on the factory grounds.
- She only want to put a cigarette vending machine in one building.
- It would not be reasonable to require her to prohibit people under 18 from entering all 10 buildings.
- The retailer would only be expected to keep people younger than 18 from being present in or entering the building that contains the vending machine.

# Acceptable Examples of Facilities with Self Service Displays or Vending Machines

## Scenario:

- A retailer rents a store on the ground floor of a public building, and the main entrance of the building is separate from the entrance to the store.
- The retailer would only need to prohibit people under 18 from entering or being present in his or her store to qualify for the exception.
- The retailer would not have to try to keep people under the age of 18 from entering the rest of the building.

# Retailer Responsibilities for Vending Machines

- If a retailer has a vending machine in their facility, they are responsible for ensuring that no one younger than 18 years of age is present or permitted to enter at any time, whether the retailer owns or leases the vending machine, or otherwise operates the facility.
- In cases where someone other than the retailer owns the vending machine, the retailer is still responsible.
- The person who owns a facility might not be the same person who owns a vending machine in the facility. But, as the person who owns or operates the facility, the retailer is still responsible.
- The retailer does not have to own the vending machine in order to be held responsible.

# Self-Service Displays

- Any item that permits a consumer to directly access and remove a cigarette or smokeless tobacco product without the retailer's direct assistance.
- Also may be referred to as "merchandisers." They come in many different shapes and sizes, ranging from free-standing, multi-shelf kiosks to small display stands that are placed next to a cash register.
- Regardless of the type or size, a self-service display is not permitted in any retail establishment, for example, a pharmacy, convenience store, grocery store, gas station, restaurant, or any other place, unless the establishment prevents anyone younger than 18 years of age to enter or be present at any time.

# Operating a Facility that Contains a Self Service Display or Vending Machine

Unless the facility is one where children under 18 are neither present or permitted at any time:

- a retailers must remove self-service displays and vending machines, or move them to a place where customers cannot access them.
- a retailer cannot simply move a self-service display or vending machine to an area where they can “supervise it”.
- supervising a display or vending machine, using electronic locks, remote operating mechanisms, or taking other actions that may permit customers direct access to cigarettes or smokeless tobacco products is not permitted.

# Operating a Facility that Contains a Self Service Display or Vending Machine

- The retailer must hand the tobacco product to the customer in a direct, face-to-face exchange, unless the facility ensures that no person younger than 18 is present or permitted to enter at any time.
- If persons younger than 18 are present or permitted to enter the facility at any time:
  - A small countertop self-service display next to the cash register is in violation – It does not matter whether the retailer can see the customer choose the cigarettes, or whether they have to “ask permission” to buy them
  - The retailer can bring the self-service display into compliance by moving it to an area where customers cannot directly access the cigarettes – it is no longer a “self-service” display.
  - The retailer can remove the self-service display.

# Minimum Cigarette Package Size

- No retailer may sell/distribute a cigarette package that contains less than 20 cigarettes (minimum cigarette package size) 21 CFR 1140.16(b).
- “kiddie packs”

# Breakage of Cigarette Packages

- No retailer may break/open any cigarette package to sell/distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size. 21 CFR 1140.14(d).
- “Loosies” are prohibited
  - Exception: Vending machines located in facilities where children under 18 are neither present or permitted at any time may sell packaged single cigarettes

# Breaking Open Packages of Smokeless Tobacco

- No retailer may break/open any smokeless tobacco package to sell/distribute smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use  
21 CFR 1140.14(d).

# Free Samples

- Distribution of free samples of cigarettes is prohibited
- Note: Distribution of free samples of smokeless tobacco in “qualified adult only facilities” that meet narrowly defined specific requirements are covered in 1140.16(d)(2)(iv)