

Tobacco Merchant Info

Questions and Answers about the new FDA Regulations

What are some of the regulations that go into effect on June 22, 2010?

The full text of the requirements may be found in 21 CFR Part 1140, which was published in the Federal Register on March 19, 2010.

Age and ID (21 CFR 1140.14, Additional Responsibilities of retailers)

1.
 1. Cigarettes and smokeless tobacco may not be sold to anyone younger than 18 years of age;
 2. Retailers must examine a photographic identification bearing the person's birth date to verify that any person purchasing cigarettes or smokeless tobacco is at least 18 years old. Verification is not required for purchasers who are over the age of 26.

Packaged or Unpackaged Cigarettes or Smokeless Tobacco (21 CFR 1140.14, Additional Responsibilities of retailers)

1.
 1. Retailers may not sell single cigarettes or packages containing fewer than 20 cigarettes, except in vending machines located in facilities where the retailer ensures that no person younger than 18 years of age is permitted to enter at any time;
 2. Retailers may not sell unpackaged smokeless tobacco or packages of smokeless tobacco that are smaller than packages distributed by the manufacturer for individual use;
 3. Cigarettes and smokeless tobacco may not be sold through vending machines or self-service displays, except in facilities where persons under the age of 18 are prohibited from entering.

Free Samples, Rebates, or Redemption of Coupons by Mail or Retailer for Cigarettes or Smokeless Tobacco (21 CFR 1140.16 Conditions of manufacture, sale, and distribution)

1.
 1. Distribution of free samples of cigarettes is prohibited;
 2. Free samples of smokeless tobacco products may be distributed only in qualified adult-only facilities and no more than 1 package or 0.53 ounces (15 grams) may be distributed to an individual adult consumer per day; however, if the smokeless package contains individual portions, it may contain no more than 8 individual portions and the collective weight of the individual portions may not exceed 0.53 ounces (15 grams);
 3. Free samples of smokeless tobacco may not be distributed to a sports team or entertainment group, or at any football, basketball, soccer, or hockey event;
 4. Mail-order redemption of coupons is prohibited and free samples of cigarettes or smokeless tobacco may not be distributed through the mail;
 5. Manufacturers may not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product unless the trade or brand name was on both the tobacco product and a nontobacco product sold in the United States on January 1, 1995.

Advertising and Labeling (21 CFR 1140.32 Scope of permissible forms of labeling and advertising)

1. Audio advertisements for cigarettes or smokeless tobacco may not include music or sound effects;
2. Video advertisements for cigarettes or smokeless tobacco may not use color, but rather are limited to static black text on a white background;
3. Ads in teen magazines or similar publications may not use color, but rather must use black text on a white background.

Non-Tobacco Gifts or Items (21 CFR 1140.34 Sale and distribution of non-tobacco items and services, gifts, and sponsorship of events)

1. Manufacturers (and distributors of imported products) are prohibited from selling non-tobacco items, like T-shirts and novelty items, bearing a cigarette or smokeless tobacco brand-name, logo, or selling message;
2. No items (other than cigarettes or smokeless tobacco) may be offered in exchange for credits, coupons, or proofs-of-purchase of cigarettes or smokeless tobacco products.

Trade or Brand-Name (Non-Tobacco For Tobacco and Vice Versa) (21 CFR 1140.34 Sale and distribution of non-tobacco items and services, gifts, and sponsorship of events)

1. Non-tobacco products and services may not bear a trade- or brand-name, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification that is identical or similar to those used for any brand of cigarettes or smokeless tobacco;
2. Sponsorship of athletic, musical, artistic, or other social or cultural events in the brand-name, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification of cigarettes or smokeless tobacco is prohibited.

Black Text on White Background (“tombstone” provision) (21 CFR 1140.32 Format and content requirements for labeling and advertising)

Labeling and advertisements for cigarettes or smokeless tobacco may not use color, but rather must use black text on a white background.

The only exceptions to this requirement are advertising:

1. In any facility where vending machines and self- service displays are permitted, provided that the advertising is not visible from outside the facility and that it is affixed to a wall or fixture in the facility; or
2. Appearing in any publication (whether periodic or limited distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication. An adult publication is a newspaper, magazine, periodical, or other publication:
 - (i) Whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and
 - (ii) That is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence

Advertising

- **Are vendor posters and displays placed in a retailer’s window or placed in other locations throughout a retailer’s facility in violation of the law if they are in color or contain imagery?**
Yes, advertising and labeling with imagery and color are prohibited under the regulations.
- **What are the advertising restrictions for “qualified adult-only facilities?”**
Under section 1140.16(d)(2)(C) of the regulations, qualified adult-only facilities are not permitted to display on the exterior of the facility tobacco product advertisements; a tobacco product brand name except for purposes of identifying an area or enclosure as an adult-only facility; or words that imply that the manufacturer, distributor, or retailer has a sponsorship that violates section 1140.34(c).
- **What is the manufacturer’s responsibility concerning point of sale displays, advertising and labeling?**
Under section 1140.12 of the regulations, manufacturers must remove from each point of sale all self-service displays, advertising, labeling, and other items that the manufacturer owns that do not comply with the regulations.
- **What is the retailer’s responsibility concerning point of sale displays, advertising and labeling?**
Under section 1140.14(e) of the regulations, each retailer must ensure that all self-service displays, advertising, labeling, and other items located in its establishment that do not comply with the regulations are removed or are brought into compliance.

Labeling

- **What is labeling?**
The term “labeling” is defined in the Federal Food, Drug, and Cosmetic Act, section 201(m), as all labels and other written, printed, or graphic matters (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.
- **What is a label?**
The term “label” is defined in the Federal Food, Drug, and Cosmetic Act, section 201(k), as a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.