



# GASP

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**Summary:** The 2010 federal Tobacco Control Act **restricts cigarettes and smokeless tobacco retail sales to youth by directing FDA to issue regulations which, among other things:**

- Require proof of age to purchase these tobacco products – the federal minimum age to purchase is 18 – Sec. 102
- **Require face-to-face sales, with certain exemptions for vending machines and self-service displays in adult-only facilities** – Sec. 102
- Ban the sale of packages of fewer than 20 cigarettes – Sec. 102
- Allow certain exemptions in adult-only facilities – Sec. 102

<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm246129.htm>

**Regulation in full:** Sections of the Act that bans self-service displays and vending machine sales of cigarettes and smokeless tobacco are below. Cite to the full regulation:

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Food and Drug Administration 21 CFR Part 1140  
[Docket No. FDA-1995-N-0259] (formerly Docket No. 1995N-0253), RIN 0910-AG33  
Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents  
AGENCY: Food and Drug Administration, HHS; ACTION: Final rule. Published March 19, 2010  
<http://www.gpo.gov/fdsys/pkg/FR-2010-03-19/pdf/2010-6087.pdf>

## II. Overview of the Final Rule (pg 13226)

Consistent with the requirements of section 102 of the Tobacco Control Act, this rule prohibits the sale of cigarettes and smokeless tobacco to any person under age 18 and imposes restrictions on marketing, labeling, and advertising. The rule requires retailers to verify a purchaser's age by photographic identification; prohibits free samples of cigarettes and prohibits free samples of smokeless tobacco, except in qualified adult-only facilities; **prohibits the sale of cigarettes and smokeless tobacco products through vending machines and self-service displays, except in facilities where individuals under the age of 18 are not present or permitted at any time;**

### § 1140.12 Additional responsibilities of manufacturers:

In addition to the other responsibilities under this part, **each manufacturer shall 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 requirements under this part.**

### § 1140.14 Additional responsibilities of retailers:

In addition to the other requirements under this part, each retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco to any person comply with the following requirements:

(a) No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age;

(b)(1) Except as otherwise provided in § 1140.16(c)(2)(i) and in paragraph (b)(2) of this section, each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age; (2) No such verification is required for any person over the age of 26;

(c) Except as otherwise provided in § 1140.16(c)(2)(ii), a retailer may sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine);

(d) No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use; and

**(e) Each retailer shall ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that do not comply with the requirements of this part, are removed or are brought into compliance with the requirements under this part.**

**§ 1140.16 Conditions of manufacture, sale, and distribution:**

**(c) Vending machines, self-service displays, mail-order sales, and other "impersonal" modes of sale.**

(1) Except as otherwise provided under this section, a retailer may sell cigarettes and 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.

(2) Exceptions. The following methods of sale are permitted:

(i) Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

**(ii) Vending machines (including vending machines that sell packaged, single cigarettes) and self-service displays that are located in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.**

**DISCLAIMER:** This information is created by the Tobacco Control Policy and Legal Resource Center of New Jersey GASP, which provides educational information, educational guidance and educational technical assistance on tobacco control topics. The information presented is not intended as, nor to be construed, or used as legal advice, and should not be used to replace the advice of your legal Counsel.